of the House of the disproportionately large share of the premium charges imposed upon employees and retirees for participation under the Federal employees' health benefits program.

When the enabling legislation was implemented in 1960 to provide the important fringe benefit of health insurance for Federal workers, the funding formula assessed approximately 62 percent of premium costs to employees and 38 percent to the Government. Over the period of the past 8½ years, however, medical care costs have soared, coverage has been liberalized, and, due to a greater awareness of health care, utilization of benefits has grown. These are but a few of the factors which have played a part in the alarming increase in the dollar output to provide health benefits, and which result in employees paying an average of 72 percent of current costs.

The Subcommittee on Retirement, Insurance, and Health Benefits' public hearings conducted last year most assuredly demonstrates the urgency for the adoption of a new funding formula to require the Government to match the participation of private industry in the vital area, and to relieve employees and annuitants of the unfair burden of continuing to assume the lion's share of constantly spiraling costs.

Therefore, Mr. Speaker, I have today introduced a bill which would require the Government to eventually assume the full costs of the program. My bill proposes that the Government's contributions to subscription charges be increased to 50 percent in July 1969; to 75 percent in July 1970; and that it eventually assume the responsibility for payment of total costs in July 1971.

I believe, Mr. Speaker, that this legislation will put meaning into the costing formula by updating it in a manner to assure that the Government is striving to match the experience which has been demonstrated industrywide in providing cost-free health insurance to its workers. Action should not be delayed on this important matter since the cost situation, serious as it now is, will inevitably grow worse with the passing of time.

HOUSE OF REPRESENTATIVES—*Monday, January 6, 1969*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

The Lord give thee wisdom and understanding . . . that thou mayest keep the law of the Lord, thy God.—1 Chronicles 22: 12.

O Lord of love and God of all goodness, in this sacred moment we bow at the altar of prayer thanking Thee for this glorious land in which we live. May we now and always prove ourselves a people mindful of Thy presence, eager to do Thy will, and ready to serve our fellow men. Save us from violence and discord. Mold us into a people united in purpose and principle, in faith and fortitude.

Endue with Thy wisdom all Members of Congress, especially this House of Representatives, and particularly our beloved Speaker. Direct their decisions, prosper their planning, and expedite their efforts as they seek to promote the welfare of our country and the good of all our citizens.

As a result of our endeavors may peace come to our world, justice rise to new life in our Nation, and happiness live in every human heart.

In the Master's name we pray. Amen.

THE JOURNAL

The Journal of the proceedings of Friday, January 3, 1969, was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Vice President, pursuant to Senate Concurrent Resolution 1, appointed Mr. JORDAN of North Carolina and Mr. CURTIS as tellers on the part of the Senate to count the electoral votes for President and Vice President of the United States on January 6, 1969.

SWEARING IN OF MEMBER-ELECT

The SPEAKER. Will any Member-elect who has not been sworn come to the well of the House and take the oath of office.

Mr. MOSHER appeared at the bar of the House and took the oath of office.

VIOLATION BY SOME OF THE NEWS MEDIA OF RESTRICTIONS ON PICTURE TAKING

The SPEAKER. The Chair is troubled over the flagrant violation by some of the news media of the restrictions on the taking of pictures during the organization of the House on last Friday.

All segments of the news media were thoroughly familiar with the rules that taking any pictures—still, moving, TV, or tape—are prohibited except during the period when the klieg lights are turned on.

Some members of the news media who were granted the privilege of attending the opening session of the 91st Congress and permitted to bring their cameras into the galleries ignored the restrictions in complete violation of the agreement upon which they were admitted.

The Chair is calling this matter to the attention of the news media galleries and will expect a report from each on the action taken by them with respect to the violations of the regulations as well as to what provisions they are making to prevent such violations in the future.

RECESS

The SPEAKER. The Chair wishes to make a statement.

The Chair desires deferment of unanimous-consent requests and also 1-minute speeches until after the formal ceremony of the day, which is the counting of the electoral votes for President and Vice President. Therefore, pursuant to the order adopted on Friday last, the Chair declares the House in recess until approximately 12:45 p.m.

Accordingly (at 12 o'clock and 6 minutes p.m.), the House stood in recess subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 12 o'clock and 55 minutes p.m.

COUNTING ELECTORAL VOTES—JOINT SESSION OF THE HOUSE AND SENATE HELD PURSUANT TO THE PROVISIONS OF SENATE CONCURRENT RESOLUTION 1

At 12 o'clock and 55 minutes p.m., the Doorkeeper, Mr. William M. Miller, announced the President pro tempore and the Senate of the United States.

The Senate entered the Hall of the House of Representatives, headed by the President pro tempore and the Secretary of the Senate, the Members and officers of the House rising to receive them.

The President pro tempore took his seat as the Presiding Officer of the joint convention of the two Houses, the Speaker of the House occupying the chair on his left.

The joint session was called to order by the President pro tempore.

The PRESIDENT pro tempore. The hour of 1 o'clock having arrived, the joint session will now be in order.

Mr. Speaker and Members of the Congress, the Senate and the House of Representatives, pursuant to the requirements of the Constitution and laws of the United States, have met in joint session for the purpose of opening the certificates and ascertaining and counting the votes of the electors of the several States for President and Vice President.

Under long-established precedents, unless a motion shall be made in any case, the reading of the formal portions of the certificates will be dispensed with. After ascertainment has been made that the certificates are authentic and correct in form, the tellers will count and make a list of the votes cast by the electors of the several States.

The tellers on the part of the two Houses will take their respective places at the Clerk's desk.

The tellers, Mr. CURTIS and Mr. JORDAN of North Carolina on the part of the Senate, and Mr. FRIEDEL and Mr. LIPSCOMB on the part of the House, took their places at the desk.

The PRESIDENT pro tempore. The Chair hands to the tellers the certificates of the electors for President and Vice President of the State of Alabama, and

they will count and make a list of the votes cast by that State.

Senator JORDAN of North Carolina (one of the tellers). Mr. President, the certificate of the electoral vote of the State of Alabama seems to be regular in form and authentic and it appears therefrom that George C. Wallace of the State of Alabama, received 10 votes for President and Curtis E. LeMay of the State of California, received 10 votes for Vice President.

The PRESIDENT pro tempore. There being no objection, the Chair will omit in further procedure the formal statement just made for the State of Alabama and we will open the certificates in alphabetical order and pass to the tellers the certificates showing the vote of electors in each State; and the tellers will then read, count, and announce the result in each State as was done in the State of Alabama.

The Chair hears no objection.

There was no objection.

The tellers then proceeded to read, count, and announce, as was done in the case of Alabama, the electoral votes of the several States in alphabetical order.

During the proceedings of the count of the electoral vote.

Senator JORDAN of North Carolina (one of the tellers). Mr. President, the certificate of the electoral vote of the State of North Carolina seems to be regular in form and authentic and it appears therefrom that Richard M. Nixon, of the State of New York, received 12 votes for President, and George C. Wallace, of the State of Alabama, received one vote for President, and Spiro T. Agnew, of the State of Maryland, received 12 votes for Vice President, and Curtis E. LeMay, of the State of California, received one vote for Vice President.

Mr. O'HARA. Mr. President——

The PRESIDENT pro tempore. For what purpose does the gentleman from Michigan rise?

Mr. O'HARA. For the purpose of objecting to the counting of the vote of North Carolina as read.

The PRESIDENT pro tempore. Has objection been reduced to writing?

Mr. O'HARA. It has, Mr. President, and I send to the Clerk's desk a written objection signed by Senator MUSKIE and myself, in which 37 Members of the House and six Members of the Senate have joined.

The PRESIDENT pro tempore. The Clerk will read the objection.

The Clerk of the House read as follows:

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the ground that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and the State thereby appointed thirteen electors to vote for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.

JAMES G. O'HARA, M.C.
EDMUND S. MUSKIE, U.S.S.

ADDITIONAL SIGNERS ON THE PART OF THE SENATE

FRED R. HARRIS, U.S.S.
GALE W. MCGEE, U.S.S.
WARREN G. MAGNUSON, U.S.S.
WALTER F. MONDALE, U.S.S.
JENNINGS RANDOLPH, U.S.S.
HUGH SCOTT, U.S.S.

ADDITIONAL SIGNERS ON THE PART OF THE HOUSE

JOSEPH P. ADDABBO, M.C.
EDWARD P. BOLAND, M.C.
WILLIAM S. BROOMFIELD, M.C.
GARRY E. BROWN, M.C.
GEORGE BUSH, M.C.
JEFFREY COHELAN, M.C.
JOHN R. DELLENBACK, M.C.
EDWARD J. DERWINSKI, M.C.
ED EDMONDSON, M.C.
JOSHUA EILBERG, M.C.
LEONARD FARBSTEIN, M.C.
DANTE B. FASCELL, M.C.
DONALD M. FRASER, M.C.
SEYMOUR HALPERN, M.C.
WILLIAM D. HATHAWAY, M.C.
FLOYD V. HICKS, M.C.
LAWRENCE J. HOGAN, M.C.
JAMES J. HOWARD, M.C.
FRANK HORTON, M.C.
JOSEPH E. KARTH, M.C.
THOMAS S. KLEPPE, M.C.
EDWARD I. KOCH, M.C.
PETER N. KYROS, M.C.
ABNER J. MIKVA, M.C.
WILLIAM S. MOORHEAD, M.C.
THOMAS P. O'NEILL, Jr., M.C.
RICHARD L. OTTINGER, M.C.
HOWARD W. POLLOCK, M.C.
WILLIAM F. RYAN, M.C.
PETER W. RODINO, M.C.
WILLIAM L. ST. ONGE, M.C.
FRED SCHWENGEL, M.C.
LOUIS STOKES, M.C.
LIONEL VAN DEERLIN, M.C.
LOWELL P. WEICKER, M.C.
JAMES C. WRIGHT, Jr., M.C.
SIDNEY R. YATES, M.C.

The PRESIDENT pro tempore. The objection submitted by the Representative from Michigan, Mr. O'HARA, signed by himself and the Senator from Maine, Mr. MUSKIE, complies with the law, having attached thereto the signatures of a Member of each of the bodies of Congress.

Are there any further objections to the certificates from the State of North Carolina? The Chair hears no further objection.

This objection having been submitted in writing and being properly attested to by a Member of each House of the Congress, pursuant to the law in such cases made, it is provided that the Senate will now withdraw and determine the position of the Senate on this objection, after which, in the words of the statute, we will immediately meet again and the presiding officer shall then announce the decision on the questions submitted.

The Senate will now repair to the Senate Chamber.

(Thereupon, at 1 o'clock and 32 minutes p.m., the Senate retired from the Hall of the House of Representatives.)

OBJECTION TO COUNTING ELECTORAL VOTES FROM NORTH CAROLINA

At 1 o'clock and 41 minutes p.m., the House was called to order by the Speaker.

The SPEAKER. Pursuant to the provisions of Senate Concurrent Resolution 1 and section 17, title 3, United States Code, governing the procedure for counting the electoral votes, when the two Houses separate to decide upon an objection that has been made to the counting of any electoral votes from any State, each Representative may speak to such objection for 5 minutes, and not more than once. Under the law, debate is limited to not to exceed 2 hours.

The Chair now asks the Clerk to report the objection which was made in the joint session to the vote of the State of North Carolina.

The Clerk read the objection, as follows:

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the ground that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and the State thereby appointed thirteen electors to vote for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.

JAMES G. O'HARA, M.C.
EDMUND S. MUSKIE, U.S.S.

The SPEAKER. The question is, Shall the objection submitted by the gentleman from Michigan (Mr. O'HARA) and the Senator from Maine (Mr. MUSKIE) be agreed to.

The Chair will attempt to divide the time equally between those Members wishing to speak in support of or in opposition to the objection.

The Chair recognizes the gentleman from Texas (Mr. WRIGHT) for 5 minutes.

Mr. WRIGHT. Mr. Speaker, in opening debate on this issue, I shall attempt to put into some perspective the basic position held by those of us who object to the vote of the faithless North Carolina elector.

This is a truly historic decision that confronts us. The Congress, for good or for ill, will establish a major precedent today. In carrying out our legal mandate to canvass the votes of the electors, and to ascertain that those votes were "regularly given," we face the one fundamental issue which lies at the very heart of the system by which the President and Vice President of the United States are chosen.

The basic question is that of sovereignty. Who, under the American system, is sovereign? In whom does the ultimate right and the power of decision reside?

Are the people sovereign? Do they have the right to expect—indeed, to insist—that their clearly expressed wishes shall be faithfully carried out by the college of electors, that strangely anomalous and almost anonymous appendage which the Constitution rather awkwardly interposed between them and their chosen leaders?

Or shall we determine today that the people, in the final analysis, have no such right at all? Shall we declare that they have no authority whatever to require that their votes be faithfully reflected by their agents, the electors—no right, no remedy, no recourse and no protection against the faithless elector who betrays their trust, abuses his office,

disdains their wishes, and cavalierly substitutes his will for theirs?

Think what a dangerous precedent that would be. And that is precisely the precedent which we shall ratify if we vote down this resolution today. That is the precedent we approve if we by our action interpret the palpable betrayal by the faithless elector of North Carolina as a vote "regularly given."

Obviously, there is nothing regular about it. Since the beginning of the Republic, 16,510 electors have been chosen to perform this formal and now presumably perfunctory duty. Only six of the more than 16,000—only six in all these years—have miscast the ballot with which their people entrusted them. Each of these instances has been deplored, but never has one been rectified. Happily none of them has altered the outcome of a presidential election.

But this is not to say that it could not happen if we, by our inaction today, should tacitly sanction the practice. Consider the consequences in the case of some future third party candidate who might succeed in preventing either of the major candidates from receiving a majority of the electoral votes—and then might crassly attempt to barter away to the highest bidder the votes of the electors pledged to him—and thus the Presidency of the United States. Who is to say that this could not happen—if publicly pledged electors are to be permitted to change their votes by no more authority than their own whim?

The electoral college is a creaky and antiquated bit of machinery, a relic of the powdered wig and snuffbox era. We have long since outgrown it. Personally I think we should be done with it entirely. As early as 1826, Thomas Hart Benton described the office of elector as "useless if he is faithful, and dangerous if he is not."

Until we can reform the electoral system by constitutional amendment, we shall have to put up with this quaint old custom. But we do not have to put up with fraud. We do not have to condone deliberate betrayal of the wishes of the people by one who accepted their appointment in token of his pledge to carry out their wishes.

Perhaps there is no more dangerous flaw in our electoral system than that of a faithless elector ready to ignore the clearly expressed will of the electorate and to substitute his judgment for theirs.

We have the legal and constitutional power, and indeed the duty, to prevent faithless electors from corrupting the election of a President. While independent electors admittedly were contemplated by the Constitutional Convention, we will demonstrate that the adoption of the 12th amendment, and more than a century and a half of constitutional usage have so modified that intent that the Supreme Court rejected such a claim 16 years ago and we should reject it today.

We will show that the "equal protection" provisions of the 14th amendment guarantee every voter the right to an "effective" vote in presidential elections, that the faithless elector dilutes their right, and that it is the Congress and not the States nor the courts which has the statutory duty to protect the constitutional right of every citizen from the actions of an elector who betrays it.

We have filed a formal objection to the vote of the faithless elector. We ask that his vote not be counted for the candidates selected by him because they are not the candidates for whom he was appointed to vote and for whom he assumed a clear obligation to vote.

If we fail to sustain this objection, the consequences of our failure will be much more serious than simply depriving Mr. Nixon of a vote he does not need. For if one elector of North Carolina, nominated by political party convention as an elector for his party's nominees and elected by votes cast not for him—his name did not even appear on the ballot—but for his party's nominees can abrogate his duty, then all 13 North Carolina electors could do so. And if North Carolina's electors have this privilege so do the electors of every other State and there are many of them who appoint their electors by this method.

By every rightful and proper expectation of our political heritage, the vote of the faithless elector from North Carolina was improperly given. Today we have the opportunity—and, I believe, the responsibility—to brand it as such, to disallow it, and to establish once and for all that no elector shall arrogantly flout the will of the people of any State in this Union.

The SPEAKER. The gentleman from North Carolina is recognized for 5 minutes.

Mr. JONAS. Mr. Speaker, I intended to vote to count the ballot for former Governor Wallace which was cast by the elector from North Carolina's Second Congressional District. I shall do so, however, with grave misgivings about the possible consequences of the precedent that will be established if his right to do so is sustained today.

Fortunately we can debate this issue dispassionately and objectively because the result of the election in the electoral college will not be affected regardless of the outcome of the contest today. If the House votes today to sustain Dr. Bailey's right to cast his vote for Wallace, a precedent will be established and, unless electoral college reform occurs between now and the next presidential election, or unless the States affirmatively act, a Pandora's box will have been opened and in the next election there is a possibility that electors will go running all over the lot casting votes for candidates for the Presidency who did not carry their states. Chaos would result from this action.

Suppose in the next presidential election there should be a very close division in the electoral college so that the outcome may turn on a few or even one vote. Just imagine the pressures that might be exerted on individual electors to cast their votes for someone who was not the choice of the people who elected them.

It must be remembered that the elector in question was not elected as elector by the voters of North Carolina's Second Congressional District. He did not become an elector until the votes were counted on election day, and he was elected by the voters from all over North Carolina. One of the reasons given by Dr. Bailey for his defection to Wallace was that the latter received a majority of the votes in the Second Congressional District, but in my judgment that is beside the point. If Dr. Bailey's election had turned on the votes of his district, he would never have been an elector. His election as an elector was made possible by the votes of the people in other districts than his own. As an elector, therefore, he was not representing the people of the Second Congressional District but the people of North Carolina as a whole. It seems to me that his obligation was to the people of the State who gave Nixon more votes than either of the other two candidates, and his defection to Wallace amounted to a repudiation of the wishes of the very people who elected him and who clearly indicated their desire that North Carolina's 13 electoral votes be cast for Nixon.

It must also be remembered that since 1933 the names of the appointed electors have not appeared on our presidential ballot in North Carolina. North Carolina is among the States which list the names of the candidates for President on the ballot, and this year those names were HUMPHREY, Nixon, and Wallace. So the voters of North Carolina were not directly voting for electors but for the candidates for President, and it seems to me that the 627,192 voters in North Carolina who cast their votes for Nixon had a right to expect that the electors would vote for their man if he carried the State. When the elector in question defected to Wallace, in effect he was repudiating the mandate given him by the people who elected him to represent them and he did so in derogation of their wishes that all of North Carolina's 13 votes should be cast for Nixon.

While I personally believe that Dr. Bailey had an obligation to vote in accordance with the expressed will of the people of the State who elected him an elector, nevertheless I do not find anything in the Constitution of the United States that requires him to do so nor do I find any statute in North Carolina that expressly requires him to do so.

In the absence of a constitutional amendment which will change the electoral college system, it is my opinion that the responsibility rests on the State of North Carolina and the other States of the Union to make it impossible in the future for the election of a President of the United States to turn on the whim or predilection of individual electors.

Fortunately the country through the Congress or through the legislatures of the several States will have an opportunity to avoid the confusion and chaos that might result in some future close election in the electoral college. The Legislature of North Carolina will soon be meeting and I trust that some corrective action will be taken to prevent such a situation from arising in future elections.

In the meantime, I think it is incumbent on this Congress to begin prompt hearings on the subject of general electoral reform so that a constitutional amendment may be presented to the States for effective action to be taken before the next general election.

The SPEAKER pro tempore (Mr. ALBERT). The time of the gentleman from North Carolina has expired.

The Chair recognizes the gentleman from Oklahoma (Mr. EDMONDSON).

Mr. EDMONDSON. Mr. Speaker, I can sympathize a little bit with the gentleman from the State of North Carolina who just preceded me, because in my own State of Oklahoma we had a similar situation in 1960 in which an elector, chosen in the State that voted by an overwhelming majority for President-elect Nixon, in the 1960 canvassing of the electoral college voted for Senator BYRD of Virginia instead of following the State's decision for Mr. Nixon. There was some consideration given at that time to some type of contest in connection with the canvassing of his ballot. I think it is rather unfortunate that this debate did not take place at that time, because I think we had at that time a very clear instance—and we have had six of them in history—of an elector who did not follow the decision of his State in connection with the presidential election.

Mr. Speaker, I support the objection of Congressman O'HARA and Senator MUSKIE at this time, and I agree wholeheartedly with my good friend from North Carolina that we are dramatizing today very clearly the need for reform in the electoral college system. I cannot think of any other way that would demonstrate more clearly the need for reform than the issue which is before us today.

The 12th amendment to the constitution specifies:

> The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted.

This power of the Congress to count the electoral vote is the only constitutional power specifically granted to anybody or agent to protect the electoral system against arbitrary or unlawful action to thwart the popular will of the people of the States in electing the President of the United States.

This power conferred by the Constitution on the Congress is not in strict terms a legislative power. It requires no Executive approval and is not subject to the Presidential veto as in the case of legislative enactments. When the action of Congress in rejecting the certified electoral votes of certain States was transmitted to President Lincoln in 1865, he said:

> The two Houses of Congress, convened under the twelfth article of the Constitution, have complete powers to exclude from counting all electoral votes deemed by them to be illegal and it is not competent for the Executive to defeat or obstruct the power by a veto * * * or to interfere in any way in the matter of canvassing or counting the electoral votes.

Mr. Speaker, this is an absolute power possessed by the House and the Senate and it is this power which we seek to invoke today.

Mr. Speaker, in the exercise of this power the Congress is to be guided by what the Constitution requires with respect to the electoral process.

In this regard the Constitution in article II, section 1, provides:

> 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.

Mr. Speaker, each State under the Constitution directs the manner of the selection and, hence, the Congress in its powers to count the electoral votes is giving effect to and protecting the constitutional right of the States in their functions with respect to the electoral process.

To me it is significant that the names of the electors did not even appear on the November ballot in the State of North Carolina. The voters had nothing before them except the names of the presidential and vice-presidential candidates for each party.

Those voters were entitled to assume when they voted for the presidential candidate and vice-presidential candidate of their choice, that their votes would be made effective by the electors.

I think we can take congressional notice of the plurality that was cast for President-elect Nixon and for Vice President-elect Agnew. We can take congressional notice of the fact that the North Carolina vote was for them and was intended to be cast for them.

The Congress has not been blind to the potential dangers to the electoral process with respect to protecting the rights of citizens of the States casting their ballots for electors in that phase of the electoral process, and the courts have sustained the validity of congressional enactments in this area—Ex parte Yarborough 110 U.S. 651.

Surely the Congress will not be blind to a flagrant and audacious violation of the North Carolina electoral law in the case of Dr. Bailey, who has decided to substitute his own judgment for that of the voters of North Carolina and has thereby violated his trust.

Mr. Speaker, Congress has the ultimate power to protect the integrity of the electoral process, and the objection of Mr. O'HARA and Senator MUSKIE should be and must be sustained.

The SPEAKER pro tempore (Mr. ALBERT). The Chair recognizes the gentleman from Ohio (Mr. MCCULLOCH) for 5 minutes.

Mr. MCCULLOCH. Mr. Speaker, I rise in opposition to the objection. I sincerely wish that I could support the objectors because I believe that the elector from North Carolina should have voted as the people of North Carolina instructed him.

However, my study and my reading of history of the Constitution requires me to oppose the objection. Both article II and the 12th amendment which superseded it state:

> The electors shall . . . vote by ballot for President and Vice President.

I understand that language to mean that the electors are constitutionally free and independent in choosing the President and Vice President. Several State courts have said so—*Opinion of the Justices, No. 87*, 250 Ala. 399, 34 So. 2d 598 (1948); *Breidenthal* v. *Edwards*, 57 Kans. 332, 339, 46 P. 469, 471 (1896); *State ex rel. Beck* v. *Hummel* 150 Ohio St. 127, 146, 80 N.E. 2d 899, 909 (1948). *Contra, Thomas* v. *Cohen*, 146 Misc. 836, 841–42, 262 N.Y.S. 320, 326 (Sup. Ct. 1933)—although the U.S. Supreme Court has never passed on the question—Cf. *Ray* v. *Blair*, 343 U.S. 214 (1952).

It should be especially clear to the Members of the House that the concept of "voting by ballot" implies that the voter has a real choice. This was the original understanding, as the debates of the Constitutional Convention—two records of the Federalist Convention of 1787, at 501 (M. Farrand ed. 1937)—and No. 68 of the Federalist, demonstrate beyond doubt. Even the objectors admit this in the materials they have circulated to the Members of this body.

But what has happened since those early days to alter the constitutional freedom of the elector? Nothing. Electors have been "faithless" as early as 1796 and as late as 1960. And each time the Congress counted the vote as actually cast by the elector—Rosenthal, *The Constitution, Congress, and Presidential Elections* 67 Mich. L. Rev. 25, n. 97 (1968). Moreover, hundreds of Congressmen have reacted to such perfidy by introducing resolutions to amend the Constitution by abolishing the office of elector. And why? Because only a constitutional amendment can change the constitutional independence of the elector.

Today, the objectors ask us to circumvent the amending process. They ask us to do what we have criticized so often before—to read into the Constitution what we wish the law to be. They ask us to transform independent electors into rubber stamps. They ask us to adopt a view which not only differs from but which is diametrically opposed to the way the Constitution was written.

But the Congress has previously indicated that the elector must be free to vote his own mind. In the election of 1872, the Democratic presidential candidate, Horace Greeley, won the popular vote of six States. Shortly after the election, he died. When the Democratic electors voted in the electoral college, they scattered their votes among several persons. Three votes were cast for the deceased Greeley. Congress refused to count those three votes because they were not cast for a "person," as the 12th amendment required. See "Electing the President," 33 American Bar Association 1967.

Thus the present system which separates the appointment of electors from the election of a President by over a month necessitates that the electors remain free and independent because the people's choice may have died.

In 1912, it was the defeated Republican vice presidential candidate who died before the electoral college met. Lest their votes be not counted, the Republican electors voted for someone else, and Congress counted the votes. See "Electing the President," 33 American Bar Association 1967.

We cannot have it both ways—electors who are bound if the candidates live and electors who are independent if the candidates die.

The history of this issue in the Congress reveals the consistent application of the rule of law that electors are independent.

Section 15 of title III which is being invoked today was enacted in 1887 in order to establish a procedure for determining how the chosen electors voted. The Congress wished to provide against a repetition of the Hayes-Tilden dispute of 1876 and 1877. In that election, some States sent two sets of returns. Which set was real? That was the question. Section 15 is the procedure for answering that question.

But once the real set is determined, the votes must be counted. Nothing in title III empowers Congress to change or disregard votes because an elector has been unfaithful.

Note that title III allows the State of North Carolina to object. However, North Carolina does not object—and rightly so. Mr. Bailey is an elector and his vote was reguarly given. The laws of North Carolina and the United States were complied with.

Of course, Mr. Bailey violated an agreement with the Republican Party in North Carolina. But what law—State or Federal—did he violate?

I find none. So how can we tamper with the vote?

The objection, however, serves to underscore the need for immediate affirmative action by the Congress in fashioning a resolution for a constitutional amendment to reform the electoral college. I wholeheartedly call for such reform and urge prompt action in this body.

However, that reform must be achieved honestly—by the amendment process. It should not be achieved by ignoring the Constitution and the steady precedents of the Congress.

I urge that the objection be defeated.

The SPEAKER pro tempore. The Chair recognizes the gentleman from New York (Mr. CELLER) for 5 minutes.

Mr. CELLER. Mr. Speaker, at the time of the framing of the Constitution, our Founding Fathers, led particularly by Hamilton and partly by Jefferson, felt that the hoi polloi, the unwashed masses, and the rustics, they called them, were not educated enough or did not have intelligence enough to select the President and Vice President; that there was to be a barrier between them and the Presidency. Therefore they set up an elite class to be voted on by the general voters, which we call the electoral college.

That process did not over the course of history seem to work too well. It was not long before changes were effectuated. So that during most of the 19th century and all of the past 20th century this system went into limbo, as it were, that is, the idea of the Founding Fathers, and it became the common understanding and usage that the electorate expects that its votes will be cast for the candidate of its choice without the intervention of another judgment and in a manner contrary to their expressed wishes.

Whether or not electors are pledged, whether or not they are named, whether or not their names appear on the ballot, whether or not the law provides sanctions if they should fail to vote in accordance with the electorate's wishes, the universal—and I say "universal"—understanding in the United States today and in the the 20th century particularly is that the electoral college exercises a ministerial, an agency function and effectuates the expressed wishes of the people. Indeed most electors consider themselves irrevocably committed to support the presidential candidate on whose ticket they were elected or on which they were elected.

This traditional ministerial function of the electors has become sacred. Any departure from that tradition must be challenged as it is today. It must be successfully challenged.

James Russell Lowell, a Republican elector in Massachusetts, in the famous Hayes-Tilden election of 1876, was urged to switch his vote from Hayes to Tilden, which would have made Tilden the victor, since only one vote divided the men in the national count. Lowell refused to do so and stated significantly:

> In my own judgment I have no choice, and am bound in honor to vote for Hayes, as the people who chose me expected me to do . . . They did not choose me because they have confidence in my judgment but because they thought they knew what the judgment would be. If I had told them that I should vote for Tilden, they would never have nominated me. It is a plain question of trust.

So, my good friends, what this man Dr. Bailey did was contrary to that tradition which is sacred in this Nation of ours—a tradition that we must respect. While we have the electoral college we must protect the integrity of the electoral college.

And so the issue here is joined.

Mr. Speaker, Members of this House undoubtedly are aware that it is my plan to hold hearings on electoral college reform early in the present Congress. But no one can predict what the outcome of our deliberations will be.

Meanwhile, I intend to support the proposed challenge to the vote cast by the elector from North Carolina. I do so recognizing that the disposition of this challenged vote will not affect the result of the presidential election. However, I believe it most appropriate and essential that the Congress give effect to the view now held by the overwhelming majority of our people that when the vote of an electorate is cast for President, it shall not be nullified or abrogated by any elector.

Mr. ABERNETHY. Mr. Speaker, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Mississippi.

Mr. ABERNETHY. The gentleman stated that when the Founding Fathers set up this system that they provided that the actual election of the President should be made by the electors. Now, that was constitutional, was it not?

Mr. CELLER. That was in the Constitution.

Mr. ABERNETHY. All right; now, would the gentleman tell us when and where it was changed?

Mr. CELLER. Where they changed it?

Mr. EDMONDSON. In the 12th amendment.

Mr. CELLER. The change came by tradition and practice. Also, there is not necessarily any violation of the Constitution in what we are seeking to do today because the Constitution says, for example, that the House has the right to count the vote and the right to count the vote implies a right to say there shall be no vote and, therefore, we have a right to say, "No vote."

Mr. ABERNETHY. Mr. Speaker, if the gentleman will yield further, there is a difference between counting votes and casting votes.

Mr. CELLER. Yes, there is a difference in counting votes and casting votes.

Mr. ABERNETHY. This House has no right to cast a vote. The only right the House has is to count the votes.

Mr. CELLER. I admit the line of difference is slender, but one which I believe can be stretched a little. Hence I think it can be understood that we can cast the vote for Mr. Nixon. Remember, Dr. Bailey, the elector, was nominated and elected for that purpose; namely, to elect Mr. Nixon. He had a trust to vote for Nixon. He cannot disavow that trust. We, therefore, correct his breach of trust or, in other words, cause the ministerial act of voting for Mr. Nixon to be consummated.

The SPEAKER pro tempore. The time of the gentleman from New York has expired.

The Chair recognizes the gentleman from North Carolina (Mr. LENNON).

Mr. LENNON. Mr. Speaker, I would like to make it crystal clear in the beginning, that as an individual I do not agree with the elector from the Second Congressional District of North Carolina. I think he had a moral obligation to vote for the candidate who received the highest vote throughout the State of North Carolina.

But, if I may read to you gentlemen—if I may have your attention for a minute or two because North Carolina is involved and I do think you ought to listen to us from North Carolina on this subject matter—I read from the 12th amendment:

> The President of the Senate shall in the presence of the Senate and the House of Representatives open all of these certificates and the votes shall then be counted.

It does not mention the fact that they may be changed. That is what is proposed here in the objection of the gentleman from Michigan and the Senator from Maine.

Mr. Speaker, I was quite interested in finding in the Library of Congress on Saturday afternoon a very comprehensive article on this subject matter, which appeared in the State of Michigan Law Review published in November 1968 subsequent to the election. If one gets that document, a fine article written by one of the most eminent professors of law in the Nation, Mr. Albert J. Rosenthal, you will find on page 17 a very significant statement. If you will bear with me and listen to me, please, I shall read:

> If we assume that discretion on the part of electors to override the expectations of their constituents must be eliminated, there are three possible ways in which this may be accomplished: by the courts under existing law, by statute, or by constitutional amendment.

No. 1, "by the courts under existing law"—under existing law the courts have not spoken to this subject matter—"by statute"—in 23 States of our Nation they

have by statute mandated the electors to cast their vote.

After passing of the 21st amendment which gave the right to the District of Columbia to participate in the presidential election, the Congress immediately implemented the 21st amendment in its capacity acting as a State legislature for the District of Columbia and mandated and required the electors to take a written pledge and oath to support the nominee of the party at the national level who received a majority or plurality in the District of Columbia.

So, then, it becomes crystal clear that until such time as the State legislatures of the several States act, unless the court at the highest level, the Supreme Court acts, or unless the Congress through constitutional amendment by two-thirds of the votes of the two bodies, and ratification by three-fourths of the legislatures of the 50 States, we are powerless to do anything.

If we could do what is suggested here today, then we can void, if you please, the votes for Richard M. Nixon, all of his votes, and give them to Mr. HUMPHREY, or vice versa, we could void the votes of Mr. HUMPHREY and give them to Mr. Nixon.

Mr. ABERNETHY. Mr. Speaker, will the gentleman yield?

Mr. LENNON. I yield to the gentleman from Mississippi.

Mr. ABERNETHY. Mr. Speaker, I thank the gentleman for yielding.

The gentleman has made a fine point, and that is that the only power we have here today is to count the votes.

Mr. LENNON. That is all.

Mr. ABERNETHY. And not to cast or void votes. Is that not right?

Mr. LENNON. That is correct.

Now, I want to tell the Members of the House of Representatives what the official position of the State of North Carolina is. This is a statement that was issued through the news media this morning by the chairman of the State Board of Elections of the State of North Carolina. I shall read it:

> It is simply beyond reasonable comprehension that the Federal Congress or any segment thereof would presume to alter the electoral vote from North Carolina or any other state. There is no constitutional authority for such action nor is there any basis in law for the Congress to disrupt this due process.
>
> If there is need for alteration to preclude the eventuality of any elector casting his vote contrary to the political party which elected him then it can and should be done within the state either by the General Assembly of this state or through the respective representative "plans of organization of each political party". Either approach can be accomplished with relative ease under the existing statutes and constitutional provisions in this or in any other state.
>
> Any attempt by Congress to usurp this authority from our state would in my judgment demonstrate again that emotionalism in Washington causes over-reaction and often prescribes a cure much worse than the alleged illness.

The SPEAKER pro tempore (Mr. ALBERT). The time of the gentleman from North Carolina has expired.

Mr. LENNON. Mr. Speaker, would I be permitted to yield to someone sharing my belief for 5 minutes?

The SPEAKER pro tempore. The Chair will state that it has no discretion in this matter, inasmuch as the time is set by law.

Mr. LENNON. I thank the Chair for its ruling.

The SPEAKER pro tempore. The Chair now recognizes the gentleman from New York (Mr. HORTON).

Mr. HORTON. Mr. Speaker, as each of us in this Chamber has come here by virtue of free and fair constitutional machinery for direct representation elections, I feel we owe the American people a duty to support the objection raised by the gentleman from Michigan and the Senator from Maine and in which I have joined.

Our democratic republic has limped along for nearly two centuries with a system for presidential election which is inherently undemocratic and wholly unsuited to the needs of a well-informed electorate in the 1960's and 1970's. But despite its serious weaknesses, the system has somehow survived by yielding up only infrequently the inequitable results and the potential electoral disasters inherent within it. The principal reason that our electoral system has muddled through for so long is that there has grown up a general expectation that presidential electors would and must follow the will of their constituencies in casting their ballots for President and Vice President. This expectation is becoming a part of the judicial and, I believe, the statute law that has grown up around the electoral system.

Today, in one of the most troubled hours of this Nation, we are seeing, for only the sixth time in our Nation's history, the betrayal of this essential trust between the people of a State and one of their electors. As the duly elected Republican elector from North Carolina's Second Congressional District, Dr. Lloyd W. Bailey was both faceless and nameless to the vast portion of that State's voters. They were aware of only one fact about him—that he was part of a slate of electors who would cast all of their ballots for Richard M. Nixon should he win a plurality of North Carolina's popular votes.

Mr. Speaker, the false argument has been raised by Dr. Bailey that he was casting his vote in accordance with the will of the people in his congressional district whom he was selected to represent. This is an outrageous contention. Dr. Bailey was indeed nominated by a district caucus at his party's State convention, but he was elected on a statewide basis. A vote cast for Mr. Nixon was a vote for the Republican electors as a group, and their election turned upon the statewide results—not the vote of their congressional districts. In fact, were the selection by congressional district, Dr. Bailey, as a Republican elector, would not have been chosen.

A great many years ago it was not unusual for electors to be chosen by the voters of each congressional district, with two electors elected at large. But as political parties grew in strength this system fell out of favor. By 1832, it remained in only four States. The principal objection to this method was that it more often than not divided a State's vote. With specific reference to North Carolina, it is interesting to note a contemporary comment on the statutory change of 1933 which removed the names of electors from the ballot. The commentator remarked that change was intended, in part, to "preclude the bare possibility" that the State's electoral count would be split.

We might ask Dr. Bailey if he advocates Republican electors casting their votes for HUBERT HUMPHREY where he carried their congressional districts.

There are 13 presidential electors from North Carolina. They hold among them all of the voting power of the 5,000,000 people of that State in selecting a President and Vice President. Regardless of whom he cast his individual vote for, each North Carolina citizen expects that the winning candidate in his State will receive all 13 electoral votes.

By breaking the faith of his "agency" for the people of the State, Dr. Bailey, who claims to have cast his ballot for George C. Wallace through personal "moral obligation," in effect nullified the "effective votes" of one-thirteenth of all North Carolinians.

Thus, by this reasoning, Dr. Bailey's failure to vote for the President-elect effectively disenfranchised nearly 400,000 citizens of North Carolina.

It is only by our good fortune that this man's vote by "moral obligation" did not change the winner of the national election, nor throw the vote into the House of Representatives for decision under a blatantly undemocratic set of constitutional rules, but it certainly could have been otherwise. In this election it would take only 30 Dr. Baileys to nullify the wishes of a plurality of Americans or to throw the vote into the House. Our good fortune should not cause us to overlook the mockery which has been made of the electoral system as we understand it; it must not cause us to overlook the fraud which was worked on the people of North Carolina.

Title 3, United States Code, section 15, establishes the procedure of the congressional count of electoral votes. It clearly spells out the procedure for objecting to electoral ballots "not regularly given." Cogent arguments for not narrowing the meaning of this phrase to include only formal and procedural regularity have been ably presented here this afternoon. Dr. Bailey had both a moral and legal duty, in my judgment, to the people of his State, of a far higher order than any "moral obligation" he claims to himself to vote for Mr. Wallace. His disavowal of that duty stands as a misuse of the office of elector, and, I believe, renders his ballot highly "irregular."

I implore my colleagues to sustain the objection.

If there is any gain to be had from the action of this faithless elector, it is the hope that its potential consequence will shock our colleagues and this Nation to rebuild the national election procedures of America on sound, modern, and democratic foundations, so that the whimsical actions of one or a few men no longer have the potential of breaking down our great system of government.

The SPEAKER pro tempore (Mr. AL-

BERT). The Chair recognizes the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, there is a saying, of course, among lawyers, of whom there are a goodly number in this body, that hard cases make bad law.

It seems to me perhaps regardless of the outcome and regardless of the decision that we make here today that there may be an unfortunate result because we do face a truly Draconian choice.

There are those who fear that in supporting the objection submitted by the junior Senator from Maine, Senator MUSKIE, and the distinguished gentleman from Michigan (Mr. O'HARA) that we would be doing violence to the Constitution, article II and the 12th amendment.

There are those who fear that unless we do take that step and unless we do vote affirmatively on this resolution that we are encouraging the proliferation of faithless electors in elections to come.

I was interested when the distinguished gentleman from Texas (Mr. WRIGHT) drew the issue for us this afternoon in terms of the sovereignty of the people. He said that is the issue, and that we should carry out the will and wishes, and honor the sovereign right of the people as to who their choice in this last election was.

It seems to me that the gentleman from Texas (Mr. WRIGHT), when he answers that question in the affirmative, is ignoring the fact that the basic defect and the basic vice of the present system of the electoral college, is that it is possible for us to find ourselves in this very unpleasant and uncomfortable position in which we find ourselves today. For it is inherently possible that the will of the popular majority can be thwarted under the system of the electoral college.

Mr. EDMONDSON. Mr. Speaker, will the gentleman yield at that point?

Mr. ANDERSON of Illinois. I yield to the gentleman from Oklahoma.

Mr. EDMONDSON. It only makes it possible if this House will not do what it is in a position to do and has the power to do; that is, to throw out the vote of the faithless elector.

Mr. ANDERSON of Illinois. Of course, I am surprised that no one this afternoon has discussed the statute of 1887, which is really the statute under which these proceedings are being conducted this afternoon. As I interpret not only the language of the statute but the legislative history that surrounds that statute, it was intended to circumscribe to the very narrowest limits the power of the Congress to do anything other than to certify the results in the States. I believe some significance has to be attached to the language that was monotonously intoned a few minutes ago by the tellers who read—

The certificate of the State of—

And I quote—

seems to be in regular form and authentic.

Is the certificate in regular form and authentic? It seems to me, whether we like it or not, we have to concede that is so with respect to the certificate from the State of North Carolina.

I would suggest that the proper action might have been for an action of mandamus to be commenced in the proper forum—in the Federal court in the State of North Carolina—to there challenge the certification of the vote of this faithless elector by the State officer charged with that responsibility.

But I would submit that under the Constitution and under the plain language of the statute of 1887 we cannot taken affirmative action on the resolution offered by the Senator from Maine, (Mr. MUSKIE), and the gentleman from Michigan (Mr. O'HARA). I make that statement because I think it is important that we keep the pressure on for the reform of the present electoral college system. I, for one, favor the direct election of a President. I, for one, believe that we ought to abolish the electoral college rather than to try to put some kind of plaster, some kind of a Band-Aid on the situation and suggest that we in the Congress have the power, on an ad hoc basis, every 4 years, to deal with the kind of situation that confronts us today.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Florida.

Mr. PEPPER. I just inquired of two able gentlemen on both sides of the aisle from North Carolina, and I find that, as has already been stated, that there were no electors voted for in the North Carolina election, but that the names of the presidential and vice-presidential candidates appeared on the ballots. If we wish to be technical, there were no electors elected in the State of North Carolina. I learned from those gentlemen that the names of the electors were submitted by the Democratic Party, the Republican Party, and the Wallace Party to the secretary of state pursuant to the statute law of North Carolina.

Mr. ANDERSON of Illinois. If the gentleman will suspend briefly, I should like to point out that the Library of Congress Legislative Reference Service has documented the proposals for the reform of our electoral system. That work indicates that presently about 35 States authorize the use of the so-called presidential short ballot on which the names of the presidential and the vice-presidential candidates are printed in lieu of presidential electors. That action carries with it the implication, perhaps, that they will then vote for the candidate of their respective parties, but it is an implication only and is not supported by the law or by the Constitution.

The SPEAKER pro tempore (Mr. ALBERT). The Chair recognizes the gentleman from Louisiana.

Mr. BOGGS. Mr. Speaker, I rise in support of the protest submitted by the gentleman from Michigan and Senator MUSKIE. I was very much interested in the colloquy which occurred here a moment ago with respect to counting and casting votes. In the counting of votes, the question of the legality of the votes being counted is always in order. As I understand it, we are not casting votes; we are counting votes.

As I further understand it, if the vote of the faithless elector from North Carolina is repudiated by this body, it will not be counted for President-elect Nixon. It will simply not be counted for the former Governor of Alabama, who did not carry his State.

Mr. Speaker, I submit that this is a very serious matter. I am glad that we can debate it dispassionately.

I wonder, however, what would be the case if there had been enough faithless electors to put this matter into the House of Representatives. If one could be faithless, then 535, the total number of electors, could also be faithless. The net effect, of course, would be the complete repudiation of the will of the electorate throughout our country.

I realize, of course, that there is a serious constitutional question here. I have been tremendously interested in this matter for a great many years, because I have known people who have deliberately tampered with this system in its present condition of uncertainty in order to throw the election into this body, and therefore act as power brokers and achieve concessions that they could not achieve otherwise.

But even in those cases I have not known of these groups advocating faithless electors. They have invariably put their own electors on the ballot.

For instance, some years ago, in 1964, in my State we had so-called independent electors. In 1960 when former President Kennedy carried my State by a clear majority, there was some question about the legality of the election in some other States, and there were some groups who wanted to change the electors in Louisiana, but they did not suggest by the furthest stretch of the imagination doing what the gentleman from Oklahoma did that year—I think his name was Harris—when he voted for former Senator Byrd, or what the gentleman from North Carolina did last month. They were going to ask the State legislature to instruct the electors to change their votes.

What this really points up, Mr. Speaker, is the crying need to amend the Constitution and once and for all get rid of this anachronistic system which every 4 years puts us in the position of playing Russian roulette with the election of the President of the United States. I hope this Congress will expeditiously adopt a constitutional amendment, because even if we do vote with the gentleman from Michigan—which I shall do—it will certainly not resolve the problem of the electoral college, which must be abolished.

With respect to the idea of throwing a presidential election into the House of Representatives, I cannot imagine a more chaotic situation existing than if on November last, the election of the President of the United States had not been resolved and we, today, rather than having a President elected, would be debating who the President might be—and this with the crisis in the Middle East, and with problems all over the world, as well as countless domestic problems—this is an invitation to anarchy. I hope, Mr. Speaker, that this House in its wisdom and with bipartisan support will adopt a sensible constitutional amendment.

I believe in the federal system. I have proposed an amendment which would maintain our federal system—by giving each State the same number of votes as that State now has under the electoral college system. But the electoral college would be abolished and no election would ever again be determined by the House of Representatives.

I would use the same formula that the American Bar Association adopts in the Bayh amendment; that is, unless a candidate gets 40 percent of the electoral vote, then there would be a quick runoff to determine the winner. That would resolve the question of the unfaithful elector and that would once and for all remove the matter from the House of Representatives and the Senate.

Thus the weaknesses would be removed without weakening the federal system.

I hope that my amendment, House Joint Resolution 1, will be adopted and I hope the objection of the gentleman from Michigan will be sustained, because I think there is ample constitutional basis for it in the 12th amendment and in two Supreme Court decisions.

I include the following at this point:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES, OFFICE OF THE DEMOCRATIC WHIP,
Washington, D.C.

WASHINGTON, D.C., January 3.—U.S. Representative HALE BOGGS (D. La.), House Majority Whip, Friday introduced a Constitutional Amendment with the opening of the 91st Congress which would take the pitfalls out of electing Presidents.

Boggs, joined by several of his colleagues, introduced a measure which would abolish the Electoral College in its present form, while retaining a modified electoral system. Boggs was joined by Congressmen Lester L. Wolff (D., N.Y.), Robert L. F. Sikes (D., Fla.), and Spark M. Matsunaga (D., Hawaii).

House Joint Resolution No. 1, as it has been designated, would also remove from the House of Representatives the power to select a President when a candidate fails to receive a majority of electoral votes.

Boggs said that the Presidential elections of 1968 "brought the Nation to the brink of a catastrophic Constitutional crisis."

"Because we so narrowly succeeded in avoiding such a crisis last fall, it is mandatory that we now take steps to alter our process of electing Presidents."

"The Fact that President-elect Nixon fell far short of receiving a majority of the popular vote and scarcely received a plurality, demonstrates how very real the danger is," Boggs said.

Under the present system, Boggs said, if the election were thrown into the House of Representatives, a small State, such as Delaware, would have the same power in electing the President as would have large States such as New York and California.

"The American Bar Association has proposed a Constitutional Amendment which would provide for the popular election of a President receiving 40% of the popular vote. Without that percentage, under the ABA proposal, a quick run-off would be required. The Electoral College and House determination would be eliminated.

The Boggs proposal provides for the automatic election of a President if he receives more than 40% of the electoral vote. If he does not, a run-off would be required between the two leading candidates. The House of Representatives would play no role in the selection of Presidents, he said.

Although the Electoral College would be abolished, the system of assigning votes on the basis of the number of its Representatives in the House and Senate would be retained, he said.

Boggs emphasized that his proposal would remove the evils of the present system while maintaining the Nation's tradition of Federalism.

Boggs said that he doubted that Federalism could be maintained with a system providing for the direct popular vote of Presidents.

"I see no other logical approach, in view of the fact that the candidates of our two major parties are nominated by convention in the respective 50 States and the District of Columbia."

"Federalism is an integral part of our form of government, and a direct popular vote would not be in that tradition," Boggs said.

In order to be adopted, a Constitutional Amendment must be approved by two-thirds of the House and Senate and be ratified within seven years by the legislatures of three-fourths of the States.

Mr. Speaker, Neal R. Peirce, the noted authority of the electoral system, recently wrote a book entitled, "The People's President." He did a remarkable job of demonstrating how loosely held are the reins of power in the Federal Government.

To recognize the weakness of the electoral college system, one need do no more than read his catalog of 20 national elections beginning in 1828, the Jackson-Adams contest and continuing through 1960, the Kennedy-Nixon election—in each instance where a shift of a few votes would have changed the results.

The book interested me especially because I have spent a great number of years searching for an acceptable alternative. As a matter of fact, in 1951 I was one of those who introduced one of the constitutional amendments. This one proposed keeping the form of the electoral college system but removing any discretion in the electors.

There have been countless other amendments introduced seeking a whole variety of changes, the most frequent ones being: removing discretionary power; distributing the electoral votes on the basis of results in congressional districts; and a nationwide popular vote.

Mr. Peirce catalogs more than 500 proposed amendments, which have been introduced in the course of our history. Many of these, of course, were identical in content but their sheer number points up the concern felt in the Nation since the inception of the system. Of the 500 amendments which have been proposed, about 100 have suggested election of the President and Vice President by direct ballot.

Few Americans realize that even to this day in many places, including my own State, the presidential elector is not an agent of the electorate, but is in fact free and independent to vote for whom he pleases regardless of the popular vote in a given State. This fight has occurred over and over again in many States in the Deep South and it is still with us.

In 1960, even though John F. Kennedy had carried my State by a clear majority and a heavy plurality, when returns from other States were in doubt, notably Illinois, there was talk of the legislature instructing the electors to vote against Kennedy.

The author notes the first faithless elector picked as one of the two Federalist electors in Pennsylvania in 1796. He was expected to vote for Adams but he voted for Jefferson. A Federalist mentioned him in the United States Gazette:

What, do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President. No! I chuse him to *act*, not to *think*.

And again as recently as 1960, an elector from Oklahoma, which had cast its popular vote for Vice President Nixon, felt free to vote for Senator Harry Byrd who had not been a candidate.

"The People's President" is very timely. With the withdrawal of President Johnson as a candidate, the Democratic Convention was wide open. Gov. George Wallace has indicated his intention of running for the Presidency as an independent. And the 1968 election as of this writing could very well end up in the House of Representatives if any of the candidates fails to receive a majority of the electoral college vote.

Since 1824, when the House of Representatives had to decide between Andrew Jackson who had received 152,933 popular votes and 99 electoral votes, and John Quincy Adams who had received 115,696 popular votes and 84 electoral votes, conditions have changed immensely. In 1824, a frontier nation, sparsely settled and recently independent, could afford to let the House of Representatives wrangle over who might lead it. Federal power was loosely held and of no great consequence on a day-to-day basis. Since then, however, the Presidency has become the most important power center on earth. The office is awesome and staggering in its responsibilities. It is the President and only the President who, among other things, determines whether or not the country becomes involved in a nuclear contest. We face dangers at home and abroad unlike anything dreamed of in 1824, or for that matter, at any previous time. To delay naming the President while the House of Representatives debated could indeed be disastrous.

The House procedure, to say the least, is ill-defined and the idea that a State with one Congressman should have the same voice as New York or California, is the very antithesis of the theory now accepted that each vote should have equal weight.

I find it difficult, however, to accept as the ultimate answer the amendment drafted by the American Bar Association, which would provide for the election of the President by direct popular vote by all of the people of all of the States, just as we elect a Governor in New York or a Senator in California.

The author has done a commendable job in tracing the growth of universal suffrage in the United States, starting with the initial property requirements for voting. He cites acts of Congress, State legislatures, Supreme Court decisions, which have now made suffrage almost universal. It is argued that this makes the popular election of the President the only answer to the electoral college problem. The President, under the proposed amendment, could be elected by a plurality of 40 percent.

As thorough and complete as the book is, however, it leaves a number of questions unanswered. The two major parties nominate by conventions with delegates selected either in primaries or by appropriate appointment by State agencies. In any event, the State system or the federal system is still basic in the nomination of presidential candidates. Whether or not this system could be maintained with a direct popular vote is problematical.

Is it not possible that the matter could be resolved first by removing any discretion from the elector and by employing the same pluralities, say 40 percent, in electoral votes as is proposed in the direct election amendment? Could not the fear of resolution by the House of Representatives be determined by removing the choice from the House and requiring a runoff within a short time if the 40 percent of the electoral votes were not obtained, just as would be required under the proposed direct election amendment? Would this not preserve the federal system and lay to rest forever the fear of an election in the House of Representatives?

The problem is indeed a difficult one. Mr. Peirce, with his admirable knowledge and skill, shows why it has been with us so long and continues to plague us.

The text of House Joint Resolution 1 and other material follows:

H.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

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

"The President and Vice President shall be elected by the people of each State in such manner as the legislature thereof may direct, and by the people of the District constituting the seat of the Government of the United States (hereafter in this article referred to as the 'District') in such manner as the Congress shall by law prescribe. The Congress may determine the time of the election of the President and Vice President, which day shall be the same throughout the United States. In such an election, a vote may be cast only as a joint vote for the election of two persons (referred to in this article as a 'presidential candidacy') one of whom has consented that his name appear as candidate for President on the ballot with the name of the other as candidate for Vice President, and the other of whom has consented that his name appear as candidate for Vice President on the ballot with the name of the said candidate for President. No person may consent to have his name appear on the ballot with more than one other person. No person constitutionally ineligible to the office of President shall be eligible to that of Vice President. In each State and in the District the official custodian of election returns shall make distinct lists of all presidential candidacies for which votes were cast, and of the number of votes in such State for each candidacy, which lists he shall sign and certify and transmit 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 electoral votes shall be computed in the manner provided in section 2.

"SEC. 2. Each State shall be entitled to a number of electoral votes for each of the offices of President and Vice President equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress. The District shall be entitled to a number of electoral votes for each such office equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State. In the case of each State and the District, the presidential candidacy receiving the greatest number of votes shall be entitled to the whole number of the electoral votes of such State or District. If a presidential candidacy receives a plurality of at least 40 per centum of the electoral votes, the persons comprising such candidacy shall be the President-elect and the Vice President-elect. If no presidential candidacy receives a plurality of at least 40 per centum of the electoral votes, a run-off election shall be conducted, in such manner as the Congress shall by law prescribe, between the two presidential candidacies which received the greatest number of electoral votes. The persons comprising the candidacy which receives the greatest number of electoral votes in such election shall become the President-elect and the Vice President-elect.

"SEC. 3. The Congress shall by law provide procedures to be followed in consequence of the death or withdrawal of a candidate on or before the date of an election under this article, or in the case of a tie.

"SEC. 4. The twelfth article of amendment to the Constitution, the twenty-third article of amendment to the Constitution, the first four paragraphs of section 1, article II of the Constitution, and section 4 of the twentieth article of amendment to the Constitution are repealed.

"SEC. 5. This article shall not apply to any election of the President or Vice President for a term of office beginning earlier than one year after the date of ratification of this article."

GENERAL SUMMARY OF DIFFERENCES AND SIMILARITIES BETWEEN AMERICAN BAR ASSOCIATION PROPOSAL, AS CONTAINED IN HOUSE JOINT RESOLUTION 470, 90TH CONGRESS, MR. CELLER, AND HOUSE JOINT RESOLUTION 1, 91ST CONGRESS, MR. BOGGS

1. *Voter Qualification.*—The ABA proposal provides that the electors in each State shall have the qualifications requisite for electors of Senators and Representatives in Congress from that State. It further provides the States may prescribe lesser qualifications with respect to residence and that Congress may establish uniform residence and age qualifications. The Boggs resolution is silent on voter qualifications as is the Constitution.

2. *Time, Manner and Place of Holding the Elections.*—The ABA proposal provides that the time, place, and manner of holding elections will be regulated by the States with authority in the Congress to revise such regulation. In addition, the States shall prescribe regulations (subject to Congressional revision) relating to entitlement to inclusion on the ballot. Mr. Boggs' resolution (following the present provisions of the Constitution) provides only that the manner in which elections will be conducted shall be prescribed by the States (and the Congress in the case of the District of Columbia) and that the Congress shall prescribe the time of the election of the President and the Vice President.

3. *"Ticket" Requirements.*—Both the ABA proposal and Mr. Boggs' resolution provide that in a Presidential election each elector shall cast a single vote jointly applicable to the President and the Vice President. They further provide that the names of candidates shall not be joined unless they shall have consented thereto and that no candidate shall consent to his name being joined to more than one other person.

4. *Requirements for Election.*—The ABA proposal requires that a Presidential candidacy must receive at least 40% of the popular vote. Mr. Boggs' resolution retains the present assignment of electoral votes to the States and the District but does away with the electoral college. The Presidential candidacy that receives the most votes in a State will receive that State's electoral votes. A Presidential candidacy must receive at least 40% of the electoral vote to be elected.

5. *Runoffs and Ties.*—Both the ABA proposal and Mr. Boggs' resolution require a runoff election if the requirements for election are not met in the general election. Such runoff election shall be held in such manner as the Congress shall by law prescribe. In both proposals the Congress shall by law provide the procedures to be followed in the case of a tie vote in any general election or runoff election.

6. *Death or Withdrawal of a Candidate.*—The ABA proposal provides that Congress may by law provide for the death of a candidate on or before the date of an election. Mr. Boggs' resolution provides that Congress may also provide for the withdrawal of a candidate before such day.

7. *Effective Date.*—The ABA proposal has no provision for an effective date. Mr. Boggs' resolution provides that the proposed amendment to the Constitution will not apply to any election of the President or Vice President for a term of office beginning earlier than one year after the date of the ratification of the amendment.

[From the Washington (D.C.) Evening Star, Dec. 12, 1968]

WHY NOT LET STATES CHOOSE WITHOUT ELECTORS?

(By Crosby S. Noyes)

Before everybody forgets about the recent election scare and turns his attention to other problems, at least one more serious effort will be made to change the rules under which American presidents are elected.

On the opening day of the 91st Congress, Rep. Hale Boggs, D–La., the assistant majority leader, is ready to introduce the latest of more than 500 proposed constitutional amendments to revamp the election procedure. His proposal, in the form of a joint Senate-House resolution ,is likely to provide an early subject of controversy.

Boggs is proceeding on the sensible premise that the way to succeed where others have failed in trying to change the system is to change it as little as possible. His proposal is likely to disappoint crusading critics who want the whole electoral system done away with and the president chosen by a direct, nationwide popular vote.

As he sees it, the major evils of the existing system are the electoral college and the role of the House of Representatives in choosing a president when no candidate wins a majority of electoral votes. In the November election, it was these two provisions, given the candidacy of Alabama's George C. Wallace, that threatened the nation with a full-fledged constitutional crisis.

The electoral college system has been causing problems for the country at least as far back as 1796, when a Federalist elector from Pennsylvania outraged some of his constituents by casting his vote for Thomas Jefferson instead of John Adams. It is still causing problems today in states where these largely faceless electors are theoretically free to vote as they please, regardless of the popular vote.

But the greater evil undoubtedly is the

election of the president in the House if no candidate wins a majority of electoral votes. In this case, each state would have one vote, with Delaware weighing exactly as much as New York or California and a state with an evenly split delegation not counted at all.

The validity of an election carried out on this basis would be doubtful, to say the least. And the possibility that no candidate could win a clear majority is a danger which in this nuclear age is simply not tolerable.

The Boggs amendment is the simplest possible remedy for this state of affairs. Under his proposal, the electoral college system would be abolished once and for all. So would the power of the House to choose a president from minority candidates. But the same proportional distribution of votes among the states, based on the numbers of senators and representatives, would be retained. If no one candidate won more than 40 percent of the whole electoral vote, a runoff election would be held between the two leading candidates.

There are many people who would prefer to see the election of presidents by direct popular vote. But Boggs, as a practical politician, understands the enormous difficulty of this kind of radical reform of a system that has endured for almost two centuries.

In his view, there is little chance—and also little justification—for doing away with the federal system of choosing candidates for the presidency. The convention system, with all its obvious imperfections, is likely to remain as a permanent feature of the American political landscape. Since the candidates of the two major parties will continue to be nominated by delegates representing the 50 States and the District of Columbia, the election also should follow the principle of federalism, Boggs contends.

Apart from retaining the present distribution of electoral votes, the new amendment is similar in many respects to the proposals drawn up by the American Bar Association and submitted to the last Congress by Rep. Emanuel Celler, D–N.Y. Under that proposal, the president would be elected by direct popular vote, with a runoff election held if no candidate received more than 40 percent of the ballots.

The virtue of the Boggs amendment is that it is perhaps more likely to win the required majority of two-thirds in the House and Senate and, ultimately, ratification by three-quarters of the states.

At this point, there is undoubtedly very strong popular support in the country for electoral reform. But there is also an enormous inertia to be overcome in any amendment of the Constitution. And the dangers of the present system, so clearly revealed in November, may seem less compelling as time goes by.

[From the Associated Press, Dec. 17, 1968]

NIXON'S OFFICIALLY IN WITH 301 ELECTORAL VOTES

The Electoral College has made it official—Richard M. Nixon will be the 37th president of the United States.

But many of the 538 members who cast their ballots yesterday also made something else clear—they think the college is outdated.

Balloting by the college went pretty much according to script as members met in the 50 state capitals and District of Columbia to fulfill the tasks voters chose them for Nov. 5.

An exception in North Carolina left Nixon with 301 votes instead of 302—giving George C. Wallace, the American Independent candidate, 46, one more than originally expected. Democrat Hubert H. Humphrey wound up with the expected 191.

A simple majority of 270 electoral votes was needed to elect.

In North Carolina, Dr. Lloyd W. Bailey of Rocky Mount, cast his ballot for Wallace while the other 12 electors followed the state's majority and voted for Nixon.

"The Electoral College is one part of the system of checks and balances which guarantees that the minority voice can be heard," Bailey said.

In Michigan, former Democratic State Chairman Zolton Ferency, something of a political maverick, refused to cast his ballot for Humphrey. The other electors picked a replacement to keep the delegation's 21 Humphrey votes intact.

The U.S. Constitution allows the electors to vote for any candidate they choose. But tradition dictates, and some state laws demand, that the electors follow the result of the popular vote in their states.

There were some other minor foulups. North Carolina's electors found themselves without someone to administer an oath for more than an hour.

And in North York, one bloc of electors got delayed in a stackup of commuter trains and the man who was supposed to preside was delayed at crowded Kennedy International Airport.

A spot check of electors across the land showed many unhappy with a system that may be on its last legs.

Suggestions run from direct popular election to choosing electors by congressional district.

"The system is outmoded. I would go the popular vote way," said O. M. Travis, one of Kentucky's nine electors.

GOP Gov. Raymond P. Shafer of Pennsylvania said he would recommend to the next General Assembly that it "lead the nation in a call to Congress for a constitutional amendment to abolish the Electoral College."

"We should no longer permit ourselves to be imprisoned by the fears of yesterday," Shafer said, "for they might well thwart the national will tomorrow."

Six of Maryland's electors, who cast the state's votes for Humphrey, said they think the system should be changed.

"It's not a good system but I don't know what the solution is" said Mrs. Esther Kominers of Bethesda. "A direct popular vote would probably be the most reasonable, but there are so many ways of cheating on that, too."

Mrs. Anette Helen Wheatley of Baltimore also said she prefers a direct vote. "I think a lot of people feel they've been shortchanged by this system," she said.

Joseph E. Bean of Great Mills is one of the four Maryland electors who thinks the electoral system should be retained. "We've been doing it for so many years I guess we ought to keep on doing it."

Attorney L. Shields Parsons, one of the 12 Virginia electors who cast the state's votes for Nixon, said he favors a change to a direct popular vote.

Samuel T. Emory of Fredericksburg, an associate professor at Mary Washington College, said he would retain the Electoral College but divide a state's electoral votes for each presidential candidate according to his percentage of the state's popular vote.

[From the National Civic Review, February 1968]

DOWN WITH THIS "COLLEGE"

Use of the Electoral College to choose a President is "archaic, undemocratic, complex, ambiguous, indirect and dangerous," the American Bar Association warned early in 1967. "It gives too much weight to some voters and too little to others; gives excessive power to organized groups in states where the parties are evenly matched; places an undue premium on the effects of fraud, accident and other factors; and allows for possible abuse and frustration of the popular will."

The ABA warning attracted considerable attention but not, perhaps, as much as it deserved. For at least a century and a half, people have been crying wolf about the Electoral College and joking about it—wasn't it Will Rogers who noted its strange absence of campus, courses and athletic teams?—but out of inertia or possible erroneous calculation of advantage by some states, nothing substantial has been done in the way of reform.

The situation at the start of another presidential election year is not reassuring. Experts fear that, for the first time in 144 years, Congress may be called on to say who is to be the new President. With the prospect of splinter candidates on the right and left opposing major-party choices, the situation this time may well be more precarious than in 1948 when Harry S. Truman survived a three-way split in the Democratic party, losing 1,100,000 votes to J. Strom Thurmond of the States Rights party, who carried four states, and about the same number of votes to Henry A. Wallace of the Progressive party, who did not carry any state.

George Wallace of Alabama, an early starter, is already talking openly of his chances of moving into the White House with a minority of the vote. While this seems unlikely to most observers, Wallace just might, by carrying six or seven states, make it impossible for either major-party candidate to obtain the required majority of 270 of the 538 votes in the Electoral College. The decision would then pass to the House of Representatives, with each state delegation casting a single vote.

The last time this happened was in 1824. The electoral vote was then divided: Andrew Jackson of Tennessee, 99; John Quincy Adams of Massachusetts, 84; William H. Crawford of Georgia, 41; and Henry Clay of Kentucky, 37. On a single ballot, the House chose Adams, though he received 105,321 votes to 155,872 for Jackson.

In 1876, Rutherford B. Hayes won the electoral majority even though Samuel Tilden received more popular votes. Similarly, in 1888, Grover Cleveland, the popular winner, was defeated in the Electoral College by Benjamin Harrison. Supporters of these losers accepted the verdict with grumbling, but nowadays the discord and confusion over such arbitrary negation of the popular will certainly would be greater.

There has been a continuous expansion of the franchise and equality in voting in the United States. Today, no one would dream of barring Catholics or Jews from voting, but some colonial governments did so; or suggest requiring a voter to own property, but it was not until 1851 that all the states dropped property requirements. All women could not vote until 1920. The "one man, one vote' principle enunciated by the U.S. Supreme Court did more than democratize the democratic process. It spotlighted the presidential election as the only one of such importance in which some votes are not equal to others and where millions of votes may not necessarily count.

In recent years, Americans have taken comfort in the notion that free elections give us an advantage over our global rival, the Soviet Union, in the orderly transfer of national power. Any revelation that this supposed advantage was illusory would be humiliating. It might even precipitate the violence which lurks just beneath the surface of modern political life.

Perhaps the Electoral College was the best and even the only compromise which could have been accepted at the 1787 constitutional convention in view of the irreconcilable differences of opinion then existing over the role of the states in a national union. Some of the more glaring inequities of the Electoral College have been tidied up over the years, but the basic flaw remains: It awards the electoral vote of each state, calculated on the basis of the total of that

state's congressmen and U.S. senators, on a winner-take-all basis to the candidate receiving the most votes in that state. This almost inevitably forces candidates to concentrate on the larger states and leads to all the abuses catalogued by the 15-member ABA Commission on Electoral College Reform. The public itself is reasonably aware of the difficulty; a Gallup poll last June showed 63 per cent in favor of direct election of the President to 20 per cent opposed.

Since a constitutional amendment takes years to pass, nothing can be done about this perilous condition in time to deal with the contingencies of 1968. But this does not justify further delay. Of various amendments introduced in Congress on this subject, four have attracted particular attention. They are:

1. President Johnson's plan to keep the College but do away with electors. This would prevent a repetition of what has happened often in modern times: the disregarding of the popular vote by one or more electors determined to express their personal preference for President.

2. The district plan, providing that electors be chosen like congressmen and senators—two statewide and the rest from districts—and that they be required to vote for the candidate for whom they are chosen to vote. This plan would not correct the present overrepresentation of sparsely populated states in the Electoral College, however.

3. A proportional plan, abolishing electors but not electoral voting. The electoral vote in each state would be divided according to the popular vote. This plan was passed by the Senate two decades ago, but not by the House.

4. The ABA plan for abolition of the Electoral College in favor of popular election. Under this plan, a presidential winner must poll at least 40 per cent of the vote, or there is a run-off.

The assassination of President Kennedy, several serious illnesses of President Eisenhower and illness of President Johnson were required to prod the country into doing something about the unsatisfactory line of presidential succession. It should not be necessary to undergo a disaster before the Electoral College is reformed or, better yet, eliminated.

[From Saturday Review, Feb. 18, 1967]

THE DIRECT VOTE AND THE ELECTORAL COLLEGE

The President and Vice President of the United States are, of all elected federal officers, the only ones not chosen by direct vote of the American people. As almost everybody knows, and too few seem to care, the President and Vice President are elected by a vote of the Electoral College, an antique American institution which has since 1789 survived more than a hundred Congressional attempts to abolish, or modify it. Members of the House of Representatives always have been elected directly by the people and, since 1913 when the Seventeenth Amendment to the Constitution became effective, all U.S. Senators have been elected by the direct popular vote. Prior to that—which wasn't so very long ago—Senators were chosen by the legislature in each state, with understandable anomalies.

Three nineteenth-century Presidential candidates were defeated in the Electoral College though they received the largest popular vote. Andrew Jackson failed to win an Electoral College majority over Henry Clay and John Quincy Adams in 1824, but Adams was elected President by the House of Representatives in a political deal with Clay. In 1876, Rutherford B. Hayes thought he had lost the Presidency to Samuel J. Tilden, Democrat, by 184 to 163 electoral votes, but, in a fraudulent and farcical Republican recount in the Electoral College, Tilden was ousted and Hayes went to the White House. In 1888, President Cleveland received a larger popular vote than Benjamin Harrison, but the Republican upset the Democrat in the Electoral College, 233 to 168. Four years later Cleveland became President for a second time, beating the incumbent and becoming our only eight-year President whose terms of office did not run consecutively.

The theory behind the Electoral College is that our country is a commonwealth of the several states and by Constitutional law each state gives all of its electoral votes to the winning candidate within its borders, whether he has won by a million votes or a hundred. The losing candidate gets no electoral votes at all. This by itself is debatable democracy. As *The New York Times* recently pointed out, other dangers inherent in the present Electoral College system were painfully illustrated as recently as the Nixon-Kennedy election of 1960, when electors in some of the Southern states exploited the technical fact that those who actually vote in the Electoral College are not bound specifically by law to cast their ballots precisely as the voters ordered them to. Theoretically, the "electors" have the right to vote independently; in 1960 this loophole was utilized in an attempt to throw the closest Presidential vote in our history into the House of Representatives. Last year President Johnson suggested a Constitutional amendment requiring that the electoral vote of each state be cast automatically for the candidate who polled the most popular votes in that state, but nothing has come of it so far—an extremely dangerous federal oversight.

A committee of experts from the American Bar Association has long been studying the possibility of reform in the Electoral College and came recently to the conclusion that the best way to reform it is to get rid of it completely and substitute a political system by which Presidents and Vice Presidents would be chosen directly by the total national popular vote. This direct, one-man-one-vote system has the virtue of simplicity, but is a waterway fraught with dangerous shoals. Had we moved away from the Electoral College to direct popular election of the President in 1960, the votes might still be in the counting process in New Mexico, Alabama, Texas, and such urban centers as Chicago and Los Angeles, where charges of fraud were legion.

The election commission suggests further that if there are more than two major candidates, and if none of them receives 40 percent of the total popular vote, a national run-off election then be held. All we have to do is think back quickly to any one of the Presidential campaigns within our lifetime to realize what a botched anticlimax a national run-off election would be. Another argument, the oldest one but still valid, against direct popular choice of our President and Vice President has always been fear that the enormous urban areas of the country would dictate every election. Though somewhat undemocratic in concept, the alternative electoral choice by individual states at least keeps a balance between the small and large, urban and agrarian, North and South, East and West that the amazing Constitutional Convention foresaw.

The best plan we have yet come across for reforming the Electoral College is still some form of the Lodge-Gossett Amendment, which would have divided each state's electoral votes in proportion to that state's popular vote. If, for example, a state had fifteen votes in the Electoral College and the popular vote was very close, the winning popular candidate would receive eight electoral votes and the loser seven. This use of the exact ratio to the popular vote (plus an amendment requiring that the electoral vote be cast precisely as the voters voted) has never been given a fair hearing, in our view, though it was killed by the House in 1950 after the Senate had approved it. With the Presidential nominating conventions only a little over a year away, to be followed by the hectic fall campaign of 1968, reconsideration of the Lodge-Gossett Electoral College reform bills, plus President Johnson's proposal, seems very much in order and not a moment too soon for the nation's welfare.

[From the Wall Street Journal, Nov. 7, 1968]

ELECTORAL COLLEGE SYSTEM MAY BE CHANGED DUE TO THE NARROWNESS OF NIXON'S MARGIN

(By Fred L. Zimmerman)

WASHINGTON.—The narrowness of Richard Nixon's victory may finally spell doom for the nation's archaic and potentially dangerous method of choosing Presidents.

A major political crisis, which many Constitutional experts had considered highly possible, was averted by Mr. Nixon's capture of a small but clear-cut majority of electoral votes. But through the long hours of vote-tallying that kept the result in doubt until late yesterday morning, the situation verged on a deadlock that could have sent the election into the House, where chaos probably would have ensued while the Representatives were trying to pick a President.

That danger having passed, Congress is likely to devote major attention next year to overhauling the system. The reform proposal that has the most supports is to replace the present Electoral College mechanism with direct, popular election of a President.

DEVISED IN 1787

The indirect, two-step selection process in use today was devised in 1787 by men who thought the choice of a President was too important to trust to ordinary voters. Thus, instead of picking a President, voters choose a group of "electors" from each state, the number to be equal to that state's Congressional delegation.

These electors were supposed to be the best and wisest men available but today are mainly small-time politicians given the pro forma positions as a reward for party service. They vote for President following the general election, with a simple majority in the Electoral College being sufficient for election. Their vote takes place on the first Monday after the second Wednesday in December, this year on Dec. 16.

Unlike what was envisioned by the Founding Fathers, however, the electors don't make an independent choice but merely ratify the popular-vote decisions in their states. Thus, in most elections the vote in the Electoral College has been a pointless, but fairly harmless, exercise that doesn't have any bearing on the Presidential outcome.

What engendered all the fear of chaos this year was the possibility, made strong by the third-party candidacy of George Wallace, that neither Mr. Nixon nor Vice President Humphrey would receive in Tuesday's balloting a majority of the 538 electoral votes.

WALLACE'S HOPE

That would have plunged the nation into a confused period of maneuvering aimed at the Dec. 16 Electoral College vote. The two other candidates—especially the one placing third—would have been pressured to yield their electoral votes to the front-runner, giving him an electoral majority. Mr. Wallace always hoped that during this period he could assume a crucial role as kingmaker.

In the event that none of the candidates swung his electoral support to another, the choice of a President would have been dumped into the House, whose members are a lively group of politicians capable of a rousing fight even over something as mundane as whether to waive the reading of yesterday's Journal of Proceedings. Twice, in 1801 and 1825, the nation has watched in near-panic as the House, amid great wheeling and dealing, has chosen the President.

Intensifying the confusion in an election by the House is the fact that each state would have one vote and that 26 votes would elect the President. This would make the lineup between Republicans and Democrats in state Congressional delegations crucial.

Although Mr. Humphrey ostensibly would have had the advantage, because Democrats control more state delegations than Republicans do, it was by no means certain that Southern Democratic Representatives would have voted for Mr. Humphrey—who ran third in many of their districts. Beyond that, some state delegations would be evenly divided (Tuesday's vote deadlocked the Maryland and Virginia party lineups in the House) and that would have increased the difficulty of winning a majority of 26 states' votes.

FEW DEFENDERS

Not surprisingly, hardly anyone defends the Electoral College system. But although reform proposals have kicked around Capitol Hill for years, the inertia that is endemic to the legislative process always has held them back. This year's widely publicized narrow escape, which some observers are calling a "civics lesson," may have made enough people familiar with the weaknesses of the present system so that Congress will be pressured into action.

Last year, the American Bar Association threw its considerable weight in such matters behind a proposal to junk the mechanism and provide for the election of the President on the basis of a direct, nationwide popular vote. Under the plan, a front-runner could be elected with at least 40% of the total popular vote. In the rare event that no candidate received 40%, there would be a runoff election between the top two.

Mr. Nixon previously has stated he favors the so-called "district vote" reform proposal, which would divide each state into electoral districts comparable to Congressional districts. The winner of the popular vote in each district would get its electoral vote, and two additional electoral votes would go to the winner of the state's popular vote.

[From the Washington Post]

LAST ELECTORAL MEETINGS?

If all goes well, Richard M. Nixon will be elected President of the United States today. Most citizens have been laboring under the illusion that that event took place nearly six weeks ago when voters in the 50 states and the District of Columbia cast 31,770,237 votes for Mr. Nixon and 31,270,533 for Hubert H. Humphrey. But actually these votes were cast and counted only by way of advising the electors of the various states as to what they should do when they meet today.

Rumor has it that at least one elector will disregard the popular vote in his state, perhaps as just another reminder of the fallibility of the present system. Fortunately, most of the electoral votes will be cast in accord with the dominant wishes of voters in the respective states, but it might easily have been otherwise. If Mr. Nixon's thin margin over his Democratic rival had left him without a majority of electoral votes, the 45 electoral votes won by George Wallace would have been on the auction block. The country would have witnessed the strange spectacle of a minority candidate trying to determine the outcome of an election by swinging the electoral votes won in his name to another candidate who might be or might not be approved by the rank and file who had supported Mr. Wallace.

As the electors meet today, therefore, the country ought to be more conscious than it has ever been before of the defects in its presidential electoral system. There is much impatience over the fact that "dummy" electors stand between the people and the presidential candidates, with some asserting the right (which the Constitution unfortunately gives them) to thwart the will of the people. There is much concern over the fact that California, with a close popular vote, should give all its 40 electoral votes to Mr. Nixon and Texas, with a still closer popular vote, should give all its 25 electoral votes to Mr. Humphrey. Positive fright arises from the prospect that any close presidential contest may be thrown into the House of Representatives.

Much rejoicing will be heard, therefore, if Congress and the states decide that today's meeting of the electors should be the last. A constitutional amendment will be required, of course, and there is still much disagreement over the precise form it should take. We hope that these differences can be ironed out and that a new electoral system can be devised early in the new Congress so that the states will have plenty of time to ratify it before the election of 1972.

[From the Washington Post, Dec. 15, 1968]

THE DEFECTOR ELECTOR

In deserting Richard Nixon and his fellow Republican electors to vote for George C. Wallace, Dr. Lloyd W. Bailey of Rocky Mount, N.C., joins a handful of other electors from the past who have made footnotes to history by violating the wishes of the voters who selected them. Dr. Bailey's action also exposes other flaws in the anachronistic Electoral College system and underlines the reasons for its reform.

This system of picking Presidents and Vice Presidents violates fundamental democratic principles in a number of ways. Under its winner-take-all rule for allocating a state's electoral votes a candidate could win an electoral victory and yet receive fewer popular votes than his opponent. It quadrennially disfranchises millions of voters in the sense that their ballots do not count in the final selection process. In New York, for example, the 3,007,938 voters who cast ballots for Richard Nixon might as well have stayed home, if one judges from the electoral vote. Vice President Humphrey barely carried the state but received all of New York's 43 electoral ballots.

The constitutional independence of an elector risks voter disfranchisement in an even more direct way. In North Carolina not only were all the Humphrey voters in a sense disfranchised when Nixon carried the state, but the defection of Dr. Bailey as a Nixon elector also more pointedly disfranchised the Nixon voters. Despite party discipline, custom and state laws which tend to bind electors to the candidates to whom they are pledged, the Constitution grants them a discretion that they sometimes insist on exercising.

The Electoral College system violates democratic principles by making the votes of some voters count for more than the votes of other voters. While more voters go to the polls in the larger states, they are able to influence more electoral votes. Studies show that, on balance, the voters in larger states have a better chance of influencing the outcome of an election. Wallace's third-party candidacy raised the risk of an electoral deadlock in which no candidate would have commanded an electoral vote majority. The decision would then have fallen to the Congress, with the consequent risk of political deals and possibly serious delay in naming the nation's chief executive, who conceivably would not have been the one a plurality of voters wanted.

Dr. Bailey becomes one of only five electors in American history who have voted clearly contrary to the wishes of voters selecting them, but other electors have switched in slightly different circumstances. There have also been independent elector movements as well as third-party candidacies. In 1796 a Federalist elector switched to vote for Thomas Jefferson rather than John Adams, and history records a voter then as complaining in language appropriate for many North Carolinians now:

"I chuse him to act, not think."

But, from then until now, the Electoral College system has resisted basic change. Dr. Bailey remains free to ignore the wishes of the voters. His defection, coupled as it is with Wallace's third-party candidacy which could have created a constitutional crisis, should alert the nation. It should produce new efforts for fundamental electoral reform.

[From the New York Times, Nov. 11, 1968]

ENDING ELECTORAL CHAOS

The nation's near-miss on an electoral deadlock has made plain the need for Congressional action to rule out more such flirtation with disaster in Presidential elections. Both Senator Bayh of Indiana and Representative Celler of New York plan hearings on electoral reform; democracy will be the gainer if no paralysis of will impedes action by their Congressional colleagues when a reform plan is presented.

The shift of a relative handful of votes in Illinois and Missouri last week would have put those states in the Humphrey column and thus denied President-elect Nixon the Electoral College majority he now clearly has. In such a deadlock, the power of picking a President might well have been shifted from the 72 million Americans who went to the polls to one man—George C. Wallace. The third-party candidate had exacted from all his electors a sworn commitment to vote for him "or for the candidate he shall direct."

But even if Mr. Wallace proved unsuccessful in his kingmaker role and the decision went to the House of Representatives, a period of confusion and cynical political maneuvering almost surely would have ensued before the country knew who its President would be.

Under the Constitution, each state would have but one vote in the Presidential balloting in the House. How that vote would be cast would be decided by a majority of each state's delegation. Had an electoral deadlock thrown that responsibility into the new House, maximum uncertainty would have clouded the outcome.

Twenty-six state votes are needed to elect a President. The Democrats would start with clear control of only 21 delegations. The Republicans control nineteen. Five delegations are evenly split between Democrats and Republicans, and a crucial five are nominally Democratic—but from states which went to Mr. Wallace. Many Southern Congressmen—especially incumbent Democrats—promised their constituents that, if the decision fell to them, they would vote for the Presidential candidate who carried their district, regardless of party label.

The potentialities for chaos that existed this year in both Electoral College and House—plus the virtual certainty that a deadlock would have made the Presidency a commodity for political barter—should be all the evidence Americans need that no similar risks must be run again. The answer lies in a system that will guarantee the right of the people to choose their own Chief Executive, not rely on the roulette wheel that the present electoral system has become.

[From the Washington Post]

NEW ELECTORAL SYSTEM

Senator Bayh quite properly emphasizes that popular sentiment for abolition of the obsolete electoral college, following the narrow escape from a national crisis on Nov. 5, is not enough. If a new system for election of the President is to be in effect by 1972, an enormous amount of work will have to be done. The Gallup Poll showing 81 per cent of those interviewed in favor of basing the election of the President on the popular vote throughout the Nation is merely a favorable base for the operation.

It is a good sign that conservatives as well as liberals are in favor of a change. Senator Thurmond, for example, wants to abolish the electors and divide each state's electoral votes among the candidates on the basis of the popular votes cast. He seems to think this would lend encouragement to a third party in case the two major parties fail to offer a meaningful choice. But this, with nothing more, would leave three-cornered races, when no one had a clear majority, to be decided by possibly a small fractional vote or be thrown into the House of Representatives, with all the evils that the process might entail.

The first step toward a new system should be additional hearings that would explore the relative merits and defects of each proposal, to be followed by the drafting of an appropriate constitutional amendment. Fortunately, Mr. Bayh's Subcommittee on Constitutional Amendments will not be writing on a blank page. It will have before it the extensive hearings of 1966 and 1967, a wide assortment of resolutions on the subject, several books, many articles and the highly useful report of the American Bar Association's Commission on Electoral College Reform in 1967. No doubt many members of Congress will be seeking additional information. But the big problem now lies in drafting a set of principles that will command support by two thirds of the Senate and House and win ratification by three fourths of the states.

In our view the new system should provide:

1. Abolition of the electors who now stand between the voter and the candidate of his choice and in some instances threaten to take the right of choosing the President away from the people.

2. Abolition of the contingent election of a President in the House of Representatives and of a Vice President in the Senate.

3. Machinery for election of the President and Vice President, standing as a team on the ballot, by direct popular vote throughout the Nation.

4. In a two-way race the candidate with a majority of the votes would be the winner. If three or more candidates were running, a plurality vote of at least 40 per cent would be necessary to win. If no one had such a plurality, a runoff election would be held.

5. Authority of Congress to fix the date for the election and the runoff, if any, by law.

6. Authority for Congress to fix uniform age and residence requirements and other qualifications for voting in national elections.

7. Authority for Congress to require the use of voting machines in all presidential elections, probably with Congress providing funds for the same, and to require bipartisan or civil service watchers in every polling place to avoid fraud.

8. Authority for Congress to determine what presidential candidates should be entitled to a place on the ballot. This is essential to prevent Alabama and possibly other States from keeping the names of major candidates off the ballot so as to deny people of the state an opportunity of voting for them.

9. Provision should also be made for the possible death of a presidential candidate before the election.

Any such shift in the mode of electing the President would be, of course, an immense undertaking. The importance and complexity of the job are not an argument against undertaking it. But they do underline the need for a prompt beginning so that the new system can be approved and the necessary legislation passed before the 1972 political pots begin to boil.

The SPEAKER. The gentleman from Virginia (Mr. POFF) is recognized for 5 minutes.

Mr. POFF. Mr. Speaker, I will vote against the objection. This does not mean that I approve Mr. Bailey's conduct. I disapprove. The system should be changed. The change should make such conduct impossible. Such change can be made, however, not by mere legislative pronouncement but by constitutional amendment only.

Thus, my position is based upon the Constitution and the law as it now exists. But it is also based upon a deep concern for the national consequences which a vote for the new objection might have.

Frankly, I fear that if the House were to sustain this challenge, it might defeat or defer chances for electoral reform. The impression would soon get abroad that Congress, without benefit of constitutional amendment, has solved the problem of the defecting elector. I would not want to be the instrument of such a gross misimpression.

Worse than this, I foresee another potential mischief in sustaining this challenge. If the Congress can look behind the solemn certificate of the Chief Executive of a State, reject that certificate and by a simple majority vote decide what electoral votes were "regularly given" and which were given irregularly, then the Congress can expropriate from the people their power to elect their President. Ordinarily, such a danger is too remote to be credible. But who is bold enough to say that in some future election, the results will not be so close, the personalities so controversial, and the temper of the times such that political fervor, malice or sheer caprice will not dominate respect for the will of the people?

According to the prevailing viewpoint, the present state of the law is such that:

First. The Federal Constitution does not bind electors to vote for the nominee of their party;

Second. The States cannot bind electors;

Third. The law of the State of North Carolina does not attempt to bind electors; and

Fourth. The Federal statute requires the Congress to count all electoral votes which "have been regularly given by electors whose appointment has been lawfully certified to" by the Governor of the State.

An analysis of each proposition is indicated. The Federal Constitution does not bind electors. The converse is so. Both article II, section 1 and the 12th amendment provide that electors shall "vote by ballot." The naked language clearly implies a written, secret vote, inherent in which is the notion of untrammeled discretion. Beyond the language of the Constitution itself, there are several references in the Federalist Papers, including prominently the much quoted comment of Hamilton in No. 68 of "The Federalist," to the independent status of the elector. The Congress has honored the same viewpoint. Congress has counted the vote actually cast by every defecting elector in history. Moreover, in proposing the 12th and 23d amendments, Congress retained the concept and procedure of electors voting by ballot.

Can the States by law bind electors? Article II, section 1, clause 2 of the Federal Constitution empowers the States to appoint electors "in such manner as the Legislature thereof may direct." However, this language does not empower the States to deprive electors, once appointed, of their free choice in the electoral college. With only one exception, all decisions of State courts have said so.

The Supreme Court of the United States has never said otherwise. The Supreme Court in the Alabama case of Ray against Blair has said that a State has the power under article II when fixing the "manner" of appointment of electors to permit political parties to extract a loyalty pledge before the elector is "appointed." But that decision does not give States the power, once the pledge is given and the elector is appointed, to bind the elector to honor his pledge when he votes in the electoral college. Indeed, in the 1956 election, 4 years after the decision and in the same State, one appointed elector, having publicly given his pledge before appointment, violated his pledge in the electoral college, and the Congress counted his vote accordingly.

While there is, then, a minority viewpoint reflected in the legislative opinions of 13 State legislatures and the District of Columbia, the majority viewpoint of the courts holds that even State legislatures have no constitutional power to divest an appointed elector of his unfettered discretion in the electoral college.

Whether one embraces the minority viewpoint or the majority viewpoint, the controlling fact remains that North Carolina has not attempted by law to bind North Carolina presidential electors. Under the circumstances and the law governing the circumstances, that is a controlling fact. It remains only to inquire whether the electoral vote cast by elector Bailey, having been lawfully certified by the Governor of his State, must be counted by the Congress as it was cast. The language of title 3, United States Code, section 15, answers in the affirmative.

After defining procedures to be followed when an electoral vote is challenged in the Congress the language reads as follows:

> No electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to . . . from which but one return has been received shall be rejected.

It is argued that Bailey's vote was not "regularly given" because it was not the vote that those who "appointed" him thought he would give. What the words "regularly given" were intended to connote must be distilled from the history of the statutory enactment. Congress passed this statute in 1887 with the problem pictured by the Hayes-Tilden election contest in mind. Seeking to avoid for all time the cumbersome commission procedure Congress employed to resolve that contest, Congress wrote a statute designed to require all future contests to be resolved in the State or States where they developed. It was intended that when Congress receives only one return of electoral votes from a State and the electors have been certified by the Governor as properly appointed, Congress will not reject that return. The certificate and transmit-

tal were intended to signify that the electors had been appointed in the "manner" directed by the legislature and that the votes had been "regularly given" under the law of the State.

If the action of this House is to uphold the literal language of the Constitution, if it is to honor its manifest purpose, if it is to abide by the pronouncements of the scholars and the decisions of the courts, then the House must reject the objection to the Bailey vote.

Mr. EDMONDSON. Mr. Speaker, will the gentleman yield?

Mr. POFF. I yield to my distinguished friend from Oklahoma.

Mr. EDMONDSON. I thank the gentleman for yielding.

I believe the gentleman's first point has some validity, but I question the second point with regard to the claim of expropriation of power by the Congress from the people.

Are we not confronted here with a situation in which an elector is expropriating for himself, for a candidate of his choice, the power of the people of the State of North Carolina.

Mr. POFF. The gentleman will recall that my preface was that Mr. Bailey should have expressed the will of the people in the vote he cast in the college of electors. But my further statement is, and I abide by it, that under the Constitution and the law as it exists today he has an untrammeled discretion. And on that I am obliged to make my decision today.

Mr. ABERNETHY. Mr. Speaker, will the gentleman yield?

Mr. POFF. I am glad to yield to my colleague.

Mr. ABERNETHY. With the Constitution giving the Congress the authority and also the direction to count these votes, if we did other than count them, that is, if we voided a vote, then would it not be possible for this Congress to void enough votes so as to elect a man other than Richard Nixon?

Mr. POFF. The gentleman expressed in more eloquent terms than I the same proposition that I suggested earlier.

The SPEAKER. The Chair recognizes the gentleman from California (Mr. CORMAN) for 5 minues.

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from New Jersey.

Mr. RODINO. Mr. Speaker, I support the objection to the count of the electoral vote of the elector from North Carolina, Dr. Lloyd W. Bailey. I do so with a full realization of the constitutional thicket, because of the overriding principle—also imbedded in the Constitution and recently elaborated upon by the Supreme Court—that one man must be fully equal to another man in exercising his franchise.

The independent elector, as the Constitution foresaw, has run counter to the responsibilities of universal suffrage which this country has been perfecting since the inception of the Constitution itself.

The real question before us is whether we shall be bound by a practice that has never been accepted by the people, or whether we shall now move to assure the people of North Carolina, and indeed voters throughout the United States, that their vote cannot be faithlessly negated by an elector who changes his mind. Since the early 1800's electors have been understood to be "agents" of the people—to act on their behalf, and not to decide their franchise for them. This issue goes to the heart of the concept of democracy, which we all so proudly and so often hail—to our own people and to the people throughout the world.

Even if the objection is sustained by our vote today, we will only be plugging a glaring loophole, for the purposes of the 1968 election only, in a system that cries out for fundamental reform. Such reform, I would hope, will be a priority item on the agenda of the 91st Congress. And if the issue before us now serves to further focus our attention upon the need for reform the time spent now will be well worth it.

I have wondered often how Members of Congress would react if they were obliged to be elected under the provisions of the electoral college. Think for a moment how you would feel if the people of your congressional district wisely chose to send you to Congress, only to find that just as you had moved into your Washington office, moved your family, adjusted your business and personal affairs, an "independent elector" dissatisfied with your choice of office staff cast his vote for your opponent.

Under that system, by 1969, we would find more than enough outraged "elected" non-Congressmen to perhaps overthrow the Government. Does the Presidency, the highest office in the land, deserve less?

Mr. Speaker, a vote to sustain the objection is a vote for basic honesty, for honor, for responsibility and reliableness, and most of all a vote that upholds the most fundamental principle of our system of government—that this Government is of, by, and for the people.

Mr. CORMAN. Mr. Speaker, I rise to support the challenge to the vote cast by the North Carolina elector. I do so to effectuate the express wishes of the North Carolina electorate as well as the universal understanding of electorates throughout the Nation. In the latter half of the 20th century we cannot afford the fiction of an independent elector exercising his own judgment in derogation of the will of the people.

I would like to commend the gentleman from Illinois (Mr. ANDERSON) for pointing up, as have others, the need to move expeditiously on reform in this area, but do not think that we can hide behind a fiction today to frustrate one of the most basic rights of the American people, that is, to vote and to have their vote given efficacy in the election of the person to hold highest office in the land.

The laws of North Carolina are clear. They contemplate that a presidential elector will cast his ballot for the party candidate designated on the ballot. The challenge before us implements not merely the Federal interest in the selection of our President and Vice President, but also is the last means of enforcing the rights of the citizens of North Carolina. I recognize that there is no precedent in the Congress for challenging an elector who has been unfaithful to his electorate. Indeed, the success of this challenge may have limited effect as precedent since the vote challenged will not be determinative of the final result. However, we must also comprehend how serious the consequences will be if the Congress, squarely confronting the issue of an unfaithful elector, rejects the challenge now raised to the vote cast by a North Carolina elector. A refusal by the Congress to reject an electoral vote cast in defiance and derogation of the will of the electorate may encourage increasing numbers of electors to disregard the will of the voters in the future.

Mr. Speaker, in 144 years—1820 to 1964—out of 15,245 electoral votes cast there have only been four "unfaithful" electors. Adherence to the will of the people has been the norm. Manifestly, the people believe they are voting for the President and Vice President. The almost unbroken chain of fidelity on the part of electors to the will of the people should not be rejected by the Congress.

The Constitution is an evolving instrument. Almost two centuries of our history reflect a nearly consistent practice. It makes clear that the preference of the voters does take precedence over independent decisions by electors.

Today, the Congress sits as a court of last resort. No other forum is presently available in this case to effectuate the express wishes of the North Carolina electorate.

It is not enough, however, merely to reject the vote cast for George Wallace. To do only that would be to deprive the citizens of North Carolina of the full weight and effect of their votes. It would be to deprive them of equal protection of the law. A citizen of North Carolina is certainly entitled to have his vote counted in the same manner as the vote is counted of a citizen from California. It is not enough merely to reject the challenged vote. We must also act affirmatively and count the vote exactly as though it had been cast in accordance with the wishes clearly expressed by the people of North Carolina.

Mr. EDMONDSON. Mr. Speaker, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Oklahoma.

Mr. EDMONDSON. I thank the gentleman for yielding, because a little bit ago we had cited a Law Review article from another State. It is interesting that the North Carolina Law Review commenting on the 1933 North Carolina statute which took the names of the electors off the ballot had this to say:

> Here, the legislature, acting under its plenary power of determining the method of appointing Presidential electors has attained the desirable object of direct voting for President and Vice President (11 N.C. Law Review 229).

This was the clear intent of the North Carolina Legislature by the enactment of this law, and it seems to me that we have a moral obligation as well as a legal one in seeing that that intent by the legislature in connection with this law is being carried out.

Mr. CORMAN. I thank the gentleman.

For those who support reform in this matter I would hope that you would not so strain the facts today and make a wrong decision to dramatize the need for electoral reform.

I urge that we support the resolution, and I yield back the balance of my time.

The SPEAKER. The Chair recognizes the gentleman from Illinois (Mr. PUCINSKI).

Mr. PUCINSKI. Mr. Speaker, there is no question that the distinguished gentleman from Michigan (Mr. O'HARA) and the distinguished Senator from Maine have performed a valuable public service by bringing this action and challenging the vote for George Wallace. It helps to focus upon yet another dilemma of our democracy. They have placed this issue into the spotlight of public debate, and I hope such debate will hasten the day when we will be able to effectuate electoral reforms in this country in a constitutional manner.

Mr. Speaker, the distinguished gentleman from New York (Mr. CELLER) has placed his finger on the issue here when he reminded us that the Founding Fathers conceived this concept of the electoral college because at that time they did not believe the voters of this country were capable of selecting a President through general elections. Of course, the gentleman from New York (Mr. CELLER) quite properly pointed out that this ancient idea is totally alien to us today. But there can be no question—and there has been ample debate here—that the Constitution does provide that the elector is a free agent. Repugnant as this may be to representative government, the principle is clear that under the meaning of the Constitution he is a free agent—free to vote as he wishes. This is one of the sad dilemmas of our democracy and must be corrected.

There is always a tendency to seek change through expediency.

I believe it has been properly stated that nothing moves more slowly than a democracy, but move it does and, in its seemingly cumbersome movement, this slow process has brought us to the highest standard of human dignity and freedom ever conceived by man.

There is no question that we need a change. That change will come through the constitutional amendment process only if we reject this resolution today.

Mr. Speaker, we have adopted only 25 amendments to our Constitution since the birth of the Republic. Since the very birth of the Republic we have lived without the 25th amendment, which finally provides the machinery for succession. We even had an occasion where a President's wife managed the affairs of government simply because there was no machinery available for succession when the President was incapacitated. It was not until last year that the Congress faced this issue and adopted the 25th anniversary on succession as it will this electoral college issue.

But I say to you when we try to alter the Constitution through legislative fiat we invite great difficulties.

It seems to me that there will be a 26th amendment, as the distinguished gentleman from Louisiana (Mr. BOGGS) so eloquently stated. There will be electoral reform, but it will come only when we demonstrate that we cannot meet the challenge through resolutions such as the one proposed here today.

Mr. Speaker, no one argues the fact that we need a basic electoral change, and I do support electoral change. I do realize the great danger that this country faced on the morning after election when we were not quite certain how the President was going to be selected.

I say to the House that by adopting this resolution we clearly indicate that there is a legislative way to correct the change, while indeed the country cries out for a constitutional change to once and for all get this problem settled so that the President may be elected by popular vote.

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. PUCINSKI. I yield to the gentleman from Texas.

Mr. WRIGHT. I thank my distinguished colleague from Illinois for yielding to me at this time.

I am sure that the gentleman from Illinois agrees with us that this action under question represented a derogation of the elector's duty and that the North Carolina elector had a strong moral and ethical obligation if not an absolutely binding legal obligation to cast his vote for Nixon?

Mr. PUCINSKI. There is no question about it.

Mr. WRIGHT. And so the gentleman would agree, also, that the vote the faithless elector cast was a most irregular procedure to our basic system?

Mr. PUCINSKI. I agree with the gentleman on that. But the fact of the matter is I do not believe we can adjust his actions through this resolution.

Mr. WRIGHT. The gentleman is familiar, I am sure, with the statute of 1887 which conferred upon the two Houses of the Congress the responsibility of canvassing the votes and of determining whether they were regularly given?

Mr. PUCINSKI. As the gentleman has heard in the previous debate there is a serious question as to just exactly where and when that statute begins and ends. I believe the statement was made here earlier that the statute provides for the Congress merely to confirm. I do not believe the Congress, within the framework of the Constitution, has the right to change any of the votes.

Mr. WRIGHT. Would the gentleman conclude that this vote by this elector who flouted the will of his electorate and abused the obligation that he assumed was "regularly given?" Would the gentleman characterize this as a regular action or an acceptable action to which the people do not deserve remedy?

Mr. PUCINSKI. I would say to the gentleman that we have come to this high pinnacle of man's achievement in this country simply because we have resisted changing our Constitution with the shifting sands of public opinion which ebb and flow like the tide. We really should not try to meet this problem through the resolution method, but through a proper constitutional amendment, so that once and for all we can have order out of chaos in the election of our Presidents.

The SPEAKER. The time of the gentleman from Illinois has expired.

The Chair now recognizes the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Speaker, some Members argue that it would be unconstitutional to sustain this objection: I say that the truly unconstitutional action would be to count the North Carolina elector's vote for Wallace. I shall not repeat the detailed legal analysis which other Members have made on this subject. My position is fundamental. The major function of the Constitution is to distribute the powers of government, and its great unifying principle is to affirm the ultimate power of the people as voters.

The framers of the Constitution may have believed that the electors would make independent judgments, and would be chosen for their individual wisdom, but this never became practice. In the first election in which there was an active contest for the Presidency, a Pennsylvania voter criticized the first faithless elector in these words:

> Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No I chuse him to *act*, not to *think*.

And that has been the expectation of voters ever since. The Nixon voters, who by their plurality enabled Dr. Bailey to become an elector from North Carolina, chose him to act for them by casting his vote for Nixon on December 16. After all, the voters in North Carolina who wanted Wallace to receive the State's electoral votes marked their ballots for Wallace. Thus Dr. Bailey exercised an authority to think for himself which the voters did not intend to give him.

The State of North Carolina has legislation on this subject. In exercising its constitutional power of determining how electors are to be appointed, the State adopted a ballot in which the names of the presidential and vice-presidential candidates would appear, not those of the electors. This is a clear expression of the States' will that its electoral votes be counted according to the choice of the voting public. To count a North Carolina elector's vote for Wallace would make a mockery of this law, an instrument to deceive voters into thinking they were helping elect the man whose name they marked on the ballot, whereas they were actually casting their vote for an unknown person who in turn could choose for President a person against whom they had voted.

Now what are the facts:

On December 16, 1968, Dr. Lloyd W. Bailey, a duly elected Republican elector from North Carolina cast his vote for George C. Wallace stating that he considered it "my moral obligation to do so." Bailey was selected as a Republican elector by the Second Congressional District Republican Convention prior to the Republican National Convention.

A person who cast his vote for Nixon on election day was not wholly conscious that he was actually voting for an intermediary or expected that that intermediary would vote for Wallace and not for

Nixon. If he wanted the elector to vote for Wallace, he would so mark his ballot, or pull his lever. Putting it in another way, unless the Nixon electors are bound to vote for Nixon in the electoral college, there is no way in which the citizens who wish to choose Nixon for President can effectuate that choice.

To reemphasize, North Carolina statutes do provide that the names of electors shall not appear on the election ballot. Only the names of the presidential and vice-presidential candidates appear on such ballots. The law provides that a vote for such candidates shall be counted as a vote for the electors of the party by which such candidate was named. Certainly this in turn implies an obligation on the part of the elector to cast his vote for the candidate of his party. Not to do so destroys the effectiveness of the citizen's choice.

Mr. CHAMBERLAIN. Mr. Speaker, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman.

Mr. CHAMBERLAIN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to state I am in sympathy with the objective of the gentleman from Michigan (Mr. O'HARA) and associate myself with his position.

I would further like to say that this is an issue that does not give me any trouble, as apparently it is giving some Members here today.

Out our way when we count ballots, if we find one that is irregular on its face—or fraudulent in this case may be a better word—we do not count it. I cannot imagine a ballot being more irregular, or more fraudulent, than the one that we have before us today. This is a fraud that has been perpetrated before all the people of this whole United States. It is not right to count this ballot and we should not do so.

Mr. DERWINSKI. The gentleman from Michigan is certainly one of the most profound Members of this House and he has just proved it by that statement.

The SPEAKER. The Chair recognizes the gentleman from California (Mr. BURTON). Is the gentleman opposed to the motion?

Mr. BURTON of California. Yes, Mr. Speaker.

The SPEAKER. The gentleman is recognized.

Mr. BURTON of California. Mr. Speaker, I rise in opposition to the resolution.

As one of the coequal branches of the Government, we have the continuing responsibiilty to measure our actions by the power granted to us under the Constitution as well as the limitations on our power as spelled out by the Constitution.

It is essential that we recognize that this body cannot amend the Constitution of the United States by either statute or resolution. The Constitution can only be amended in the manner specified by this basic charter. In other words, by amendment to the Constitution and concurrence by the requisite number of the several States. It has been clear for some time that our electoral procedures contain some rather significant—perhaps even dangerous—defects. Some of these defects can be remedied by the enactment of a Federal statute; however, in the instant case of the "faithless elector," the Constitution appears to me to be quite clear and therefore we are without authority—in the absence of an amendment changing this provision of the Constitution—to either ignore or invalidate the vote cast by Mr. Bailey, of North Carolina.

I hope that the 91st Congress comes to grips with and resolves our electoral imperfections and I should like to commend the gentleman from Michigan (Mr. O'HARA) and our colleague in the other body—Senator MUSKIE—for giving us an opportunity to debate and highlight this important issue. This debate should add a further note of urgency to the cause of electoral reform.

As the Constitution now stands, my research has led me to believe that the Founding Fathers, for whatever reasons, decided that presidential electors were to exercise their own independent judgment.

On the first day of this session, last Friday, in my view, we ignored our constitutional responsibility and duty in the matter of seating the gentleman from New York. In my view we were mandated by the Constitution to seat Mr. POWELL, after ascertaining that he met the basic qualifications set forth in the Constitution; and that we exceeded our authority when we imposed, in effect, a condition of a fine on his being seated. Although I have little doubt that this body has the authority after observing procedural and substantive due process to discipline one of our Members, the constitutional course in that instance was to first seat the gentleman from New York and subsequent to the seating determine what, if any, discipline should be imposed upon him.

Similarly today, I urged my colleagues to resist the temptation to impose our collective will by majority vote on the judgment exercised—no matter how ill advised or lamentable we may deem it to be—by the so-called faithless elector from North Carolina. It appears to me that this gentleman was exercising his right granted to him under the basic charter. While it may be argued that this elector misled those who selected him and further that the judgment of those who decided he should be an elector is open to some question, all of this is irrelevant. The fact of the matter remains that the present provision of the Constitution must be honored until that provision is altered or deleted in the manner set forth in the Constitution of the United States. I shall not belabor the point of how very important it is that we maintain a government of laws and not of men, and that we, as Members of the U.S. Congress, abide by this provision, as well as all others, until that point in time that we are successful in deleting this archaic procedure from the framework of our presidential elections.

For these reasons, I urge my colleagues to vote with me in opposition to the pending motion.

Mr. JONES of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman.

Mr. JONES of North Carolina. Mr. Speaker, it appears to me that this House is attempting to involve itself in matters which are clearly covered by the U.S. Constitution as well as the election laws of the State of North Carolina. I agree with those who state that the electoral college is filled with imperfections and is in dire need of reforms as soon as possible. But, Mr. Speaker, to take an isolated case from the State of North Carolina which can in no way possibly affect the outcome of the presidential election, is to say the least, out of order. I think statements taken from yesterday's Washington Post, January 5, 1969, can best express my feelings, and they are as follows:

> The Muskie-O'Hara challenge assumes that the vote of Elector Bailey is illegal because it was cast contrary to the wishes of the voters who chose him at the polls. But North Carolina did not challenge the vote for this reason. That state certainly contemplates that Republican electors chosen by the voters shall vote for the Republican presidential candidate, for it puts the name of the candidate (not that of the electors) on its ballot. Yet it does not require them by law to be faithful to their trust.
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> It is interesting to note that Bailey explained his vote as conforming to the will of the voters in his district. He said that he was nominated as a district elector and that his district went for Wallace. This did not, of course, release him from his moral obligation to vote for the winning candidate in the state under the general ticket system. But the basic fact is that North Carolina did not legally bind him to support the winner of the popular vote in the state, and the Constitution leaves him free to make his own choice.
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> Under the Twelfth Amendment, Congress seems to have the duty of counting this vote as it was cast. Even if Congress should assert the right not to count it on the rather far-fetched assumption that it was not legally given, where could Congress find any authority to change it from a vote for Wallace to a vote for Nixon? The duty imposed by the Twelfth Amendment and the act of 1887 is merely to count the votes—not to say for whom they should have been cast.
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> Since Congress itself has no right to intervene, it is scarcely persuasive to say that it can do so by pretending to enforce a North Carolina law that does not exist. To say the least, it is a very strange undertaking.
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> Congress has been importuned on many occasions to amend the Constitution so that there would be no possibility that "dummy" electors might frustrate the will of the people in choosing the President. But Congress has failed to do so. It can scarcely excuse that neglect or overcome its unfortunate consequences now by asserting the right to count votes so as to deprive electors of the discretion the Constitution gives them.

I hope this House will vote down this resolution which to me is totally irrelevant and unnecessary.

The SPEAKER. The Chair recognizes the gentleman from Massachusetts (Mr. O'NEILL).

Mr. O'NEILL of Massachusetts. Mr. Speaker, we are called upon today to exercise our constitutional obligations in the counting of the electoral vote. What in the past was mere formality, becomes much more as we consider our legal duty to judge the regularity of votes cast.

In the past, the Congress has acted under the provisions of the Constitution as amended and the 1887 electoral count

law. Today's action is a first only in that we are using that provision of the law that describes the method for objecting to an elector's vote. Regardless of the outcome of this debate, I believe our action today is correct and obligatory. The phrase "regularly given" is vague; therefore, it is incumbent upon us to discuss, at least in this instance, what may or may not be considered regular.

There is no direct precedent to which we can turn; nor is the law so explicit and defined that we can look solely to it. We must look to related cases and the history of the electoral college and consider constitutional custom.

I support the objection of the gentleman from Michigan. I believe the intent of the people of North Carolina to cast their electoral vote for Richard Nixon has been thwarted, and that the elector, Dr. Bailey acted as an individual and not as an agent of the people of his State.

There are two views of the role or power of the elector. The first is that electors are appointed by the parties in the States to exercise their own judgments with regard to the selection of the President. In this opinion, the electors are not bound by law or morality to select that man chosen by the people of their State. The other view is that electors are agents of the people of their States, the formal means by which the people's vote is recorded. They have no independent existence, and are asked neither to decide or even to think; they merely transmit the vote of their State.

Although there is ample evidence that many of the authors of the Constitution favored the former view, practice among those men who have been privileged to be electors, from the beginning, has conformed to the latter view. By now, we all know the views of that anonymous constituent in 1796 who chose the elector Samuel Miles "to act, not to think." In the entire history of our Nation, only six men have voted against the wishes of their constituencies.

The Supreme Court in Ray against Blair upheld the right of a State to require that electors pledge themselves before the general election. I believe we all support this decision. However, the case of the North Carolina elector is not quite so easy. The 1933 electoral law of the State of North Carolina does not, on its face, require pledged electors. However, I believe that this was the intent of the law.

The North Carolina law states that the names of electors shall not be placed on the ballot, and only the names of presidential and vice-presidential candidates shall appear. A vote for the candidates is counted as a vote for the electors of the party by which the candidate was named. The elector does not exist except through the presidential candidate. This is not a case, as in some States, where voters vote for electors who it is assumed will vote for certain candidates. The voter casts his ballot for the President, and it is deemed that the electors of that candidate's party are chosen. Dr. Bailey only existed as an elector for the people of North Carolina in terms of his party's support for Richard Nixon. He had no individual standing.

If we accept his vote, we are denying the vote of the people of his State. They did not vote for Dr. Bailey—his name was not even on the ballot. Other nations have electoral systems wherein people vote for parties and not people. However, we have always deemed it the right of the people to choose their government. If Dr. Bailey's vote is upheld, we are saying that it is right, it is fair, and it is legal that the people of North Carolina vote blindly. Obviously, if this is the case, they did not vote for Richard Nixon; neither did they vote for Dr. Bailey. In a sense they voted for a party, but that party could not guarantee that their vote would be cast for the candidate of their choice.

I believe the 1933 North Carolina law meant to bring the people's vote closer to a direct vote for President, and not remove it one more step from an effective vote.

More than 20 States do not print the names of electors on the ballot. In one way or another, a vote for a candidate is deemed a vote for electors who are assumed to support that candidate. If we sustain Dr. Bailey's vote, we are saying to the people that it is legal to imply an elector's preference for a candidate—by associating him with a candidate's party—without putting any obligation on that elector to concur with the wishes of the people. Intimation becomes fact; appearance becomes reality.

We are making the voting process a game, as things are not what they seem. We are asking people to make vital decisions but we do not let them know what the choices are, nor are we allowing them to really decide.

I do not think our action here today is any substitute for electoral reform. There looms the possibility that such decisions as this one could be made every 4 years, with each State's laws making an entirely new case. But separate from the great need for changing our electoral process, for making clear the provisions of the law, for translating votes into electoral choice, there is a need to uphold the dictates and the intent of the Constitution and the North Carolina electoral law of 1933. The people of the State of North Carolina voted for Richard Nixon. That vote placed Dr. Bailey in a position to transmit their vote to the electoral college. Dr. Bailey has no standing and no identity as an elector apart from the people's vote for Richard Nixon. He is the people's agent; he is obligated to represent the people and the State of North Carolina in the electoral college. If we allow his vote to stand today, we have allowed the votes of the people of North Carolina to disappear, to become void. We have an obligation to guarantee that the people's vote is meaningful, that it exists. Therefore, I support the objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Missouri (Mr. BURLISON).

Mr. BURLISON of Missouri. Mr. Speaker, I rise in opposition to the objection. I wish to state affirmatively early that in so doing, I do not approve of our present system of electing the President of the United States. Three times in our history the popular will of our people has been defeated—in the infamous elections of 1824, 1876, and 1888.

In six instances we have had the "unfaithful elector" situation which we are discussing at this point. This demonstrates the great potential for absolute repudiation of the popular will of our people. So I think most of us must conclude that the electoral college is a reprehensible and an undemocratic anachronism.

This brings us to the question of whether the remedy submitted by the distinguished gentleman from the other body and the distinguished gentleman from Michigan is the appropriate one. In my humble judgment, it is not.

In the first place, it is illegal. Both article II of the Constitution and the 12th amendment thereto make it clear, as well as the arguments that were submitted at the Constitutional Convention, that it was the intent of the drafters of our Constitution that the elector would have an independent judgment which he should and could exercise.

Ironically, the law which the gentleman from Michigan and the gentleman from the other body seek to invoke is a law passed to prevent a recurrence of that greatest miscarriage of the popular will that has ever happened in this Nation—the election of Hayes over Tilden in 1876. Ironically, they invoke in this instance a law which was passed to cure that situation. By their own admission, in a document put out by the gentleman from Michigan and the gentleman in the other body—and I refer to the "memorandum in support of an objection to counting the vote of a North Carolina elector"—paragraph 10 of that document—"In 1876 the present electoral system faithfully was adhered to on all sides," so the situation in 1876 had no instance of the "unfaithful elector" that we are debating on this occasion.

My conclusion, Mr. Speaker, is two-pronged:

First. The objection offered by the gentleman from Michigan and the gentleman from the other body is constitutionally invalid and is not remedied by an inapplicable law passed in 1887 for a different purpose, to remedy the situation which existed in 1876.

Second. The second facet of my conclusion, Mr. Speaker, is that our system for electing a President is woefully inadequate. But let us not approach the problem piecemeal as here proposed. Let us in this first session of the 91st Congress discharge our full responsibility by starting the turn of the wheels which will mean amendment to our Constitution and elimination of the innocuous electoral college system for electing a President.

I have introduced legislation to this effect. Many others have and will. Whether you prefer the proportionate system, or the district system, or the popular system—which I prefer—let us do away with our present inadequate system; but let us not compound our past errors by approving the objection.

Mr. EDMONDSON. Mr. Speaker, will the gentleman yield?

Mr. BURLISON of Missouri. I yield to the gentleman from Oklahoma.

Mr. EDMONDSON. Mr. Speaker, I

commend the gentleman on the splendid presentation he has made.

The SPEAKER. The time of the gentleman from Missouri has expired.

The Chair recognizes the gentleman from North Carolina (Mr. GALIFIANAKIS).

Mr. GALIFIANAKIS. Mr. Speaker, I rise to oppose the resolution.

Mr. Speaker, the vote case by presidential elector, Dr. Lloyd Bailey of North Carolina, raises many interesting questions, some of which deserve careful and deliberate consideration by this Congress. Unfortunately, by law we are required to count the electoral votes today, January 6. This provides very little—indeed inadequate—time to consider thoroughly the many implications of Dr. Bailey's act.

Suppose the resolution rejecting Dr. Bailey's vote is passed by this Congress today. And suppose Dr. Bailey decides tomorrow, as he might very well do, to test his constitutional right to vote as he did. We shall then be no closer to resolving this particular problem than we are now. Indeed, the problem will be further complicated by the intervention of the courts and may well interfere with the ultimate adoption of a more adequate, permanent solution to the fundamental problem presented here.

At the outset, I must emphatically differentiate between my personal feelings on the matter and what I perceive to be the controlling law. I believe Dr. Bailey had a moral commitment, as a Republican elector, to cast his vote for the Republican candidates, President-elect Nixon and Vice President-elect Agnew. I have no doubt that the voters whom Dr. Bailey represented as elector confidently anticipated that their expression of preference would be preserved by the North Carolina electors should the Republicans carry the State, as they did. I feel this assumption is particularly valid since the third party candidate, George Wallace, also appeared on North Carolina's presidential ballot, providing those voters who preferred him ample opportunity to choose his slate of electors.

Furthermore, if it is the intention, in whole or in part, of Senator MUSKIE and Congressman O'HARA to question the presidential elector system, I am entirely in accord with their motives. I feel the entire electoral system needs the most careful reexamination and consideration.

But at the same time, I do not see that these gentlemen have made a legal case for their challenge. The first question is whether or not there are, in the laws of the State of North Carolina, provisions which require an elector to cast his vote for the candidates of the party he represents. It appears that the North Carolina constitution and statutes are entirely silent on this point. I am confident that the Supreme Court of North Carolina would hold, in construing the laws of the State, that in the absence of express language or clear implications in the law, no such interpretation can prevail. I find neither such express language nor such clear implication in the laws of North Carolina.

Also, I do not see that the Federal laws will help their case. The statute which authorized Congress to reject electoral votes does so in a very limited and specific way. I quote:

> No electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.

Clearly, our only basis for rejecting Dr. Bailey's vote under this section would be upon the determination by this Congress that his was not a lawfully certified appointment or that his vote was not cast in a regular manner. There apparently is no contention raised as to the first point, and to argue that the fact of Dr. Bailey's vote in itself made it irregular, I believe, assumes the questions rather than answering them.

As I understand it, the duty of Congress under the law is, of course, to count electoral votes, not to cast them, nor to ignore them, nor to recast them. There may be flaws in the scheme which produces these votes, but these must be traced to the Constitution of the United States and to the several State codes. It is hardly appropriate for Congress to try to amend the Constitution of the United States by custom.

Mr. HENDERSON. Mr. Speaker, will the gentleman from North Carolina yield?

Mr. GALIFIANAKIS. I yield to my distinguished colleague.

Mr. HENDERSON. I should like to commend the gentleman from North Carolina for the statement he is making. I join him in his remarks.

Mr. Speaker, when the House sits to receive the electoral vote cast by the electors duly chosen in the various States to serve in the electoral college to elect the President of the United States, our duty is similar to that of a local board of elections which canvasses and certifies the returns.

Our function is solely to receive the votes, count them, and certify the result.

It is not to determine whether the votes were properly cast.

I do not believe our laws should permit an elector to disregard the expressed will of the voters and cast the electoral vote entrusted to him as a representative of his political party for a candidate other than the candidate of his party. Nevertheless, our present law does permit such action and the Congress has no legal authority to change the vote cast by a duly qualified elector or to refuse to consider and count it.

I expect to support a constitutional amendment which would change our electoral system to prevent such actions in the future, but in the absence of such an amendment, or a State law spelling out clearly the duties of an elector, he has the legal, if not the moral, right to vote as he chooses.

Mr. EDMONDSON. Mr. Speaker, will the gentleman yield?

Mr. GALIFIANAKIS. I am glad to yield to the gentleman from Oklahoma.

Mr. EDMONDSON. Mr. Speaker, I join my friend in commending the gentleman from North Carolina for a splendid speech.

I ask unanimous consent to insert in the RECORD at this point a statement with regard to the 12th amendment and the manner in which it does direct that the electors act as agents for the people.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The statement is as follows:

THE 12TH AMENDMENT

In 1800, the electors met and cast their votes, each voting for two candidates, without distinction as to a Presidential and Vice-Presidential choice, as then prescribed by the Constitution. The result was a tie for first place between Jefferson and Burr, the two Democratic-Republican candidates, each of whom received 73 votes. John Adams received 65 votes, his "official" Federalist running mate, Pinckney, received 64, and one Federalist elector voted for John Jay. This left Jefferson and Burr tied for President, and after considerable cliff-hanging, the House elected Jefferson over Burr. Subsequently, in order to prevent the possibility—which was close in the House—of the election as President of an unintended candidate through wheeling and dealing among the State delegations—the Congress submitted to the States, the twelfth amendment, which was ratified in time to govern the casting of the electoral votes for President and Vice-President, and makes other changes in the electoral college procedure, is the language which now governs the choice and operation of electors. In the debates preceding its adoption by the Congress, there is ample rhetorical evidence that it was the intent of the framers of the amendments to provide for as direct a Presidential election as they deemed possible, and that they viewed the electors as mere agents of the voters. Their speeches, from which I quote below, are favorable to our cause. But the environment in which they were delivered poses some questions since most electors immediately prior to the adoption of the Amendment were not chosen by direct election at all, but by the State Legislatures.

I. THE RHETORIC

A. *In the Senate.* Senator Jackson of Georgia. "You must keep the election out of the House of Representatives if you wish to keep the Government from civil war, from the danger of having a man not voted for by the people proposed to be placed over your head, as you are plainly told has been proposed. We are but the servants of the people, and it is our duty to study their wishes."

Senator Nicholas, of Virginia: "By taking the number three instead of five, you place the choice with more certainty in the people at large, and render the choice more consonant with their wishes. . . . The people hold the sovereign power, and it was intended by the Constitution that they should have the election of the Chief Magistrate."

Senator Samuel Smith, of Maryland: . . . the Constitution; which if (I understand) is right, intended that the election of the Executive should be in the people, or as nearly as was possible, consistent with public order and security to the right of suffrage. . . . Our object in the amendment is or should be to make the election more certain by the people."

Senator Breckinridge of Kentucky: "If any principle is more sacred and all-important for free government it is that elections should be as direct as possible; in proportion as you remove from direct elections you approach danger. And if it were practicable to act without any agents in the choice, that would be preferable even to the choice by Electors."

B. *In the House.* Rep. Clopton of Virginia: "he believed the provision, if conformed to

the ideas suggested by him, would be more likely to insure the ultimate election of President and Vice-President according to the will of the people, as the electoral votes are to be considered as their expression of the public will."

Rep. G. W. Campbell of Tennessee: "He considered to be the duty of this House, in introducing an amendment to the Constitution on this point, to secure to the people the benefits of choosing the President, so as to prevent a contravention of their will as expressed by Electors chosen by them."

Rep. Clopton (further): "The Electors are the organs, who, acting from a certain and unquestioned knowledge of the choice of the people, by whom they themselves are appointed and under immediate responsibility to them, select and announce those particular citizens, and affix to them by their votes and evidence of the degree of public confidence which is bestowed upon them. The adoption of this medium through which the election should be made, in preference to the mode of immediate election by the people, was no abandonment of the great principle, that the appointment of the constituted authorities ought to be conformable to the public will. It was no abandonment of that principle in respect to the President and Vice President. The adoption of this medium in the first resort, and the adoption of this alternative of a Legislative election in the last resort, were not intended as disparagements to the energy of that principle—were not intended to operate any diminution of its force. The spirit, the genius of the Government, is the same. The same principle was intended to influence its elections, although in a different form and after a different manner. It is a great characteristic feature of the Government. It is a primary, essential, and distinguishing attribute of the Government, that the will of the people should be done; and that the elections should be according to the will of the people."

Rep. Holland of North Carolina: "Sir, I am one of those who have been early taught to respect the will of the people, and notwithstanding what has been said, I still retain an opinion that the public will is of binding obligation and I hope I shall continue to regard it. The Constitution itself is predicated upon the will of the people, and in order to ascertain this will at all times, the framers were obliged to resort to elections and delegations of power by which agents were to be appointed to express and execute their will, whether acting in a Legislative or Executive capacity. But the delegation of power ought to be imposed only in cases where the will of the people cannot be otherwise known. Under these impressions, I have not admired the plan adopted in the Constitution of electing those high officers by Electors. I should have preferred an immediate suffrage to this indirect mode of electing by Electors; but as the framers of the Constitution have thought proper to ascertain the public will through the medium of Electors, I am unwilling that they also should be under any unnecessary trammels whereby the will of their constituents should be impeded.

The SPEAKER. The gentleman from Minnesota (Mr. FRASER) is recognized for 5 minutes.

Mr. FRASER. Mr. Speaker, I regret that parliamentary considerations have led to a limited challenge today; one which, if sustained, will only disqualify the vote of the defecting elector. I would have gone further and required the defector's vote to be counted in accordance with the pledge that he carried. At a future time that further result should be urged.

Does the Constitution confer upon an elector the unrestricted right to exercise his discretion regardless of the system used to elect him, and without reference to firm, public pledges to vote for a particular candidate which were the sole basis of his election? I think not, although I must confess that until I reviewed the language of the Constitution and read some of the court decisions I had a contrary view.

Mr. Speaker, it is true that the drafters of the Constitution contemplated that presidential electors would use their own judgment and discretion in voting for a President. Presumably this intent was expressed by calling for the elector to "vote by ballot." But the same article of the Constitution contains a further provision which must be examined.

The critical language is found in article II, section 1 of the Constitution, which provides that each State shall appoint presidential electors "in such manner as the Legislature thereof may direct." This language is a general grant of power, broadly drawn, which does not circumscribe the procedures under which the States may choose electors.

In truth, the courts have repeatedly upheld a variety of procedures for the appointment of electors, including election by the legislature, by statewide vote, and by district votes. Moreover, the courts have sustained the validity of the procedure used in North Carolina and in at least 34 other States. In these States only the names of the presidential and vice-presidential candidates appear on the ballot, and not the names of the electors. It is beyond dispute that the latter system contemplates that the electors will vote for the candidates on whose behalf they were filed. The electors are under an explicit pledge in some of those 35 States and under an implied pledge in the others to vote for those candidates. The creation of the implied pledge has been explicitly referred to by the U.S. Supreme Court.

Thus, for over a century and a half, both practice and the courts have sanctioned a system of appointing electors who carry either an explicit or an implied pledge to vote for a certain candidate. Thus, a system of appointing electors has prevailed for over 150 years which explicitly follows a system outside the contemplation of the original drafters of the Constitution. Nevertheless, this system appears to come within the broad grant of power afforded each State to appoint these electors in "such manner as the legislature may direct."

The only question which remains is whether or not the Congress shall give full force and effect to the system followed by almost all of the States. There is no reason why we should not. If we sustain this challenge, we will be upholding the exercise by the States of their general power to determine the procedures to be used in selecting electors; we will carry forward the will of the voters rather than permitting that will to be frustrated; and we will insure the integrity of the election system which is so essential to a free society.

If Congress sustains this challenge, it does not in any way impair the rights of third parties to present themselves to the voters, nor does it bar a State from following a method of selecting electors who are free to exercise discretion. If we sustain the challenge today, we simply affirm the right of the States to make effective one system of selecting electors which in no way detracts or erodes their right to adopt other systems.

I urge that the challenge be sustained.

The SPEAKER. The Chair recognizes the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. GERALD R. FORD. Mr. Speaker, I doubt if anyone in this Chamber today is happy with the prospect of having to make a decision on this matter at this time. But on the other hand we are awfully fortunate that we are not making another decision, that other decision being who would be the next President of the United States. As we all know, we came dangerously close to having to face up to that problem as the closeness of the election in November became more obvious to every one of us. So, although we have the lesser of the two challenges pending before us, I think we ought to take a look at some of the problems that face us in trying to resolve in our minds how each of us should vote.

In December 1967 I first raised the question before a Republican Governors' conference in Florida of the possibility of the House of Representatives having to decide who might be the next President. Quite frankly I was disappointed with the response that I received from even Members of this body. I was disappointed with the interest on the part of the press. The news media discounted the possibility of this constitutional crisis. However, I do not believe that many people were discounting this serious problem as the election night wore on, believe me.

And, perhaps, the mere fact that we have this issue pending before us today is yet another incentive for the Congress to initiate some affirmative action to avoid the possibility of a constitutional crisis in November 1972.

I am all for a change in the method by which we select the President. I have some views favoring one method over another, but I am willing to moderate these personal views in order to achieve a solution. Therefore, I urge immediate action in the Committee on the Judiciary and on the floor, and the sooner we get together the better. But we have a concrete problem before us today as to what we should do about this specific issue raised by the gentleman from Michigan (Mr. O'HARA) and Senator MUSKIE.

Constitutionally, the gentleman from Ohio is right, the gentleman from Virginia is right, and the gentleman from North Carolina is right. I cannot argue with the freedom of choice of the elector predicated upon a strict interpretation of the Constitution. On the other hand it is my opinion that we have to weave into our decisionmaking the question of the moral issue.

Our function today is to decide what votes we count. Do we count the vote of the faithless elector from the State of North Carolina or do we count the votes of the people of North Carolina who voted in the plurality for the President-elect? And, when I weigh on the scales under these circumstances whose vote or votes I am going to count today, I am

going to vote for the vote of the people of North Carolina who voted for Dick Nixon.

Now, some will say that is a bad precedent. Well, I hope it is a precedent in a moot case, because, in the next 4 years, I hope we have found a better way to select a President of the United States than the manner in which we do it today. Therefore, whether it is a precedent under this procedure or not, I am not concerned about it.

I am concerned about affirmative action on our method of electing a President. I hope that whatever the precedent is today that it certainly will be moot, and that we will soon have a new method and a new means of choosing a President so as to be effective in November of 1972.

Therefore, Mr. Speaker, may I conclude with this final observation—for obviously I am going to vote for the resolution if we get to that question, and I hope we do not—and in order to obviate a precedent which I believe would be bad, even though I would hope it would not be applicable in 1972, I am going to move, or seek to move to table the resolution. As soon as we conclude the debate, I am going to move to table the resolution, and I hope it is in order.

The SPEAKER. The time of the gentleman from Michigan has expired.

The Chair would like to inquire if there are any other Members who are going to speak in opposition to the objection. At present the Chair has one Member on the list who is going to speak in opposition, and three or four Members who will speak in behalf of the objection. The Chair is making the inquiry in order that the Chair can protect the Members on the question of equality in the debate.

The Chair recognizes the gentleman from Texas (Mr. ECKHARDT).

Mr. JONES of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. ECKHARDT. Mr. Speaker, I yield to the gentleman from North Carolina.

Mr. JONES of North Carolina. Mr. Speaker, I thank the gentleman for yielding.

I would like to insert into the RECORD at this point—and I would also like to read—a telegram received by me today which is as follows:

RALEIGH, N.C.

Hon. WALTER B. JONES,
Representative of North Carolina,
House Office Building,
Washington, D.C.:

Pursuant to your request you are advised that under the North Carolina statutes a presidential elector is not required to cast his vote for any particular candidate.

JAMES F. BULLOCK,
Deputy Attorney General.

I thank the gentleman from Texas for yielding to me.

Mr. ECKHARDT. Mr. Speaker, I would be reluctant to appear here to oppose a resolution with such honorable intent against one guilty of such dishonorable conduct if I did not consider it incumbent on me to do so under my oath of office.

Last Friday I voted "present" upon that basis, and today I shall vote "no" upon the same basis.

There are twin derelictions that I consider to be the highest crimes of a representative official. The first is lack of fidelity to the people, and the second is lack of fidelity to the Constitution of the United States.

On so thorny a constitutional question as the basic one raised in debate here today one would be bold, indeed, if he were so sure of his correctness as to say the opposite conclusion defied the Constitution. And though, on the constitutional objection that I shall raise here, I feel that Congress' authority is clearly and expressly limited short of judging a hypothetical question of Dr. Bailey's authority to defy the voters' mandate, I concede that others may come to a contrary conclusion. If they do, they are upholding the Constitution as they see it, and this is what they should do.

My arguments against this resolution do not rest upon the basis of any of the constitutional arguments that have heretofore been raised. I do not believe it is so clear as the very able chairman of the Committee on the Judiciary contends that the electoral college is a mere conduit of the will of the persons who select them.

I do not, on the other hand, believe it is so clear, as the gentleman from California said, that the electors may vote without restraint their true and independent views. But I do believe that there is one thing that is beyond question in the Constitution, and that is that the joint session of the House and the Senate has no power whatsoever other than to hear the returns of the electors read, until it is shown that there is at least a possibility that one of the candidates does not have a majority.

The time we reach the point that we are attempting to decide by this resolution is at the point where the House gets jurisdiction to determine the issue of the Presidency.

There is no possibility of the House receiving that jurisdiction under the facts of this case. But technically, if I were not stopped by the peculiar rule involved where an issue is presented to this body through the joint body and therefore cannot be amended, what I would be speaking for here and now would be a delay of action with respect to the decision on the vote of the elector from North Carolina until it was determined that his vote might result in a failure of a majority appearing for any given candidate.

Now that is the only point at which this body receives jurisdiction to determine the issue of the propriety of the election or of the propriety of the vote of an elector in the electoral college, and until this occurs this body is utterly and completely without jurisdiction to deal with the matter.

Now there are also practical aspects in following this mandate of the constitution and they are the same aspects that constrain the Supreme Court from deciding moot cases and questions.

If this determination, with respect to the electors of North Carolina, were to determine who would be President of the United States, then nearly every responsible law journal in the universities in the country and most of the students of constitutional law would have written on this subject and we would be deciding this question on a mature basis of consideration, and not as a moot case or question.

If we decide a case on this basis, then we decide it on the weakest consideration that a matter of this importance could possibly command.

I urge the House that we cast a "no" vote at this time, without resolving the question of whether Dr. Bailey was compelled to follow the mandate of the vote of the State of North Carolina or was not compelled to follow that mandate.

The SPEAKER. The Chair recognizes the gentleman from Wisconsin (Mr. REUSS).

Mr. REUSS. Mr. Speaker, the question is whether the Congress may prevent a presidential elector chosen on the assumption that he would vote for Mr. Nixon from in fact casting his vote for Mr. Wallace.

Originally, there was no doubt that an elector was free to exercise his own judgment. But customary law has long since dictated an obligation to keep faith. As long ago as 1903, James A. Woodburn said in The American Republic that—

> No law of the Constitution is stronger or more inviolable than this unwritten one that a presidential elector is required to vote for the candidate selected by the popular election.

The gentleman from Michigan (Mr. O'HARA)—to whom we must be grateful for raising the issue—relies on the electoral count law of 1887 as the basis of his challenge of the vote of Dr. Bailey. I have some difficulty with the use of the 1887 law for this purpose, since that law seems to imply that if an elector is duly elected by the law of his State, his vote may not be challenged.

But there is another, and I think clearer, ground for this House to count Dr. Bailey's vote as not a vote for Mr. Wallace. We are here acting under the language of the original Constitution—and of the identical language of the 12th amendment of 1804:

> The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted.

In counting Dr. Bailey's vote, we ought to assume that he did not betray his trust.

If Dr. Bailey does not like the way we count his vote, it is open to him to go to a Federal court of equity and attempt to have his vote corrected. And there, even if he should persuade the court that Congress in counting his vote was wrong, the court of equity will invoke a old maxim of equity: He who comes into equity must come with clean hands. The court, noting Dr. Bailey's betrayal of trust, will turn him away, saying: "Physician, heal thyself."

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. REUSS. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Speaker, I ask the gentleman, if we were to follow the literal language of the Constitution, which some of our distinguished colleagues feel we are bound to do, could we have anything like an effective election tallied here today?

Article II of the Constitution provides:

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.

In the case of the State of North Carolina, that would have been 13. The State of North Carolina did not do that. They authorized the Democratic Party to submit to the Secretary of State a list of Democratic electors, and they authorized the Republican Party and the Wallace Party to do the same thing. So the Legislature of North Carolina authorized three sets of electors, but only one set voted for President and Vice President. That would be one-third of the total number authorized to vote by the Legislature of the State of North Carolina if we ignore the vote of the people of the State.

Therefore, is it not apparent that by common acquiescence and the laws of the several States that we have come to treat the electoral college as an institution about as functional as is the appendix in the human body?

I ask one further question: Suppose the State of North Carolina had not named any electors, but suppose the Secretary of State had certified to the Congress that the State of North Carolina, let us say, voted for the President-elect. Suppose that today there were no certificate from the electors but that there was a certificate from the Secretary of State to the effect that they had voted for Nixon. Would it be counted here today?

Mr. REUSS. I am confident it would be.

Mr. PRYOR of Arkansas. Mr. Speaker, will the gentleman yield?

Mr. REUSS. I yield to the gentleman.

Mr. PRYOR of Arkansas. Mr. Speaker, the case of Dr. Lloyd W. Bailey is certainly not a case against the splendid State of North Carolina, any political party, either of the three presidential aspirants who presented themselves to the American electorate on November 5, or actually against Dr. Bailey himself. But rather, in its broadest sense the Bailey case presents a challenge to the very possibility, or principle, or philosophy, that the American voters could, if Dr. Baileys exist everywhere, find themselves completely disenfranchised and the popular will of the people annihilated.

Had Dr. Bailey, a Republican Party elector, pledged to support Richard Nixon, decided to cast his vote for HUBERT HUMPHREY, instead of George Wallace on December 16 in the electoral college, justice would have been equally flaunted—the peoples' wishes flagrantly violated. A Dr. Bailey in Arkansas, New York, or any of our States would of course have presented the same issue as arises at this historical moment today.

We talk about rights a great deal today. Civil rights, Indian rights, and water rights. But, Mr. Speaker, the Bailey issue is one of peoples' rights—or the right of the people to speak effectively with their ballot—the will of the electorate of any given State not to be abandoned or mocked because of the personal whims or desires of electors who violate their agency relationship with their people.

The case of Dr. Bailey in its broad sense presents a challenge to the patchwork of cloudy and nebulous statutes and court decisions on both the Federal and State levels in the area of the elector's relationship to those who chose him to represent them in the electoral college. It is our hope that the deliberations of this body and the meeting squarely of the great constitutional issue encompassed in the Bailey situation will serve to clarify the position of those who make up the electoral college.

But on a broader front the case of Dr. Bailey comes to the basic roots of an antiquated, clumsy, and unfair method of electing our President. The question of what we now describe as an "unfaithful elector" is only one of many flaws, discrepancies, and dilemmas in our electoral college jungle.

Hopefully, the Bailey situation added to other related facets attached to the electoral college system, will demonstrate the necessity of the 91st Congress giving the highest priority to seeking wholesale reform in our method of electing our President.

The SPEAKER. The gentleman from California (Mr. HOSMER) is recognized for 5 minutes.

Mr. HOSMER. Mr. Speaker, I rise in favor of the resolution and recall to your mind that one of the stated purposes of our Constitution, set forth in its preamble, is to establish justice. That is quite relevant to our decision today whether to count or not to count the electoral vote from North Carolina. For here, too, we are seeking justice.

And what is justice?

It is a fair result which comes from an application of both law and equity.

Law, as this Republic knows it, comprises the written provisions of our Constitution and our statutes, and the unwritten provisions of the common law.

Equity, on the other hand, is the conscience of justice. It is an obligation upon those seeking justice not to be blind in situations where the rote application of law will promote injustice. It is an obligation to seek out the conscionable where otherwise the unconscionable would prevail.

True, equity is principally a tool of the courts, the judicial branch of our Government. But it is nowhere a tool denied the Congress, the legislative branch, in the conduct of its business. In fact, we, the Congress, if we seek justice, are as bound to apply its principles in the conduct of our business as are the courts.

Today our business is to decide the election of a President and a Vice President. In this process we have been called upon to determine the validity of one vote cast by an elector from North Carolina. In essence, we are called upon under the resolution before us to decide whether counting that particular vote will serve a conscionable or an unconscionable end. We are obliged to use all the tools of our trade in arriving at this decision. Equity is one of those tools, for this House cannot act without conscience in rendering justice.

The central issue before us, then, is whether counting this vote will conscionably forward justice or unconscionably thwart it.

What are the facts?

Simply that the elector in question in some manner held out to someone, including the electorate of North Carolina, that should he become an elector he would vote for his party's candidate for President and Vice President. For that reason alone and none other was he made an elector. But to the contrary notwithstanding, when it came to balloting, he cast his ballot for two other candidates. All this is open and notorious knowledge of which we have taken legislative notice by entertaining the resolution before us.

In this sense he has defrauded those to whom he held out a contrary intention in order to qualify to cast his ballot.

This elector's fraudulent conduct is unconscionable.

If we see only the legalisms some have cited and blindly permit his unconscionable act to be effected by counting his ballot, thus forwarding his unconscionable purpose, we will thwart the ends of justice as I have explained them. We certainly will not be forwarding them.

As I have also explained, we have the power to employ equity in determining this business before us. No one has denied that we have this power. Therefore we possess the capability to thwart this unconscionable fraud by this elector upon those who made him such.

I strongly recommend we exercise that power. It is our duty to do so and thereby achieve the conscionable ends of justice. We can do so only by supporting the resolution. It will be a good precedent because it will bring a fair result.

The SPEAKER. The time of the gentleman from California has expired.

The Chair recognizes the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. Mr. Speaker, in 1826, Senator Thomas Hart Benton said in regard to the office of presidential elector:

The agent must be useless if he is faithful, and dangerous if he is not.

These words apply with full force and vigor to the case of Lloyd Bailey, the faithless and, hence dangerous, elector of North Carolina.

Some 16,000 Americans have been chosen as presidential electors under the laws of the several States, in the 180 years since the American people first embarked upon the exciting, courageous and eminently successful experiment of allowing the powerful Chief Executive of a great nation to be chosen by the people over whose government he presides. Sixteen-thousand people—men and women of every race, every religion, every walk of life. Sixteen thousand people—some of them eminent public figures, more of them obscure private citizens—have been given the ministerial but solemn function of listening to what the people say at the polls and jotting it down on their ballots. Of this great army of Americans only six throughout the history of the Republic have sought to impose their own private judgment, their own will, over the free choice of the people to whom they are

accountable. This is a record of amazing fidelity to a system which has had few sanctions, and in which even those few sanctions have not been hitherto applied.

There have only been six of them, and in no case, have their disregard for their duty, changed the result of a presidential election. The lawyer's maxim, "De Minimis Non Curat Lex," might be thought to apply here, and we may be urged to disregard the tiny and ineffectual mischief done by Elector Bailey on the grounds that the Nation, the President, and the people of North Carolina have suffered no lasting harm from his irresponsibility.

I see it differently, Mr. Speaker. As I see it, these six faithless electors have gone largely unremarked in our history because we have been fortunate enough not to have several of them emerge at the wrong time. Let us suppose, Mr. Speaker, that 85,500 popular votes, in the States of Illinois, Alaska, and New Mexico, had been cast differently. Let us suppose that by this combination of minute alterations in the voting patterns of 1968, the election had been thrown into the House of Representatives by the margin of one electoral vote. In a situation like this a single faithless elector, motivated either by ideological considerations, as Bailey apparently was, or by some even less defensible motive, could have literally held the history of the Republic in his own hands, and subjected it to his own will. This, I submit, is not the kind of power the American people are willing to entrust to an electoral college made up of saints and scholars, and they certainly did not intend that their next 4 years of leadership should be decided by an anonymous elector from North Carolina.

Mr. Speaker, I would now like to address myself briefly to the historical questions involved in this objection.

Everyone knows, Mr. Speaker, that the presidential electors are free agents. Like a lot of other things that "everyone knows," this assertion simply has no basis in historical fact.

I do not question those learned observers who contend that the Founding Fathers intended the electors to be men of independent judgment, who would exercise their own wisdom in selecting among their fellow citizens for the Presidency. This assumption among the Founding Fathers is too well documented to question.

But there are two other facts to take into consideration in judging the duty of an elector, besides the original concept of the position. First, it is simple historical fact that the electoral college never functioned as the Founding Fathers intended it to, even from the beginning. In the very first presidential election, the electors were chosen in the sure and certain knowledge that they would all vote for George Washington. The individual electors were no more free agents, nor were they expected to function as a deliberative body, in 1788 than in 1968.

In 1792 the same thing was true. Again, George Washington was the unanimous and foreknown choice of the electors. By the time the third election took place, in 1796, it was clearly understood by all the electors that their function was to give voice to the candidate they were pledged to prior to their election. This understanding was so firm that only one elector in 1796 chose to violate his pledge. Samuel Miles, an elector pledged to John Adams, voted instead for Thomas Jefferson. One of his constituents spoke for most Americans in 1796, and for the overwhelming majority of Americans in 1968, in saying of this defection:

> Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chuse him to act, not to think.

In 1800 the electors remained faithful to a man to their preelection pledges. This time, the great majority were pledged not only to a presidential candidate—Thomas Jefferson—but to his vice presidential running mate, Aaron Burr. They remained so faithful to their duty that under the original constitutional provisions, there was a deadlock for the two offices, which had to be settled in the House.

This brings us to the second major consideration to be kept in mind in determining the contemporary function of an elector. The 1800 election was not looked upon by the people of the time as a strange one-time anomaly that would never happen again if the electors simply did their independent duty. On the contrary, it was assumed on all sides that the 1800 experience would constantly repeat itself because it was assumed on all sides that electors would simply vote for the candidates they were pledged to vote for. The Congress, acting on this assumption, undertook to amend the Constitution to fit the new reality. And the 12th amendment was rapidly ratified by the States.

My basic point, Mr. Speaker, is that it is not article II, section 1, which governs the electoral college today. It is the 12th amendment. The quotes from the Constitutional Convention, and the arguments in the Federalist Papers deal with constitutional language which has been almost wholly superseded by the 12th amendment. It is to the legislative history of the 12th amendment that we must turn to find out what the electors were meant to be in the minds of the men who wrote and approved that amendment.

In those debates, which are preserved in large part in the Annals of Congress, the remote ancestor of today's CONGRESSIONAL RECORD, it is crystal clear from the debates that there was no significant body of opinion in the Congress which still clung to the notion that electors were free agents.

Let me quote very briefly from some of the remarks made during the debate on the 12th amendment:

Senator Nicholas of Virginia:

> The people hold the sovereign power, and it was intended by the Constitution that they should have the election of the Chief Magistrate.

Senator Samuel Smith, of Maryland:

> Our object in the amendment is or should be to make the election more certain by the people.

Representative Clopton of Virginia: He believed the provision, if conformed to the ideas suggested by him, would be more likely to insure the ultimate election of President and Vice President according to the will of the people, as the electoral votes are to be considered as their expression of the public will.

Representative G. W. Campbell of Tennessee: He considered to be the duty of this House, in introducing an amendment to the Constitution on this point, to secure to the people the benefits of choosing the President, so as to prevent a contravention of their will as expressed by electors chosen by them.

It is the clear duty of the Congress, not to interpose its will between the people and their choice of a President, but to offer the shield of its authority as a protection of the sovereign right of a free people to see conferred the highest office in their gift upon the man they have chosen.

Mr. BENNETT. Mr. Speaker, it seems to me that a negative vote on this objection is required because of the specific wording of the Constitution and I expect to so vote. I take this opportunity to express the hope that the issue thus raised may again point out the need for an amendment to the Constitution to eliminate the electoral college, and also to provide for a better way to nominate the President and Vice President each 4 years.

Like many others I have been for years introducing legislation of this nature and I hope it can receive prompt attention this year.

Mr. FOUNTAIN. Mr. Speaker, I want to join those who have expressed their opposition to the petition of objection filed by the gentleman from Michigan and the Senator from Maine.

I, too, feel that Dr. Bailey had a moral obligation to cast his electoral vote for Mr. Nixon because Dr. Bailey was an elector for the State of North Carolina and not just of the Second District, which I have the privilege of representing here in this House.

A moral obligation and a legal requirement, however, in this instance, are two different things. There is no requirement in the Constitution of the United States, the constitution of North Carolina, the United States Code, or the statutes of North Carolina that binds a presidential elector to any one candidate. Nor to my knowledge has a decision binding our electors been issued by any competent court.

Therefore, regardless of whether we agree or disagree with Dr. Bailey's decision, Congress is powerless to act as proposed. It is powerless to vacate Dr. Bailey's vote and it is powerless to assign it to Mr. Nixon or any other candidate.

I am aware that one of the stated reasons for the proposals of the gentleman from Michigan and the Senator from Maine is to dramatize the weaknesses in our present form of electing a President.

I think this particular weakness has been dramatized and I hope the Congress will address itself at an early date to effective and appropriate reform.

But to call upon the Congress to do what it clearly has no authority to do in this particular case before us today is not solving the longstanding problem

nor is it a workable solution to what some feel is an errant vote by one elector duly chosen under the laws and constitution of our Nation and our State.

Therefore, I repeat: There is no present legal or constitutional provision existing in the State of North Carolina to dictate how a presidential elector should cast his vote. And in the absence of any such binding authority, Congress cannot alter the electoral vote of North Carolina. It can only count it as provided by the Constitution and the Federal statutes.

Lasting solutions are needed to our unanswered questions of presidential elections but the action proposed today is not one of those solutions.

Mr. McDONALD of Michigan. Mr. Speaker, the case of the defecting North Carolina elector points up once again the basic unfairness of the electoral college system.

Here we have the people of the State of North Carolina voting for President-elect Nixon, but one of the Republican electors giving his vote to another candidate, thus thumbing his nose at the very people who entrusted him to vote their will.

When the Founding Fathers instituted the electoral college this was a sparsely settled agricultural nation; communications were primitive; a good education was denied the bulk of the population and the educated elite felt the ordinary citizen was not capable of making a wise choice as to who would govern.

Party politics as we know it today had not come into fashion and the duty of the electors was to choose the two best men to run the country, the candidate getting the larger vote to serve as President and the other as Vice President.

Electors in the early years of our Republic were supposed to be men of the highest caliber, men of wisdom, integrity, and high purpose. It was felt that only by choosing such men could we assure our people of responsible government.

The original reasoning behind the elector system may have been constructive in the early years of the Republic, but the development of a vigorous two-party system gave the Nation a political atmosphere none of the Founding Fathers could have foreseen.

The retirement of George Washington led to partisan division and it became apparent that the election provision would usually result in selection of the top man from each party. The 12th amendment remedied this and electors vote for President and Vice President.

During the early 1800's, the practice of electing famous, independent electors was abandoned and parties started selecting partisan electors whose function was to vote for the candidate to whom they were committed.

Thus, for the past 150 years few voters have even known or cared about the identity of the electors for whom they voted on election day.

Electors are still legally and constitutionally independent and cannot be compelled to vote for the man to whom they are committed. As a result, there have been deviations, the latest occurring in the 1968 election in North Carolina.

It is important to point out that as a direct result of the electoral college system, we have had three presidential elections in which the candidate who led in popular vote was defeated.

One election was decided in the House, one by a special electoral commission, and one on the basis of the electoral vote.

The electoral college has outlived its usefulness. Today, with a third party in the field and other threats of vote splintering, it could deny the office of President to the man chosen by the largest segment of the voters.

An election thrown into the House could lead to the sort of backstairs bargaining that disgraced this Nation in 1824, when Andrew Jackson led in the popular vote but was defeated as the result of a deal between Henry Clay and the supporters of John Quincy Adams.

It is time to get rid of this political monstrosity before it does the sort of damage never envisioned by its creators.

Mr. WYMAN. Mr. Speaker, the trouble with the argument of the petitioners in this matter is simply that as things stood in the 1968 election, the electors are not legally bound, no matter how dismaying may be an admitted violation of trust and confidence in voting for other than the candidate in whose name the elector was chosen.

At the Federal level unless and until this is changed by constitutional amendment, or to a lesser extent within the several States by State law, electors are legally free to vote as they individually see fit.

If the instance to which petitioners here object involves as they maintain "a constitutional principle of enormous magnitude" the proper role for this Congress consists of the proposal of a remedial constitutional amendment to be the result of deliberative legislative procedures.

The duty and the responsibility of Congress at this juncture is to vote not to sustain the objection.

Mr. DOWDY. Mr. Speaker, this resolution before us to attach and set aside the certificate from the State of North Carolina, certifying the electoral vote of that State is not within the province of a legislative body under the Constitution and laws of the Federal Government. We have no right to go behind the certificate of the official of North Carolina.

The right or wrong of the action taken by the elector in casting his vote is not an issue for us. Any contest of that vote should have, and necessarily must have been undertaken by the officials of the State of North Carolina, which has not been done. Those officials were satisfied the vote was legally cast.

If we take action here, on this resolution, we are relegating to ourselves an authority we do not have under the Constitution. We would be rewriting the Constitution in an unconstitutional manner, in the same way that the Supreme Court has done in other regards on numerous occasions.

It has been stated in this debate that courts have never passed on this issue, and this is true. It has not even been before a court, and the reason is the same reason we should not consider it today. The question is moot—it will not change the result of the election, regardless of what we do. A court would not take jurisdiction nor hear this issue, just as we should not do in the manner it is presented. Whether right or wrong, it is true that under the Constitution, an elector is a free agent, to vote for whom he believes to be the most able and competent to be President or Vice President. We have not the authority by joint resolution to alter the Constitution. It should be done, if at all, by constitutional amendment, as provided in the Constitution.

By reason of the fact that this body should not be considering this question at all, the resolution should be tabled as moot, in order that we might get on with the regular order of business.

Furthermore, we ought not establish a precedent, that the Congress of the United States has any right in disregard of the U.S. Constitution, to disregard the certificate of the proper official of any State in certifying the results of an election in his State, in particular, in cases wherein there has been no question raised by anybody in that State as to the accuracy of the certificate.

Many of the problems of our Nation today have been brought about by Federal executive agencies, Federal courts, and the Federal Legislature trodding forbidden paths. This is one we should avoid. Leave the answer to constitutional amendment, or action by the individual States. This was the intention of the Founding Fathers, and the way it ought to be.

In the meantime, in this instance, we have the authority and duty to count the votes as properly certified—not cast them as we think they should be cast.

Mr. FLOWERS. Mr. Speaker, article II, section 1, of the U.S. Constitution provides in part as follows:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

The selection or appointment of each State's electors has been accomplished in many ways during the history of our country. It was a longstanding practice in many States, for example, for the legislature itself to appoint by name those persons designated to serve as that State's electors. The function of the electors is a State function. They derive their power not from the Congress but from their respective States. It should not, therefore, fall to the Congress to question the vote cast by a duly appointed elector of an individual State, and the identity of the person for whom that elector voted should not have any bearing on the matter whatsoever. Congress has the power to tabulate or count the votes cast by all of the electors of all of the States and the District of Columbia. This power is derived from article II, section 1, of the Constitution, as amended, and superseded by amendment No. 12 thereto. Said amendment No. 12 reads in part as follows:

The President of the Senate shall, in the presence of the Senate and House of Representatives open all of the certificates and the votes shall then be counted.

If a challenge to the appointment of an elector is to be made, it should be made in the proper manner through the appropriate channels provided by each individual State.

This Congress must, and I believe it will, uphold the Constitution of the United States, and this dictates that the vote cast by Dr. Lloyd Bailey of North Carolina, a duly appointed elector of the State of North Carolina, be counted by this Congress just as it was cast by Dr. Bailey for George C. Wallace for President of the United States and Curtis E. LeMay for Vice President of the United States. Dr. Bailey is answerable to the people of the State of North Carolina. He is not answerable to the Congress of the United States.

Mr. BATES. Mr. Speaker, once again there is placed before us, in full view of the American people, a glaring and dangerous shortcoming in our Constitution—a deficiency that has cried out for a remedy for too long a period of time; a deficiency in an electoral system that, as Justice Jackson once observed, "suffered atrophy almost undistinguishable from rigor mortis." Nonetheless, we should not, indeed, we cannot overlook the constitutional fact that the elector, once seated, is free to cast his vote in the electoral college as he may choose. This has long been the constitutional law as I understand it. We are not here to resolve the moral issue concerning Mr. Bailey's vote as a North Carolina elector, or a custom or tradition that finds no constitutional support.

The significant question before the people of America today is not to redefine the past, but to provide a remedy for the future so we can avoid a perilous situation of the type in which we almost found ourselves due to the close vote in the last election. There are various acceptable ways to rectify the present situation. But as a foundation for any change it is imperative that the actual vote of the people be reflected. I, therefore, urge, Mr. Speaker, that the Judiciary Committee initiate hearings immediately and recommend to the House its judgment as to the constitutional changes that would seem best to cope with this very important problem.

Mr. VANIK. Mr. Speaker, I rise to support the O'Hara motion. In my concept of the constitutional process, a presidential elector has no discretion with respect to the candidate for whom he is instructed to cast a ballot.

Today's voting displays a more serious defect in our present election process which must be corrected immediately. The entire electoral college method of choosing the President of the United States is archaic and undemocratic.

The electoral college process, which has always been a cumbersome one, has also been a dangerous one. Under the present system, if no candidate receives the majority of electoral votes, the election is thrown into the House of Representatives. History has shown that in the past—in 1796, 1824, and 1876—deals and compromises were worked out behind closed doors, which angered great portions of the Nation and led to disunity in the country and distrust of the Federal Government. In the world's oldest democracy, there can be little support of an administration which has not received the largest plurality in a given election.

Even when the election is not thrown into the House of Representatives or the Senate, the electoral college is still a liability. As the 1968 meeting of the electoral college again revealed, electors can vote any way they want to. On their personal whim or purposeful defection, these single individuals can ignore—and destroy—the will and studied choice of hundreds of thousands of voters.

Mr. Speaker, it is irrational for us to continue to use the electoral college system in present-day democratic elections. Therefore, I am introducing today a joint resolution to amend the Constitution to provide for the direct popular election of the President and Vice President of the United States. The resolution also provides that if no candidate receives a plurality of at least 40 percent of the total number of votes certified, then Congress will provide for a runoff election between the two candidates having the most popular votes. This proposal is patterned after the Celler-Bayh bill of the 90th Congress.

Mr. FISH. Mr. Speaker, the "unfaithful elector" challenge by the gentleman from Michigan (Mr. O'HARA) poses the question whether the Congress has the power to alter a vote by a lawfully certified elector because he disregarded the people's will. National attention will again be focused on a serious weakness of our electoral system, and this is good.

I have long advocated basic reform in the electoral system. Change, however, should come about through a constitutional amendment and not piecemeal by what is at best a questional assertion of congressional power to alter the vote of a qualified elector.

The Congress is asked to vacate the vote cast for Wallace by an elector from North Carolina chosen by a Republican Party convention of his State.

There is no question that the elector was properly elected. There is no question but that he was chosen on the assumption that he would cast his vote for Nixon, the winner of the popular vote in North Carolina. There is no question the elector voted for Wallace in defiance of a moral obligation imposed on him. But neither is there a requirement in the law of North Carolina binding an elector to vote for the winner of the popular vote, nor was any challenge to the elector's action made in North Carolina.

The gentleman from Michigan relies on an 1887 law, passed by Congress in response to the Hayes-Tilden scandal of 1876 when Congress gave all the disputed votes to Hayes. The intent of the 1887 law was to keep future disputes out of Congress and within the respective States. The 1887 law limits the power of Congress with respect to counting electoral votes to decide whether a vote has been "regularly given by electors whose appointment has been so certified." The challenge relies on the ground that the vote of the North Carolina elector was not "regularly given."

Advocates of the objection to counting the vote admit that the Constitution, article 11, section 1, visualizes an independent office of presidential elector. But it is argued that custom has evolved the principle of the pledged elector.

Granted custom and usage, quite a different question is presented over the power of Congress to act in this case.

It was pointed out in debate that only a constitutional amendment can change the constitutional independence of an elector. Furthermore, nothing in the 1887 law suggests Congress intended to take upon itself the power to change an elector's vote because he disregarded the people's will. Quite the contrary is evident from the legislative history of the law.

The need for definitive electoral reform cries out. All Members of Congress believe the people are sovereign. Had Congress the power to overturn the unfaithful elector, I would be counted with the objectors. I conclude, however, that Congress has no such power.

When we contemplate the chaos which might have resulted had no presidential candidate received a majority of electoral votes in 1968, the need for electoral reform is patently urgent.

The system needs change. The correct way is by constitutional amendment, and the time for such amendment is now.

Mr. RARICK. Mr. Speaker, the House this afternoon is concerned with a challenge against one of the 13 electoral votes cast from the State of North Carolina. Under the Constitution and our oath of office we, as Congressmen, are not election supervisors nor given discretion to recompute the vote received from a sovereign state. The Constitution clearly proscribes our duty as "to count the electoral votes," the ministerial function of a central collecting agency and a tabulating point.

The President pro tempore of this session announced that the joint session was called under the Constitution for the purpose of opening the certificates, ascertaining, and counting the votes of the electors of the several States for President and Vice President.

Senator JORDAN of North Carolina in the capacity of one of the tellers announced:

The certificate of the electoral vote of the State of North Carolina seems to be regular in form and authentic.

And thereafter announced the respective votes. The challenge was then made to one vote in the return.

North Carolina elector, Dr. Bailey, chose not to cast his vote for the Republican candidate. Rather, as a Republican elector, he cast his ballot—and it was counted and included in the return—for the former Governor of Alabama, George C. Wallace.

The defection is the basis for the challenge—which can in no way affect the election. I find it hard to understand how or why the frailty of one unfaithful elector can be used to dramatize a so-called weakness of the electoral system.

When we contemplate that in over 190 years there have been only six instances of like defection under the sys-

tem, it would appear to the contrary that Dr. Bailey's revolt should prove that the electoral system is a workable system—any defects or weaknesses are not from the Constitution but rather those of human frailty.

Admittedly the North Carolina electoral revolt does not present any crisis or even a contest. The State of North Carolina undertook no remedial action, but rather ratified the vote by certifying it to Congress. Since the election is over and Mr. Nixon has won, the incident—at most—is being utilized as a vehicle to promote change in the constitutional system.

It is interesting to note that some who repudiate the event do so to indicate the need for a change to give the people a more direct voice in the selection of their President. The paradox is that such is Dr. Bailey's explanation of his action.

He said he voted for Mr. Wallace because Mr. Wallace was the candidate who had carried the congressional district in which he lived, indicating that Dr. Bailey felt he, too, was trying to give the people of his own district a more direct voice in their preference for President.

There have been many accusations and protestations against the electoral system based on the premise that once the election is over, the elector can change his mind and vote contrary to his people.

Have we not experienced other situations where politicians are elected but forget their promises and people once the votes are counted. This being so, no one would say that because of human frailty in our elected leaders using their discretion we have dramatized a breakdown in our representative type government. Or, would they have us change this, too?

Discounting the emotion of the hour and conjecture as to what might have happened or could have happened—one elector bolted his party, nothing more, nothing less. There was no constitutional crisis. Through supposition and fear everything has been blown out of reasonable perspective.

The fear that the election might have been thrown into the House was whose fear? The people's or political factions? Had it been, there still was no crisis—the Constitution itself provides for such contingencies. But the Constitution does not provide for political parties nor partisan controls.

The election is in the House today. And those who would inject fear of the system of electors into our people by moving to recast the votes could be in reality attempting to perform precisely what they object to; that is, electing a President in the House of Representatives.

Since the constitutional provision assigning our role in the presidential election, in this instance, does not give discretion to recast or recount the votes—otherwise valid and authenticated on the face. We, like Dr. Bailey, are constitutional agents of limited authority, vis-a-vis, to count the votes as reported from the States.

No one can approve Dr. Bailey's action, nevertheless, as Representatives under our oath to preserve and defend the Constitution as it now exists, we would be as wrong as he should we do other than vote down the objection previously made.

Mr. SCHWENGEL. Mr. Speaker, the question raised by Senator MUSKIE and the gentleman from Michigan (Mr. O'HARA) relative to the electoral vote of North Carolina, brought before this body once again, the crucial problem of urgently needed election reforms. As so correctly noted by the distinguished gentleman from Michigan (Mr. GERALD R. FORD), we should be thankful that an even more crucial decision relative to the election was not before us, to-wit selection of the President of the United States. Our constitutional system would have been severely tested were that question presented to us. The closeness of the election coupled with the question presented here, make it imperative that the Congress act during this session to update our election procedures, including the electoral college procedures.

It was my pleasure to join Senator MUSKIE, and my colleague, Mr. O'HARA, in their objections to counting Dr. Bailey's vote as an elector for the State of North Carolina. Title 3, sections 15 to 18, of the United States Code implements the provisions of article II, section 1 of the U.S. Constitution relative to the procedure for counting of electoral votes by the Congress. Specifically title 3, section 15 provides in part:

> . . . and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to Section 6 of this title from which but one return has been received shall be rejected, *but* the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so *regularly given* by electors whose appointment has been so certified. [Emphasis added]

Debate on this issue placed a number of the attorney-Members of this body in direct conflict as to the meaning of the words "regularly given." The "strict constructionist" would argue, that the electors are permitted to vote for anyone, regardless of the outcome of the election, unless the provisions of that State's laws are to the contrary. In this case, North Carolina's laws do not specifically bind the electors to the outcome of the popular vote. The "broad constructionist" would argue on the other hand that "regularly given" should be read in light of the electors moral obligation to vote in accordance with the outcome of the popular vote.

Without belaboring the niceties of the legal arguments it seems to me the view which takes into consideration the moral obligation of the elector is the soundest position. As so well put by my colleague, the gentleman from Illinois (Mr. DERWINSKI):

> Out our way when we count ballots, if we find one that is irregular on its face—or fraudulent in this case may be a better word—we do not count it. I cannot imagine a ballot being more irregular, or more fraudulent, than the one that we have before us today.

Among the various definitions accorded to the word "regular" by Webster is the following:

> 5. Undeviating in conformance to a standard set by convention, a party—

And so forth. The clear standard set by the "convention" of nearly 190 years of precedent is that electors will vote in accordance with the outcome of the popular vote, regardless of whether or not they are required by law to do so. Dr. Bailey, the so-called faithless elector, has violated his clear moral obligation to the majority of the people of North Carolina who voted for Dick Nixon, and who, in reliance on many years of precedence, thought he would cast his vote in accord with the outcome of the popular vote. A more clear case of an irregular vote would be difficult to find.

The SPEAKER. The Chair recognizes, for the purpose of concluding debate, the gentleman from Michigan (Mr. O'HARA) for 5 minutes.

Mr. O'HARA. Mr. Speaker, needless to say, I did not take the oath of office on Friday with the intention of standing here on Monday and proceeding to violate the Constitution of the United States. I have filed this objection because I believe that doing so does not violate the Constitution; it supports it.

It has been said that the Constitutional Convention created a scheme of constitutionally independent electors. I concede that it was the intention of the members of the Constitutional Convention that electors be independent. And if one stopped reading there one could reach no other conclusion.

But a lot of water has gone over the dam in the past 180 years. Most notably, the 12th amendment was adopted.

Now, the 12th amendment is a replacement for most of the electoral scheme adopted by the Constitutional Convention. If Members will look in their House manuals they will find that the original provisions of article II, section 1 which were replaced by the 12th amendment do not even appear there. Instead, a footnote under the 12th amendment indicates that the 12th amendment replaced them.

Now, why did we have the 12th amendment? We had it precisely because by that time, 1803, it was already well understood that these electors were not independent, that they were voting at their party's call.

The 12th amendment was produced by the tie between Jefferson and Burr that resulted from the fact that every Democratic elector voted for Jefferson and for Burr. Now, that was not considered to be a freak result. If it had been, the 12th amendment would not have been needed. But everyone agreed that unless the 12th amendment were adopted every election after that would result in a similar tie.

The understanding of the framers of the 12th amendment was that electors would vote for the nominees of their party. And that is the important legislative history involved here.

Indeed, in an Alabama case that went to the Supreme Court in 1952—Ray against Blair—Blair, who wanted to be a Democratic elector but did not want to be bound to vote for the Democratic nominee, made the claim that the Con-

stitution made him a free agent, and the Supreme Court rejected that claim.

We ought to reject that claim today when Dr. Bailey makes it.

It has been said that the situation which we face today would be different and somehow more favorable to the objectors if the State had a specific requirement that the elector take an oath to support the nominee of his party. Well, the North Carolina statutory system clearly contemplates that he do exactly that. I do not believe the North Carolina Legislature would have dreamed, in 1933, that it needed to exact such a requirement. Never in the history of North Carolina had an elector been faithless. There had not been a faithless elector in the United States of America for more than 100 years before North Carolina adopted its statutory scheme, which clearly contemplated that electors would vote for the nominees of their party.

But what if they had required an oath?

What good would it have done them? How could they enforce it? They could not. The Constitution requires a vote by ballot. How would the State know who had cast the errant ballot? Much less are they able after the event to require him to cast it as his oath required. Only the Congress can see to it that the elector respects his obligations, and the only way we can do it is by sustaining the objection that the junior Senator from Maine, Senator MUSKIE, and I have filed.

The SPEAKER. The time of the gentleman from Michigan has expired. All time has expired.

The question is, Shall the objection submitted by the gentleman from Michigan (Mr. O'HARA) and the Senator from Maine (Mr. MUSKIE) be agreed to?

For what reason does the gentleman from Michigan (Mr. GERALD R. FORD) rise?

Mr. GERALD R. FORD. Mr. Speaker, I move to lay the objection of Senator MUSKIE and Representative O'HARA on the table.

The SPEAKER. For what purpose does the gentleman from Michigan (Mr. O'HARA) rise?

Mr. O'HARA. Mr. Speaker, I make a point of order against the motion of the gentleman from Michigan (Mr. GERALD R. FORD).

The SPEAKER. The gentleman will state his point of order.

Mr. O'HARA. Mr. Speaker, as enunciated by the presiding officer of the joint session, the President of the Senate, the procedure under which we operate is controlled by statute, the statute of 1887 now found in title 3 of the United States Code. Section 15, title 3, provides that when all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw and such objections shall be submitted to the Senate for its decision, and the Speaker of the House shall in like manner submit such objection to the House of Representatives for its decision.

Then, Mr. Speaker, in section 17, title 3, it provides that each Senator and Representative may speak to such objection or question 5 minutes and not more than once, but after such debate shall have lasted 2 hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Mr. Speaker, I submit that the main question is on the objection filed by Senator MUSKIE and myself and that the statutory requirement in the United States Code, section 17, requires that it be put.

The SPEAKER. Does the gentleman from Michigan (Mr. GERALD R. FORD) desire to be heard?

Mr. GERALD R. FORD. Mr. Speaker, I do desire to be heard.

I think that the crux of the question comes on an interpretation of section 17 and particularly the last part of that section, which reads as follows:

> After such debate shall have lasted 2 hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Now, if you will note the heading of that section, it says, "No. 17. Same; limit of debate in each House." That section and particularly the last part which I quoted from is only applicable as to debate. It makes no reference whatsoever to parliamentary procedure. It simply says that the debate shall be limited to 2 hours. It does not by the use of any words in that section preclude a traditional parliamentary procedure. Certainly, Mr. Speaker, a motion to table is a legitimate traditional parliamentary procedure. I have no objection to the limiting of the debate as it has been by statute. It is there. But there is not a scintilla of evidence, there is not one word in that language of that section which says we are precluded from using a recognized parliamentary procedure. For that reason, Mr. Speaker, I think the procedure is correct and I oppose the point of order.

The SPEAKER. Does the gentleman from Michigan (Mr. O'HARA) desire to be heard further?

Mr. O'HARA. I do, Mr. Speaker.

I would like to point out, Mr. Speaker, that in fact the statute does control, and there are a number of parliamentary procedures that could somehow permit the Members to speak for more than 5 minutes. But it is clear to me that the Presiding Officer could not entertain any such unanimous-consent request for other procedural suggestions or motions that would permit someone to speak for more than 5 minutes or to speak more than once in violation of the statutory procedure set forth.

I would also like to point out—and I failed to do so in my earlier remarks—that the concluding sentence of section 15 of title 3 of the United States Code reads as follows:

> No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

I believe, Mr. Speaker, that is further evidence of the intention of the statute, that we must finally dispose of and act upon the main question of the objection.

The SPEAKER. The Chair is prepared to rule.

The gentleman from Michigan (Mr. GERALD R. FORD) makes a motion to lay on the table the objection submitted by the gentleman from Michigan (Mr. O'HARA).

The Chair anticipated that question and has had an opportunity to give consideration to the questions involved. Both of the gentlemen from Michigan (Mr. GERALD R. FORD and Mr. O'HARA) agree that the statute involved is title 3, section 17 of the United States Code.

It seems to the Chair that the law is very plain with respect to the 5-minute rule and time of debate. With respect to the problem, the section states, and I quote:

> It shall be the duty of the presiding officer of each House to put the main question without further debate.

In the opinion of the Chair the main question is the objection filed by the gentleman from Michigan (Mr. O'HARA) and the Senator from Maine, Senator MUSKIE.

The Chair is of the opinion that the law plainly governs the situation; that the Chair must put the main question and that the motion to table is not in order.

Accordingly, the Chair sustains the point of order.

The SPEAKER. The question is, Shall the objection submitted by the gentleman from Michigan (Mr. O'HARA) and the Senator from Maine (Mr. MUSKIE) be agreed to.

The question was taken; and the Speaker being in doubt, the House divided, and there were—ayes 86, noes 123.

Mr. BOGGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 170, nays 228, not voting 32, not sworn, 4, as follows:

[Roll No. 9]

YEAS—170

Addabbo	Derwinski	Hicks
Albert	Diggs	Hogan
Anderson, Calif.	Dingell	Holifield
	Donohue	Horton
Andrews, N. Dak.	Dulski	Hosmer
	Duncan	Howard
Ayres	Edmondson	Hutchinson
Beall, Md.	Edwards, Calif.	Ichord
Biaggi	Eilberg	Joelson
Biester	Esch	Johnson, Calif.
Bingham	Evans, Colo.	Karth
Boggs	Fallon	Kazen
Boland	Farbstein	Kleppe
Bolling	Fascell	Koch
Brademas	Feighan	Kyros
Broomfield	Flood	Laird
Brotzman	Ford, Gerald R.	Leggett
Brown, Calif.	Ford, William D.	Lloyd
Brown, Mich.		Long, Md.
Brown, Ohio	Fraser	Lowenstein
Burke, Mass.	Frelinghuysen	McCarthy
Bush	Friedel	McDade
Byrne, Pa.	Gallagher	McDonald, Mich.
Byrnes, Wis.	Garmatz	
Carey	Gibbons	McFall
Cederberg	Gilbert	McKneally
Celler	Gonzalez	Madden
Chamberlain	Gray	Mailliard
Chisholm	Green, Pa.	Matsunaga
Clark	Grover	Meeds
Clay	Gude	Mikva
Cleveland	Halpern	Miller, Calif.
Cohelan	Hanley	Minish
Conte	Hansen, Wash.	Mize
Conyers	Harsha	Mollohan
Corman	Harvey	Moorhead
Culver	Hastings	Morgan
Daniels, N.J.	Hathaway	Mosher
Dawson	Hawkins	Moss
de la Garza	Hays	Murphy, Ill.
Delaney	Hechler, W. Va.	Nix
Dellenback	Helstoski	O'Hara

O'Konski	Riegle	Thompson, N.J.
Olsen	Robison	Tiernan
O'Neill, Mass.	Rodino	Tunney
Ottinger	Rooney, Pa.	Van Deerlin
Patman	Roybal	Vanik
Patten	Ryan	Weicker
Pelly	St Germain	Widnall
Pepper	Scheuer	Wilson,
Perkins	Schwengel	Charles H.
Philbin	Shipley	Wright
Pirnie	Sisk	Wyatt
Pollock	Slack	Yates
Powell	Smith, Iowa	Yatron
Price, Ill.	Stanton	Young
Pryor, Ark.	Stokes	Zablocki
Rees	Stratton	
Reuss	Sullivan	

NAYS—228

Abernethy	Frey	Pike
Adair	Fulton, Pa.	Poage
Adams	Fuqua	Poff
Alexander	Galifianakis	Preyer, N.C.
Anderson, Ill.	Gaydos	Pucinski
Anderson, Tenn.	Gettys	Purcell
	Giaimo	Quie
Andrews, Ala.	Goodling	Quillen
Arends	Green, Oreg.	Randall
Ashbrook	Griffin	Rarick
Ashley	Griffiths	Reid, Ill.
Aspinall	Gross	Reifel
Baring	Gubser	Reinecke
Bates	Hagan	Rhodes
Battin	Haley	Rivers
Belcher	Hall	Roberts
Bennett	Hamilton	Rogers, Colo.
Berry	Hammer-	Rogers, Fla.
Betts	schmidt	Rooney, N.Y.
Bevill	Hansen, Idaho	Rosenthal
Blackburn	Hébert	Roth
Blanton	Heckler, Mass.	Roudebush
Bow	Henderson	Rumsfeld
Bray	Hull	Ruppe
Brinkley	Hungate	Ruth
Brock	Hunt	Sandman
Broyhill, N.C.	Jacobs	Satterfield
Broyhill, Va.	Jarman	Saylor
Buchanan	Johnson, Pa.	Schadeberg
Burleson, Tex.	Jonas	Scherle
Burlison, Mo.	Jones, Ala.	Scott
Burton, Calif.	Jones, N.C.	Sebelius
Button	Kastenmeier	Shriver
Cabell	Kee	Sikes
Caffery	Keith	Skubitz
Cahill	King	Smith, Calif.
Camp	Kirwan	Smith, N.Y.
Carter	Kuykendall	Snyder
Casey	Kyl	Springer
Chappell	Landgrebe	Stafford
Clancy	Landrum	Staggers
Clausen,	Langen	Steed
Don H.	Latta	Steiger, Ariz.
Clawson, Del	Lennon	Steiger, Wis.
Collier	Lipscomb	Stephens
Collins	Long, La.	Stubblefield
Colmer	Lujan	Stuckey
Conable	McClory	Symington
Corbett	McCloskey	Talcott
Coughlin	McClure	Taylor
Cowger	McCulloch	Teague, Calif.
Cramer	McEwen	Teague, Tex.
Daniel, Va.	McMillan	Thompson, Ga.
Davis, Ga.	MacGregor	Thomson, Wis.
Davis, Wis.	Mahon	Udall
Denney	Mann	Ullman
Dennis	Marsh	Utt
Dent	Mathias	Vander Jagt
Devine	Mayne	Vigorito
Dickinson	Meskill	Waggonner
Dorn	Michel	Wampler
Dowdy	Miller, Ohio	Watts
Downing	Mills	Whalen
Eckhardt	Mink	Whalley
Edwards, Ala.	Minshall	White
Edwards, La.	Mizell	Whitehurst
Erlenborn	Montgomery	Whitten
Eshleman	Morton	Wiggins
Evins, Tenn.	Myers	Williams
Findley	Natcher	Winn
Fish	Nedzi	Wold
Fisher	Nelsen	Wolff
Flowers	Nichols	Wydler
Flynt	O'Neal, Ga.	Wylie
Foley	Passman	Wyman
Foreman	Pettis	Zion
Fountain	Pickle	Zwach

NOT VOTING—32

Abbitt	Brooks	Everett
Annunzio	Burke, Fla.	Fulton, Tenn.
Barrett	Burton, Utah	Kluczynski
Bell, Calif.	Cunningham	Macdonald,
Blatnik	Daddario	Mass.
Brasco	Dwyer	Martin
May	Price, Tex.	Schneebeli
Monagan	Railsback	Waldie
Morse	Ronan	Watkins
Murphy, N.Y.	Rostenkowski	Watson
Podell	St. Onge	Wilson, Bob

NOT SWORN—4

Hanna	Reid, N.Y.	Taft
Lukens		

So the objection was rejected.

Mr. YATRON changed his vote from "nay" to "yea."

Mr. MORTON changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER. The Clerk will notify the Senate of the action of the House, and will inform that body that the House has rejected the objection submitted by the Representative from Michigan (Mr. O'HARA) and the Senator from Maine, (Mr. MUSKIE) and is now ready to further proceed with the counting of the electoral vote for the President and Vice President.

RECESS

The SPEAKER. The Chair declares a brief recess, subject to the call of the Chair.

Accordingly (at 4 o'clock and 35 minutes p.m.), the House stood in recess, subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 4 o'clock and 45 minutes p.m.

COUNTING THE ELECTORAL VOTES; JOINT SESSION OF THE HOUSE AND SENATE HELD PURSUANT TO THE PROVISIONS OF SENATE CONCURRENT RESOLUTION 1

At 4 o'clock and 45 minutes p.m., the Doorkeeper, Mr. William M. Miller, announced the President pro tempore and the Senate of the United States.

The Senate entered the Hall of the House of Representatives, headed by the President pro tempore and the Secretary of the Senate, the Members and officers of the House rising to receive them.

The PRESIDENT pro tempore took his seat as the Presiding Officer of the joint convention of the two Houses, the Speaker of the House occupying the chair on his left.

The joint session was called to order by the President pro tempore.

The PRESIDENT pro tempore. The joint session of Congress for counting the electoral vote resumes its session.

The two Houses retired to consider separately and decide upon the vote of the State of North Carolina, to which objection has been filed. The Senate has been duly notified—and appreciates the graciousness of the House in so doing—of the action of the House of Representatives on the objection. The Secretary of the Senate will now report the action of the Senate.

The Secretary of the Senate read as follows:

In the Senate of the Unted States:

Ordered, That the Senate by a vote of 33 ayes to 58 nays rejects the objection to the electoral votes cast in the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President.

The PRESIDENT pro tempore. The Clerk of the House will now report the action of the House.

The Clerk of the House read as follows:

In the House of Representatives of the United States:

Ordered, That the House of Representatives rejects the objection to the electoral vote of the State of North Carolina submitted by the Representative from Michigan, Mr. O'HARA, and the Senator from Maine, Mr. MUSKIE.

The PRESIDENT pro tempore. Under the statute in this case made and provided, the two Houses having rejected the objection that was duly filed, the original certificate submitted by the State of North Carolina will be counted as provided therein.

Tellers will now record and announce the vote of the State of North Carolina for President and for Vice President in accordance with the action of the two Houses referred to and pursuant to the law.

Mr. JORDAN of North Carolina. Mr. President, I think first I should apologize for one of my constituents having forced a call of the two Houses in joint session and for all the work we have had to do today.

Mr. President, in accordance with the vote of the two Houses, Richard M. Nixon, of the State of New York, received 12 votes for President, George C. Wallace, of the State of Alabama, received one vote for President, Spiro T. Agnew, of the State of Maryland, received 12 votes for Vice President, and Curtis E. LeMay, of the State of California, received one vote for Vice President.

Mr. FRIEDEL (one of the tellers). Mr. President, the certificate of the electoral vote of the State of North Dakota seems to be regular in form and authentic, and it appears therefrom that Richard M. Nixon, of the State of New York, received four votes for President and Spiro T. Agnew, of the State of Maryland, received four votes for Vice President.

The tellers then proceeded to read, count, and announce, as was done in the case of North Dakota, the electoral votes of the several States in alphabetical order.

The PRESIDENT pro tempore. Gentlemen of the Congress, the certificates of all of the States have now been opened and read, and the tellers will make the final ascertainment of the result and deliver the same to the Vice President.

The tellers delivered to the President pro tempore the following statement of the results:

The undersigned, SAMUEL N. FRIEDEL and Glenard P. Lipscomb, tellers on the part of the House of Representatives, B. EVERETT JORDAN and CARL T. CURTIS, tellers on the part of the Senate, report the following as the result of the ascertainment and counting of the electoral vote for President and Vice President of the United States for the term beginning on the 20th day of January, 1969:

States	Electoral votes of each State	For President			For Vice President		
		Nixon	Humphrey	Wallace	Agnew	Muskie	LeMay
Alabama	10			10			10
Alaska	3	3			3		
Arizona	5	5			5		
Arkansas	6			6			6
California	40	40			40		
Colorado	6	6			6		
Connecticut	8		8			8	
Delaware	3	3			3		
District of Columbia	3		3			3	
Florida	14	14			14		
Georgia	12			12			12
Hawaii	4		4			4	
Idaho	4	4			4		
Illinois	26	26			26		
Indiana	13	13			13		
Iowa	9	9			9		
Kansas	7	7			7		
Kentucky	9	9			9		
Louisiana	10			10			10
Maine	4		4			4	
Maryland	10		10			10	
Massachusetts	14		14			14	
Michigan	21		21			21	
Minnesota	10		10			10	
Mississippi	7			7			7
Missouri	12	12			12		
Montana	4	4			4		
Nebraska	5	5			5		
Nevada	3	3			3		
New Hampshire	4	4			4		
New Jersey	17	17			17		
New Mexico	4	4			4		
New York	43		43			43	
North Carolina	13	12		1	12		1
North Dakota	4	4			4		
Ohio	26	26			26		
Oklahoma	8	8			8		
Oregon	6	6			6		
Pennsylvania	29		29			29	
Rhode Island	4		4			4	
South Carolina	8	8			8		
South Dakota	4	4			4		
Tennessee	11	11			11		
Texas	25		25			25	
Utah	4	4			4		
Vermont	3	3			3		
Virginia	12	12			12		
Washington	9		9			9	
West Virginia	7		7			7	
Wisconsin	12	12			12		
Wyoming	3	3			3		
Total	538	301	191	46	301	191	4

SAMUEL N. FRIEDEL,
GLENARD P. LIPSCOMB,
Tellers on the part of the House of Representatives.
B. EVERETT JORDAN,
CARL T. CURTIS,
Tellers on the Part of the Senate.

The PRESIDENT pro tempore. The state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for President of the United States is 538, of which a majority is 270.

Richard M. Nixon, of the State of New York, has received for President of the United States 301 votes;

Hubert H. Humphrey, of the State of Minnesota, has received 191 votes.

George C. Wallace, of the State of Alabama, has received 46 votes.

The state of the vote for Vice President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for Vice President of the United States is 538, of which a majority is 270.

Spiro T. Agnew, of the State of Maryland, has received for Vice President of the United States 301 votes.

Edmund S. Muskie, of the State of Maine, has received 191 votes.

Curtis Lemay, of the State of California, has received 46 votes.

This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning on the 20th day of January, 1969, and shall be entered, together with a list of the votes, on the Journals of the Senate and House of Representatives.

Members of the Congress, the purpose for which the joint session of the two Houses of Congress has been called, pursuant to Senate Concurrent Resolution No. 1, 91st Congress, having been accomplished, the Chair declares the joint session dissolved.

(Thereupon, at 5 o'clock and 10 minutes p.m., the joint session of the two Houses of Congress was dissolved.)

The House was called to order by the Speaker.

The SPEAKER. Pursuant to Senate Concurrent Resolution 1, the Chair directs that the electoral vote be spread at large up the Journal.

The Chair understands that there were additional signatures of Members of the House and Senate on the objection raised to the electoral vote of the State of North Carolina. Without objection, the signatures of the additional Members will appear in the RECORD and the Journal.

There was no objection.

GENERAL LEAVE

Mr. ALBERT. Mr. Speaker, pursuant to the request of several Members, I ask unanimous consent that the Members desiring to do so may extend their remarks over a period of 5 days on the O'Hara objection to the electoral vote of the State of North Carolina that we discussed during the time the Senate had retired to its Chamber to debate the objection.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

TO INCREASE THE PER ANNUM RATE OF COMPENSATION OF THE PRESIDENT OF THE UNITED STATES

Mr. ALBERT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 10) to increase the per annum rate of compensation of the President of the United States.

The Clerk read as follows:

H.R. 10

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102 of title 3, United States Code, is amended by striking out "$100,000" and inserting in lieu thereof "$200,000".

SEC. 2. The amendment made by this Act shall take effect at noon on January 20, 1969.

The SPEAKER. Is a second demanded?

Mr. GROSS. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The Chair recognizes the gentleman from Oklahoma (Mr. ALBERT).

Mr. ALBERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as Members all know, this is the first suspension bill of the 91st Congress. Normally the Speaker would not recognize Members to call up bills under suspension of the rules this early in the term and without committee consideration. The only reason that this method has been used on this occasion is that it presents to the House the opportunity to consider this legislation before the new President takes office. Members know that under article II, section 1, clause 7, of the Constitution the salary of the President of the United States cannot be increased during his term of office. Therefore, if the matter is to be handled at all, it must be passed by both Houses of Congress and signed by the President before noon on January 20. Members further know, Mr. Speaker, that committee assignments have not been made and will not be made in time for normal hearings and proceedings to be had in order to consider this bill by the deadline.

In view of these circumstances, the distinguished minority leader and the distinguished chairman and ranking member of the Committee on Post Office and Civil Service and myself have jointly offered this resolution for the consideration of the Members of the House.

Mr. Speaker, all Americans are aware that a dollar sign cannot be put on the President's office. This is the most important position on earth today. It is well known that the salaries of many officials in private business far exceeds

that recommended here. Moreover, Mr. Speaker, it is interesting to note that of all salaries of officers and employees of the Government of the United States, action on the salary of the President has been the most laggard. The original salary was set in 1789 at $25,000 per year and there have been only three increases since that time. The last increase was made effective January 20, 1949, 20 years ago. This was an increase from $75,000 to $100,000.

Increases have been made for all officers and employees of the Government since the last Presidential pay increase. Let us take a few examples. The salary of Members of Congress in 1949 was $15,000 annually. By two increases salaries are now $30,000 per year. The salary of the Vice President and the Speaker of the House was raised from $30,000 in 1949 to $43,000 in 1968.

Salaries of Cabinet officers were raised from $22,500 in 1949 to $35,000, a 55.5-percent increase.

The salary of the Chief Justice of the United States was increased from $25,500 to $40,000, a 56.9-percent increase. Salaries of Associate Justices were $25,000 in 1949; today they are $39,500, an increase of 58 percent.

The highest salary provided by law for top career civil service employees in 1949 was $14,000, and was finally increased to $28,000 in 1968, an aggregate increase of 100 percent.

The highest salary provided by law for the career postal field service was $13,270 in 1949 and was finally increased to $27,900 in 1968, an aggregate increase of 110.8 percent.

These figures do not tell the whole story. The salary of the President now $100,000, is only 400 percent above the salary received by George Washington. The salary of the Vice President in 1789 was $5,000; today the salary of the Vice President is $43,000, an increase of 860 percent, percentagewise more than twice the increase Congress has seen fit to give the President of the United States. The last increase given to the President of the United States prior to 1949 was in 1909. Numerous increases were made between that date and 1949 for all other officers and employees of the Government.

It seems to me, Mr. Speaker, that the importance of the office of the President of the United States, the esteem in which the American people hold the office, regardless of politics or personalities, and the fact that so much time has elapsed between presidential salary increases, all argue strongly for the bill now being considered under suspension of the rules. I therefore urge my colleagues to vote to suspend the rules and pass this legislation in this House today.

Mr. GROSS. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, since there has been no hearing whatever on this proposed legislation, I want to take time to ask some questions of the sponsors of the bill, who I assume are prepared to provide answers. Since this bill provides for a 100-percent increase in salary for the next President, I would like to ask what will be the percentage increase recommended for other officials in the executive branch, the legislative branch, and the judicial branch of the Government? Since we are being called upon here today to approve a 100-percent increase for the President, I would like to know what the proposed salary increase for officials in the three branches of the Government will be percentagewise.

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I am glad to yield to the gentleman from Oklahoma.

Mr. ALBERT. I am not able to answer that question. The report of the President has not come up to the Congress, and his report can be acted upon by the Congress only when it does come up.

Mr. GROSS. Does the gentleman not think that this proposed action will be setting a precedent—a bill to provide a 100-percent increase for the President, without any knowledge of what is to be done with respect to other officers of the Government? And what about the Vice President?

Mr. ALBERT. If the gentleman will yield further, I believe an increase for the President of the United States is more overdue than an increase for any other officer of the Government. The President has had only three increases since George Washington's time.

Mr. GROSS. Beyond salary what other emoluments go to the office of the President of the United States?

Mr. ALBERT. Will the gentleman yield?

Mr. GROSS. I am glad to yield to the gentleman from Oklahoma.

Mr. ALBERT. There is, of course, a $50,000 expense allowance which was authorized by law in 1949.

Mr. GROSS. If the gentleman will pardon me for interrupting, that is tax-free and spent upon the accounting of the President alone; it that correct?

Mr. ALBERT. The gentleman is incorrect. It is subject to taxation. If it is not spent, then it reverts, as I understand, to the Treasury. But the President must account for it in his list of expenditures. And may I say to the gentleman this—and I believe this is significant—that every President, so far as I have been able to determine, in the last several years has gone into his own pocket to help pay the expenses of the operation of his office. Most of the Presidents, at least starting with Herbert Hoover, have had independent wealth and independent income. Two of them, I believe, did not—Harry Truman and Dwight Eisenhower. I think it is well known—at least I have been told this on pretty good authority—that Mr. Truman left the White House broke, and so have other great Presidents in our history. I believe General Grant was one of those.

I do not think the gentleman wants the President of the United States to go into his salary to help pay the necessary operating expenses of his office, and that is what all Presidents have had to do.

Mr. GROSS. I will say to the gentleman that I am deeply concerned about a 100-percent increase for the President when I have had no word of any kind—well, yes, I have had word indirectly that the President-elect takes a dim view of a 100-percent pay increase.

Can the gentleman cite me any evidence that the President-elect, the man who will first benefit from this, has asked for a 100-percent increase in pay?

Mr. ALBERT. This was initiated by Members of Congress and not by the President of the United States. We have not asked for a recommendation either by the present President or by the incoming President.

Mr. GROSS. What retirement pay is provided for former Presidents, and do they make a contribution while in office to their retirement?

Mr. ALBERT. The retirement allowance, as I understand it, is $25,000 per year.

There are members of the Post Office and Civil Service Committee here who know more about that subject than I, but there are other officers of the Government in the military and in the courts who do not make any contribution to their retirement.

Mr. GROSS. I am well aware of that, but I just want to establish the fact that Presidents are paid $25,000 a year when they leave office as a retirement, and they pay nothing toward that retirement. What I am trying to establish is the fact that as of now we do pretty well by the Presidents of the United States. I cannot think of one—and does the gentleman know of any President in the last quarter century who is in want, a former President who is in want?

Mr. ALBERT. I would be ashamed of the Congress if there were any President in want, and the gentleman would be too.

Mr. GROSS. So would I, but tell me if there is one who is in want.

Mr. ALBERT. Not that I know of.

Mr. GROSS. That is what I thought.

Now tell me about the pay of the Vice President. Why is he not included in this bill?

Mr. ALBERT. I tried to make that clear. The gentleman knows that the pay of a President of the United States in the first place cannot be increased during his tenure, so it has to be done before January 20. The pay of the Vice President can be increased at any time, and the pay of the Vice President has been increased since the pay of the President has been increased.

Mr. GROSS. So we get no information here today, as we open the door to a 100-percent increase in pay for the President, about the executive, congressional, and judicial pay increase bill and what it will provide when the budget message comes to the Congress, and recommended by the present President of the United States?

Mr. ALBERT. We have no way of knowing that.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Speaker, I can tell the gentleman we have some upper limits. I am sure the gentleman has read the report of the Commission on executive, legislative, and judicial salaries. Under the law, the figures the President sends up cannot be more than that, so I can provide the gentleman with the comfort that they cannot exceed those upper limits.

I can also tell the gentleman, from the committee that deals with the pay and with legislation the gentleman has referred to, that the Vice President and a few other officers, including the majority leader and the minority leader, were omitted from that structure, so if this bill goes through and if the salary plan that is coming up later this week provides for increases for Members of Congress, I am going to sponsor legislation to give proportionate increases to the Vice President and to those who were omitted from this salary scheme.

Mr. GROSS. If the outlandish Commission report is recommended to the Congress by President Johnson and the automatic pay increase goes into effect on July 1, the military will get a raise along with the raise for civilian employees of the Federal Government. Would the gentleman think these increases would amount to an estimated outlay on the part of the taxpayers of approximately $3 billion, or what price tag would the gentleman care to put on the pay increases that are proposed?

Mr. UDALL. Mr. Speaker, the best figures I have are in the neighborhood of those the gentleman is talking about. If the third phase of the 1967 Salary Act goes into effect as we intended, and if the military get comparable increases, and some of the things we are talking about today go into effect, it would cost the Federal payroll in the neighborhood of $3 billion.

Mr. GROSS. Where would the gentleman propose or suggest the Government would get the money?

Mr. UDALL. I would suggest we go to the U.S. Treasury and get it where we got it before, so we can be fair to the Federal employees and to the military.

Mr. GROSS. Or borrow the money and pay interest on it?

Mr. UDALL. If need be. But I am tired of Federal employees and the military bearing the fight against inflation. We say to those people, "You run the fight against inflation. The other people do not have to bear their fair share."

Mr. GROSS. Did the gentleman hear any complaint on the part of any one of the numerous candidates for President last year, complaining about the salary which would be paid? Did any candidate say that the salary was too low?

Mr. UDALL. If the gentleman will yield further; of course, they did not say this. It would have been unbecoming of anyone to say it.

Mr. GROSS. Why?

Mr. UDALL. No presidential candidate is going to say, "Fellows, I am running for this job; please raise my salary." I think it is up to us to do it in a dignified and proper way for them, and it ought to be done for the new President.

Mr. GROSS. It seems to me I did hear and read statements proposing a program or programs of austerity and frugality in the spending of the taxpayers' money by the new administration.

It seems to me I did hear statements made in the campaign that inflation would have to be slowed down and stopped.

To save my life, I do not understand how Congress can increase an executive's salary 100 percent and yet talk about austerity and frugality, especially when we know that a huge pay bill is in the offing and will be offered to Congress in the near future.

I do not understand the reasoning back of this move today, and especially when no one, so far as I know, who could possibly benefit, has asked for this increase.

Mr. UDALL. Mr. Speaker, will the gentleman yield further?

Mr. GROSS. I yield to the gentleman from Arizona.

Mr. UDALL. Let me say a couple of things.

It pains me to see my beloved friend attacking the President of his own party, not even in office yet. He said during the campaign he was going to accelerate the pay increases for the Federal employees, that there was a lag and he deplored this and he was going to take action to help us speed it up.

Out of this $100,000 increase, between $65,000 and $70,000 will be turned right back around, to come back to the Treasury as taxes on the President's salary, so we are talking here about $30,000 to $35,000. That is all in this bill.

Mr. HAYS. Mr. Speaker, will the gentlemen yield?

Mr. GROSS. I yield to the gentleman from Ohio.

Mr. HAYS. In line with what the gentleman said about nobody asking for the increase, the last time congressional salaries were raised I remember very distinctly a number of Members made speeches against it, and some of them very vehemently. Does the gentleman know of any instance of their not taking the increase after it was passed?

Mr. GROSS. No, no more than I would know of any reason why, if they put a bridge across the Ohio River leading from Ohio to another State, I should not drive across that bridge even though I might have opposed the building of it.

Mr. HAYS. Mr. Speaker, will the gentleman yield further?

Mr. GROSS. I yield.

Mr. HAYS. I would not use the bridge if I had made a speech saying I would rather swim.

Mr. GROSS. Of course, the gentleman from Iowa made no such statement, and the gentleman from Ohio well knows it.

Mr. UDALL. Mr. Speaker, will the gentleman yield to me on that point?

Mr. GROSS. I yield to the gentleman from Arizona.

Mr. UDALL. I prepared a form 4 years ago when we had the congressional pay bill up, under which a Member of this House could irrevocably refuse to take any increase. I just want to tell the Membership—and I thank the gentleman for yielding—I will have those forms available.

Mr. GROSS. I believe the gentleman announced that the last time a pay increase bill was before the House; did he not?

Mr. UDALL. I did not hear the gentleman.

Mr. GROSS. I believe you announced that the last time out; did you not?

Mr. UDALL. I did. I try to be helpful.

Mr. GROSS. There is nothing new or novel about the suggestion of the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. I will have these forms available, if the Members feel strongly they do not want this increased pay, or are not worth it. I will have these forms available.

Mr. GROSS. That is fine, but we happen to be dealing today with a 100-percent increase for the next President of the United States, not for Members of the Congress. We will cross that bridge when we get to it.

Mr. Speaker, I urge the defeat of this bill, and reserve the remainder of my time.

Mr. ALBERT. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan, the distinguished minority leader.

Mr. GERALD R. FORD. Mr. Speaker, I appreciate the yielding of the time by the distinguished majority leader.

I compliment him for taking the initiative in advocating this legislation for a President not of his own party. I think this is indicative of the fine character and forthrightness of the gentleman from Oklahoma.

I think we all recognize that the Presidency is the biggest and the toughest job in this country and perhaps in the world. The President of the United States in the next 4 years will be dealing with budgets ranging from $180 billion to $200 billion a year. Today when the new President takes over he will become Commander in Chief of a military force of approximately 3.6 million men and women on active duty. At the same time he will be the ranking civilian in the executive branch where the total civilian employment is approximately 2.7 million.

Now, several years ago, rightly or wrongly, the Congress adopted the principle of comparability with industry in fixing the salaries of Federal Government officials and employees. I feel very strongly that the President stands immeasurably taller and carries far, far heavier responsibilities than the head of any large U.S. corporate organization in the United States. Yet by almost any standard his salary is smaller.

Mr. WAGGONNER. Mr. Speaker, will the gentleman yield to me at that point?

Mr. GERALD R. FORD. I yield to the gentleman from Louisiana.

Mr. WAGGONNER. I thank the gentleman for yielding.

Mr. Speaker, I think it would be an absolute impossibility for us to legislate comparability in pay for the President of the United States with any other job which exists on the face of this earth today. As far as I am concerned, the President of the United States, no matter who he is, is the most important man in the world to me and to every other American. There is no such thing as legislating comparability for him. This might seem like a rather sizable increase today, but I will tell you one thing: It is very little as far as I am concerned in taking care of the needs of the President of the United States. I am prepared to support this or any other proposal that we can bring on today which will give the President of the United States at least a fraction of what he deserves. It makes no difference to me who the President is or what his party is in making this decision.

Mr. GERALD R. FORD. Mr. Speaker, I am very grateful for the observations

and comments of the gentleman from Louisiana.

Let me continue with one or two additional observations.

While the salaries of Federal Government officials, employees, and other elected officeholders have been adjusted in recent years, the President's salary has not been adjusted upward since 1949. I wonder how many other Americans today, those who serve in this body, those who work in this body, or those who are otherwise employed in the United States, would feel that they had been done right by if their salaries should have been held at the 1949 level, particularly since the cost of living from 1949 to date has advanced approximately 50 percent from then to the present time. Whether we like it or not, undoubtedly the cost of living will increase anywhere from 2 to 3 percent in each of the years for the next 4 years.

Perhaps some may argue, Mr. Speaker, that the President's salary should not be increased. Obviously we have one and maybe others who feel that way. The quarrel, if there is one, might be over the size of the increase. I personally feel the size of the increase can be fully justified on the basis of these points:

First, the President's salary has not been increased or adjusted upward since 1949. And, it is absolutely certain that if we do not act between now and January 20 it will not be adjusted upward for the next 4 years.

Certainly, the office of the President should be compensated monetarily at a figure at least comparable to that of the head of any reasonably comparable corporate organization. Quite frankly, I know of none that has so many people involved, that spends so much money, that has such vast responsibilities on a worldwide basis.

Third, the compensation of the office of the President should be sufficiently large to allow for adjustments of salaries of other high-ranking Federal elective and appointed officials and the top Federal classified employees.

The SPEAKER. The time of the gentleman from Michigan has expired.

Mr. GERALD R. FORD. Will the gentleman from Oklahoma yield to me 3 additional minutes?

Mr. ALBERT. I yield the gentleman 3 additional minutes.

Mr. GERALD R. FORD. So I say if the adjustments at this time were not made of the size proposed, then the comparability plan would have to be abandoned for the spread between the salaries of the President and that of other high-ranking officials would have to be unreasonably narrowed.

The proposed adjustment in the President's salary and those which will be recommended for other high Federal officials will have no appreciable impact upon the Federal budget.

In conclusion, I think it must be kept in mind that while other Americans have been receiving pay adjustments annually, or more frequently, a great number of top appointed and elective officials have not. Therefore, any adjustments in their pay will represent adjustments that span a number of years and must be viewed in that light.

Therefore, Mr. Speaker, I urge approval of the resolution which has been offered by the distinguished gentleman from Oklahoma (Mr. ALBERT).

Mr. CORBETT. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Pennsylvania.

Mr. CORBETT. I thank the gentleman from Michigan for yielding.

I simply wish to support the gentleman's remarks with the facts that Members of Congress since 1949 have had their salaries increased 100 percent. The top salary for postal employees has gone up 110.8 percent and the salary for the top classified workers has gone up 100 percent, exactly the same figures as are proposed here for the President.

Mr. JONAS. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from North Carolina.

Mr. JONAS. I understood the gentleman from Arizona (Mr. UDALL) during the debate to make the point that the Federal taxes on this increase would amount to around $35,000; is that correct?

Mr. UDALL. No, no.

Mr. ALBERT. Mr. Speaker, will the gentleman yield to me at that point?

Mr. GERALD R. FORD. Yes; I shall be glad to yield to the gentleman from Oklahoma.

Mr. ALBERT. I do not have the figures here, but for a person with no dependents the take-home pay would be only $98,818. With one dependent it would be $99,246.

Mr. JONAS. We hear a lot these days about take-home pay. I think it is very important that we have the facts directly set forth in the RECORD.

Mr. MILLS. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Arkansas.

Mr. MILLS. I am sure that my good friend has made clear what he is talking about and that is what is left after Federal taxes. I can assure the gentleman that his figures are correct, based upon the salary alone. What we are talking about is $98,818 or $99,246 for the President after Federal taxes out of a $200,000 salary.

Mr. JONAS. And, that does not take into consideration New York State or New York City income taxes, both of which have to be paid out of the 50 percent that is left?

Mr. MILLS. That is correct.

Mr. ALBERT. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York (Mr. DULSKI).

Mr. DULSKI. Mr. Speaker, I have cosponsored H.R. 10, together with our distinguished majority and minority leaders, the Honorable CARL ALBERT and the Honorable GERALD R. FORD, and the ranking minority member of the Post Office and Civil Service Committee, the Honorable ROBERT CORBETT.

We took this action in order that the House may have an opportunity to consider an increase in compensation for the President before President-elect Nixon takes office on January 20, 1969.

The bill has been referred to the Committee on Post Office and Civil Service. But, as everyone knows, the committee has not yet been organized and there will be no opportunity for committee consideration of the proposal before January 20.

Article II, section 1, clause 6, of the Constitution, provides that the President shall receive a compensation for his services "which shall neither be increased nor diminished during the period for which he shall have been elected."

A 4-year term of office for the President is fixed by title 3, United States Code, section 101, and the term "in all cases, commences on the 20th day of January next succeeding the day on which the votes of the electorates have been given."

Section 102 of title 3, United States Code, now fixes the compensation of a President in the amount of $100,000 a year. This rate was last adjusted by the act of January 19, 1949, and became effective at noon on January 20, 1949, when President Truman took office.

On January 20 of this year, a new presidential term will begin. The prohibition of the Constitution against changing a President's compensation during his term of office makes it of the utmost importance that this legislation be considered under the unusual procedure which we are following here today.

Unless the compensation of the President is adjusted before January 20, the Constitution would prevent this act from becoming operative for the duration of Mr. Nixon's term of office.

In any sensibly operated organization—whether public or private—the rate of pay for the top-ranking position should reflect its responsibility.

It is impossible, of course, to provide a salary for the President of the United States to fully compensate him for the heavy responsibility he bears. His is the most difficult, demanding, and important office the world has ever known. There is no comparable position anywhere else.

On the other hand, it is the responsibility of the Congress to provide a rate of compensation for our President that is in at least some degree commensurate with the responsibilities for the position he holds.

Mr. Speaker, favorable consideration of H.R. 10 will result in only the fifth increase in compensation for the President of the United States since the beginning of our country.

The President's compensation was fixed at $25,000 in 1789, at $50,000 in 1873; at $75,000 in 1909, and at $100,000 in 1949.

These five increases compare with nine increases for the Vice President, 10 increases for members of the Cabinet, and 11 increases for the top judges of our judiciary system during the same period of time.

Mr. Speaker, as I indicated at the outside, this legislation has the nonpartisan support of the leaders of the House of Representatives. I urge your favorable consideration of the proposal here today.

The SPEAKER. The question is on the motion of the gentleman from Oklahoma

that the House suspend the rules and pass the bill H.R. 10.

The question was taken.

Mr. GROSS. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER. The Chair will count.

Two hundred and twenty-one Members are present, a quorum.

For what purpose does the gentleman from Iowa rise?

Mr. GROSS. Mr. Speaker, on that question I demand the yeas and nays.

The yeas and nays were refused.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RECEPTION FOR PRESIDENT

(Mr. GERALD R. FORD asked and was given permission to address the House for 1 minute.)

Mr. GERALD R. FORD. Mr. Speaker, I have asked for this time to ask the distinguished majority leader, are we having the reception for the President at the present time?

Mr. ALBERT. I appreciate the gentleman making the inquiry. We are having the reception and we hope to get over there within the next 5 minutes.

Mr. GERALD R. FORD. I thank my colleague very much and I hope that everybody comes to greet the President and say goodbye and wish him the very best.

CHAIRMAN DULSKI PROPOSES BROAD POSTAL REFORM

(Mr. DULSKI asked and was given permission to extend his remarks in the body of the RECORD and to include extraneous matter.)

Mr. DULSKI. Mr. Speaker, one of the most critical issues—and probably the most urgent—facing us as we begin this 91st Congress, is what we should do about the U.S. Post Office Department.

The postal service has a more direct, personal, and day-to-day effect on more Americans than does any other function of our Government.

And, more and more, Americans are demonstrating every day to each of us that they are deeply and seriously concerned with the condition of our postal communications system, and the grave problems confronting it.

Additionally, at this time there is unprecedented agreement of opinion among postal officials, as well as independent authorities, on the urgent need for sweeping reforms in postal policies and operations.

In my judgment—a judgment shared, I believe by most Members of this House—there is urgent need for prompt legislative action to preserve and strengthen our vast, sprawling, and heavily overburdened postal complex.

Certainly, all presently available information indicates that the U.S. Post Office is in serious trouble, and these troubles cannot necessarily be blamed entirely upon the postal system itself.

As now constituted, the Post Office Department does not have the means to do the job it has been assigned. Indeed, it cannot be expected to continue—let alone to exceed—the present level of postal service in the face of the tremendously increased mail volume.

DEPARTMENT IS HANDICAPPED

The Department is handicapped by numerous legislative, budgetary, financial, and personnel policy restrictions that have accumulated over the years and are virtually self-defeating.

These restrictions foreclose to any Postmaster General most of the modern management and business practices which should be available to him if he is to carry out his responsibilities to provide efficient and economical service.

Another damaging handicap under which the Department is forced to operate is its extreme vulnerability to constant, yet unwise, interference from all types of political and personal pressures which adversely affect both postal employment and operating policies.

Mr. Speaker, a great number of solutions for the many postal difficulties have been proposed over the years. Most have been offered in good faith and have been the result of very careful study. Many have been piecemeal, others more sweeping.

Probably the foremost recommendation—at least the one now being given widespread publicity—is that recently made by the President's Commission on Postal Organization, usually known as the Kappel Commission. This recommendation is to turn the postal service over to an independent nonprofit corporation.

For the past several weeks I have devoted a great amount of time and attention to the Kappel Commission's report, as well as to the wealth of valuable information and evidence which the supporting documents present to highlight the many postal problems and their causes.

The report is certainly a most thoroughly comprehensive and analytical document. It is a credit to the outstanding citizens who prepared and presented it.

I strongly concur with the Commission's findings that postal reform is an immediate necessity in the public interest. I also agree that no private organization or firm would be willing to take over what is described as essentially a bankrupt postal system.

THREE BASIC CHANGES NEEDED

My own studies, and my close association with postal problems over the past decade, convince me that there are really three basic changes required in the present Post Office Department to permit it to do the job that needs to be done.

First, we must give to top management the authority it needs to operate consistent with its responsibilities. The weakness of the present administrative setup is that management is severely and unjustly hampered in its effort to administer the Department under the law in a businesslike way,

Second, we must modernize employee-management relations to fit today's operations, and

Third, we must provide the Department with updated business-type financing.

In the area of financing—probably the most critical problem needing attention—there are two areas which require immediate action.

We should have a system of financing that allows the Department reasonable flexibility in the use of the revenues which it generates. Under the present outmoded system all receipts must be funneled to the U.S. Treasury, and then the Department is subject to all kinds of crippling appropriation restrictions on the use of these revenues for its own operations.

In addition, it is essential for efficient management that the Department be allowed to finance both construction of its own buildings and the acquisition of necessary operating equipment. It is also essential that the Department be able to support in full the all-important research and development work that can permit the Department to meet the needs of the ever-changing, but always-increasing, flow of mail.

However, Mr. Speaker, based on the record at this time, and on my own careful analysis of the problem, I am not yet prepared to conclude that the only remedy for the ills of the postal service is to replace the Post Office Department with a nonprofit, Government-backed corporation as the Kappel Commission has proposed.

MAJOR REFORMS ESSENTIAL

I am certainly willing to agree that major changes—perhaps even radical changes—are needed in our historic postal policies and practices.

But there must be great care taken that the cure is not worse than the illness. I think a real possibility exists that this could occur were such a drastic changeover to be made, that is, a conversion from an executive department to a nonprofit corporation.

As I indicated, I have spent the major part of my time since the close of the 90th Congress in studying our postal system. I have carefully reviewed the Kappel Commission's report and its detailed supporting documents, along with the history of the creation and operation of a number of Federal corporations.

It appears abundantly clear to me that there are both advantages and disadvantages in the use of the corporate device to carry out a governmental mission.

The creation of a corporation generally is warranted only, first, when a program or activity is necessary in the public interest; second, when no one except the Government can or should undertake it; and third, when the customary and normal organizational structure of the Government is not suited to its accomplishment.

Of those three tests, only the first—necessity in the public interest—applies to the postal service.

The Post Office Department and its 700,000 employees have been doing—and are doing—a remarkably effective job when we consider the burdens imposed on them. They stand ready, willing, and able to do an even better job if the Congress will only grant adequate relief from the serious handicaps that now exist.

REFORM—NOT REPLACEMENT

In short, Mr. Speaker, my studies indicate that every major postal reform that a nonprofit corporation might achieve can be done more quickly and effectively within the present framework of Government. Most important, I am convinced these can be done without the inevitable disruption and turmoil involved in a changeover to a corporation.

For these reasons, and to provide a responsible alternative to the corporation proposal for the Congress to consider, on the opening day of the 91st Congress last Friday, I introduced a comprehensive postal reform bill, H.R. 4.

My bill would reorganize and greatly strengthen the postal service, but continue it as a regular Government department with the Postmaster General as a member of the President's Cabinet.

I sincerely feel that my bill will do everything that is claimed for a corporate entity—and all within the framework of the historic philosophy and the fundamental principles of our Government.

It would preserve the traditional character of the postal service as a direct duty of the Government—a duty to be carried out by placing responsibility on an executive department, and giving the department the authority and flexibility it must have to carry out that responsibility.

Mr. Speaker, the Kappel Commission report contains five recommendations which it claims would achieve the goal of "postal excellence."

It is my belief that the provisions of my bill would not only accomplish most of the recommendations of the Kappel Commission, but that the bill, if enacted, would also really achieve our common goal of "postal excellence."

H.R. 4 VERSUS KAPPEL PLAN

I would like at this point to outline briefly the major provisions of my bill as they relate to the five Kappel Commission's recommendations.

The first recommendation of the Commission is "that a postal corporation owned entirely by the Federal Government be chartered by Congress to operate the postal service of the United States on a self-supporting basis."

The Postmaster General already has full management responsibility, but he lacks a necessary measure of authority and flexibility of operations.

My bill retains the Post Office as an executive department headed by the Postmaster General, but—for the first time in history—it would grant a measure of authority and flexibility that is equal to his level of responsibility.

Thus, it would enable the Postmaster General and his Department to do every necessary thing that a corporation could do.

Under H.R. 4, the Department would have the objective of supporting itself from its revenues, with the exception of public service allowances, which would continue to be subject to congressional scrutiny and appropriation.

The Department would be enabled to use its own revenues to pay its own expenses free of present overly restrictive budgetary and appropriation limitations.

PERIODIC RATE ADJUSTMENTS

Provision is also made for periodic semiautomatic postal rate adjustments through a quadrennial commission whose recommendations would be submitted to the President once every 4 years. The President would use the Commission's recommendations as the basis for his formal rate proposals to Congress.

The President's proposals would take effect as law in 120 days unless either the House or the Senate voted changes, in part or in full.

The second Kappel Commission recommendation is:

The Corporation take immediate steps to improve the quality and kinds of service offered, the means by which service is provided and the physical conditions under which postal employees work.

My bill provides a strong foundation for modernization of postal plant and equipment. It establishes a new Postal Modernization Authority, a body corporate headed by the Postmaster General.

The Authority would act as a holding company for all property and equipment, with authority, first, to issue, finance, and retire bonds secured by the property; second, to conduct a vigorous research and development program; and third, to lease needed property and equipment to the Post Office Department on a cost-recovery basis.

The Postal Modernization Authority would be subject to the Government Corporation Control Act.

LABOR-MANAGEMENT RELATIONS

My bill also contains a complete labor-management relations program which embodies all of the essential policies, principles, practices, and procedures that have been adopted in modern, progressive private enterprise.

It includes provisions for, first, compulsory arbitration; second, settlement of disputes in disagreement by an independent Labor-Management Relations Panel; and third, clear-cut standards and guidelines for both management and labor in the field of employee-management relations.

The third Kappel Commission recommendation is:

All appointments to, and promotions within the postal system be made on a nonpolitical basis.

Title II of my bill, H.R. 4, prohibits all kinds of political recommendations, influence, and interference in the appointment of postmasters, and also extends this prohibition to all other types of undesirable pressure or influence from any other source.

The fourth recommendation of the Kappel Commission is:

Present postal employees be transferred, with their accrued Civil Service benefits, to a new career service within the Postal Corporation.

The labor-management provisions of H.R. 4 are considered to be the critical improvement that is needed. They will work effectively to update the postal personnel system and make it fully responsive to the needs of both management and the public.

The fifth and last recommendation of the Kappel Commission is:

The Board of Directors, after hearings by expert Rate Commissioners, establish postal rates, subject to veto by concurrent resolution of the Congress.

QUADRENNIAL COMMISSION

As pointed out earlier, H.R. 4 provides for periodic review and adjustment of postal rates by a Quadrennial Commission for the purpose of returning cost, exclusive of public service.

It also provides a semiautomatic procedure for proposed rate adjustments to take effect as law without the necessity of extensive, frustrating, and often bitter consideration of the complexities of postal rates before congressional committees.

Mr. Speaker, the bill I have introduced, H.R. 4, is most comprehensive. It very carefully goes to what I consider to be the heart of the Post Office Department's problems today. Even more important, it will let the Department be responsive to the problems of tomorrow and, indeed, the years ahead.

I intend to schedule prompt hearings by my committee on the entire subject of postal reorganization because I am convinced that the Department can be expected to do its increasingly difficult job of handling the mail only if we give to management the necessary administrative tools.

Mr. Speaker, as a part of my remarks, I am including a summary of my bill by title:

SUMMARY OF H.R. 4, POSTAL REFORM ACT OF 1969

H.R. 4 is an omnibus postal reform bill directed to the correction of major deficiencies in legislative and operating policies and procedures which tend to adversely affect the postal service of the United States.

The bill is divided into eight titles.

TITLE I—GENERAL POLICY STATEMENT

Title I of the bill sets forth findings of the Congress with respect to the present condition of the postal service, the prospect for its efficient and economical operation, the causes of its difficulties, and the basic principles upon which remedial measures can be effected.

TITLE II—APPOINTMENT OF POSTMASTERS

Title II of H.R. 4 removes one of the most criticized practices that burden the postal establishment—the archaic procedure of political and personal patronage appointments of postmasters.

Each of the 32,000 post offices is managed and administered by a postmaster who, as the law now stands, may be selected either politically or by personal choice of one or a few individuals having little or no direct responsibility in postal affairs. Yet, the postmaster is perhaps the most important postal management figure—the focal point of a service that vitally concerns the public. There is no other practice in our postal institution that has more of an irritant and has bred more criticism than political and other patronage choices in the appointment of postmasters.

Title II of H.R. 4 provides sweeping reform in this area. It absolutely prohibits any written or oral recommendation for appointment of a postmaster by any Member of Congress, any elected official of a State or local government, or any official of a partisan political organization.

Of equal importance, the bill also prohibits any such recommendation by any other

person or organization, subject to only two necessary exceptions.

The first exception permits the Postmaster General to consult appropriate postal management and administrative officials as to the qualifications and ability of a postal employee who is being considered for promotion to fill a vacant postmastership.

The second exception permits authorized government representatives to inquire as to an applicant's loyalty and suitability, and to solicit from a former employer of an applicant a judgment as to the applicant's qualifications and ability.

Any person who applies, or is being considered, for a position of postmaster will be disqualified if he knowingly requests any of the prohibited recommendations.

If any prohibiting recommendation is received by a Federal official, it must be rejected with a notice that it violates this title.

The existing residence requirements for postmasters are continued.

TITLE III—POSTAL TRANSPORTATION

Title III will modernize postal transportation laws and provide the Postmaster General greater flexibility in the procurement of transportation of mail by railway, airplane, and motor vehicle.

This title will authorize the Postmaster General to obtain transportation services for mail from regulated motor carriers and freight forwarders on exactly the same basis as he now does from the railways.

The Postmaster General will be authorized to negotiate rates of compensation with scheduled air carriers as well as railways.

The requirement that certain airport-to-post office transportation be performed by Government vehicles will be repealed.

The residence requirement for star route contractors will be repealed.

The bill will establish authority for the Postmaster General to enter into mail transportation contracts which require the use of more than one mode of transportation.

The proposed revision will extend the statutory obligation of railway common carriers to transport mail and provide related services at rates prescribed by the Interstate Commerce Commission, to the two important segments of the transportation industry not now covered by any corresponding obligation—the regulated motor carriers and freight forwarders.

TITLE IV—MODERNIZATION OF POSTAL FACILITIES

Title IV of H.R. 4 is directed to what has been described as the most glaring deficiency in our entire postal operation—the failure to provide modern and efficient plant and facilities for the gigantic postal operation.

As explained in Title I, the present structure of legislative, budgetary, and procedural limitations constitute a veritable straitjacket on the Postmaster General in terms of acquiring, developing and improving the facilities he and his team use in moving the mails.

Title IV creates a complete Postal Modernization Authority, a body corporate, to act, in effect, as a development and holding company, controlled by the Postmaster General, for all buildings, facilities, equipment, and machinery needed in postal operations.

All property of the Post Office Department and substantially all of the responsibilities and authorities of the existing Bureau of Facilities and the Bureau of Research and Engineering are turned over to the Postal Modernization Authority.

The Authority is authorized to acquire, hold, develop, and perfect buildings and equipment suited to postal needs, to issue and retire bonds for those purposes, and to lease needed buildings and equipment to the Postmaster General at rentals which will return the Authority's total costs.

This holding company structure will remove the obstructive handicap of a penny-wise, pound-foolish policy that for many years has deprived the Post Office Department of adequate facilities and imposed the impossible burden of providing up-to-date mail service with horse-and-buggy facilities.

The Postal Modernization Authority is the first of three major financial remedies provided by H.R. 4.

TITLE V—COMMISSION ON POSTAL FINANCE

Title V of H.R. 4 removes a stumbling block that has contributed in untold measure to the unfortunate image of the Post Office Department as a losing and inefficient Government function.

The revenue received for handling the ever-increasing volume of mail is controlled by a structure of postal rates, charges, and fees rigidly prescribed, for the most part, by the Congress.

Experience proves that every effort to obtain increased postal revenue, by whatever Postmaster General may be in office, is an undertaking of almost frightening magnitude.

Each official proposal on general postal rate adjustments is met immediately by an opposing hue and cry from the general public and large users of the mails.

The consideration by Congressional committees of such proposals is characterized by long, trying, and bitterly controversial hearings. Members are subjected to exorbitant demands and all kinds of pressures.

The legislative changes that result in many instances are characterized more by personal preferences, bias, and prejudice than by the best interests of the Government and the postal service.

Title V of the bill removes the initial and formative stages of rate adjustment proceedings to a more suitable forum—a quadrennial Commission on Postal Finance—but leaves the ultimate decision on proposed rate adjustments to the Congress through the exercise of a veto power over proposals originated by the Commission.

This title creates a Commission on Postal Finance that will exist for an 18-month period every 4 years. Five members of the Commission will be appointed by the President, 3 by the President Pro Tem of the Senate, and 3 by the Speaker of the House.

The Commission is required to study and review all postal rates, charges, and fees on all classes and kinds of mail, as well as requirements and conditions of mailability as in effect when the Commission is appointed.

The Commission will hold hearings and consider the views and the interests of the Government and of mail users, and then present to the President its recommendations for such adjustments as, in its judgment, are necessary to return the total costs and expenses incurred by the postal establishment—on an across-the-board basis—after excluding the public service allowance provided for by law.

The Commission is authorized, among its other powers, to review and to recommend needed changes in the public service allowance, in the structure and operation of the Postal Modernization Authority, established by Title IV of H.R. 4, and the cost ascertainment system of the Post Office Department.

The President, in turn, is called on to transmit to the Congress his recommendations, based on his review of the Commission's proposals, for adjustments in postal rates, charges, and fees.

If within 120 days after transmittal of the President's recommendations no differing statute has been enacted, and neither the House nor the Senate has disapproved any or all parts of the recommendation by bill or resolution, the President's recommendations automatically take effect as law.

TITLE VI—POST OFFICE DEPARTMENT REVOLVING FUND

Title VI of H.R. 4 represents the third part in the total financial breakthrough provided by the Dulski bill. It supplements the first two—the Postal Modernization Authority and the quadrennial Commission on Postal Finance.

This title makes a true and effective revolving fund available to the Postmaster General, through which he is authorized to receive and to use all postal revenues to operate the postal service, free of the present unrealistic and obstructive budgetary and appropriation limitations and restrictions.

The operation and administration of this revolving fund will be subject to effective fiscal control through internal accounting and auditing procedures and audit by the General Accounting Office. It represents a long-overdue changeover to responsible business practice, without which the present outmoded practices have severely handicapped the Post Office Department in terms of availability of its revenues to pay for its operations.

TITLE VII—EMPLOYEE-MANAGEMENT RELATIONS

Title VII of H.R. 4 responds vigorously and effectively to the severe and worsening problems of the postal establishment in the field of employee relations.

Every authoritative study of postal affairs in recent years has stressed the problem of employee morale and the unsatisfactory condition of employment in the Postal Field Service.

The recent report of the President's Commission on Postal Organization, under the Chairmanship of Frederick R. Kappel, placed emphasis on employee-management relations second only to its primary recommendation that the Post Office Department be turned over to a Government corporation.

Title VII establishes a clearly defined, workable, and highly desirable charter for a new and dynamic postal employee-management relations program.

It lays down the fundamental principle that free and friendly consultation between employee unions and management will contribute to better postal service; that employees are entitled to be heard by management on matters affecting them; and that strong and democratically administered employee organizations are to be encouraged in the Postal Establishment.

This title provides for compulsory arbitration of differing viewpoints, for orderly and effective settlement of appeals and grievances, and for the establishment of an independent, full-time Postal Labor-Management Relations Panel vested with authority to render final and conclusive decisions on disputes between employees and management.

It also spells out a clear policy for the granting of exclusive recognition to postal employee organizations, based on identification of crafts for employees and separate consideration of supervisors' organizations, together with codes of proper conduct for both management and employees.

The rights of both employee and management representatives to present their cases, to testify and be heard, and to question and cross-examine witnesses—without fear of intimidation or reprisal—are guaranteed.

This title of the bill, in the judgment of the sponsor, is the most important advance in the field of postal management that has yet been developed. It maintains the traditional policy of the great postal employee unions that they do not ask, and do not want, the right to strike.

TITLE VIII—MISCELLANEOUS AND EFFECTIVE DATES

Title VIII of H.R. 4 establishes the position of Executive Assistant for Employee Relations, with stature equal to that of the present Executive Assistant to the Postmaster General, to act as a personal adviser to the Postmaster General in the executive field of employee relations. The Executive Assistant

for Employee Relations will not be subject to supervision, control, or any interference on the part of any other officer or employee of the Post Office Department.

The establishment and use of this new executive position is needed to implement, at the very top level in the Department the broad new employee-management relations program provided for by Title VII.

EFFECTIVE DATES

The date of enactment will be the effective date for:

Title I—Congressional findings with respect to postal reform,

Title IV—Modernization of Postal Facilities,

Title V—Commission on Postal Finance, and

Title VIII—Miscellaneous provisions and the effective dates.

Title VII—Employee-Management Relations, will become effective on the first day of the second month which begins after the date of enactment.

Title II—Appointment of postmasters, will become effective on the first day of the third month which begins after the date of enactment.

Title III—Postal Transportation, will become effective on the first day of the sixth month which begins after the date of enactment.

Title VI—Post Office Department Operations Fund, will become effective on the first day of the first fiscal year which begins after the date of enactment.

NEW LEGISLATION NEEDED FOR CLEANER WATER

(Mr. VANIK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. VANIK. Mr. Speaker, I am today introducing the Federal Water Pollution Control Act of 1969. This legislation, which improves and expands past water pollution control laws and provides for new protection in the area of oil spillage and mine acid leakage, was passed by the other Chamber on July 10, 1968, and by this Chamber on October 7, 1968. The Senate agreed to House amendments on October 11. But confusion and inaction in the closing hours of the 90th Congress, coupled with heavy lobbying pressures against the bill by certain special interests, prevented the measure from being enacted into law.

Our Nation is faced with a continuing water pollution crisis. The dimension of the problem is outlined in an article in the November issue of McCall's magazine by Dr. David Peter Sachs, a former Clevelander, entitled "Drink at Your Own Risk." The article includes a table, now dated by changing conditions and water levels, listing numerous communities, by State, where the drinking water is not satisfactory, is a potential hazard to health, and is not checked frequently enough. It is to our shame that in our rich Nation all our citizens are not guaranteed safe drinking water.

As the Nation grows, the demands for clean water grow. A report released yesterday on projected powerplant needs, both thermal and nuclear, expresses great concern that we will not be able to construct these huge power facilities without destroying more rivers, more wildlife, more of our irreplaceable, unspoiled natural resources.

To provide clean water for all Americans, to plan for the future, we must legislate now. We must be willing to supply funds. This is the purpose of the legislation which I am reintroducing today.

Most significantly, the Water Pollution Control Act of 1969 provides a new form of assistance to localities in the construction of water treatment facilities. To make the present Federal grant appropriations for such facilities go further, the Federal Government would be authorized to enter into 30-year contracts with localities during which it would contribute the present Federal share of such project costs. Although significant funds have been authorized to help build such treatment facilities, usually less than a third of the authorization has been appropriated. These appropriations have been inadequate to meet the need. The use of grants will enable badly needed projects to be started immediately, rather than waiting for full appropriation.

Another section of this legislation is of particular significance to the Cleveland area and the entire Great Lakes region. This bill provides for contracts or grants for research and development of new methods to prevent pollution and control its effects in lakes. Other sections provide assistance in controlling acid and other mine water pollution.

A portion of the legislation would allow grants to assist in providing improvements in existing treatment facilities through the addition of the latest and most technically advanced treatment devices.

The legislation provides for a new section of pollution control law providing clearly defined controls over the condition of wastes dumped in American waters by ships and boats. In addition, fines and liabilities are set for the negligent spillage of oils and other hazardous polluting matter from vessels while in American waters. Hopefully, this section will prevent a *Torrey Canyon* disaster in the waters of our Nation. It will make provision for cleaning up from such disasters, if they do occur, as well as fixing the blame and liability for such damage to our public, natural resources.

Mr. Speaker, full hearings have been held on this bill. Both Chambers approved it last year. It is my hope that this legislation can be acted upon in the next several months and that some of its more critical provisions may become effective in the new fiscal year beginning July 1. The need for this legislation has already been clearly established. It is essential for our future generations.

ADAM CLAYTON POWELL

(Mr. STRATTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. STRATTON. Mr. Speaker, I take this time to comment briefly on the votes I cast on Friday, January 3, with regard to the seating of ADAM CLAYTON POWELL.

Two years ago when this issue was first presented to the House, I voted not to seat Mr. POWELL. I did so for one very compelling reason; namely, that Mr. POWELL's deliberate decision to remain outside of New York State rather than submit himself to the jurisdiction of the New York State courts had meant that he was not a resident of the State from which he was elected, and therefore failed to meet one of the three basic constitutional qualifications for membership.

Since the Constitution also provides that the House itself shall be the final judge as to whether Members-elect do or do not meet the qualifications of House membership, a determination by the House on these grounds could not have been challenged in any other place.

Many of may colleagues, I am frank to say, did not concur at the time in this reasoning with regard to Mr. POWELL; but I might point out that had the House followed my lead on this point 2 years ago we would not now be faced with a suit in behalf of Mr. POWELL's seating in the U.S. Supreme Court.

On last Friday, when the question of Mr. POWELL's seating came before this new 91st Congress, the situation that had existed in January 1967 no longer obtained. Mr. POWELL had in the interval made his peace with the courts of New York State, had returned freely and frequently to New York State, and had met all of his obligations in New York—except a pending 90-day jail sentence which is temporarily being deferred by the State courts, as I understand it.

In short, Mr. POWELL had fully removed the previous cloud from his residency qualification. For that reason I believed the gentleman from New York had a right to be seated and I supported and voted for that right last Friday.

I did feel, however, that because of the very serious questions with regard to Mr. POWELL's conduct in the 88th and the 89th Congresses reported to the House by a special committee in January 1967, we ought not to act to seat Mr. POWELL without taking some official recognition of the charges that led a majority of the House to vote to exclude him 2 years ago. The original Celler seating resolution made no mention of any possible House review of these very grave charges once Mr. POWELL was seated, and therefore I opposed the "previous question" motion, that action which would have made it impossible to offer to the original Celler seating resolution any amendments dealing with the serious charges against Mr. POWELL.

When the move to block amendments to the Celler seating resolution failed I would myself have favored amending the original resolution to refer the question of possible disciplinary action arising from these charges to an appropriate committee of the House. I mentioned that possible amendment briefly on the floor during the debate.

As it turned out, the parliamentary situation never made it possible for that amendment to be offered. Instead I supported the substitute finally offered by Congressman CELLER to seat Mr. POWELL and fix a penalty of $25,000 against him because of the findings made by the special committee in January 1967.

LEGISLATION TO REMOVE ONE-BANK EXEMPTION

(Mr. BENNETT asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BENNETT. Mr. Speaker, on the first day of the 91st Congress, I introduced a bill to close the loopholes in the Bank Holding Company Act of 1956, which allows one-bank holding companies and labor unions to own banks.

I believe the exemptions in the Banking Act of 1956 should be removed, and my legislation, drafted and approved by the Federal Reserve Board, would accomplish this. The principle adopted by Congress in the 1933 Banking Act, that it was against the public interest for banks and nonbanking businesses to be controlled by the same ownership, should be upheld.

It is disturbing to read reports that banks are going into nonbanking businesses. I believe in the words of Federal Reserve Board Chairman William McChesney Martin, who said recently:

> This is a real can of worms. It can affect the whole capitalistic system in the U.S. The line between banking and commerce should not be erased.

Legislation which I sponsored and supported and was passed in 1966, stripped four other exemptions from the law for: long-term trusts, registered investment companies, nonprofit, charitable, religious, and educational institutions, and companies with at least 80 percent of their assets in agriculture. We need to act on the remaining two exemptions in the 91st Congress.

Specifically, my 1969 bill would amend the exemption rule in the 1956 act, which states "each of two or more banks" to "any bank" and do away with the provision for "labor, agricultural, or horticultural organizations." The 1956 act prohibits corporations controlling more than 25 percent of two or more banks from engaging in anything but banking. The present law does not cover companies owning only one bank; and where State law allows branch banking, this nullifies the purpose of the Federal law. The recent trend is for commercial banks to reorganize into one-bank holding companies. Today, there are over 700 of these companies, about 200 more than in 1966, and 600 more than in 1956 when the Banking Act was passed. Twenty-two of the Nation's largest banks have organized the Association of Corporate Owners of One Banks to push further into the conglomerate banking-non-banking field.

The two remaining exemptions now in the law represent possible conflicts of interest and monopoly and are not in the public interest. There is the chance that banks would bail out failing companies they have an interest in to the detriment of depositors of the bank; they might refuse to extend credit to a competitor of one of its subsidiaries or require borrowers to trade with one of its firms.

THE BLACK SECESSION MOVEMENT

(Mr. RARICK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. RARICK. Mr. Speaker, I have been besieged with inquiries from Americans alarmed by news promoting a threatened program designed to give five States to black nationalists for establishment of a separate black nation to be called New Africa.

The idea is so repulsive to most Americans it would be easy to discount any such plot as the mutterings of extremist crackpots and to ignore the inquiries. For certainly no American would tolerate for one instant any idea of chopping up the United States. Likewise, no pro-American leader would consider negotiating such a sinister threat to destroy our Nation.

My inquiry at the State Department as to the existence of a written ultimatum to negotiate such a purpose revealed that on May 29, 1968, such a written demand from an organization calling itself "the Republic of New Africa" was received and does exist.

Any reply from the State Department or negotiations to this date are unknown. A copy of the ultimatum follows my remarks.

Further inquiry revealed that the September 12, 1968, Jet magazine outlined similar demands and indicated petitions were being circulated for recognition of the separate movement for presentation to the United Nations.

Political Affairs—the theoretical magazine of the Communist Party of the U.S.A.—in the November 1968 issue carried a detailed paper accredited to Claude Lightfoot, entitled, "The Right of Black America To Create a Nation," identified as material discussed at the Special Convention of the Communist Party, U.S.A., held in July 1968, and to be further discussed at the next Communist Party convention in April of 1969. The Lightfoot article also follows my comment.

The Esquire magazine for January 1969 permitted its pages to be used as a revolutionary rag to carry anti-South material by Robert Sherill, which amplifies the Communist Party line set forth in the Lightfoot article.

Esquire sought to dignify the subversive plot by printing pictures of the president and officers. Esquire, in selling this copy of its magazine, went so far as to place a flier on the cover reading: "Exclusive Report—The Black Plan To Take Over Louisiana and Four Other States."

I believe these reports are startling enough to merit notice, not only to my constituents, but to my colleagues as well.

The conclusion can be but publicized treason and sedition against the American people along with demands against the U.S. State Department to negotiate for peaceful settlement and petitions—as if from an established government—to the United Nations.

The real danger and threat to our national security comes from those who are the guiding intelligence and supplying the financial aid.

The Attorney General of the United States is most certainly aware of this conspiracy to peacefully overthrow a portion of our Nation. There have been no arrests, no investigations nor any reassurances to our people. Nor has the U.S. State Department denied any negotiations or communications with this satyagraha.

Meanwhile the communications media continues to build a "hate the South" image and continues to work progressively toward programs within the dialog of the Political Affairs memo.

The American people want to know what, if anything, has been done to protect the sovereignty of the Union and protect them from this openly publicized threat against our lives and property?

I consider these acts outrageous.

Mr. Speaker, I include the following documents with my remarks: New Republic note to the U.S. State Department; Jet for September 12, 1968; Political Affairs, November 1968; and Esquire magazine, January 1968.

The material follows:

THE REPUBLIC OF NEW AFRICA,
May 29, 1968.

Hon. DEAN RUSK,
Department of State, The United States of America, Washington, D.C.

GREETINGS: This note is to advise you of the willingness of the Republic of New Africa to enter immediately into negotiations with the United States of America for the purpose of settling the long-standing grievances between our two peoples and correcting long-standing wrongs.

The wrongs to which we refer are those, of course, which attended the slavery of black people in this country and the oppression of black people, since slavery, which continues to our own day. The grievances relate to the failure of the United States to enter into any bilateral agreements with black people, either before or after the Civil War, which reflect free consent and true mutuality. Black people were never accorded the choices of free people once the United States had ceased, theoretically its enslavement of black people, and this constitutes a fatal defect in the attempt to impose U.S. citizenship upon blacks in America.

The existence of the Republic of New Africa poses a realistic settlement for these grievances and wrongs. We offer new hope for your country as for ours. We wish to see an end to war in the streets. We wish to lift from your country, from your people, the poorest, most depressed segment of the population, and, with them, work out our own destiny, on what has been the poorest states in your union (Mississippi, Louisiana, Alabama, Georgia, and South Carolina), making a separate, free, and independent black nation.

Our discussions should involve land and all those questions connected with the prompt transfer of sovereignty in black areas from the United States to the Republic of New Africa. They must also involve reparations. We suggest that a settlement of not less than $10,000 per black person be accepted as a basis for discussion. We do assure you that the Republic of New Africa remains ready instantly to open good faith negotiations, at a time and under conditions to be mutually agreed. We urge your acceptance of this invitation for talks in the name of peace, justice, and decency.

MILTON R. HENRY,
First Vice President.

[From Jet magazine, Sept. 12, 1968]

PETITION DRIVE ON FOR BLACK REPUBLIC

U.S. blacks working to acquire five states as home for a separate black nation began a drive to get ghetto dwellers to sign petitions, asking payment to blacks for past injustices, and for recognition of the newly formed Republic of New Africa. Representatives aim at getting signatures of one-half of

1 percent of persons over 16 years who live in the ghettos of 10 major cities. The petitions call for the U.S. to pay $10,000 for each person in the new state—$6,000 to the Republic and $4,000 to the person. Minister of Information Brother Imari (Richard B. Henry) told JET the petitions will be presented to the UN General Assembly because the U.S. has veto power in the Security Council, which ordinarily would handle it.

[From Political Affairs, Nov. 11, 1968]

THE RIGHT OF BLACK AMERICA TO CREATE A NATION*

(By Claude Lightfoot)

The Special National Convention of the CPUSA, held last July, deferred discussion of the question of self-determination for black America to the next regular convention, to be held in April 1969. In preparation for such a discussion, this article is presented. The views set forth are my own and should in no way be considered official. Hopefully, this article will stimulate the kind of discussion which will result in a document that will reflect a collective effort.

In view of a long background of vacillation in the handling of the slogan of self-determination within the Party, it is imperative that we present this question today in a way that will stand the test of time. We must avoid dotting i's and crossing t's in respect to future developments. Marxism-Leninism does not equip us to do that. At best it enables us to perceive what is new, what is aborning, and to indicate the direction in which things are moving. It also enables us to foresee the possibilities inherent in a given trend. But it does not enable us to blueprint the exact form that trend may take.

In this discussion, therefore, we must combat a dogmatic, mechanical presentation of the matter. We must likewise strive to avoid being overwhelmed by the present state of affairs and acting as if it will prevail forever. With these yardsticks in focus, we shall discuss:

1. The historical background of the Communist Party's handling of the slogan of self-determination.

2. A more precise definition of the national character of the black people's movement, especially as it exists today.

3. Some proposals as to how this matter should be formulated in our draft program.

4. The main prerequisites for a black nation in the United States.

HISTORICAL BACKGROUND

In 1930 the Communist Party adopted a resolution on the Negro question in the United States. It was an historic landmark in determining scientifically the character of black people and their struggles. Prior to the appearance of this resolution most organizations and individuals, both black and white, had approached this question in a piecemeal fashion. Hardly any organization had presented a definitive treatment, either in the community as a whole or in the radical sector.

In fact, the radical predecessors of the Communist Party paid little or no attention to the problems confronting black America. They took the position that the Negro question was a class question and that the problems of the black worker would be solved in the same way as those of the white worker. In taking this position they betrayed strong influences of white chauvinism. Such an approach could only lead to passivity in the face of a continuous onslaught of racist ideology which singled out black people for special exploitation and persecution.

The 1930 resolution had three main features. 1st, we inscribed on our banner the goal of full economic, political and social equality for black America. We were the first political party to take this stand. A 2nd feature was the characterization we made of the special forms of oppression peculiar to black people on the American scene. 3rd, we declared that these special features of black persecution, coupled with such historical developments as slavery, had resulted in the development of a black nation in the Black Belt of the South.

The Party arrived at this conclusion on the basis of the Marxist criteria of nationhood. The essence of these is: A nation is a historically evolved, stable community of people having a common territory, a common language and a common economic life, reflected in a common psychological makeup or culture. Using these yardsticks, it was concluded that in the Black Belt black people had all the requisites of a nation, and therefore the right of self-determination applied to them. We called for equal rights for black people everywhere and self-determination in the Black Belt.

This position placed the CPUSA in the vanguard of all Americans.

The first two aspects of the struggle as defined in the resolution—the fight for equality and the special demands made necessary by the special forms of persecution—have stood up through the succeeding years and can be considered as firmly established. In regard to self-determination, our position has fluctuated several times.

This tendency to fluctuate shows that while there was some validity in the concept, our approach has been based on some faulty premises. We need, therefore, to examine the history of our application of this slogan to see what errors we made in our various analyses.

After declaring its position in 1930 the Communist Party proceeded to organize struggles based on the concept of equality and elaborated a series of special demands covering every aspect of oppression and superexploitation of black America. The Party sparked a new historic wave of struggles which shook the very foundations of the whole system of jim-crow segregation and discrimination. It was during this period that it came to be known as the party of the Negro people.

During this time almost all movements of a nationalist character faded into the background, and interracial efforts dominated the scene. There were many black forces who hailed the role of the Communist Party in fostering unity and raising the special demands of the Negro people. But they rejected the idea of nationhood in the Black Belt and the slogan of self-determination. The ruling circles contributed to this rejection by distorting the slogan, by convincing many people that such a proposition would be jim-crow in reverse. Consequently after several years of effort during which little or no consciousness of nationhood was manifested, and no significant response to the slogan of self-determination, the Party began to abandon it.

Earl Browder, then general secretary of the Communist Party, went as far as to declare that the black people had already exercised their right of self-determination and had chosen the path of integration into the American nation. But, at the close of World War II, when American Communists took stock of the Browder era in which opportunist positions had been taken on many questions of principle, it also took a new look at the question of self-determination. In 1946 the National Committee decided once again to raise the slogan of self-determination in the Black Belt.

There were those who raised serious doubts about the advisability of doing so. Some based their doubts on the fact that black America had indicated no consciousness of nationhood or self-determination. This led to a deeper probing into the status of the black nation.

As a consequence several Party leaders argued that the Negro people constituted a young nation, a nation which had not become full-blown and had not developed consciousness of itself as such. This came closer to defining the national character of the Negro people than did the previous position which treated the question as if a full-blown nation already existed within the Black Belt. Based on this new analysis we restored the slogan of self-determination.

Between 1946 and 1959, we witnessed an accelerated growth of struggles designed to establish first-class citizenship for black Americans. Simultaneously, there was a tremendous shift of population from the rural areas of the South into the urban regions of both the South and the North. The black population of the United States became widely dispersed and was no longer a substantial majority in any section of the country.

Moreover, the continuous wave of migrations also led to great changes in the class composition of the black community. It brought about the growth of the Negro workers as the dominant section of the population rather than the sharecroppers and farmers who had been the main class force in the Black Belt counties.

It was these developments which contributed to the decision of the 1959 National Convention once again to withdraw the slogan of self-determination. Involved in this withdrawal was the view that the nation had been uprooted, that it no longer had territorial unity and that the working-class aspect of the problem was becoming increasingly its dominant feature.

THE NEW NATIONAL CONSCIOUSNESS

Paradoxically, after we reversed our position forces began to emerge which did reflect a consciousness of the necessity of nationhood. This was evident especially in a significant trend toward support of the policies of Elijah Muhammad and Malcolm X of the black Muslim movement.

Currently there is a mass trend toward support of nationalist forms of development, though it is an uneven one. There are those who call for control over their communities while remaining within the general commonwealth. At present they do not seek physical separation beyond making their communities power bases from which to operate in the general community. There is also a growing trend toward a program of separation and the building of a black nation in the South. In fact, many of the counties which formerly represented the area we called the Black Belt have been singled out by some as the future homeland of black America.

In order to determine what our present position should be, we must unravel the reasons for this contradiction.

At the time we adopted the resolution discarding the slogan of self-determination it was realized by most comrades that the resolution left some matters unexplained. This was expressed in the following paragraph:

"To conclude that the Negro people in the United States are not a nation is not to say that the Negro question in our country is not a national question. It is indeed a national question. The question is, however, a national question of what type, with what distinguishing characteristics, calling for what strategic concept of its solution."

Those of us who authored this resolution definitely felt that the concept of nationhood had been undermined. Nevertheless, we were conscious of the fact that the Negro people as a national minority differed from other national groups in the United States,

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* This article and that which follows open discussion on two of the questions in relation to the draft program which were singled out for particular discussion by the Special Convention last July. Others will appear in the December issue. Comment on these articles or other discussion articles on these subjects is invited.

though we did not elaborate on these differences. In retrospect, it is my judgment that from the very beginning our Party made an error when it applied the right of self-determination to the Black Belt rather than to the black people as a people, for in so doing we reduced the matter of self-determination to an artificial geographical consideration.

Of course, the concept of common territory is one of the fundamental features of a nation and without it there is no nation. But what we failed to understand was that while the Negro people in the Black Belt did not constitute a full-blown or even a young nation, the background and conditions of life of the black people, whether on the southern plantation or in the urban ghettos, are breeding grounds for national aspirations.

These tendencies, therefore, have not been merely an expression in some geographical area. Indeed, the most significant movement which reflected the aspirations for nationhood did not begin in the Black Belt, nor did organizations espousing such views gain their greatest strength in this area.

Perhaps the most graphic illustration of this was the emergence of the Garvey movement in the 1930's. This movement was one of the clearest expressions of black people's strivings for nationhood. Because of the utopian and sometimes reactionary character of parts of the Garvey program, our Party failed to discern in it the essential urge for a black nation somewhere on this globe. Everything about the Garvey movement took the form of a struggle to create such a nation. It specifically proclaimed as its goal a black nation in Africa, to be centered mainly around Liberia.

In preparation for such a goal the movement made efforts to build its own economy in this country. It took on many paramilitary aspects of a nation with its uniformed soldiers and its nursing corps. The titles it conferred on its leaders and many other things would be regarded as characteristic of a nation. At its height this movement attracted several million people. Clearly it was not itself a nation, but it did reflect the aspiration to nationhood of a sizable segment of the black community.

NATIONS AND NATIONAL GROUPS

However, it is clear that black people in the Black Belt area of the South had begun in embryo form to develop some of the prerequisites of a nation.

It was a people which had evolved through a historical process.

The slave system as it operated in the United States subjected black people here to forms of persecution that have no parallel with the persecution of any other people in the world, including other black people. There was also a common territory, a common language which manifested itself in a psychological make-up. But the weakest link in the chain was the economic aspect.

Modern type nations grew and were nurtured in the womb of a feudal system. But they were established in the context of the growth of capitalism. It was the economic factor, namely, the emergence of a bourgeois class which, in order to meet competition, organized the nation. In the words of J. Stalin, "The bourgeoisie learns its nationalism in the struggle for the market."

The evolving black nation in the United States was mainly of a semi-feudal nature. There was no significant bourgeois class in this development. There was no market to be sealed off. Even to this day there is no real basis for the growth of a substantial black bourgeoisie that can compete with the dominant economic interests in the land. Here and there a struggle for services in the ghettos develops between black and white capitalists, but such competition is a minor factor. The ghettos have no resources and produce very little of what is consumed within them.

In these circumstances capitalism, which by virtue of history and its own economic needs has set black America apart from the rest of the nation, has created the preconditions for the emergence of a separate nation, but at the same time has acted as a barrier to its further growth and development. The economic needs of capitalism which dispersed black people all over the United States represent a case in point.

If the black people did not and do not constitute a separate nation in the Black Belt, the question arises: to what stage, to what level, has black America evolved?

It seems to me that they fall in the category of what has been defined as a national group or community. This is a category which was the forerunner of the modern nations.

History shows that before the modern nations came on the scene, they were preceded by groupings of people that laid the basis for the emergence of national states.

For example, ancient Gaul gave birth to three nations, France, Belgium and Switzerland. At one time the Danes and the Norwegians were one people but evolved into two separate nations. Similarly, the Arabs as a national community evolved into several separate nations.

But even if black people fall in the aforementioned category, the slogan of self-determination would still apply. Marxists have always considered in their programs not only nations that are full-blown but also peoples that are in the process of becoming nations. The Soviet Union after the October Revolution not only proclaimed the right of the oppressed nations to self-determination; it also created the material conditions whereby national groups which had not yet developed nationhood could become nations.

In his book, *The Principle of National Self-Determination in Soviet Foreign Policy*, (Foreign Languages Publishing House, Moscow), G. Starushenko says: ". . . a national group is an historically constituted, relatively stable community of people which precedes the formation of a nation. A national group* forms on the basis of three elements of a nation which is in the process of formation and development—common language, common territory and common psychological makeup, which manifests itself in a common culture.

"In settling the question of the right of nations to self-determination, the concept 'national group' is of vast import, if only because many colonial peoples have not yet developed into nations. That is why we say 'self-determination of peoples and nations,' and assume that in this case the concept 'people' includes the concept 'national group.'" (P. 18.)

On the basis of this understanding the USSR *created* the conditions for scores of formerly oppressed nationalities to form themselves into nations. On this point Starushenko says:

"Since the formation of the national community usually ends in the creation of a nation, the backwardness of certain peoples—a backwardness which manifests itself in their failure to consolidate into nations—cannot be made a pretext for depriving them of the right to decide their own destiny, whatever the colonialists and their learned advocates may say. All the more so, since this backwardness is the result of the colonial oppression and exploitation of these peoples. Consequently, *it would be quite proper to speak of the self-determination not only of nations, but also of the national groups which have not yet succeeded in developing into nations.* Once freed from the foreign yoke, these peoples will be able to accelerate the process of their formation into national communities and then, depending on the prevailing conditions, into bourgeois or socialist nations." (Pp. 31–32. Emphasis added.)

Starushenko says further: "A national group can develop into a nation even if its territory is not completely united." (P. 20.)

If the Negro question in the United States is viewed from the angle of a national group with aspirations for nationhood, it follows that the right of self-determination applies to black Americans independently of whether there is territorial unity in the Black Belt or elsewhere. In my view it was wrong from the beginning to have restricted the use of this slogan on the basis of a territorial approach. It was not territorial unity which formed the basis for Pakistan's emergence as a nation; it was mainly religion. And certainly the Jewish people the world over joined to help form an emerging nation in Israel, yet nowhere else do they constitute a nation.

In the light of historical experience, therefore, it was wrong to decide the question of self-determination for the black people in the United States only on the basis of whether territorial unity still reflected the status of the majority of them. Even when the slogan of self-determination for the Black Belt was raised, its authors had to disregard territorial problems arising out of artificial boundaries of states. The Black Belt represented an economic and social unit but not a political unit. The counties composing it were parts of different, artificially created states.

By the same logic, the ghettos across the land may be viewed in a similar way, even though they will never reflect complete political units. But their very existence and the conditions of life within them have served to propel forward the desires for nationhood.

PROGRAMMATIC FORMULATION OF THE QUESTION

Since my view is that self-determination must be applied to the people as a whole and not to a territorial unit, the problem arises of how we should formulate this point in the draft program.

If it is possible to err in overlooking the national character of the Negro question, it is also possible to err in placing the desire for national development as the all-dominating question in black America.

There has at no time been complete unity on aspiration for nationhood and all that flows from it, as against integration into every aspect of American life on the basis of equality. Even in the heyday of the Garvey movement the trend toward national aspiration, albeit a significant one, did not represent the majority of the black community. I believe that if a poll were taken of black America today we would still find this to be the case. Our draft program, therefore, must reflect the desires and aspirations of all the Negro people.

It should be formulated as follows:

"We stand for full economic, political and social equality for black America. Toward that end we call for changes in all American institutions and the creation of guarantees that will make the black minority equals in a majority white society."

This should be the central thrust of our Party. In addition, we should call for a plebiscite of all black Americans on whether they want to remain in the general commonwealth or to establish another nation within the continental United States. If this plebiscite should reveal that there is a significant number, even though a minority, who desire such a path, we Communists must say that we will have no hesitation in helping to establish such a nation, and that we will work to place at its disposal such resources and assistance as would make of it a prosperous community. Thus, the slogan of self-determination today means the struggle for the right of black America to form a nation if it elects to do so.

* It should be noted that in this country the term "national group" is used to refer to groups of people with a common national background who are in the process of being absorbed into the American nation, rather than to groups in the process of becoming nations.

In putting this position forward, we should make it clear that we Communists are internationalists and that our conception of the world of tomorrow envisions, not the breaking up of mankind into small units, but a world in which national distinction will pass into the abyss of time. We see a new world in which all people, be they black, white, red, brown or yellow, can walk this earth as brothers and sisters and as equals.

However, since we have lived for several centuries under an exploitative system in which people of some nations and races have been subjugated by others, it is necessary to create a condition in which confidence among the peoples can be established. This is the rationale behind our use of the slogan of self-determination.

How black America would react to a plebiscite only the future can tell. The response would depend on the prevailing circumstances at the moment when this would become a practical proposition. We have seen many historical variations in how people respond. We have also seen that the oscillation between separation and integration in black America has been conditioned by the response of the white community to the just demands of the Negro people.

A good example of what would be possible may be seen in Cuba. There black people form the majority of the population in Oriente, one of the major provinces of the country. At one time the Communist Party of Cuba proclaimed the right of self-determination for the black people in the Province of Oriente. But when the socialist revolution occurred, bringing with it instantly a change in the status of black people on the island, there was no demand for separate institutions of any kind with the exception of culture. Whether or not this would be the case in the United States I do not know. We must not pretend to know.

Whether or not self-determination is appropriate will be determined by black America itself. Regardless of the form in which the black people express this right, we Communists must be prepared to assist them in every possible way.

Meanwhile the Communist Party identifies itself with the aspirations of black America to exercise, to the fullest degree possible under the present system, control over its own destiny. This means that we support struggles of black people to gain a measure of control over schools, police and other institutions within the ghettos. However, we do not equate these struggles for control over community life with self-determination, although they can be important beginnings leading in the direction of a fundamental solution to the black man's problems in the United States.

NATIONHOOD AND THE FIGHT FOR SOCIALISM

Of equal importance to black America manifesting the desire for nationhood is clarity on what it will take to reach the goal. Unfortunately, mass forces and organization standard bearers of the nationalist cause do very little to illuminate the path ahead. Moreover, some pursue lines of direction and tactical approaches which undermine the very goals they claim to seek.

We live in an advanced age of science, both natural and social. And this problem of black nationhood, like all other social phenomena, must be approached scientifically. An approach which is based only on subjective desires, on mere condemnation and protest, will lead exactly nowhere.

What, then, are some fundamental prerequisites for the possibility of black America to establish a black nation within continental United States?

First and foremost is the social system which prevails in the country.

As we have already pointed out, modern nations came into existence as a consequence of the rise of capitalist society. But it does not follow that in our day capitalism can and will generate conditions for new, free and independent nations to emerge. On the contrary capitalism is the main force in today's world holding black independence for peoples and nations. The nations which were born several centuries ago and are now the leading capitalist powers, in the course of their development subjected other peoples.

There is no better example of this than the emergence of the American nation. In 1776 the thirteen colonies fought a war against Great Britain for the right of self-determination. That war was won and a new nation came on the stage of history. Today, almost two hundred years later, the American nation, based on capitalism, is the chief policeman roaming all over the world to prevent colonial peoples from exercising the right of self-determination.

If American capitalism in the pursuit of its narrow class interests cannot permit the peoples of Guatemala, of Cuba, of the Congo, of Indonesia, of the Dominican Republic, Ghana, and especially of Vietnam, to exercise their right of self determination, then how can anyone seriously talk about establishing a black nation in the United States, in the context of a capitalist society?

In our time, socialism, and the strength it exerts in the world, is the fundamental condition for oppressed nations as well as evolving nations to gain the conditions for the exercise of the right of self-determination. Its record in this regard stands up under any objective evaluation. Indeed, the billion-and-a-half peoples of Asia, Africa and Latin America owe their political independence in large part to the role of the socialist sector of the world.

There are those who seek to refute this proposition on the basis of the Warsaw Pact nations' occupation of Czechoslovakia. But this occupation was not only in the interest of preserving socialism but also in defense of the oppressed nations and peoples of this earth. The Warsaw Pact nations moved in time to prevent another Guatemala, another Congo, another Ghana. A socialist Czechoslovakia gave guns to liberate Algeria from French imperialism. It gives guns to the people of Vietnam. If the West German imperialists had succeeded in undermining socialism in Czechoslovakia, instead of Czechoslovakian guns going to Algeria and Vietnam, they would be used to keep those people or put them back under the heels of world imperialism.

This brief summary can be documented in great detail. It is, therefore, my view that the struggle for a socialist America is an important corollary of the struggle for a black nation.

From this it follows that the advocates of a black nation must identify themselves with all that is required to set up a socialist America. This means understanding the class nature of capitalist society. Above all else, it means recognizing that black people alone could never destroy capitalism and usher in a new system which would permit a reorganization of our entire society, a condition basic to carving out a black nation in continental United States. This fact surfaces the necessity for allies. The advocates of a separate black nation for tomorrow must act in concert with other forces today. Most nationlist organizations do not comprehend this basic truth, and yet, unless it is grasped, the long range goal will remain empty—"a sound and fury signifying nothing."

[From Esquire, January 1968]

WE ALSO WANT FOUR HUNDRED BILLION DOLLARS BACK PAY

(By Robert Sherrill)

One day late in May, Brother Imari, Minister of Information for the Republic of New Africa, pulled up to the United States Department of State Building in a taxi and told the driver to keep the motor going because he would be right back out. Inside, James McDermott and Charles Skippon, who introduced themselves to Imari as "special assistants to Secretary of State Dean Rusk," formally received Imari's note requesting the opening of negotiations between the United States and New Africa. The note's demands were simple but rather sizable: New Africa's officials wanted $200,000,000,000 in "damages" and they also want the U.S.A. to give up five Southern states—Louisiana, Mississippi, Alabama, Georgia, and South Carolina. McDermott and Skippon took the note politely and said they would start it through the proper diplomatic channels. Two minutes after the simple ceremony in the lobby began, Imari was back in his cab and on his way to Michigan, which is his home.

All was not exactly as it appeared. Only loosely speaking were McDermott and Skippon "special assistants" to Secretary Rusk. More accurately, they are plainclothes State Department cops—security officers—who sometimes carry pistols and who handle demonstrations, protests, and body traffic. The State Department had understood that the Republic of New Africa was sending a large group; the diplomats, envisioning a possibly riotous demonstration, alerted District of Columbia police and the Federal Bureau of Investigation, and dispatched McDermott and Skippon to grapple with the black emissaries. "You can imagine our surprise when the 'large group' turned out to be one man," says Skippon, who recalls the episode with polite contempt. He can't remember what happened to the petition. "It was turned over to the appropriate-country desk. I don't recall specifically; the bureau of African affairs, I believe, because they call themselves 'New Africa.' What they did with it, I don't recall. Well, I mean, how do you deal with a nonentity?" he asked, laughing.

But Imari (who is better known as Richard B. Henry at the Detroit Arsenal, where he works as a technical writer for the U.S. Army Tank Auto Command) and other cabinet members in the government of New Africa are not laughing, and they think Dean Rusk won't think it so funny either when his native state, Georgia, is part of their black nation.

The President of New Africa is Robert F. Williams, a former North Carolinian who fled this country one jump ahead of the sheriff (Williams says the charges were trumped up, and there are some grounds for thinking so), and he now commutes between Peking and friendly nations in Africa while awaiting his new kingdom to be set up by the faithful back home. But the real power behind the movement is Imari's brother, Milton R. Henry, a Michigan attorney who for six years served on Detroit's city council and who ran for United States Congress in 1964, losing to another Negro, John Conyers; Henry says the election was rigged. Milton Henry has taken the name Gaidi, which he says is Swahili for "guerrilla," although he doesn't mind if it is confused with "gorilla" because he admires King Kong.

First Vice-President in the illusive Republic, Henry is also chairman of the Malcomites, a society whose membership is secret but whose purpose is not. It seeks to establish the Republic of New Africa in these steps: (1) Arm the black communities of the North and West, and if whitey tries anything rough, blast hell out of him. Henry has two well-kept AR–15's—lightweight, semiautomatic, 20-cartridge rifles—in his home and frequently conducts target practice for his family and his friends. Plenty of other Malcomites, he says, are doing the same. (2) Ship about a million well-armed blacks into Mississippi, take over all of the sheriff's jobs through the ballot box, seize the government, and then move on to Alabama and repeat the process; the next three Southern states would be seized in no special order, but it would be done in the same way, by shipping in armed blacks who would first try to grab

the governments by voting and, if that didn't work, by guerrilla warfare.

Inside the loosely knit community of 23,000,000 Negroes in this country, the recently revived proposal for the creation of a separate black nation from a portion of the United States has probably more support than whites would like to think.

The nation was officially alerted in 1967 to how restless the natives of Harlem and Samtown and Bootville really are when the Conference of Black Power met in Newark, New Jersey, and passed with tumultuous cheers a resolution calling for "a national dialogue on the desirability of partitioning the U.S. into two separate and independent nations," one black, one white. Most newspapers reacted with either shock or outrage, especially when the Black Power conferees illustrated what they had in mind by physically ejecting white newsmen in a rather rough style.

In the South, of course, where black militancy moves much more slowly, one will find few Negroes who are even aware of the proposal; but in the black neighborhoods in Northern and West Coast cities, the dream is dreamed quite regularly; and among the black intelligentsia, it is considered a legitimate topic for cocktail-party debates; as often as not the argument turns not around the desirability of separation but about the means to achieve it and the geographic area to be demanded of whitey.

Robert Hutchins, director of the Center for the Study of Democratic Institutions in Santa Barbara, says ghettologists estimate that about thirty percent of the black slum-dwellers are advocates of separatism, at least in the Los Angeles area; inasmuch as fifty-seven percent of Los Angeles' blacks live at slum level, this means only about one-sixth of the Negro total, if these experts know what they're talking about, would like to leave this country and set up one of their own. But even one-sixth, if applicable to slums everywhere, comes to a million or so Negroes eager to make the break and who are—according to the timetable of New Africa's politicians-in-exile—ready right now to get things started with guns. A Columbia Broadcasting System poll last year found only six percent of the blacks ready to carve out a portion of this country or go abroad; but even that amount comes to 1,380,000, and the CBS poll was pretty middle-class. Henry called it "racial propaganda."

When the separatists quarrel, it is only over such things as how much of the U.S.A. they should take with them. Whereas the New Africans would leave out Florida as militarily indefensible, Robert S. Browne, an assistant professor of economics at Fairleigh Dickinson University whose article, "The Case for Black Separatism," is now required reading in many black campus study cells, thinks the Henry group is stingy to stop with five states; he wants to take North Carolina as well and considers it utterly "ridiculous to talk about leaving Florida isolated down there." That makes seven states. Some leaders of C.O.R.E. think a better number is thirteen—a kind of patriotic salute to the original American colonies.

It would be only natural if the proposal for seizing land were directed toward the South from a feeling of vengeance, but separatist leaders claim that their desire for Dixie is directed by logic. "Not so much because the blacks are there in large numbers, although that is part of the reason," says Browne, "but because their roots are there even if they are not physically there any longer. Most of the blacks of the North were either born in the South, or their parents were. Also, we would want a coastline, and this would put us in the closest proximity to Africa and the West Indies."

Although the new nation would expect the United States to set it up in business by paying $400,000,000,000 (since filing the letter with Rusk, the money demand has been doubled) in reparations for the black man's three hundred years in slavery and by paying off the industries and white landholders whose possessions would be seized by the New Africans, they would also try to float large loans with other nations. On this the separatists also disagree; Henry wants to borrow from Red China, but Browne prefers drawing working capital from Sweden on the grounds that "the whole thing is so shocking to most people that there is no reason to inflame them further by talking about aid from Communist China." Browne is such an impressive smoothie in his advocacy that Hutchins' philosophers in Santa Barbara had him out for three days of serious discussion. Henry's invitations come, more often, from the rougher militants who like to hear him rage against "the coercivè rapes which our sisters suffer routinely at the hands of white swine." Actually Henry is a very sophisticated fellow, widely traveled (Africa five times), a graduate of Yale Law School, and with plenty of perspective on his own life, which began in Philadelphia as one of a middle-class family of eleven, all of whom, he recalls without embarrassment, "wanted to be good Americans. My mother used to put out flags on the Fourth of July." But now his business is roasting the white pig, basted with dreams of a kingdom stretching from the expropriated lands of Judge Leander Perez on the West to Mendel Rivers' military bases on the East, where a black man's life would be legally polygamous and tuned to what he calls "the beautiful on-going drums of New Africa."

How would it be possible to effect the transfer of power, money and land from the United States to the Republic of New Africa? In the following interview, Henry attempts to explain it:

Q: Do you consider your government already in existence?

A: Certainly. We are the government for the non-self-governing blacks held captive within the United States. We meet once a week in every consulate, and we have consulates in most of the larger cities right now. New York, Baltimore, Pittsburgh, Philadelphia, Washington, Chicago, Cleveland—you name it. We're thin in the West, but we have strong consulates in Los Angeles and San Francisco. Soon we will be organizing a Congress.

Q: Are these just paper consulates?

A: They are real consulates with a consul and a vice-consul and at least two secretaries. We *should* be issuing passports but if we did the U.S. government would probably use that as an excuse to crack down on us.

Q: How do you propose shifting your government-in-exile into the Deep South and setting up a government-in-fact?

A: We have already begun the shift. We have bought a hundred acres in Mississippi. That isn't much land but it is sufficient for a base headquarters. Like the Jews moving into Israel we will start to organize along the lines of cooperative and collective farms. You have to be able to feed your people. But the collective farm does more than just provide food. It's a center where people can get together, can politic themselves and can protect themselves.

Q: How many blacks will you ship into Mississippi to take control?

A: It won't have to be many. With a small movement of people we can do it. There are less than three million people in Mississippi and the blacks are already more than forty percent; in some counties they are fifty to seventy-five percent. Having a majority isn't meaningful until the day comes when we have enough people standing at the polls with guns to protect our vote.

Q: Does that mean you intend to seize the ballot machinery by democratic methods or by force?

A: Nothing is really peaceful. We may have to use arms. We will take over Mississippi county by county. To do that, we must have the power to get our votes counted. This embraces two needs: the power to ward off economic pressure and the power to ward off physical pressure. The reason we are setting up a Black Legion is so we will get our votes counted. If you bring in enough voters to take over a county, that gives you a sheriff. If you are wise in selecting your county—particularly in the Mississippi delta—you will have a large number of blacks to build with. Then we will have a legitimate military force, legitimate under U.S. law, made up of people who can be deputized and armed. The influence we will then exercise over the whole area of Mississippi will immediately be disproportionate to the numbers under our command. If we had only four sheriffs down there, with all that can be done with deputizing, we could change the state of Mississippi. Why did the Jews go into the Palestinian area and buy land? Because it gave them a base from which they could legitimately say, "We have land and we want to change the sovereignty." That's the way we are operating already.

Q: Where are you getting your money to buy the land? And where will you get your money to ship in blacks from the North?

A: Each black citizen is asked to buy one-hundred-dollar Malcolm X land certificates. It's something he can cherish and show to his children to prove he helped set up the black nation. The average black man can afford a hundred dollars. He can afford money for everything else under the sun—he doesn't have any objection to buying the most expensive automobiles and everything else, and they wear out in three years. He sure can afford a hundred dollars to put down on his land.

Q: Will you feel you can take over the five states when you have five black governors?

A: We may not have to wait until we control these governors' offices before we make our demands as a new nation. The real question is not whether we control the governors but whether we control the land, and we can do that by controlling the sheriffs. That's the important thing: having physical control of the land. In terms of real control of the land and real confrontation—there will be other things going on in this country. It could be burned to the ground while U.S. officials are playing games with us. They could be engaged in very costly guerrilla activities. The problems in the North aren't going to be settled. We say the U.S. government will talk to us, and they will talk seriously to us about separation prior to the time we control the governors.

Q: If the government sees what you are up to and moves in to stop you, do you think you could whip the U.S. Army?

A: With the aid of nuclear weapons from our allies, such as China, sure we could. China could never help us until we could show that we were capable of a separate, independent existence. But we could show that by controlling a land mass. We could show it by the actual fact that we were there and had a majority of the people and were not subject to U.S. jurisdiction. Then China would back us with missiles. But we don't want to fight. It's better to have nice relations. We would only have to neutralize the U.S. Army, not fight it. We don't want another Vietnam, flames and napalm. Neutralizing the U.S. is the only way Castro could survive, and that's the way we would do it, too.

Q: At this point China is only a tentative hope for you to rely on. What do you have in the way of retaliatory firepower to fall back on until you can be sure of China's help?

A: We've got second-strike power right now in our guerrillas within the metropolitan areas—black men, armed. Say we started taking over Mississippi—which we are ca-

pable of doing right now—and the United States started to interfere. Well, our guerrillas all over the contry would strike. Our second-strike capability would be to prevent the United States Armed Forces from working us over, not the local forces. The local forces couldn't compete with our forces. We can handle them. The second-strike capability already exists, and all the United States has to do to find out is to make the wrong move. The guerrillas will be operative until we take possession of the physical land. Ultimately, when we have the land, we will get the missiles from around the world.

Q: What makes you think the U.S. will let you have the land when they wouldn't let the Confederacy secede?

A: It's a different situation. The South could be defeated separately, but if the whites defeat our objectives, the country will be ruined in the process. There are a sizable number of people who want self-determination, separation, land. They want that more than life itself. They can't shoot all of us. They can't shoot enough to discourage others. You see, the Revolutionary War would not have worked if that could have happened. And the war in Vietnam *isn't* doing so good. They aren't going to win in Vietnam and they can't win in the United States. We can fight from within. How are they going to get us out of here? Where would they make the guns to shoot us—in the United States? Do you think we are just going to let them keep on making guns? How will they transport their guns and soldiers—on railroad trains? The United States can be destroyed.

Q: Do you mean you would do all this by sabotage and guerrilla warfare?

A: Obviously. We're within the country. This country will either talk to the separatists today or will talk to them later. At which time perhaps this country will have lost a great deal, in terms of lives and property.

Q: As for the blacks who stay behind in the United States after you separate, how do you foresee defending them from revenge?

A: I don't think that is possible, and this is one reason why most of them will come with us. It would be like Germany. Some would want to stay behind, but you get rid of ambivalence by oppression. There were some Zionists who even kind of welcomed the oppression because it helped unify the people toward the ideal of creating a nation. We've always said the white man is making more converts than we ever could. Every day the police walk through the black ghettos they make more converts than we can.

Q: When you have cut away the South as your own nation, what would happen to the industries that are already there, such as the steel companies around Birmingham?

A: We keep them. We take them and we keep them. The United tSates would pay reparations to those companies as part of our conditions for separation. The U.S. could give the companies tax credits for their losses. In those terms it wouldn't be very costly to the U.S. And of course our government would operate the plants. We don't have any hang-ups on socialism, which we call "ujaama," which is broader than socialism. It's an African conception of the organization of society. It means we have total responsibility for one another.

Q: Where will you get your technicians during the transition period?

A: If we need outside technicians, they'll be given resident visas. White people who feel they can live in the kind of society we're talking about can stay. But they'll have to be cognizant of the fact that we'll have a new kind of law. The white industrialists and technicians have too much power in Africa. I'm impressed every time I go back there—they have too —— much power in Africa. One of the things Castro did that helped his survival was to cut off the head of the industrial monster in the midst of his government. This is one of the problems in Algeria—they can't get out from under this economic thing. Those industrial guys are *powerful*.

Q: Since many of the whites who stayed on would hate your guts, wouldn't you be afraid of sabotage and guerrilla reprisals from them?

A (laughing): That kind of white would want to move. They'd say, "Those goddamned niggers." I know there'd be a lot of people calling the President a bastard. Some of us who are helping getting the thing underway may never live to see the actual fruition of the government. But the government will go on.

Q: You say that your black followers are arming themselves for the day of separation. But where is this evident? If the blacks were really arming in large numbers, seriously, wouldn't the destruction and bloodshed in the riots of recent years have been far greater than it was?

A: The blacks have been arming along defense lines so far. We are now going through the period of holding action. But most astute people see that a different pattern is developing. Everywhere you can see a frustration, the willingness on the part of black people to say the hell with it. Some black people right now are so keyed up they just want to shoot it out. They want it all right now—right now. They don't want to wait. So far there has been sparing use of the gun and the Molotov cocktail. But we are urging that every black home have a gun for self-defense against the possibility of a Treblinka.

Q: Do you have a gun?

A: Just a minute—I'll show you. (He came back with two rifles.) These are AR–15's. Like the weapon used in Vietnam except not fully automatic. It's semi. Holds a clip with twenty cartridges in it. It's beautiful on the range. Lightweight, any girl can handle it. My wife shoots. These are the kind of weapons we suggest women have so that if there be a Treblinka every block will be able to defend itself. We train regularly. This is important because most of us like myself—I was in the Air Force—the only thing I had really seen was that Army .45 and the little button on the stick. I didn't know what the machine guns looked like and it didn't worry me. I just knew that if you pressed the button, the thing went off. I bought these rifles in the last couple of years, when I realized the seriousness of the thing. It's just incredible to think that you have to prepare to defend your very existence against the possibility of annihilation.

Q: You actually think the white man might try to annihilate you?

A: Oh sure. All the whites around us are better armed than we are.

Q: What would trigger a serious white attack on the blacks in this city?

A: Anything could do it. We have people who threaten us openly. The same is true in city after city. One right-wing nut went on television and said he was going to kill me. Now suppose one of those racists made the mistake and really did that—you can't tell what might happen. There are plenty of whites, and some police are among them, who are trying to goad folks into doing something with the hope that it will help generate the garrison state. But if they trigger that, they will also help the separatist movement. Just imagine, at my age—I'm forty-nine—I've never known a minute's peace in this country. I've struggled like hell all my life just to live with people.

Q: Well, why don't you get completely away from it all by moving to Africa? You like Africa, don't you?

A: I love it. Every time I go over there I feel a peace, which is an important thing for me. For myself, I would personally like to go to Africa and say to hell with it.

Q: Your forebears came from what section of Africa?

A: Probably West Africa. That region around Ghana, the Cameroons, in that area. But we don't know where we came from—this is one of the tragedies of our past. You have a name which is in fact your name, and that is quite different from my having a name like Henry. Nobody in Africa is named Henry. Such a hell of a thing for me to be named Milton Henry. That's an *Irish* name, for god's sake. I have no ——— business—it's a ——— of a name. It means that somebody, way back, owned my parents or ——— my parents. It's a mark of shame. It would be so nice to know that maybe I did have people who were among the Ashanti in Ghana.

Q: Then why don't you load up your people and go back to your fatherland instead of heading South?

A: It's a good idea, but logistically it is very unsound because of the difficulties of moving people, furniture, mastering the culture. Anyway, could you tell me what nation we might be able to move back to? It's easier to put furniture on a truck than to get it across that ocean.

Q: What would you have in the South but a black extension of the United States?

A: My goodness. Our social life would be different. We would try to reinstitute the dance as it is in Africa. So many things. The whole business of polygamy.

Q: You say you would allow your men to have more than one wife?

A: Absolutely. It's an African custom. Here in America we can't do that, so this is one reason for not staying in the United States.

Q: Would you have party politics?

A: I don't think so. Let me explain something. In America, which is an older country, you can afford to have changes of the leadership. But it makes no difference whether you have Nixon or Humphrey.

Q: You mean you won't be voting at first?

A: No, we can't have that kind of vote at first. The persons responsible for bringing that government into existence are entitled to have some say about who is going to run that government. As your government then becomes really secure, you put into effect an increasing degree of democracy. You get your parties institutionalized like in America and then it doesn't make any difference whom you elect.

Q: How long would you foresee that first period lasting?

A: Not too long—not more than thirty or forty years. Look at Russia—they started in 1918 and they're now getting to the point where they might consider a form of elective process. We cannot permit any elective process that would overthrow the government, at the start. This voting business is something that secure governments can afford.

Q: What would you do about immigration?

A: Of course black people would certainly be allowed to come in. White people we would subject to very rigorous examination to determine whether they were really interested in a synthetic society and had goodwill toward our nation. How to test them? A lot of ways—see what they had done, what their views are. If they couldn't pass simple tests we wouldn't want to be bothered. We don't want saboteurs and provocateurs in our country. If whites didn't have any overt things against them, they would be perfectly welcome. They would not come in as citizens but on trial; if they do things to show their interest they'd be entitled to join with us. If they didn't, then they'd have to go. They'd be given resident visas, permits to come in and live for a restrictive purpose. There would be no quota—just according to our needs, absolutely according to the needs of the nation.

Q: What sort of governmental structure do you see? A Congress?

A: Oh, yes. There are a lot of good things contained in the basic idea of this government. Ghana is constitutional—many of the ideas are quite similar to those here. This country had good ideas, a good thing going if they could make it work. It works for whites. The structure, the idea of the balances—very good. It has its hang-ups.

Q: There would be poor people in your society, wouldn't there?

A: Yes. But poor people in my society with hope. That's a lot of difference. Everybody in my society will have hope—they really will—that one day they may be President. As one little boy said at one of the council meetings, "You know, for the first time I really have the understanding that I might be President." It's a hell of a thing to sit down in a legislative body as I did for six years on the city commission and see everybody under the sun being made mayor but you. And this is by the vote of your brother councilmen.

Q: You going to have compulsory military service?

A: Absolutely. Every man should be willing to defend the nation, every woman.

Q: Would there be unions in your nation?

A: I would be inclined to discourage them, particularly if they were along the lines of American organized labor. American organized labor is part of the institutional side of capitalism, which is undesirable. When you talk about the movement toward integration and inclusion into all the instrumentalities of government and the institutions, then you have to look further than whether we get a good job in terms of three dollars an hour. Can we get the fifteen-dollar-an-hour job—can we get the job where we really plan, and that sort of thing? The union doesn't even recommend black candidates.

Q: If you could get the fifteen-dollar job, would you like to stay in this country?

A: If this country could make the kind of modifications I'm talking about, yes. That'd be fine. I wouldn't mind staying. If they had a truly synthetic society—if I could be, as a black man, representative to an African country, and be a *black man*, not a blue-eyed black; if I had the right to rise up and modify the policies of these companies, so that General Motors would not invest in South African oppression—if I could do all that, if the political structure of this whole country were changed so that I could participate in it, then we'd have the kind of government I'm talking about having down there. But this country won't make those changes—not educationally; it persists in maintaining its myths. There's so much that has to be changed, I don't think the country is willing to do it. It'd be easier to give me five states.

Q: How is it a black man who feels as you can be friendly to a white man?

A (laughing): It's not a personal thing. It's an institutional thing. We've got an institutionalized oppression that we've got to break. We have to break those bonds. So then we can live as we would be inclined to live. With decency toward one another. We don't have any inclination to be nasty to you. It's the institutions that keep us from living.

Q: But I suppose there will be a period of transition where people won't be able to separate black faces from black institutions and white faces from white institutions?

A: That's one of the problems of our mythology. We have a mythology that is developed, that is important to the development of any movement, of course. And we move by the mythology. Eric Hoffer said you cannot build a movement without a devil, but you can build a movement without angels. And you see the essential is to build a movement. In the mythology of any movement—we're analyzing the situation—you cannot build without a devil. And the very fact you begin to talk in devil terms means that some may not comprehend the humanity of black people; some blacks will not be able to comprehend any humanity in white people. And that's unfortunate. Our problem is to build the movement. We have to paint the picture, to create the mythology, to give life to it. We have to enlarge it. There's no terms you can think up that would be any better than to say the white man is a devil. That term embraces the conception of the destruction of life.

Q: How would you go about moving out the whites who are unacceptable to you, or who don't want to stay because they don't relish a black government?

A: That's their problem. They will have forty-five states they can move to. The United States has great capacity to move men and equipment. It has moved half-a-million men into Vietnam. It will be much easier to move several million out of the South. The U.S. is the greatest country in the world for moving things.

Q: Wouldn't you feel bad about moving out a white Georgian, say, who liked Georgia?

A: I wouldn't have any worries about him. Absolutely not. He's enjoyed Georgia far too long. Besides he's had the benefit of Georgia goods off my back. Let him go up North. If he loves Georgia that much, let him live under our dominion. We're not going to intimidate him, beat him, keep him from going to the polls. Or anything like that. But if he doesn't like us, because of racial views, if he can't stand living under black people, I don't have any sympathy for him. I don't have any more sympathy for him than the government of Kenya has in encouraging those Indians to go over to London. The hell with it.

Q: Let's get down to day-to-day things. What about the Georgian who just couldn't get around the lifetime habit of using the word "nigger"?

A: That's all right—we'd educate him. We've got a good possibility with those television sets. The cultural realigning of a whole people. Everybody in our government would be subjected to a kind of propaganda. We would gear our literature, our theatre—that's why our artists would be able to make a new life in terms of developing literature and plays and all of that.

Q: This hypothetical Georgian—maybe he didn't watch TV and maybe he still went around saying nigger and he called you that, and worse things. What would happen?

A: He would be subject to governmental pressure. We're going to have a criminal code which would deal with socially indefensible acts.

Q: What if I owned a newspaper down there and editorialized against those black monsters?

A: You would be in trouble. That kind of freedom of the press cannot be justified. The Russians are right in that area. You have to think about what they're saying. When they start censuring people for putting out counterrevolutionary literature, they're right in that. You can't have people directing the minds of the young in this fashion.

Q: Some white liberals are now proposing to let you set up independent cities in the black neighborhoods that exist in our urban centers. Would you settle for that much independence?

A: A nation within a nation, helped by the major nation. Once again, that's no good. We could never have any control in that situation. The whites would have us surrounded. We would be at their mercy. They would control the food supply, the transportation, the utilities. We would still be subject to the white man.

Q: Would you accept it as an intermediate step?

A: No. We could get bogged down in that for another hundred years and eventually find we would have to get out anyway. So the thing to do is do it now. That is the only answer: get out.

[From Esquire, January 1969]

MEET THE PRESIDENT AND THE CABINET

Robert F. Williams, President of the Republic of New Africa, has not lived in the United States for more than nine years. In 1959, as leader of the N.A.A.C.P. in Monroe, North Carolina, he became convinced that Negroes in the South would be murdered before they were allowed equal rights or voting privileges, and he organized an armed self-defense group. Shortly afterward, a clash between freedom riders and white citizens occurred in Monroe. An elderly white couple was held at Williams' home until the authorities met his demands for medical treatment for the beaten freedom riders. Williams, warned of a lynching, escaped with his wife during the night-long battle between police, National Guardsmen and armed Negroes. They left the country when they learned they were among the group being sought by the F.B.I. on abduction charges. For the past nine years Williams has lived in Cuba and China. His statement, which follows, was issued from his present headquarters in Tanzania: "I envisage a Democratic socialist economy wherein the exploitation of man by man will be abolished. Racial oppression will also be abolished. The concept of the Republic of New Africa is not a segregationist concept, but rather one of self-determination for an oppressed people. It represents a rallying point for progressive and constructive Black Nationalism. Some doubting Thomases and white-folks-loving Uncle Toms are loud and shrill in proclaiming the idea as fanatical and utopian. This is definitely not the case, and I feel as certain now of the ultimate acceptance of the idea as I did when I advocated a policy of meeting violence with violence during the height of the era of nonviolence. America is at the crossroads. The black man is becoming consciously revolutionary. He has as much chance of succeeding as the American Revolutionaries in 1775. As people of conscience who are in sympathy with the oppressed peoples of the world, our self-respect and human dignity dictate that we separate from racist America. Our survival demands it and the concept of the Republic of New Africa is our point of rally."

Queen Mother Moore, Minister Without Portfolio: "At age seventy, after fifty years in the liberation struggle for my people, I am considered by many as the mother of the black revolution. I'm also the founder of the reparations movement. In my remaining years, my role will be educational and agitational: to keep before our youth the vision of Mother Africa and to forge stronger links with the continent, that like us, has been raped by the West."

Raymond E. Willis, Minister of Finance: "In essence, I'm a comptroller, with control over finances. Eventually, we'll have to mint coin and have our own currency. My Ministry will also receive and distribute reparations. The tentative figure we have decided upon is that every person is entitled to $10,000 for past wrongs and damages. Of this $4,000 will go to the individual and the other $6,000 will go to the Republic of New Africa."

Baba Oseijeman Adefunmi, Minister of Culture and Education: "My prime commission is to see that false and alien ideas and institutions are discarded. For fifteen years, a process of re-Africanization has been going on. Manifestations of this have been the taking of African names and learning African languages. We must become a completely separate nation mentally, spiritually, politically, even in ways of marriage and burials."

Brother Imari, Minister of Information: "I have two main objectives: (1) at present, engineering consent among all black people living in the U.S. We aim to take consent from the U.S. and give it to the R.N.A.; and (2) creation of an atmosphere of support and toleration of the Republic among the

white as well as the black population of the U.S. and the world. Our strategic purpose is to neutralize the negative attitudes of the U.S."

Betty Shabazz, Second Vice-President: "Included in my jurisdiction is the Office of Citizenship, which will accept applications for R.N.A. citizenship and will administer the oath of allegiance: 'For the fruition of black power, for the triumph of black nationhood, I pledge to the Republic of New Africa and to the building of a better people and a better world, my total devotion, my total resources, and the total power of my mortal life.'"

John Franklin, Minister of Justice: "Before appropriate international tribunals, we shall submit these propositions: The U.S. is exercising an illegal trusteeship over us; is imposing systematic tyranny; has failed to incorporate us into the U.S. as citizens; and reparations are due us as a result of past and continuing oppressions. The responsibilities of my portfolio include formulation of a legal system and prosecution of spies."

Milton R. Henry, First Vice-President: "In the United States, I'm the executive officer of the government, subject to the direction of our exiled president. My job is to give life to the government and to concretize it, while carrying out the orders of the legislature and the Cabinet. When we gain sovereignty, we'll be better off than the so-called underdeveloped nations. Our electrical system, roads, factories, harbors are all in."

Obaboa Alowo, Treasurer: "My concern is bookkeeping: debits and credits. For example, in a single year, 1850, fifty million bales of cotton were produced by slave labor. At a price of $5 per bale, and six percent annual compound interest from 1850 to 1960, it adds up to an indebtedness of $12,800,000,000 owed the Republic. Slave labor also built, then rebuilt the White House in 1837. The descendants of each slave are entitled to $882,000."

Wilbur Grattan Sr., Deputy Minister of State and Foreign Affairs: "Our colonized nation existed before the establishment of our government, and those five states are ours. At present, this territory is subjugated. Even before we gain sovereignty over our occupied nation, my Ministry serves as guardian over all persons who sympathize with the Republic. Our first task is to negotiate treaties of understanding and establish diplomatic relations."

Mwesi Chui, Deputy Minister of Defense: "Our function is to protect ministers, citizens and property. Our Ministry has approval for expansion of the Black Legion, and establishment of an officer's candidate school. We will raise an army, a police force and, if needed, an air force and navy. If necessary, we'll train abroad, then return with aircraft and missiles. We're preparing, defensively, for the war that will surely take place."

[From Esquire, January 1969]

WHITEY'S REACTION

(By Robert Sherrill)

Actually if one wipes from his mind the emotionalisms of blacks-and-whites together and just takes the proposal of a separate black state on the basis of logic, it isn't ridiculous at all. Since 1950 Indians have received $246,760,764.61 in reparations from the federal government in 261 claims and the government still has 343 claims to process, which means that the 600,000 heirs of the semitransient redskins who lived on our portion of the continent as the U.S. expanded will probably wind up with a half a billion dollars for losing "their" land. The Negroes not only lost their African lands but were forced to work for nothing for a couple of centuries. So far 50,000,000 acres have been turned over for the use of our 600,000 Indians; if the 23,000,000 Negroes received a comparable handout, they would get *sixty-three* states the size of Mississippi.

As for the business of untangling their citizenship, the Henry group is asking that the federal government be only as cavalier in freeing them of citizenship as it has been in imposing citizenship. Henry complains, "The Fourteenth Amendment was designed to unilaterally impose citizenship upon the black man. He was not asked whether he wished to become a citizen, or whether he wished to be sent back to Africa, or whether he wished some portion of land here on this continent where he could set up his own government."

Logistically, the Henry demands hold up just as well. An official in the State Department's African affairs division who has watched a dozen new nations come into being (he would like to keep his job a little longer so asks anonymity) checked over the pros and cons of New Africa's chances of survival, if it ever got started, and conceded: "If you left aside the internal political obstacles of cutting themselves off, certainly the South could be made into a very workable nation. Because you're starting with everything. You've got what we call the infrastructure—you've got the roads, the factories, the stores—they're *there* (unlike Niger, for example, where they're not) and if nobody levels them, they are going to stay there. If you have a class of people who can't keep them up (as you have in many African nations) the stuff is going to deteriorate. Your roads will have potholes. But we have educated Negroes in this country, so there's no reason for things to go to hell."

Whitey's more normal responses to the separatists range from Mississippi's ex-Governor Ross Barnett ("You know what any good Southerner thinks about *that* scheme") to the rigidly Constitutional brotherhood of Senate Majority Leader Mike Mansfield ("Oh, no, no, no. This is one nation, united, indivisible—and that's *it*").

Masters of framing negative responses in friendly ways, Southern politicians show all kinds of ingenuity, but none more so than Congressman James Buchanan of Birmingham, who says he would be lonely if he had to live without Negroes: "Terrible. Certainly not. Not one of the fifty states would I give. Why, growing up in the Deep South, I have been in every kind of situation since I was born—I've worked with and under Negroes on the farm, I've worked with and under the command of one in the Navy. Every college I attended was integrated. Every day I have contact with colored people. Why, I wouldn't know how to act in anything but a biracial situation."

South Carolina Governor Robert McNair prefers to dismiss it all as the complaining of a small group of soreheads ("There's always a small percentage of people who don't like things as they are") who should be satisfied with job training and welfare instead of demanding exorbitant reparations.

The standard, shocked response will open with a demurrer on the grounds that separation would "admit defeat" or would be a violation of the American dream, and closes on a more candid note, implying that Negroes are too dumb or too poor to run their own country and, anyway, it's all a warmed-over Communist plot. Governor Lester Maddox, who chased Negroes from his Atlanta restaurant with an ax handle and a pistol but doesn't want them to leave the country, expresses this position perfectly: "Two separate countries would multiply our troubles and solve none of them for any race. It would be destructive of the American civilization and the American form of government, so we don't want that.

"Now, listen. We do know that beginning in the year 1912, Communists themselves devised this plan. That's right: 1912. That was when they had their first platform for the United States. But during World War I these documents were captured. It plainly shows the part of the Southern states that would be taken over for a Soviet America for the Negro citizens."

In this reaction he is joined by Congressman Edwin Willis of Louisiana, chairman of the House Un-American Activities Committee, who has his dates, if not his other details, better in hand: "Oh sure, we know what they're trying. We've been investigating these riots and things, you know, and we know where this stuff is coming from. It's a Communist idea. They been pushing it forty years. The Communists thought up this idea in 1928 and it keeps popping up again and again." H.U.A.C.'s chief investigator, Donald Appell, supports Willis by vague allusion: "I got to know Milton in '52 when he was a lawyer representing a man accused of being a Communist Party member." But whereas Willis dismisses the separate nation as "cockeyed," Appell is more cautious: "I think we make a great mistake if we play down movements like this. They attract like minds. The Klan has a membership of 15,000 to 18,000, but only a few hundred Klansmen are needed to instill so much fear into a community that it won't police itself. These militant blacks could have the same effect."

The Communist Party, U.S.A. proposal of 1928 that causes so much confusion was not a separate black republic but "self-determination for the Black Belt," meaning in this instance a ragged strip of some 145 counties from Virginia to Texas in which Negroes constituted the majority of the population and wanted a majority of the courthouse offices.

One reason the Communist Party proposal was distorted, and why the idea is judged as nothing more than an alien Communist plot by some people, is that they are unfamiliar with some of the oldest and strongest of the underground Negro yearnings, says Dr. Herbert Aptheker, national director of the American Institute for Marxist Studies. "When Oklahoma was organized out of Indian territory there was a big discussion in Negro newspapers of that day pushing the idea of setting aside the state as a home for the black population. If white people don't know that, and if they don't know that there are about 25 towns and cities in Oklahoma that are all black today, then the whole idea just naturally hits them as some sort of a bolt out of the blue." (Apthecker is one who thinks it an impractical proposal.)

Paul ("Stand Tall with Paul") Johnson, Governor of Mississippi during its most hectic modern period, 1964–67, says that if *he* were still governor, what with his black spies and state police army, the threatened invasion could be coped with, although he's not so sure that Governor John Bell Williams is ready.

Since it is possible to import enough Negroes to take over the state through legal elections, I asked Johnson how this struck him.

"Well, of course, I think it would be a foolhardy undertaking. Because in the first place, it looks like they really don't need to ship any nigras because the white people don't go to the polls themselves anyway."

Asked if he thought Mississippi is equipped to handle the sort of guerrilla warfare the New Republic of Africa is planning, Johnson replied:

"Frankly, I don't know. When I was in office we were. We had a fine state police force that was trained for this sort of thing. We used a great many colored people in our investigative work. We would have known about it when this crowd came in to buy their 100-acre base. Like when our colored investigators told us about those white girls from other parts of the country who came down here and slept in these Freedom Houses with colored boys and went back home with children."

In the event Mississippi were taken over by New Africa he would prefer to stay where he is.

"I would stay," he said. "I surely would. For one thing, I own a great deal of property

here. It's not hard to make a real fine living for your family and loved ones. To put it bluntly, it would depend on whether I could stomach it."

Johnson's reaction would be considered promising by the separatists; at least he doesn't scoff. Roy Harris of Augusta, Georgia, whose presidency of the local Citizens Council of America places him in a high pantheon of segregationists, is another who treats the proposal seriously. I told Harris that Negroes want Georgia as part of their kingdom.

"Uh huh. Uh uh," he said. "Well, we're in favor of giving them New York and New Jersey."

Would he go along with the proposal if they would settle for New York and New Jersey?

"Truth of the matter is, the idea is sound. But how you going to accomplish it after you've got this far along and have this many roots planted? To get people to up and walk off and leave a territory is going to be difficult to do. Theoretically, it's a good idea, though. Course, you know it was old Tom Jefferson, I believe—I don't know if it was original with him but he advocated it for a long time—who wanted to pick some of these African countries and send them over there. Lincoln wanted to, too. And you know they picked this little old what's-its-name, that little republic down there, what's-its-name—Liberia—and sent a few down there. The ancestors of the President of Liberia came from Augusta, Georgia. I don't say that with pride but as a matter of fact. Separate Negro towns might be another solution. I think they ought to have their own council, own mayor, own police force. I don't think there's any objection to it. I think it's got to come."

Would Harris be in favor of turning over to them such black neighborhoods as Harlem?

"Yeah, they've taken it anyway. Give it to them. That's smarter than taking three of our Southern states. You couldn't force the Negroes to move in here. If you undertook a resettlement plan in the South, you'd still have them in Harlem, Washington, Philadelphia and Chicago just like you've got them now.

"Now, you take Atlanta. They never had more than 200,000 Negroes in Atlanta in all its history. And if you count the Puerto Ricans as colored, you get a million and a half and more in New York City alone. You've got right at a million in Chicago and more than half a million in Philadelphia. There is more Negro wealth in Atlanta than there is in New York, Chicago, and Philadelphia put together. And the reason is that when old Sherman burned Atlanta, they had to start all over. And they built a white section and a Negro section. All of them—black and white—being broke, they worked on this together . . . this is 'ours' and this is 'yours.'

"They could work out the same arrangement today if the government helped the Negroes buy Harlem just like the government helps people buy farms.

"I don't know if it would be desirable for *everything* to be separate. You got some niggers in New York that like to go to grand opera. Not many. Now, that's an extreme example, but what I'm fixing to say is you probably can't have separate facilities of every kind. You don't want to have separate opera houses. There's somethings you've got to do together. Let those few Negroes who like grand opera come in and sit with you on opera night. That's right. . . . Now, we can't say the Negroes are going to take Ford and the white folks G.M.C., or vice versa. Now, you can't go to that extreme."

There is, in fact, usually little difference in the response of liberals and reactionaries. The position of Majority Leader Mansfield is no different in one regard from that held by Marvin Griffin, who served in 1968 as Wallace's temporary vice-presidential running mate. "Now, I'll tell you," says Griffin, "1861 to 1865 my folks down here tried to stake out a piece of real estate of our own and we got hell beat out of us, and they changed our point of view somewhat. If white folks got so mad at the blacks they decided to give them a piece of real estate and tell them to go off by themselves, we'd be going backwards. Anyway, whose land are these Negroes going to take—mine or yours?"

"I'm afraid," I said, "they have their eye on your land."

"Yeah, well, I guess they do at that. The strange thing about that thinking is, we got some mighty good Negro farmers down here in our section who own their own land. They're good citizens and they're doing a good job, and particularly so since they can get some federal help on their programs.

"The Negro down here who is in farming or in business, he ain't getting any help from his Negro neighbors who ain't working. He gets all his help from his white neighbors and from the U.S.A. Most of it comes from his neighbors who are white. I don't think he would be willing to trade off what he's got now. He won't swap his birthright for a mess of potash."

"You mean pottage?" I asked.

"I mean potash. That wouldn't be soup, that would be *potash*. If they just insist on separating, though what's the matter with these emerging nations? I understand they are looking for citizens."

That bit about the blacks benefiting by living next to whites is fairly common argument aganist separatism, but it seldom is proffered this opposite way; whites benefit so much economically from the blacks that they can't afford to let them go. Of course, *this* has in fact been so over the last several centuries. James Martin, the most powerful Republican in Alabama (and thereby, next to George Wallace, perhaps the most powerful politician in the state) offers the same benevolent reason for vetoing the idea of separation "Negroes draw strength from the white community. Negroes do better when they are dispersed than they do when they are concentrated, economically and socially too, because when they are together they get frustrated from their own failures. I'm in the oil business and I just got through setting up a Negro in a service station. He is energetic and all that, but he needed our guidance. On his own, I'm doubtful that he could have done it." And if the blacks insist on trying to break free of this helpfulness. Martin has an answer: shoot them. "There would be another civil war. There are enough people in the South who would mobilize and fight against it. We'll form another Confederate army. I would bear arms. I'm not about to leave the South. You don't hear of Southerners moving north."

I asked if he would be willing to give them part of the inner cities.

"I don't believe in giving anybody land anywhere."

The most effective defender the separatists have found among whites so far is W. H. Ferry, a vice-president of the Fund for the Republic Inc., a well-known money-raiser for liberal causes, and a Fellow of the Center for the Study of Democratic Institutions in Santa Barbara, California. His writings on the theme that racial integration in this country is impossible have won for Ferry the supreme accolade from Professor Browne ("I think he must be part black") and the supreme outrage of most liberals, who look upon him as a traitor.

While he concedes that a separate nation "in the long run may prove to be the only way out," he is sticking with the idea of separate cities right now. He has proposed that boundaries be set up around the natural enclaves of black residents in urban centers, and that this be theirs: power to tax, power to police, power to educate, everything, in little colonies.

Ferry's forcefulness as an advocate rests to some degree on his Swiftian ability to lean over the abyss of grotesqueries without falling in, and doing it so gracefully that his followers are never quite sure when he is being sardonic and when he is not. Of his city colonies, he says: "Neither white city nor black colony will be permitted to erect Berlin walls, but frontier zones will be clearly marked. . . . There will be no bar to whites taking up residence in the colonies, where they will be subject to colonial rule. Thus black colonists will be free to whistle at white women; deny normal services to whites and overcharge them when services are provided; expect their police to treat all whites as suspicious persons and mistreat them accordingly; and deny whites access to clubs and rest rooms. All such matters will be arranged under a Reciprocal Indignities Understanding that will be attached to the original Statute of Colonization."

The only thing unusual about Ferry's plans for black-town independence is that it comes from a white liberal. Among urban Negro intellectuals the idea is old hat. At last fall's National Conference on Black Power in Philadelphia, the proposal winning overwhelming support among the four thousand delegates called for taking over the black towns of the country—right now—with the creation of a black urban army to defend their colonies.

The concept of these little black colonies within cities has won the unexpected support of two impressive social observers, one publicly and one privately. The public support came from George F. Kennan, former U.S. Ambassador to Russia who now collects his thoughts in the solemn confines of the Institute for Advanced Study at Princeton. Speaking to a Williamsburg, Virginia, audience made up of politicians and first families who loved it, Kennan came right out and said: "Is it realistic to suppose that the American Negro is going to find his dignity and his comfort of body and mind by the effort to participate and to compete as an individual in a political and social system he neither understands nor respects and for which he is ill-prepared?

"Will it not be necessary to permit him to have, as a number of his leaders are now demanding, a local political community of his own through which he can express himself collectively and in which he can gain both authority and responsibility?"

But this confessional of just another establishment hunky was not nearly so startling as something that happened in a private meeting in New York. After Ferry wrote his "Farewell to Integration," a meeting of the founders of the Santa Barbara Center was held in New York. The founders were distressed. The Center's membership is wealthy, liberal, mostly Jewish, with old and friendly ties to the standard Negro organizations such as the N.A.A.C.P. and the Urban League. They have been spending, and spending generously, to promote integration for years. And here was Ferry seemingly undercutting everything they had stood for. So they called a meeting—about a hundred showed up—and set up a debate between Ferry and Roger Wilkins, who, as Director of Community Relations Service for the Department of Justice, is in charge of its racial integration work. Wilkins is a Negro, of course; he is a nephew of Roy Wilkins, of the N.A.A.C.P. Ferry and Wilkins had never met, and, in fact, Wilkins was not familiar with Ferry's proposals. Ferry spoke first. When it came Wilkins' turn, he stepped up and began to sow devastation in the ranks. "If you came here expecting a debate," he said, "you're going to be sadly disappointed. All I can add to what he has just said is amen. American institutions just have not worked for poor black people. The schools don't work. The trade unions don't work. The police don't work. American institutions not only ill-serve black people, they hurt them.

"I think Mr. Ferry's notion, at least for the time being, of two kinds of interdependent

societies is right. You're not going to integrate Harlem. You're not going to integrate Watts. You're not going to integrate Twelfth Street. What we need is *not* integration," he said, "but a transfer of power. But I have severe doubts about whether we as a society have enough humanity left to succeed."

Even when pushed to its most generously illogical extremes, the Ferry colony plan is greeted by the Henry group as a very dangerous counter-proposal, however, because even if the blacks held the central city colonies, the surrounding whites would still control the transportation system, water supply, and food supply. The blacks would be occupying an isolated fortress, straight out of *Beau Geste*.

But in other aspects, Ferry knows just what the militant blacks are worrying about and why they are studying Southern road maps between target practice.

"I don't think either my plan or the separate-nation idea is looking to the immediate future. My own judgment is that we're going to have something that is recognizably a race war, a civil war, and we're going to have it within a year. As for whether or not apartheid comes out of it, that would depend on how many whites are killed. If just black people are killed, it won't count, but if a lot of whites are killed it's going to count like crazy. The next one I think is going to be a blinder. Please don't say Ferry predicts the next civil war will break out at eight a.m. on May 22. But I will say in 1969, and probably around May or June."

CENSUS REFORM NEEDED NOW

(Mr. BETTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BETTS. Mr. Speaker, plans for the 1970 decennial census are essentially final, according to the Census Bureau, and the 62 million forms needed to canvas every household in America will go to the printer shortly. The long questionnaire contains 67 subjects and some 120 questions, all mandatory with refusal to answer any one bringing a citizen face to face with criminal penalties of a $100 fine, 60 days in jail, or both. Census Bureau officials have ruled out any change in the form so Congress must assert its initiative to revise and reform these plans before April 1, 1970, which is Census Day U.S.A.

On June 19, 1967, I introduced a bill limiting the mandatory questions to subjects essential to making a count of the people and providing that all other subjects would remain on the same form but no criminal penalties would attach if a person refused to answer one or more questions. Interest in census reform exceeded my expectations to the point that over 100 of my colleagues cosponsored similar bills or gave public support to this effort. Thousands of citizens wrote to their Congressmen and editorials and news articles have circulated widely throughout the country. Editorial writers and citizens alike were nearly unanimous in urging:

First, the restoration of a right to privacy by abolishing the harassing penalties from sensitive and overly personal questions;

Second, a reduction in the size and scope of the census in favor of alternative sources of data and other methods of gathering such information; and

Third, greater efforts to prevent a vast undercount in 1970 which may result if the present exceedingly long and complex questionnaire is used.

Let me review each of these points.

Personal privacy is invaded when sensitive facts are extracted from an individual against his will. I believe privacy to be not simply the absence of information about people, rather it is the control persons have over facts about themselves. The intrusion takes place with the compulsion to divulge personal data, not in the handling of such facts by the Government. Privacy is respected, however, under voluntary procedures where people are asked rather than told they must comply with a census questionnaire. My interpretation of privacy is not related to the confidentiality of information collected and stored at the Census Bureau with which I have no quarrel.

The Census Bureau recognizes their need for a favorable public attitude by the citizens who must supply the facts they seek. Public cooperation will be measurably improved if persons are asked rather than told to answer questions. The Census Bureau, State governments, the entire market research and educational communities obtain valid statistics and opinion data through voluntary questionnaires. It is high time people were asked to cooperate, not harassed and threatened with punishment if they resist a question or two on this 67-item inquiry.

The 1970 census form requires the following categories of information be submitted by every person receiving the long form:

First, income, dollar by dollar, from all sources including public assistance, alimony, unemployment and disability insurance, pensions, and investments.

Second, the value of property or amount of rent paid;

Third, educational, marital, employment, and military history;

Fourth, with whom bathroom and kitchen facilities are shared;

Fifth, a long list of household items including dishwasher, television, radios, automobiles, and second home; and

Sixth, where each person and his parents were born.

The constitutional intent of the census, to enumerate the population for the purpose of apportioning of the U.S. House of Representatives, has been vastly distorted by being loaded down with so many sundry questions. I see no justification to impose a mandatory requirement on answering all such inquiries having no direct relationship with the essential function of the decennial census.

Mr. Speaker, by probing into the many aspects of this issue for nearly 2 years I have become more convinced that Congress must limit Census Bureau authority in a very real sense to protect the Bureau from itself. The Census Bureau, so far as I can learn, is a totally statistical user oriented agency. They contend they serve the public from whom billions of statistics are extracted but in reality the public is exploited for greedy factfinders in Government and private business. Let me illustrate this form of bias. Advisory committees and regional conferences operate to help the Census Director determine what questions to ask. To my disappointment, no representative of a single citizens group, civil liberties, patriotic or other people oriented organization took part in these proceedings. Thus, when alternative channels of gathering some of this information are suggested such as from other Government agencies, the response from the Census Bureau and their statistic-user advisers is totally negative. Suggestions of more limited samplings or deferring some questions to other surveys are rejected with equal firmness. A proposal just to test a part-mandatory, part-voluntary census plan met a similar cold reception at the Census Bureau.

The task of counting about 206 million Americans will cost more than $200 million and require 150,000 censustakers. A new technique, the mail-out/mail-back questionnaire, will be sent to approximately 60 percent of the Nation's households. The cost of counting each person is not unreasonably high, about $1, but should a significant number of people remain uncounted because they do not have the eighth-grade education to read the complex form, object to some of the overly personal questions or the harassment of penalties, the cost of the 1970 census will skyrocket. Consider this: 5.6 million people were missed in 1960 but if the mail return from the most recent pretest city, Trenton, N.J., forms a national trend, the number of those not counted will be staggering. In Trenton, only 65 percent of the people returned their forms, which if projected nationwide would mean that upward of 70 million might not be counted in the first tabulation. The apportionment of Congress, the State legislatures, and distribution of billions of dollars in Federal aid depend on an early and accurate population. We cannot afford to "discover" a few million more Americans 5 years after the census is conducted.

We in the Congress must ask ourselves this pointed question: Is it not more important to count people instead of toilets and TV sets if a choice is to be made? Of course, we must give the priority attention to the headcount. There is a need to maximize the number of people enumerated, regardless of how many minuscule facts we learn about them. Congress faces not only the issue of assuring personal privacy for our countrymen but also to see that a successful census is designed and implemented. During the 90th Congress much concern arose and late in the session the Senate passed a bill repealing the jail sentence penalty on all questions. The House probably would have acted similarly if time had permitted. I believe the jail sentence provision must be repealed and the $100 fine limited to cover only a few essential questions. Mr. Speaker, I have therefore introduced legislation to accomplish this and urge early hearing on this vital matter.

CONGRESSIONAL REFORM AND REORGANIZATION NEEDED NOW

(Mr. HALL asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. HALL. Mr. Speaker, today the gentleman from New Hampshire (Mr. CLEVELAND) and I are again introducing the version passed in the other body of the Legislative Reorganization Act of 1967. This legislation was the result of extensive work carried out by the Joint Committee on the Organization of Congress and related agencies, on which I had the pleasure to serve. The committee was created by resolution in the 89th Congress and conducted many weeks of hearings. It was continued throughout the 90th Congress.

After the expenditure of thousands of tax dollars and weeks of debate, the other body passed the so-called reorganization bill on March 7, 1967, by an overwhelming vote of 75 to 9. The legislation then came to the House where it was bottled up in the Rules Committee throughout the remainder of the 90th Congress.

Mr. Speaker, I am not in complete agreement with all the provisions of the version passed by the other body, but I am willing to trust the Members of the House of Representatives to work their will on this or any other similar measure. Along with others I have included supplemental views. I am fully aware that many amendments would be offered, that many provisions would be vigorously debated, and that the final product would not completely please all Members. However, on one thing there is probably complete agreement; a modernization of the congressional branch is required. We have not brought ourselves up to date since the last congressional reform of 1946. I certainly do not have to inform the Members of vast changes that have taken place in these last 23 years.

Finally, there has been much discussion that Congress is inefficient and it has been alleged—for political and other purposes—that we are an obsolete branch of Government. I do not believe this, nor do a vast majority of the American public. However, the burden is now upon us to prove that we are a coequal branch, and that we can and do meet our constitutional responsibilities. The burden can be met by acting upon congressional reform, and thus only faith in the people's branch of Government can be maintained.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. WATSON (at the request of Mr. GERALD R. FORD), for today, on account of illness.

Mr. PRICE of Texas (at the request of Mr. GERALD R. FORD) on account of illness.

Mr. BURKE of Florida (at the request of Mr. CRAMER), for the remainder of this week, on account of a death in his family.

Mr. FOUNTAIN (at the request of Mr. LENNON), for an indefinite period, on account of death in his immediate family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. CAHILL (at the request of Mr. PETTIS), for 15 minutes, on January 7; and to revise and extend his remarks and include extraneous matter.

EXTENSIONS OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. PETTIS) and to include extraneous matter:)

Mr. WINN.
Mr. BURKE of Florida.
Mr. POFF.
Mr. HARSHA.
Mr. MINSHALL.
Mr. MCDONALD of Michigan.
Mr. LANGEN.
Mr. WYMAN.
Mr. COLLINS in six instances.

(The following Members (at the request of Mr. LOWENSTEIN) and to include extraneous matter:)

Mr. PUCINSKI in 12 instances.
Mr. CULVER.
Mr. HUNGATE in 10 instances.
Mr. DANIELS of New Jersey in two instances.
Mr. RARICK in two instances.
Mr. CELLER.
Mr. GILBERT.
Mr. ROSENTHAL in three instances.
Mr. PODELL in two instances.
Mr. JOHNSON of California in two instances.
Mr. REUSS in six instances.
Mr. MURPHY of New York.
Mr. VANIK in two instances.
Mr. MOLLOHAN in five instances.
Mr. MOORHEAD in three instances.
Mr. OTTINGER in two instances.
Mr. PICKLE in four instances.
Mr. BROWN of California.
Mr. TUNNEY in six instances.
Mr. FEIGHAN in four instances.
Mr. FASCELL in two instances.

ADJOURNMENT

Mr. LOWENSTEIN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 54 minutes p.m.), the House adjourned until tomorrow, Tuesday, January 7, 1969, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

146. A letter from the Deputy Secretary of Defense, transmitting a draft of proposed legislation to amend section 427(b) of title 37, United States Code, to provide that a family separation allowance shall be paid to a member of a uniformed service even though the member does not maintain a residence or household for his dependents, subject to his management and control; to the Committee on Armed Services.

147. A letter from the Deputy Secretary of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to authorize the Secretary of a military department or the head of a defense agency to sell production equipment to contractors and subcontractors; to the Committee on Armed Services.

148. A letter from the Deputy Assistant Secretary of Defense (Properties and Installation), transmitting a report of the location, nature, and estimated cost of certain facilities projects proposed to be undertaken for the Air Force Reserve, pursuant to the provisions of 10 U.S.C. 2233a(1); to the Committee on Armed Services.

149. A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend title 37, United States Code, to authorize travel, transportation, and education allowances to certain members of the uniformed services for dependents' schooling, and for other purposes; to the Committee on Armed Services.

150. A letter from the Secretary of the Army, transmitting a draft of proposed legislation to authorize the commandant of the U.S. Army Command and General Staff College to award the degree of master of military art and science; to the Committee on Armed Services.

151. A letter from the Comptroller General of the United States, transmitting a report on cost evaluation for movement of household goods between the United States and Germany, Department of Defense; to the Committee on Government Operations.

152. A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to authorize appropriations of the Department of Commerce to be available until expended or for periods in excess of 1 year; to the Committee on Interstate and Foreign Commerce.

153. A letter from the Secretary of Health, Education, and Welfare, transmitting the report of the Department's Consumer Protection and Environmental Health Service regarding the implementation and administration of the Fair Packaging and Labeling Act by the Food and Drug Administration, for fiscal year 1968, pursuant to the provisions of section 8 of Public Law 89–755; to the Committee on Interstate and Foreign Commerce.

154. A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations; to the Committee on the Judiciary.

155. A letter from the Secretary of the Army, transmitting a draft of proposed legislation to discontinue the annual report of Congress as to the administrative settlement of personal property claims of military personnel and civilian employees; to the Committee on the Judiciary.

156. A letter from the Director of Personnel, Department of Commerce, transmitting a report of scientific and professional positions established in the Department, pursuant to the provisions of 5 U.S.C. 3104(c); to the Committee on Post Office and Civil Service.

157. A letter from the Deputy Secretary of Defense, transmitting a draft of proposed legislation to amend the Atomic Energy Act of 1954, as amended; to the Joint Committee on Atomic Energy.

158. A letter from the Chairman, Atomic Energy Commission, transmitting a draft of proposed legislation to amend the Atomic Energy Act of 1954, as amended, and for other purposes; to the Joint Committee on Atomic Energy.

159. Communication from the President of the United States, transmitting a report relative to the availability of studies and proposals developed by the Treasury Department concerning a comprehensive reform of the Internal Revenue Code (H. Doc. No. 91–35); to the Committee on Ways and Means and ordered to be printed.

160. A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend section 815 of title 10, United States Code, to authorize the Secretaries of the military departments to extend increased nonjudicial punishment powers to

certain officers; to the Committee on Armed Services.

161. A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to permit naval flight officers to be eligible to command certain naval activities, and for other purposes; to the Committee on Armed Services.

162. A letter from the Acting Secretary of Commerce, transmitting a draft of proposed legislation to authorize the Secretary of Commerce to employ aliens in a scientific or technical capacity; to the Committee on Interstate and Foreign Commerce.

163. A letter from the Chairman, Securities and Exchange Commission, transmitting the 34th annual report of the Commission for fiscal year 1968, pursuant to the provisions of applicable statutory requirements; to the Committee on Interstate and Foreign Commerce.

164. A letter from the Librarian of Congress, transmitting a report on positions in the Legislative Reference Service of the Library of Congress in grades GS–16, GS–17, and GS–18, provided for by 5 U.S.C. 5108(b)(1), pursuant to the provisions of 5 U.S.C. 5114; to the Committee on Post Office and Civil Service.

165. A letter from the Librarian of Congress, transmitting a report on positions in the Library of Congress in grades GS–16, GS–17, and GS–18, provided for by 5 U.S.C. 5108(b)(2), pursuant to the provisions of 5 U.S.C. 5114; to the Committee on Post Office and Civil Service.

166. A letter from the Administrator, General Services Administration, transmitting a prospectus proposing acquisition of facilities to house the Geological Survey, Department of the Interior, by leasing a building to be constructed on Government-owned land at Reston, Va., pursuant to the provisions of Public Law 90–550 (82 Stat. 994); to the Committee on Public Works.

167. A letter from the Secretary of Health, Education, and Welfare, transmitting a report of the Advisory Council on Health Insurance for the Disabled, pursuant to the provisions of section 140 of the Social Security Amendments of 1967; to the Committee on Ways and Means.

168. A letter from the Comptroller General of the United States, transmitting a report of the review of certain aspects of the administration of the Neighborhood Youth Corps program in Los Angeles County, Calif., Department of Labor; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMPSON of New Jersey: Joint Committee on the Disposition of Executive Papers. House Report No. 91–1. Report on the disposition of certain papers of sundry executive departments. Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BATTIN:

H.R. 2055. A bill to amend the Agricultural Adjustment Act of 1938, as amended, to permit advance payments to wheat producers; to the Committee on Agriculture.

H.R. 2056. A bill to provide compensation to the Crow Tribe of Indians, Montana, for certain lands, for the validation of titles to those lands, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 2057. A bill relating to the income tax treatment of advertising revenues derived by a tax-exempt organization from its publication of a trade journal or other periodical; to the Committee on Ways and Means.

H.R. 2058. A bill to amend section 4063 of the Internal Revenue Code of 1954; to the Committee on Ways and Means.

H.R. 2059. A bill to grant minerals, including oil and gas, on certain lands in the Crow Indian Reservation, Montana, to certain Indians, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 2060. A bill to amend title 13, United States Code, to limit the categories of questions required to be answered under penalty of law in the decennial censuses of population, unemployment, and housing, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 2061. A bill to amend the Internal Revenue Code of 1954 regarding credits and payments in the case of certain use of gasoline and lubricating oil; to the Committee on Ways and Means.

By Mr. BATTIN (for himself, Mr. BROTZMAN, Mr. SEBELIUS, Mr. SHRIVER, Mr. SKUBITZ, Mr. MIZE, Mr. WINN, Mr. DENNEY, Mr. MARTIN, Mr. LUJAN, Mr. FOREMAN, Mr. ANDREWS, of North Dakota, Mr. KLEPPE, Mr. BELCHER, Mr. CAMP, Mr. BERRY, Mr. PRICE of Texas, and Mr. WOLD):

H.R. 2062. A bill to amend section 16 of the Soil Conservation and Domestic Allotment Act, as amended, to extend the Great Plains Conservation Program; to the Committee on Agriculture.

By Mr. BOGGS:

H.R. 2063. A bill to provide increases in annuities granted under the Panama Canal Construction Service Annuity Act of May 29, 1944, and thereafter to provide cost-of-living increases in such annuities; to the Committee on Merchant Marine and Fisheries.

H.R. 2064. A bill to amend the River and Harbor Act of 1945; to the Committee on Public Works.

By Mr. BURKE of Florida:

H.R. 2065. A bill to provide training and employment opportunities for those individuals whose lack of skills and education acts as a barrier to their employment at or above the Federal minimum wage, by means of subsidies to employers on a decreasing scale in order to compensate such employers for the risk of hiring the poor and unskilled in their local communities; to the Committee on Education and Labor.

H.R. 2066. A bill to provide that the U.S. District Court for the Southern District of Florida shall also be held at Fort Lauderdale; to the Committee on the Judiciary.

H.R. 2067. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax to employers for the expenses of providing job training programs; to the Committee on Ways and Means.

H.R. 2068. A bill to amend title II of the Social Security Act to permit an individual receiving benefits thereunder to earn outside income without losing any of such benefits; to the Committee on Ways and Means.

By Mr. BURKE of Massachusetts:

H.R. 2069. A bill to amend the Internal Revenue Code of 1954 to provide that the full amount of any annuity received under the Civil Service Retirement Act shall be excluded from gross income; to the Committee on Ways and Means.

By Mr. CABELL:

H.R. 2070. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. EILBERG:

H.R. 2071. A bill to incorporate the Catholic War Veterans of the United States of America; to the Committee on the Judiciary.

By Mr. EVERETT:

H.R. 2072. A bill to amend section 123(c) of title 28, United States Code, so as to transfer Haywood County from the western to the eastern division of the western district of Tennessee; to the Committee on the Judiciary.

By Mr. GETTYS:

H.R. 2073. A bill to amend the act of July 18, 1958, to provide for the expansion of Cowpens National Battleground Site; to the Committee on Interior and Insular Affairs.

By Mr. GREEN of Pennsylvania:

H.R. 2074. A bill to amend title VII of the Housing and Urban Development Act of 1965 to authorize financial assistance for the provision of street lighting facilities in aid of the prevention or reduction of crime; to the Commission on Banking and Currency.

H.R. 2075. A bill to amend title 13, United States Code, to provide for a mid-decade census of population, unemployment, and housing in the year 1975 and every 10 years thereafter; to the Committee on Post Office and Civil Service.

H.R. 2076. A bill relating to withholding, for purposes of the income tax imposed by certain cities, on the compensation of Federal employees; to the Committee on Ways and Means.

By Mr. HAWKINS:

H.R. 2077. A bill to more effectively prohibit discrimination in employment because of race, color, religion, sex, or national origin, and for other purposes; to the Committee on Education and Labor.

H.R. 2078. A bill to amend title XVIII of the Social Security Act to provide payment for chiropractors' services under the program of supplementary medical insurance benefits for the aged; to the Committee on Ways and Means.

By Mr. HELSTOSKI:

H.R. 2079. A bill to strengthen and improve the Older Americans Act of 1965; to the Committee on Education and Labor.

H.R. 2080. A bill to provide additional protection for the rights of participants in private pension plans, to establish minimum standards for vesting and funding of private pension plans, to provide an insurance program guaranteeing plan termination protection, and for other purposes; to the Committee on Education and Labor.

H.R. 2081. A bill to provide Federal leadership and grants to the States for developing and implementing State programs for youth camp safety standards; to the Committee on Education and Labor.

H.R. 2082. A bill to establish a Department of Peace, and for other purposes; to the Committee on Government Operations.

H.R. 2083. A bill to provide for the disclosure of certain information relating to certain public opinion polls; to the Committee on House Administration.

H.R. 2084. A bill to strengthen and clarify the law prohibiting the introduction, or manufacture for introduction, of switchblade knives into interstate commerce; to the Committee on Interstate and Foreign Commerce.

H.R. 2085. A bill to amend title II of the Social Security Act to permit the payment of benefits to a married couple on their combined earnings record where that method of computation produces a higher combined benefit; to the Committee on Ways and Means.

By Mr. HOSMER:

H.R. 2086. A bill to amend title 10, United States Code, to equalize the retirement pay of members of the uniformed services of equal rank and years of service, and for other purposes; to the Committee on Armed Services.

H.R. 2087. A bill to amend title 38, United States Code, to provide survivor benefits for military career personnel; to the Committee on Veterans' Affairs.

H.R. 2088. A bill to amend title 38 of the United States Code so as to provide that pub-

lic or private retirement, annuity, or endowment payments (including monthly social Security insurance benefits) shall not be included in computing annual income for the purpose of determining eligibility for a pension under chapter 15 of that title; to the Committee on Veterans' Affairs.

H.R. 2089. A bill to promote the general welfare, foreign policy, and national security of the United States; to the Committee on Ways and Means.

By Mr. KARTH:

H.R. 2090. A bill to guarantee productive employment opportunities for those who are unemployed or underemployed; to the Committee on Education and Labor.

By Mr. KING:

H.R. 2091. A bill to modify the reporting requirement and establish additional income exclusions relating to pension for veterans and their widows, to liberalize the bar to payment of benefits to remarried widows of veterans, to liberalize the oath requirement for hospitalization of veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. McCLURE:

H.R. 2092. A bill to amend the Tariff Schedules of the United States with respect to the rate of duty on honey and honey products and to impose import limitations on honey and honey products; to the Committee on Ways and Means.

H.R. 2093. A bill to amend the Tariff Schedules of the United States with respect to the rate of duty on whole skins of mink, whether or not dressed; to the Committee on Ways and Means.

H.R. 2094. A bill to provide for orderly trade in textile articles; to the Committee on Ways and Means.

H.R. 2095. A bill to revise the quota-control system on the importation of certain meat and meat products; to the Committee on Ways and Means.

H.R. 2096. A bill to regulate imports of milk and dairy products, and for other purposes; to the Committee on Ways and Means.

By Mr. MAILLIARD:

H.R. 2097. A bill to establish the Fort Point National Historic Site in San Francisco, Calif., and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MATSUNAGA:

H.R. 2098. A bill to exempt a member of the Armed Forces from service in a combat zone when such member is the sole surviving son of a family, and for other purposes; to the Committee on Armed Services.

By Mr. DERWINSKI:

H.R. 2099. A bill to provide that the United States shall make no payments or contributions to the United Nations for furnishing assistance to Communist countries; to the Committee on Foreign Affairs.

By Mr. MATSUNAGA:

H.R. 2100. A bill for the establishment of a Civilian Aviation Academy; to the Committee on Interstate and Foreign Commerce.

H.R. 2101. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 2102. A bill to amend the Public Health Service Act to provide special assistance for the improvement of laboratory animal research facilities; to establish standards for the humane care, handling, and treatment of laboratory animals in departments, agencies, and instrumentalities of the United States and by recipients of grants, awards, and contracts from the United States; to encourage the study and improvement of the care, handling, and treatment and the development of methods for minimizing pain and discomfort of laboratory animals used in biomedical activities; and to otherwise assure humane care, handling, and treatment of laboratory animals, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 2103. A bill to establish an Academy of Criminal Justice and to provide for the establishment of such other Academies of Criminal Justice as the Congress may hereafter authorize; to the Committee on the Judiciary.

H.R. 2104. A bill to provide for the compensation of persons injured by certain criminal acts; to the Committee on the Judiciary.

H.R. 2105. A bill authorizing veterans' benefits for persons who served in the Local Security Patrol Force of Guam during World War II; to the Committee on Veterans' Affairs.

By Mr. MURPHY of New York:

H.R. 2106. A bill to amend the Foreign Assistance Act of 1961 so as to provide for reductions in aid to countries in which property of the United States is damaged or destroyed by mob action; to the Committee on Foreign Affairs.

H.R. 2107. A bill to prohibit transportation in interstate or foreign commerce of articles to or from the United States aboard certain foreign vessels, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 2108. A bill to amend the Merchant Marine Act, 1920, to prohibit transportation of articles to or from the United States aboard certain foreign vessels, and for other purposes; to the Committee on Merchant Marine and Fisheries.

H.R. 2109. A bill to amend the Internal Revenue Code of 1954 to allow a deduction for certain expenses of higher education; to the Committee on Ways and Means.

H.R. 2110. A bill to amend the Internal Revenue Code of 1954 to allow a deduction for income tax purposes of certain expenses incurred by the taxpayer for the education of a dependent; to the Committee on Ways and Means.

H.R. 2111. A bill to amend title XVIII of the Social Security Act to provide payment for chiropractors' services under the program of supplementary medical insurance benefits for the aged; to the Committee on Ways and Means.

H.R. 2112. A bill to amend title V of the Social Security Act so as to extend and improve the Federal-State program of child-welfare services; to the Committee on Ways and Means.

By Mr. O'KONSKI:

H.R. 2113. A bill to amend section 303 of the Communications Act of 1934 to require that radios be capable of receiving both AM and FM broadcasts; to the Committee on Interstate and Foreign Commerce.

By Mr. OTTINGER:

H.R. 2114. A bill to establish an emergency program of direct Federal assistance in the form of direct grants and loans to certain hospitals in critical need of new facilities in order to meet increasing demands for service; to the Committee on Interstate and Foreign Commerce.

By Mr. PATMAN:

H.R. 2115. A bill to establish a Government corporation to assist in the expansion of the capital market for municipal securities while decreasing the cost of such capital to municipalities; to the Committee on Banking and Currency.

By Mr. PODELL:

H.R. 2116. A bill to clarify the liability of national banks for sales taxes and use taxes; to the Committee on Banking and Currency.

By Mr. POLLOCK:

H.R. 2117. A bill to amend the act providing for the admission of the State of Alaska into the Union in order to extend the time for the filing of applications for the selection of certain lands by such State; to the Committee on Interior and Insular Affairs.

By Mr. RODINO (for himself and Mr. EILBERG):

H.R. 2118. A bill to provide for the redistribution of unused quota numbers; to the Committee on the Judiciary.

By Mr. ROYBAL:

H.R. 2119. A bill to amend the Public Health Service Act to provide for a comprehensive review of the medical, technical, social, and legal problems and opportunities which the Nation faces as a result of medical progress toward making transplantation of organs, and the use of artificial organs, a practical alternative in the treatment of disease; and to amend the Public Health Service Act to provide assistance to certain non-Federal institutions, agencies, and organizations for the establishment and operation of regional and community programs for patients with kidney disease and for the conduct of training related to such programs; to the Committee on Interstate and Foreign Commerce.

By Mr. SAYLOR:

H.R. 2120. A bill to make Flag Day a legal public holiday; to the Committee on the Judiciary.

H.R. 2121. A bill to amend title 5, United States Code, to provide for the mandatory separation from Government service of all officers and employees thereof at the age of 70 years; to the Committee on Post Office and Civil Service.

H.R. 2122. A bill to amend title 38 of the United States Code to provide that any 5-year level premium term plan policy of national service life insurance shall be deemed paid when premiums paid in, less dividends, equal the amount of the policy; to the Committee on Veterans' Affairs.

H.R. 2123. A bill to amend section 4001 of title 38, United States Code, to prescribe qualifications for members of the Board of Veterans' Appeals, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 2124. A bill to amend the Antidumping Act, 1921; to the Committee on Ways and Means.

By Mr. SCHADEBERG:

H.R. 2125. A bill to amend the Internal Revenue Code of 1954 to allow an income tax credit for tuition expenses of the taxpayer or his spouse or a dependent at an institution of higher education; to the Committee on Ways and Means.

H.R. 2126. A bill to establish a program of dairy import regulation; to the Committee on Ways and Means.

H.R. 2127. A bill to amend section 22 of the Agricultural Adjustment Act of 1933, as amended; to the Committee on Ways and Means.

H.R. 2128. A bill to amend the Internal Revenue Code of 1954 to allow teachers to deduct from gross income the expenses incurred in pursuing courses for academic credit and degrees at institutions of higher education and including certain travel; to the Committee on Ways and Means.

By Mr. STAFFORD (for himself and Mr. CLEVELAND):

H.R. 2129. A bill to consent to the New Hampshire-Vermont interstate school compact; to the Committee on the Judiciary.

By Mr. STRATTON:

H.R. 2130. A bill to amend the Agricultural Marketing Agreement Act of 1937 with respect to the procedure for amending orders; to the Committee on Agriculture.

H.R. 2131. A bill to amend title 10 of the United States Code to require that the daily ration of members of the Army and Air Force contain at least as much butter as the daily ration prescribed for members of the Navy; to the Committee on Armed Services.

H.R. 2132. A bill to amend the Federal Property and Administrative Services Act of 1949 to permit donations of surplus property to municipalities and to volunteer firefighting organizations, and for other purposes; to the Committee on Government Operations.

H.R. 2133. A bill to transfer functions under various laws relating to the provision of financial assistance for water facilities to the Secretary of Housing and Urban Development and to transfer functions under various laws relating to the provision of financial assist-

ance for sewerage facilities to the Secretary of the Interior; to the Committee on Government Operations.

H.R. 2134. A bill to establish and develop the Chesapeake and Ohio Canal National Historical Park, and for other purposes; to the Commitee on Interior and Insular Affairs.

H.R. 2135. A bill to prohibit deceptive packaging or display of nondairy products resembling milk; to the Committee on Interstate and Foreign Commerce.

H.R. 2136. A bill to provide for orderly trade in textile articles; to the Committee on Ways and Means.

H.R. 2137. A bill to amend the Internal Revenue Code of 1954 to provide a 30-percent credit against the individual income tax for amounts paid as tuition or fees to certain public and private institutions of higher education; to the Committee on Ways and Means.

H.R. 2138. A bill to regulate imports of milk and dairy products, and for other purposes; to the Committee on Ways and Means.

By Mr. GREEN of Pennsylvania (for himself and Mr. Tunney):

H.R. 2139. A bill to amend title 5, United State Code, to facilitate the collection of statistics with respect to the incidence of crime and to provide for the establishment of a National Crime Statistics Center, and for other purposes; to the Committee on the Judiciary.

H.R. 2140. A bill to amend title 38 of the United States Code in order to establish in the Veterans' Administration a national veterans' cemetery system consisting of all cemeteries of the United States in which veterans of any war or conflict are or may be buried; to the Committee on Veterans' Affairs.

H.R. 2141. A bill to establish a Small Tax Division within the Tax Court of the United States; to the Committee on Ways and Means.

H.R. 2142. A bill to amend the Internal Revenue Code of 1954 to raise needed additional revenues by tax reform; to the Committee on Ways and Means.

By Mr. WYATT:

H.R. 2143. A bill to amend title II of the Social Security Act to increase the amount of outside earnings permitted each year without any deductions from benefits thereunder; to the Committee on Ways and Means.

By Mr. BERRY:

H.R. 2144. A bill to amend the Internal Revenue Code of 1954 to allow an incentive tax credit for a part of the cost of constructing or otherwise providing facilities for the control of water or air pollution, and to permit the amortization of such cost within a period of from 1 to 5 years; to the Committee on Ways and Means.

By Mr. BURKE of Massachusetts (for himself, Mr. DENT, Mr. CEDERBERG, Mr. FULTON of Pennsylvania, Mr. FULTON of Tennessee, Mr. GILBERT, Mr. KLUCZYNSKI, Mr. MINISH, Mr. MURPHY of Illinois, Mr. NIX, Mr. WHALLEY, Mr. CAHILL, Mr. TEAGUE of California, Mr. BINGHAM, Mr. DADDARIO, Mr. MOSS, Mr. ST. ONGE, Mr. HELSTOSKI, Mr. O'NEILL of Massachusetts, Mr. FISHER, Mr. ESHLEMAN, Mr. PATMAN, Mr. ADAIR, Mr. MCCLORY, and Mr. QUIE):

H.R. 2145. A bill to expand the definition of deductible moving expenses incurred by an employee; to the Committee on Ways and Means.

By Mr. BURKE of Massachusetts (for himself, Mr. SISK, Mr. SHRIVER, Mr. MCCARTHY, Mr. EILBERG, Mr. UTT, and Mr. HANLEY):

H.R. 2146. A bill to expand the definition of deductible moving expenses incurred by an employee; to the Committee on Ways and Means.

By Mr. CAHILL:

H.R. 2147. A bill to amend title 10 of the United States Code to prohibit contracting for the construction of vessels for the U.S. Navy at places outside of the United States; to the Committee on Armed Services.

H.R. 2148. A bill for the establishment of a commission to study and appraise the organization and operation of the executive and legislative branches of the Government; to the Committee on Government Operations.

H.R. 2149. A bill for the establishment of the Commission on the Organization of the Executive Branch of the Government; to the Committee on Government Operations.

H.R. 2150. A bill to amend the Federal Trade Commission Act to authorize injunctive relief with respect to violations of section 5, and to make certain practices a misdemeanor; to the Committee on Interstate and Foreign Commerce.

H.R. 2151. A bill to establish an emergency program of direct Federal assistance in the form of direct grants and loans to certain hospitals in critical need of new facilities in order to meet increasing demands for service; to the Committee on Interstate and Foreign Commerce.

H.R. 2152. A bill to provide for the investigative detention and search of persons suspected of involvement in, or knowledge of, Federal crimes; to the Committee on the Judiciary.

H.R. 2153. A bill to incorporate the Catholic War Veterans of the United States of America; to the Committee on the Judiciary.

H.R. 2154. A bill to prohibit the investment of income derived from certain criminal activities in any business enterprise affecting interstate or foreign commerce, and for other purposes; to the Committee on the Judiciary.

H.R. 2155. A bill to give the President authority to alleviate or to remove the threat to navigation, safety, marine resources, or the coastal economy posed by certain releases of fluids or other substances carried in oceangoing vessels; to the Committee on Merchant Marine and Fisheries.

H.R. 2156. A bill to give the President authority to alleviate or to remove the threat to navigation, safety, marine resources, or the coastal economy posed by certain releases of fluids or other substances carried in oceangoing vessels, and for other purposes; to the Committee on Merchant Marine and Fisheries.

H.R. 2157. A bill to provide the Coast Guard with authority to conduct research and development for the purpose of dealing with the release of harmful fluids carried in vessels; to the Committee on Merchant Marine and Fisheries.

H.R. 2158. A bill to amend the Rules of the House of Representatives to create a standing committee to be known as the Committee on Urban Affairs; to the Committee on Rules.

H.R. 2159. A bill to amend title 38 of the United States Code to provide for the expansion of the Veterans' Administration cemetery system to insure all veterans of burial facilities in a national cemetery; to the Committee on Veterans' Affairs.

H.R. 2160. A bill to provide that the Secretary of the Army shall acquire additional land for the Beverly National Cemetery, New Jersey; to the Committee on Veterans' Affairs.

H.R. 2161. A bill to provide for the construction of a new Veterans' Administration hospital in southern New Jersey; to the Committee on Veterans' Affairs.

H.R. 2162. A bill to permit the burial in national cemeteries of mothers and fathers of deceased servicemen or veterans who died leaving no spouse or minor child entitled to be buried in a national cemetery; to the Committee on Veterans' Affairs.

H.R. 2163. A bill to amend title II of the Social Security Act to provide for cost-of-living increases in the benefits payable thereunder; to the Committee on Ways and Means.

H.R. 2164. A bill to amend the Internal Revenue Code of 1954 to provide that an individual may deduct amounts paid for his higher education, or for the higher education of any of his dependents; to the Committee on Ways and Means.

By Mr. CELLER:

H.R. 2165. A bill to empower postal inspectors to serve warrants and subpenas and to make arrests without warrant for certain offenses against the United States; to the Committee on the Judiciary.

H.R. 2166. A bill to amend title 18, United States Code, to protect the people of the United States against the lawless and irresponsible use of firearms, and to assist in the prevention and solution of crime by requiring a national registration of firearms, establishing minimum licensing standards for the possession of firearms, and encouraging the enactment of effective State and local firearms laws, and for other purposes; to the Committee on the Judiciary.

H.R. 2167. A bill to correct deficiencies in the law relating to the theft and passing of postal money orders; to the Committee on the Judiciary.

H.R. 2168. A bill to amend sections 501 and 504 of title 18, United States Code, so as to strengthen the law relating to the counterfeiting of postage meter stamps or other improper uses of the metered mail system; to the Committee on the Judiciary.

H.R. 2169. A bill to assist in combating crime by creating the U.S. Corrections Service, and for other purposes; to the Committee on the Judiciary.

H.R. 2170. A bill to amend section 4 of the Clayton Act (15 U.S.C. 15), and for other purposes; to the Committee on the Judiciary.

H.R. 2171. A bill relating to national observances and holidays, and for other purposes; to the Committee on the Judiciary.

H.R. 2172. A bill to enact the Interstate Agreement on Detainers into law; to the Committee on the Judiciary.

H.R. 2173. A bill to provide cost-of-living allowances for judicial employees stationed outside the continental United States or in Alaska or Hawaii, and for other purposes; to the Committee on the Judiciary.

H.R. 2174. A bill to repeal the provisions of section 41 of the act of March 2, 1917, as amended, relating to the U.S. District Court for the District of Puerto Rico; to the Committee on the Judiciary.

H.R. 2175. A bill to amend title 18 of the United States Code to authorize the Attorney General to admit to residential community treatment centers persons who are placed on probation, released on parole, or mandatorily released; to the Committee on the Judiciary.

H.R. 2176. A bill to abolish the death penalty under all laws of the United States, and for other purposes; to the Committee on the Judiciary.

H.R. 2177. A bill to amend section 1823 of title 28, United States Code, to authorize the payment of travel expenses for certain witness service; to the Committee on the Judiciary.

H.R. 2178. A bill to authorize the Comptroller General of the United States to administratively settle tort claims arising in foreign countries; to the Committee on the Judiciary.

H.R. 2179. A bill to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce; to the Committee on the Judiciary.

By Mr. DERWINSKI:

H.R. 2180. A bill to provide the U.S. payments to the United Nations shall not be used for programs contrary to the policies of the United States; to the Committee on Foreign Affairs.

By Mr. DULSKI:

H.R. 2181. A bill to amend title II of the Social Security Act to increase the amount of outside earnings permitted each year with-

out any deductions from benefits thereunder; to the Committee on Ways and Means.

By Mr. HOSMER:

H.R. 2182. A bill to clarify the liability of national banks for taxes and fees on motor vehicles; to the Committee on Banking and Currency.

By Mr. PEPPER:

H.R. 2183. A bill to amend the joint resolution of October 23, 1965, relating to National Parkinson Week; to the Committee on the Judiciary.

By Mr. VANIK:

H.R. 2184. A bill to amend the Federal Water Pollution Control Act, as amended, relating to the construction of waste treatment works, and for other purposes; to the Committee on Public Works.

By Mr. HALL (for himself and Mr. CLEVELAND):

H.R. 2185. A bill to improve the operation of the legislative branch of the Federal Government, and for other purposes; to the Committee on Rules.

By Mr. SMITH of California:

H.R. 2186. A bill to improve the operation of the legislative branch of the Federal Government, and for other purposes; to the Commission on Rules.

H.R. 2187. A bill to improve the operation of the legislative branch of the Federal Government, and for other purposes; to the Committee on Rules.

H.R. 2188. A bill Federal Regulation of Lobbying Act of 1969; to the Committee on Rules.

By Mr. BATTIN:

H.R. 2189. A bill to grant to the State of Montana the reversionary interest of the United States in certain real property; to the Committee on Interior and Insular Affairs.

H.R. 2190. A bill to repeal section 372–1 of title 25, United States Code, relating to the appointment of hearing examiners for Indian probate work, to provide tenure and status for hearing examiners performing such work, and for other purposes; to the Committee on the Judiciary.

By Mr. BROYHILL of Virginia (for himself and Mr. NELSEN):

H.R. 2191. A bill relating to the establishment of parking facilities in the District of Columbia; to the Committee on the District of Columbia.

By Mr. CÓRDOVA:

H.R. 2192. A bill to authorize the transportation of passengers by certain foreign vessels between Puerto Rico and Port Everglades, Fla., to the Committee on Merchant Marine and Fisheries.

By Mr. HAMILTON:

H.R. 2193. A bill to enable citizens of the United States who change their residences to vote in presidential elections, and for other purposes; to the Committee on House Administration.

By Mr. HAWKINS:

H.R. 2194. A bill to authorize the Commissioner of the District of Columbia to administer a program to provide for the construction of parking facilities in the District of Columbia without cost to the taxpayers, and without displacing families, businesses, or taxes; to the Committee on Public Works.

By Mr. POLLOCK:

H.R. 2195. A bill to remove certain restrictions to clerk hire for Members of the House of Representatives; to the Committee on House Administration.

H.R. 2196. A bill to amend the Legislative Branch Appropriation Act, 1959, as it relates to transportation expenses of Members of the House of Representatives, and for other purposes; to the Committee on House Administration.

H.R. 2197. A bill to amend the act of August 28, 1965, as it relates to transportation expenses for employees in the office of a Member of the House of Representatives; to the Committee on House Administration.

By Mr. SIKES:

H.R. 2198. A bill to exempt from taxation certain property in the District of Columbia owned by the Reserve Officers Association of the United States; to the Committee on the District of Columbia.

By Mr. CAHILL:

H.J. Res. 178. Joint resolution to declare the policy of the United States with respect to its territorial sea; to the Committee on Foreign Affairs.

By Mr. CELLER:

H.J. Res. 179. Joint resolution proposing an amendment to the Constitution of the United States relating to the election of the President and Vice President; to the Committee on the Judiciary.

H.J. Res. 180. Joint resolution to amend the Constitution to provide for representation of the District of Columbia in the Congress; to the Committee on the Judiciary.

H.J. Res. 181. Joint resolution proposing an amendment to the Constitution of the United States relating to the election of the President and Vice President; to the Committee on the Judiciary.

By Mr. COLLIER:

H.J. Res. 182. Joint resolution proposing an amendment to the Constitution of the United States to provide for direct popular election of the President and the Vice President of the United States; to the Committee on the Judiciary.

By Mr. GRIFFIN:

H.J. Res. 183. Joint resolution proposing an amendment to the Constitution relative to qualifications of members of the Supreme Court; to the Committee on the Judiciary.

By Mr. KARTH:

H.J. Res. 184. Joint resolution proposing an amendment to the Constitution of the United States making citizens who have attained 18 years of age eligible to vote in all elections; to the Committee on the Judiciary.

By Mr. MURPHY of New York:

H.J. Res. 185. Joint resolution proposing an amendment to the Constitution of the United States to permit voluntary participation in prayer in public schools; to the Committee on the Judiciary.

By Mr. POLLOCK:

H.J. Res. 186. Joint resolution proposing an amendment to the Constitution of the United States of America providing for a 4-year term for Members of the House of Representatives; to the Committee on the Judiciary.

By Mr. REINECKE:

H.J. Res. 187. Joint resolution creating a Joint Committee To Investigate Crime; to the Committee on Rules.

By Mr. REUSS:

H.J. Res. 188. Joint resolution proposing an amendment to the Constitution of the United States relating to the election of President and Vice President; to the Committee on the Judiciary.

By Mr. STRATTON:

H.J. Res. 189. Joint resolution proposing an amendment to the Constitution of the United States relating to the election of President and Vice President; to the Committee on the Judiciary.

H.J. Res. 190. Joint resolution proposing an amendment to the Constitution of the United States relating to the right to vote of citizens who have attained the age of 18 years; to the Committee on the Judiciary.

By Mr. THOMPSON of Georgia:

H.J. Res. 191. Joint resolution proposing an amendment to the Constitution to provide for the direct election of the President and the Vice President; to the Committee on the Judiciary.

By Mr. WRIGHT:

H.J. Res. 192. Joint resolution proposing an amendment to the Constitution of the United States providing for the election of President and Vice President; to the Committee on the Judiciary.

By Mr. LONG of Maryland:

H. Con. Res. 63. Concurrent resolution relating to the seizure of U.S. vessels and to the highjacking of U.S. aircraft; to the Committee on Foreign Affairs.

By Mr. CAHILL:

H. Res. 87. Resolution creating a select committee to conduct an investigation and study of all aspects of crime in the United States; to the Committee on Rules.

By Mr. HAWKINS:

H. Res. 88. Resolution to amend rules X, XI, and XIII of the Rules of the House of Representatives; to the Committee on Rules.

By Mr. ICHORD (for himself, Mr. ASHBROOK, and Mr. DEL CLAWSON):

H. Res. 89. Resolution to amend the Rules of the House of Representatives to change the name of the Committee on Un-American Activities, and for other purposes; to the Committee on Rules.

By Mr. REINECKE:

H. Res. 90. Resolution creating a select committee to conduct an investigation and study of all aspects of crime in the United States; to the Committee on Rules.

By Mr. ROYBAL:

H. Res. 91. Resolution to amend rules X, XI, and XIII of the Rules of the House of Representatives; to the Committee on Rules.

By Mr. STRATTON:

H. Res. 92. Resolution expressing the sense of the House of Representatives that the people of all Ireland should have an opportunity to express their will for union by an election under the auspices of a United Nations commission; to the Committee on Foreign Affairs.

By Mr. CELLER:

H. Res. 93. Resolution authorizing the Committee on the Judiciary to conduct studies and investigations relating to certain matters within its jurisdiction; to the Committee on Rules.

By Mr. COLMER:

H. Res. 94. Resolution providing funds for the Committee on Rules; to the Committee on House Administration.

By Mr. EVINS of Tennessee:

H. Res. 95. Resolution authorizing certain printing for the Select Committee on Small Business of the House of Representatives; to the Committee on House Administration.

By Mr. FRIEDEL:

H. Res. 96. Resolution authorizing payment of compensation for certain committee employees; to the Committee on House Administration.

By Mr. McMILLAN:

H. Res. 97. Resolution transferring all the functions, powers, and duties of the Architect of the Capitol relating to the operation and management of certain cafeterias of the House of Representatives to a House Cafeterias Commission; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BARRETT:

H.R. 2199. A bill for the relief of Agripina V. and Raul S. Gesmundo; to the Committee on the Judiciary.

H.R. 2200. A bill for the relief of Benedetto Pietrangelo; to the Committee on the Judiciary.

By Mr. BATES:

H.R. 2201. A bill for the relief of Miss Anna Ferrari; to the Committee on the Judiciary.

By Mr. BOGGS:

H.R. 2202. A bill for the relief of Mr. and Mrs. Alexis Joseph Cole; to the Committee on the Judiciary.

By Mr. BOLAND:

H.R. 2203. A bill authorizing the President of the United States to award Congressional Medals of Honor to Astronauts Frank Borman, James A. Lovell, and William A. Anders; to the Committee on Armed Services.

By Mr. BROWN of Michigan:

H.R. 2204. A bill for the relief of Dr.

Sadananda Goud and his wife, Shobha Kesaree Goud; to the Committee on the Judiciary.

By Mr. BUSH:

H.R. 2205. A bill authorizing the President of the United States to award Congressional Medals of Honor to Astronauts Frank Borman, James A. Lovell, and William A. Anders; to the Committee on Armed Services.

By Mr. CABELL:

H.R. 2206. A bill for the relief of Adela Deidad La Riva; to the Committee on the Judiciary.

By Mr. CAHILL:

H.R. 2207. A bill for the relief of Frances S. Bender; to the Committee on the Judiciary.

H.R. 2208. A bill for the relief of James Hideaki Buck; to the Committee on the Judiciary.

H.R. 2209. A bill for the relief of Carlo DeMarco; to the Committee on the Judiciary.

H.R. 2210. A bill for the relief of Charles D. Dodelin and others; to the Committee on the Judiciary.

H.R. 2211. A bill for the relief of Janina Morawska; to the Committee on the Judiciary.

H.R. 2212. A bill for the relief of Lucia Musillo; to the Committee on the Judiciary.

H.R. 2213. A bill for the relief of George A. Simons; to the Committee on the Judiciary.

By Mr. CASEY:

H.R. 2214. A bill for the relief of the Mutual Benefit Foundation to the Committee on the Judiciary.

H.R. 2215. A bill for the relief of Dr. Anil K. Sinha, Mr. Purnia Sinha, and Madhulika Sinha; to the Committee on the Judiciary.

By Mr. CELLER:

H.R. 2216. A bill for the relief of Patrick Jean Giddings; to the Committee on the Judiciary.

H.R. 2217. A bill for the relief of Joseph W. Harris; to the Committee on the Judiciary.

H.R. 2218. A bill for the relief of William John Moher; to the Committee on the Judiciary.

By Mr. CONABLE:

H.R. 2219. A bill for the relief of Francesco A. DiSalvo; to the Committee on the Judiciary.

H.R. 2220. A bill for the relief of Mrs. Maria D'Avanzo Marovelli and her minor daughter, Rosella Marovelli; to the Committee on the Judiciary.

H.R. 2221. A bill for the relief of Vinceslao Nicholas Pucci; to the Committee on the Judiciary.

By Mr. CONTE:

H.R. 2222. A bill for the relief of Arnold Gerardo Borrego-Suero; to the Committee on the Judiciary.

By Mr. DAWSON:

H.R. 2223. A bill for the relief of Monohar Ramrao Kamat; to the Committee on the Judiciary.

By Mr. EDWARDS of California:

H.R. 2224. A bill for the relief of Franklin Jacinto Antonio; to the Committee on the Judiciary.

H.R. 2225. A bill for the relief of Mrs. Esperanza Ramos Delgado; to the Committee on the Judiciary.

H.R. 2226. A bill for the relief of Anton Joseph Hanna Dyke; to the Committee on the Judiciary.

H.R. 2227. A bill for the relief of Richard W. Hoffman; to the Committee on the Judiciary.

H.R. 2228. A bill for the relief of Leonor Lacuesta Jacinto; to the Committee on the Judiciary.

H.R. 2229. A bill for the relief of Mauricio A. Jacinto; to the Committee on the Judiciary.

H.R. 2230. A bill for the relief of Alfredo Augusto Maciel; to the Committee on the Judiciary.

H.R. 2231. A bill for the relief of Mrs. Maria Elviar Maciel; to the Committee on the Judiciary.

H.R. 2232. A bill for the relief of Yot Chiu Ng; to the Committee on the Judiciary.

H.R. 2233. A bill for the relief of Carmen Maria Pena-Garcano; to the Committee on the Judiciary.

H.R. 2234. A bill for the relief of Radovan Spremo; to the Committee on the Judiciary.

H.R. 2235. A bill for the relief of Miss Saturnina Toriaga; to the Committee on the Judiciary.

H.R. 2236. A bill for the relief of Herlindo Mariscal Vasquez; to the Committee on the Judiciary.

H.R. 2237. A bill for the relief of Douglas Fu Yuan; to the Committee on the Judiciary.

By Mr. EILBERG:

H.R. 2238. A bill to provide for the relief of certain civilian employees of the Air Force; to the Committee on the Judiciary.

By Mr. FALLON:

H.R. 2239. A bill for the relief of Georgios Sentis; to the Committee on the Judiciary.

By Mr. FISH:

H.R. 2240. A bill for the relief of Wladyslaw Morgner and his wife, Anna Morgner; to the Committee on the Judiciary.

By Mr. FRELINGHUYSEN:

H.R. 2241. A bill for the relief of John T. Anderson; to the Committee on the Judiciary.

H.R. 2242. A bill for the relief of Santolo Beneduce; to the Committee on the Judiciary.

H.R. 2243. A bill for the relief of Anna Crocetto; to the Committee on the Judiciary.

H.R. 2244. A bill for the relief of Filomeno De Rosa; to the Committee on the Judiciary.

H.R. 2245. A bill for the relief of Nikolaos Fountas; to the Committee on the Judiciary.

H.R. 2246. A bill for the relief of Domenico La Forgia; to the Committee on the Judiciary.

H.R. 2247. A bill for the relief of Edward Michael Murphy and Kathleen Doris Murphy; to the Committee on the Judiciary.

H.R. 2248. A bill for the relief of Vincenza Nunziata; to the Committee on the Judiciary.

H.R. 2249. A bill for the relief of Vassilios Seretis; to the Committee on the Judiciary.

By Mrs. GREEN of Oregon:

H.R. 2250. A bill for the relief of Dr. Roman Bijan, his wife, Helena Bijan, and their minor daughters, Kristina Bijan and Maria Bijan; to the Committee on the Judiciary.

By Mr. HARVEY:

H.R. 2251. A bill for the relief of Tranquilino Cruz and his wife, Paula R. Palmiery Cruz; to the Committee on the Judiciary.

H.R. 2252. A bill for the relief of Antonio Randazzo and his wife, Bartola Peraino Randazzo; to the Committee on the Judiciary.

By Mr. HAWKINS:

H.R. 2253. A bill for the relief of Rafael F. Calaguas; to the Committee on the Judiciary.

By Mr. HICKS:

H.R. 2254. A bill for the relief of Kang, Kyung Soo; to the Committee on the Judiciary.

H.R. 2255. A bill for the relief of Moon, Dong Wook; to the Committee on the Judiciary.

By Mr. JOELSON:

H.R. 2256. A bill for the relief Mario Di Leo; to the Committee on the Judiciary.

H.R. 2257. A bill for the relief of Germain Francois; to the Committee on the Judiciary.

H.R. 2258. A bill for the relief of Erwin Miller; to the Committee on the Judiciary.

By Mr. KASTENMEIER:

H.R. 2259. A bill for the relief of Dr. Sei Byung Yoon and his wife, Sook Ihn Saw; to the Committee on the Judiciary.

H.R. 2260. A bill to confer jurisdiction on the U.S. District Court for the Western District of Wisconsin to hear, determine, and render judgment on the claim of Emma Zimmerli against the United States; to the Committee on the Judiciary.

By Mr. McCARTHY:

H.R. 2261. A bill for the relief of Francoise Bongrande; to the Committee on the Judiciary.

H.R. 2262. A bill for the relief of Mrs. Nikolija Jankovska and her minor daughter, Suzana; to the Committee on the Judiciary.

H.R. 2263. A bill for the relief of Mohamed Salah Ibraham Nigahed (Meghad); to the Committee on the Judiciary.

H.R. 2264. A bill for the relief of Alfred C. Myers, Jr.; to the Committee on the Judiciary.

H.R. 2265. A bill for the relief of Humberto A. Revollo; to the Committee on the Judiciary.

By Mr. MATSUNAGA:

H.R. 2266. A bill for the relief of Etueni Alatini Vakapuna; to the Committee on the Judiciary.

By Mr. MIZE:

H.R. 2267. A bill for the relief of Dr. and Mrs. Joao Fanganiello; to the Committee on the Judiciary.

H.R. 2268. A bill for the relief of Dr. and Mrs. Gerald Dixon Smith; to the Committee on the Judiciary.

H.R. 2269. A bill for the relief of Dong Chan Kim Willingham; to the Committee on the Judiciary.

By Mr. MESKILL:

H.R. 2270. A bill for the relief of Juan Carlos Barrios, his wife, Maria Cristina Forelius de Barrios, and their minor child, Eduardo Anibal Barrios; to the Committee on the Judiciary.

By Mr. MILLER of California:

H.R. 2271. A bill for the relief of Cho Chung Foo; to the Committee on the Judiciary.

H.R. 2272. A bill for the relief of Bogdan Kopania; to the Committee on the Judiciary.

By Mr. MOLLOHAN:

H.R. 2273. A bill for the relief of Dr. Jose Sulla Maisog and Dr. Victoria Tayengco-Maisog; to the Committee on the Judiciary.

By Mr. MORSE:

H.R. 2274. A bill for the relief of Giuseppe Cantacesso; to the Committee on the Judiciary.

By Mr. NICHOLS:

H.R. 2275. A bill for the relief of John Thomas Cosby, Jr.; to the Committee on the Judiciary.

By Mr. OTTINGER:

H.R. 2276. A bill for the relief of Miss Alda G. Paternoster; to the Committee on the Judiciary.

By Mr. PICKLE:

H.R. 2277. A bill to confer U.S. citizenship posthumously upon Pfc. Joseph Anthony Snitko; to the Committee on the Judiciary.

By Mr. POLLOCK:

H.R. 2278. A bill for the relief of Klaus Max Karli; to the Committee on the Judiciary.

H.R. 2279. A bill for the relief of Luigi Piscitelli; to the Committee on the Judiciary.

By Mr. REES:

H.R. 2280. A bill for the relief of Mr. and Mrs. Arnulfo P. Abilla; to the Committee on the Judiciary.

H.R. 2281. A bill for the relief of Rudy T. Bernaldo; to the Committee on the Judiciary.

H.R. 2282. A bill for the relief of Mr. and Mrs. Alfonso Cediel and their minor child, Liliana; to the Committee on the Judiciary.

H.R. 2283. A bill for the relief of Lourdes De Leon; to the Committee on the Judiciary.

H.R. 2284. A bill for the relief of Armand Ezerer; to the Committee on the Judiciary.

H.R. 2285. A bill for the relief of Mr. and Mrs. Mohamed Hussein Fahmi; to the Committee on the Judiciary.

H.R. 2286. A bill for the relief of Katharina Gaertner; to the Committee on the Judiciary.

H.R. 2287. A bill for the relief of Mr. and Mrs. Joseph Gershon; to the Committee on the Judiciary.

H.R. 2288. A bill for the relief of Maryvonne P. Glercarz; to the Committee on the Judiciary.

H.R. 2289. A bill for the relief of Mrs. Gianna Groves; to the Committee on the Judiciary.

H.R. 2290. A bill for the relief of Maria Halmai; to the Committee on the Judiciary.

H.R. 2291. A bill for the relief of Mr. and Mrs. Haruo Hayama; to the Committee on the Judiciary.

H.R. 2292. A bill for the relief of Miss Visitacion V. Hernandez; to the Committee on the Judiciary.

H.R. 2293. A bill for the relief of Yehoshua M. Horvitz; to the Committee on the Judiciary.

H.R. 2294. A bill for the relief of Mr. and Mrs. Andrew L. Ivots and their minor daughter, Beatrice; to the Committee on the Judiciary.

H.R. 2295. A bill for the relief of Miss Lolita J. Jaramilla; to the Committee on the Judiciary.

H.R. 2296. A bill for the relief of Sang In Kim; to the Committee on the Judiciary.

H.R. 2297. A bill for the relief of Mr. and Mrs. James Ian Mahar and their two minor children, Sean and Lisa; to the Committee on the Judiciary.

H.R. 2298. A bill for the relief of Maheshchandra B. Maheta; to the Committee on the Judiciary.

H.R. 2299. A bill for the relief of Mr. and Mrs. Rafael U. Moreno; to the Committee on the Judiciary.

H.R. 2300. A bill for the relief of Constantin Sivatjian; to the Committee on the Judiciary.

H.R. 2301. A bill for the relief of Natan Sztark; to the Committee on the Judiciary.

H.R. 2302. A bill for the relief of Mrs. Rose Thomas; to the Committee on the Judiciary.

H.R. 2303. A bill for the relief of Mrs. Tomoko Tokugawa; to the Committee on the Judiciary.

H.R. 2304. A bill for the relief of Lie Mun Tsu; to the Committee on the Judiciary.

H.R. 2305. A bill for the relief of Benita Valderama; to the Committee on the Judiciary.

H.R. 2306. A bill for the relief of Mr. and Mrs. Melanio P. Villero; to the Committee on the Judiciary.

By Mr. REINECKE:

H.R. 2307. A bill for the relief of Gerardo B. Barbero; to the Committee on the Judiciary.

H.R. 2308. A bill for the relief of Salwa Barnouty; to the Committee on the Judiciary.

H.R. 2309. A bill for the relief of Maria Jesus Berecibar; to the Committee on the Judiciary.

H.R. 2310. A bill for the relief of Mesrop Bogosoglu; to the Committee on the Judiciary.

H.R. 2311. A bill for the relief of Aurora Castell (also known as Aurora Villanueva); to the Committee on the Judiciary.

H.R. 2312. A bill for the relief of Hong Jin Chun (also known as David Chun) and his wife, Bok Lae Sue Chun; to the Committee on the Judiciary.

H.R. 2313. A bill for the relief of Mrs. Brenda Gilo Cohen; to the Committee on the Judiciary.

H.R. 2314. A bill for the relief of Nicola Di Nallo; to the Committee on the Judiciary.

H.R. 2315. A bill for the relief of Josefina Policar Abutan Fuliar; to the Committee on the Judiciary.

H.R. 2316. A bill for the relief of Maximo Gonzales-Solana; to the Committee on the Judiciary.

H.R. 2317. A bill for the relief of Shi Chang Hsu (also known as Gerald S. C. Hsu); to the Committee on the Judiciary.

H.R. 2318. A bill for the relief of Hospicio A. Lakilak; to the Committee on the Judiciary.

H.R. 2319. A bill for the relief of Man Young Lee; to the Committee on the Judiciary.

H.R. 2320. A bill for the relief of Raymond Leyba; to the Committee on the Judiciary.

H.R. 2321. A bill for the relief of Mitsuyasu Maeno (also known as Soichi Maeno), and his wife, Noriko Maeno; to the Committee on the Judiciary.

H.R. 2322. A bill for the relief of Lior Novik; to the Committee on the Judiciary.

H.R. 2323. A bill for the relief of Sina Fallahi Oskoui; to the Committee on the Judiciary.

H.R. 2324. A bill for the relief of Miss Peyravi Pary Parichehr; to the Committee on the Judiciary.

H.R. 2325. A bill for the relief of Marc Mardoche Serfaty, his wife, Hilda Serfaty, and their son, Anthony Sebastian Serfaty; to the Committee on the Judiciary.

H.R. 2326. A bill for the relief of Santuzza Simonti; to the Committee on the Judiciary.

H.R. 2327. A bill for the relief of Zuhair H. Yousif (Naeem); to the Committee on the Judiciary.

By Mr. RODINO:

H.R. 2328. A bill for the relief of Vincenzo Casale; to the Committee on the Judiciary.

H.R. 2329. A bill for the relief of Heather Doreen Warner; to the Committee on the Judiciary.

By Mr. ROONEY of New York:

H.R. 2330. A bill for the relief of Miss Maria Didio; to the Committee on the Judiciary.

H.R. 2331. A bill for the relief of Mrs. Josefina Ferrer Marasigan; to the Committee on the Judiciary.

H.R. 2332. A bill for the relief of Miss Georgina Ongpin Villacorta; to the Committee on the Judiciary.

By Mr. ROYBAL:

H.R. 2333. A bill for the relief of Norma Esther Barrosa and daughter, Andrea Claudia Coltellini; to the Committee on the Judiciary.

By Mr. SHRIVER:

H.R. 2334. A bill for the relief of Dr. Yusuf Qamar; to the Committee on the Judiciary.

By Mr. SMITH of New York:

H.R. 2335. A bill for the relief of Enrico DeMonte; to the Committee on the Judiciary.

H.R. 2336. A bill for the relief of Adela Durda; to the Committee on the Judiciary.

By Mr. STRATTON:

H.R. 2337. A bill for the relief of Erika M. J. Armstrong; to the Committee on the Judiciary.

H.R. 2338. A bill for the relief of Gerald Levine; to the Committee on the Judiciary.

By Mr. TUNNEY:

H.R. 2339. A bill to authorize the Secretary of the Interior to reinstate certain oil and gas leases; to the Committee on Interior and Insular Affairs.

H.R. 2340. A bill for the relief of Marcelle Florette Courchesne; to the Committee on the Judiciary.

H.R. 2341. A bill for the relief of Mario Frenda; to the Committee on the Judiciary.

H.R. 2342. A bill for the relief of Franco Spalvieri and his son, Marco Crescenzo Spalvieri; to the Committee on the Judiciary.

By Mr. WATSON:

H.R. 2343. A bill for the relief of Rainer Johannes Kronenfeld; to the Committee on the Judiciary.

By Mr. WINN:

H.R. 2344. A bill for the relief of Dr. and Mrs. Krishan Bajaj; to the Committee on the Judiciary.

By Mr. SAYLOR:

H. Con. Res. 64. Concurrent resolution recognizing the golf course of the Foxburg Country Club of Foxburg, Pa., as the oldest golf course in continuous use in the United States; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

28. The SPEAKER presented a petition of S. R. Abramson, M.D., Marksville, La., relative to redress of grievances; to the Committee on the Judiciary.

SENATE—*Monday, January 6, 1969*

The Senate met at 10:30 a.m., and was called to order by the Acting President pro tempore.

James W. Turpin, M.D., president and founder of Project Concern, Inc., San Diego, Calif., offered the following prayer:

Our Father, creator of an expanding universe, Lord of a shrinking planet, we acknowledge more fully Your awesome love, patience, and forgiveness.

Teach us that our world has now grown too small for anything less than brotherhood; that life has become too precious for anything less than peace; that human relations have become too critical for anything less than love.

Give us a sense of family. Make us realize that in our struggle for greatness it is not so much how deep in space we can go, but how far we can reach in solving the immediate problems of Your beloved earth's people. Help us to know that until a hollow-eyed, emaciated, pot-bellied child of the Montagnard, Ibo, or American Indian becomes "our child" we have not yet achieved our national purpose.

Give us a sense of peace. Teach us to wage peace as eagerly and enthusiastically as we have waged war. Make us to experience no real satisfaction if we win a war and lose a people. May peace become not just the static absence of fighting and dying, but the imaginative, dynamic situation where every man is at peace with himself because his family has enough.

And, Father, give us a sense of love. As the world's hungry, poor, and sick ask, "Do you understand? Is it possible that you can feel our feelings?" let this be our reply: "Love you? I am you."

While others doubt, even scoff, let us direct our vast resources toward a world where every child eats enough, every woman is adequately attended in childbirth, and every man knows the dignity of supporting his own.

May this be our glorious quest. Amen.

PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mr. MANSFIELD in the chair). The Chair appoints the distinguished Senator from Vermont (Mr. AIKEN) to escort the newly elected President pro tempore to the desk so that he may take the oath as President pro tempore.

Mr. RUSSELL, escorted by Mr. AIKEN, advanced to the rostrum; the oath prescribed by law was administered to him by the Presiding Officer (Mr. MANSFIELD),

and Mr. RUSSELL subscribed to the oath. [Applause, Senators rising.]

Mr. RUSSELL assumed the chair as President pro tempore.

The PRESIDENT pro tempore. I cannot express my deep sense of gratitude for being permitted to serve at periods, as President pro tempore of the U.S. Senate.

I am honored to be escorted to the rostrum by the senior Senator from Vermont (Mr. AIKEN). He is a Senator of unusual ability—a personal friend for whom I have great admiration and affection.

The Senate is a unique institution of government. There are many senates, of course, wherever the bicameral system exists, but no other occupies the position or has the powers that are vested in the U.S. Senate, when the Senate sees fit to exercise those powers. There are times when we do not.

I am greatly honored, and I can only assure all of my colleagues that I shall endeavor to be scrupulously fair to every Member of the Senate, without regard to the party to which he belongs or to the issues before the Senate or any personal predilections I may have in regard to that issue. Thank you very much. [Applause, Senators rising.]

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the concurrent resolution (S. Con. Res. 1) to provide for the counting on January 6, 1968, of the electoral votes for President and Vice President of the United States.

The message also announced that the House had agreed to a concurrent resolution (H. Con. Res. 1) making the necessary arrangements for the inauguration of the President-elect and Vice-President-elect of the United States, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the following resolutions:

H. Res. 4. Resolution informing the Senate that a quorum of the House of Representatives has assembled; that John W. McCormack, a Representative from the Commonwealth of Massachusetts, has been elected Speaker; and that W. Pat Jennings, a citizen of the Commonwealth of Virginia, has been elected Clerk of the House of Representatives of the 91st Congress;

H. Res. 5. Resolution relating to the appointment by the Speaker to join with a committee of the Senate to notify the President of the United States that a quorum of each House has been assembled, and that Congress is ready to receive any communication that he may be pleased to make; and

H. Res. 6. Resolution instructing the Clerk to inform the President of the United States that the House of Representatives has elected John W. McCormack, a Representative from the Commonwealth of Massachusetts, Speaker, and W. Pat Jennings, a citizen of the Commonwealth of Virginia, Clerk of the House of Representatives of the 91st Congress.

ACTING CHAPLAIN OF THE SENATE

Mr. DIRKSEN. Mr. President, I submit a resolution and ask for its immediate a consideration.

The PRESIDENT pro tempore. The resolution will be read.

The legislative clerk read the resolution (S. Res. 9) as follows:

S. RES. 9

Resolved, That Reverend Edward B. Lewis, D.D., of Washington, D.C., be, and he is hereby, elected Acting Chaplain of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. STENNIS. Mr. President, may I be heard briefly?

The PRESIDENT pro tempore. Yes. The Chair recognizes the Senator from Mississippi.

Mr. STENNIS. Mr. President, I am not going to object to the adoption of the resolution, but it was clearly understood that the resolution referred to Acting Chaplain only, and that the selection of the Chaplain was entirely an open question before the caucus.

Mr. MANSFIELD. Mr. President, that is absolutely correct, and that was made clear to the distinguished minority leader.

Mr. STENNIS. I thank the Senator very much.

The PRESIDENT pro tempore. Is there objection to the adoption of the resolution?

There being no objection, the resolution was agreed to.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, January 3, 1969, be dispensed with.

The PRESIDENT pro tempore. Without objection, the reading of the Journal is dispensed with.

COUNTING OF THE ELECTORAL VOTE

Mr. MUSKIE. Mr. President——

Mr. MANSFIELD. Mr. President, will the Senator yield briefly to me without losing his right to the floor?

Mr. MUSKIE. I yield.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that until the Senate proceeds to the House at 12:45 for the counting of the electoral vote, it proceed to a discussion of the possible issues which may arise in that session, and that the time be equally divided and controlled by the proponents and opponents, with the majority leader or someone designated by him in charge of the time for the proponents, and the minority leader or someone designated by him in charge of the time of the opponents.

Mr. DIRKSEN. Mr. President, reserving the right to object, and this may be as good an opportunity as any for knowing what the format will be, I understand when we go into joint session it is expected that the objection which has been referred to with respect to a certain elector will be proffered in the joint session.

The PRESIDENT pro tempore. The law provides for the objection to be submitted at the joint session.

Mr. DIRKSEN. That is correct.

The PRESIDENT pro tempore. But that is the limit of the authority of the joint session, and the law then requires the Senate to repair to its Chamber and consider the objection, and the House to consider the objection in its Chamber, and, of course, the Senator is familiar with the law that provides that if one body agrees and the other disagrees, the certificate stands. There are other provisions of the law, but they will be settled in the Senate, except when we return to the House of Representatives to report the results of the proceedings of the Senate.

Mr. DIRKSEN. If I may propound a parliamentary inquiry, I should like to ascertain now, if possible, exactly how this objection is going to be registered, and whether or not it is to be done on a voice vote, or whether a rollcall is anticipated, and whether we are operating under the rules of the House of Representatives or of the Senate. Those matters are all obscure now.

The PRESIDENT pro tempore. The objections must be filed in writing, signed by a Senator and a Representative. The joint session may not take any action whatever, may I say to the Senator from Illinois; but the Senate will return to this Chamber and when it returns, it will be bound by the law which, as I recall, provides for 2 hours of discussion, limited to 5 minutes to each Senator. The Senate will then determine whether it will decide the issue on a viva voce vote or a rollcall vote, or on a standing division.

Mr. DIRKSEN. Mr. President, is my understanding correct that the only issue before the Senate, if and when we return, will be the question of the revision of the statute to cover a case of this kind?

The PRESIDENT pro tempore. No; there cannot be any issue on the revision of the statute at that point. It will be on the application of the statute to the constitutional principles regarding the action of electors.

Mr. DIRKSEN. I have a copy of it, prepared by the Parliamentarian, which I anticipated was a modification of the statute which was to be offered here in order to cover the case.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. MUSKIE. At one point last week we contemplated the possibility of liberalizing the terms for debate by the introduction of a resolution, which could have been done last Friday and hopefully enacted by both Houses and signed by the President before noon today.

But rather than pursue that route, after discussing the matter with the Parliamentarians of both Houses, the distinguished Senator from Georgia (Mr. RUSSELL), the distinguished Senator from North Carolina (Mr. ERVIN), and others, it was decided to ask the Senate, with respect to the debate, to give unanimous consent to the usual procedure in the Senate; that is, that the 2 hours be divided equally between the proponents and the opponents and controlled by the majority and minority leaders or any other Senators they may designate, and that the debate thereafter continue as it

customarily does in the Senate under such unanimous-consent agreement.

Since we found agreement among the Senators I have mentioned that this procedure was possible, subject, of course, to approval of the Senate, we decided to follow that route. So this afternoon, after we reconvene, I take it that a unanimous-consent request will be propounded to that effect, governing the terms of the debate.

Mr. CURTIS. Mr. President, reserving the right to object, and I shall not object, I should like to inquire, inasmuch as the House of Representatives and the Senate both recognize as valid an action taken by unanimous consent, whether it would be possible, in the joint session, to ask unanimous consent that all other electoral votes be counted, that the result be declared and certified, and that the one vote in question be deferred for further deliberations.

My reason for the inquiry is that the Constitution gives to each body the right to determine its own membership; yet, when a contest arises, the apparent winner is sworn in and the matter is deferred for due deliberation, committee hearing, and so on.

Would it violate the Rules of the Senate to have a Senator propound a unanimous-consent request in the joint session, to the effect that all votes except this one be counted, and the result declared, and the contested matter be deferred?

The PRESIDENT pro tempore. The Chair states to the distinguished Senator from Nebraska that the joint session is not conducted under the Rules of the Senate; it is conducted under the express provisions of the Constitution of the United States relating to the election of the President, and the Constitution prescribes the procedures.

It is a common saying that the Senate can do anything by unanimous consent. I do not know whether that applies to the Rules of the House of Representatives or not. The Chair would hope that we would proceed in the regular order. It takes only about 15 or 20 minutes to run through the States, and to do otherwise might be construed as denying some Members a right to interpose objections as authorized by the law. While the Chair would not object, the Chair would hope that some other Member of this body or of the House of Representatives would object to dispensing with the constitutional procedure that is set forth in some detail.

Mr. CURTIS. I thank the distinguished president for his comment on the matter. I believe that the same constitutional prerogatives to determine contests in the Senate exist; yet, over a long period of time, we have adopted our procedure, sometimes by unanimous consent.

The PRESIDENT pro tempore. Of course, this is purely an advisory opinion, and the present occupant of the Chair does not look with any high degree of approval on advisory parliamentary opinions. But it is the opinion of the Chair that under the wording of the statute, considered in connection with the Constitution, no final declaration of the vote can be made until after the two bodies have separately considered any objection that might be entered. I doubt very seriously that the unanimous-consent request would be in order.

Is there objection to the request of the Senator from Montana?

Mr. MANSFIELD. Mr. President, this applies only to this morning.

The PRESIDENT pro tempore. I understand. The request is that the time be equally divided from now until 12:45, when the Senate will retire to the joint session, the time to be controlled by the majority leader and the minority leader.

The Chair hears no objection, and it is so ordered.

The Chair recognizes the Senator from Montana.

Mr. MANSFIELD. Mr. President, I now yield to the Senator from Maine.

Mr. MUSKIE. I thank the Senator from Montana.

I take it that Senators are fully informed about what it is that I intend to propose this afternoon, when the Senate meets in joint session with the House to count the electoral votes for President and Vice President of the United States.

To the best of my knowledge, only one objection will be filed. That objection will be filed to the vote of the elector from North Carolina who was elected an elector on a Nixon slate, but who cast his vote for George C. Wallace and Curtis LeMay. That objection will be limited to the request that, if both Houses agree, that vote will be rejected.

There has been some discussion about a proposal that, in addition, Congress be asked to declare that the vote to be cast for Mr. Nixon and Mr. AGNEW. Those who support the objection will not make that request this afternoon. The reason we will not is that, after discussion with persons who were in a position to advise us on the parliamentary implications of such a move, we were afraid that to make both requests might result in a different action in each House, and thus vitiate any effective action by Congress with respect to the vote in question. Under the statute, each House must take the same action if the challenge is to be sustained. If the Houses disagree, the challenge is not sustained.

To introduce both requests for relief, it seemed to us, therefore, would open up possibilities of disagreement, even though both Houses might agree, or might be in agreement, with respect to the request to reject the vote for Mr. Wallace. To avoid that risk, therefore, we shall limit the objection to a request that if both Houses agree, the challenged vote will be rejected.

Mr. MURPHY. Mr. President, will the Senator from Maine yield?

Mr. MUSKIE. Yes; I am happy to yield to the Senator from California.

Mr. MURPHY. I should like to ask a simple question: Would this procedure in any way whatsoever cloud the official announcement of the election?

Mr. MUSKIE. Would it what?

Mr. MURPHY. Would it cloud the official announcement of the election in any way?

Mr. MUSKIE. No; I cannot see how that decision by Congress with respect to this vote would change the result in any way or affect the result or cloud it in any way.

Mr. MURPHY. In other words, do I correctly understand that the only question in issue is with respect to one particular vote?

Mr. MUSKIE. The Senator is correct.

Mr. MURPHY. I thank the Senator.

Mr. MUSKIE. I am not aware of any other challenge with respect to any other vote or any other State. We are concerned with this one vote, and this one vote alone.

The discussion this morning was scheduled because of what appears to be very rigid limitations in the statute concerning the debate once the Senate returns to its Chamber to debate the objection. The statute provides that the debate shall be limited to 2 hours and that each Senator shall be entitled to speak for 5 minutes and not more than once. This restriction, it seemed to us, if enforced, would rigidly limit the possibility of conducting a discussion on this issue which would be useful to the country. So we scheduled this discussion this morning, when we are unrestricted, in that rigid sense, in order to give Senators who are interested an opportunity to have an understanding of the issue before we begin the formal debate. The time this morning has been divided, as Senators have heard, between the opponents and the proponents before we get down to the question of this objection.

Mr. MUNDT. Mr. President, will the Senator from Maine yield?

Mr. MUSKIE. I am happy to yield to the Senator from South Dakota.

Mr. MUNDT. I am not sure whether I have understood the Senator correctly. When we were discussing the matter last week, I thought the thrust of his proposal was to transfer the vote of Dr. Bailey from Wallace, for whom he cast it, back in support of Richard Nixon, for whom the people of North Carolina voted. Was not that the thrust of the original proposal?

Mr. MUSKIE. We proposed two steps. First, that the vote cast for Mr. Wallace in North Carolina be rejected; second, that the vote be announced for Mr. Nixon; yes. Two steps were proposed, as the Senator has said.

Mr. MUNDT. Has that been changed?

Mr. MUSKIE. We have dropped the second request, for the reason that I tried to describe earlier. I shall be glad to try to describe it again.

Under the statute that we are using to bring the question before Congress, in order to sustain the challenge—or the objection; that is the word of art—both Houses must agree. We sought a way to make it possible for each House to speak out on each of these points; that is, the question of the rejection of the vote and also the question of casting the vote for Mr. Nixon. We considered, for example, the possibility of filing two objections, one limited to the rejection of the vote, the other covering both points.

But it was our impression, after discussing the question with our parliamentary consultants, that if we were to take the second course, and if the two Houses were not in complete agreement with respect to both courses, we might then face

the possibility that the action of the two Houses would be declared in disagreement because they did not agree totally. So the possibility faced us that even though both Houses agreed to reject the vote cast for Mr. Wallace, if one House disagreed with respect to casting the vote for Mr. Nixon, the action of the Houses in agreeing to the first point would be vitiated.

Mr. MUNDT. I can understand the dilemma that disturbs the distinguished Senator from Maine. But it would seem to me that the dilemma could be resolved by putting both provisions within the same objection, because we then consider the problem differently from what the Senate is now undertaking to do.

The first proposal would have retained for the people of North Carolina whatever number of electors they are entitled to under the Constitution. The second proposal, it seems to me, deprives the people of North Carolina of one of their electors. I just do not see how we have any right, as a Congress, to tell the people of North Carolina that they have the number of electors to whom they are entitled, minus the one which we have rejected.

As long as the Senator retained the thrust of the other vote, as he read it, I thought he was on sounder ground.

Mr. MUSKIE. I am in complete agreement with the Senator's position. The question that faced us was. "Should we risk setting a larger precedent at the risk of losing a lesser precedent?" It is my feeling that if Congress will take the position which I hope it will take; namely, that the vote cast for Mr. Wallace ought to be rejected, that action on the part of Congress will, in the future, inhibit electors from taking the action that Dr. Bailey, of North Carolina, took in this case.

I would make this observation, too: That as the North Carolina situation now stands, the effective vote of North Carolina is limited to 11 votes, because one of the votes cast for Mr. Nixon is offset by the vote cast for Mr. Wallace. So if Congress were to reject the vote cast for Mr. Wallace, one vote—one effective vote—would have been added to North Carolina's total, and North Carolina would have 12 votes cast for Mr. Nixon without any offsetting ones cast for Mr. Wallace. I felt we ought to take that much of a gain, even though we could not, perhaps expect to get the total gain we would like.

Mr. MUNDT. What disturbs me is that there is a switch from what originally seemed to be an effort to deprive Dr. Bailey of his option, which he took, and thereby punish him for taking it, and instead to punish the people of North Carolina by depriving them of the vote of one of their electors. The two provisions could be joined with the simple conjunction "and."

Mr. MUSKIE. The difficulty with that is that we were advised by the Parliamentarian that to submit that kind of proposal might be subject to a motion for a division in one or both Houses, again opening the door to a different action in each House, and thus causing a vitiation of the whole proceeding. We do not want to take that risk. There are a great many holes in the electoral procedure at the present time, and we cannot deal with all of them in this proceeding.

Really, my principal purpose in joining in this effort is to open the issue, to expose it, perhaps to identify the dangers and the risks, and by so doing to stimulate the movement for constitutional reform of the entire process.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. MUSKIE. I yield to the distinguished Senator from Nebraska.

Mr. CURTIS. According to the interpretation placed upon it by the distinguished Senator from Maine, what will happen to this one electoral vote if the Senator's position is sustained?

Mr. MUSKIE. If the objection we intend to file is filed and acted upon and supported, then one of the North Carolina electoral votes will be uncounted.

Mr. CURTIS. Is there anything to the report that the Senator from Maine does not seek to get his resolution agreed to?

Mr. MUSKIE. No. I want it agreed to. I believe in my position.

I have mixed feelings about winning, because I suspect that by losing I might develop more momentum for constitutional reform than by winning.

Mr. CURTIS. I certainly do not mean to challenge the sincerity of the distinguished Senator, because he is so well respected by all Members of the Senate; but I could not help being affected to some extent by his statement that this action is being taken to call attention to some other problem that the distinguished Senator regarded as important.

Mr. MUSKIE. No. Perhaps I made my statement too broad.

All we can hope to do effectively here today, I believe, is to expose this particular weakness or shortcoming in the electoral process and to give the country the benefit of the congressional view with respect to it—to establish a precedent, for whatever weight that precedent may have in the future. I believe that is a useful exercise, and we should do it. But by getting involved in it, I may say to the distinguished Senator, I think we have dramatized the entire problem and perhaps focused public attention on it in a way that otherwise it would not be focused.

Mr. CURTIS. In dramatizing the problem, is it the contention of the distinguished Senator from Maine that the action he proposes is in accord with the Constitution and existing statutes?

Mr. MUSKIE. Yes; I do. In my opening remarks, I shall amplify that point a little more.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. MUSKIE. I am glad to yield to the distinguished Senator from Georgia.

Mr. TALMADGE. I agree with the Senator that the electoral college needs some reform. But would not this be a dangerous precedent, in that it would arrogate to Congress, and not to the electors, the power to elect the President and Vice President? For example, we now have a Democratic majority in the Senate. We have a Democratic majority in the House. If this Democratic majority were so venal, could they not vitiate the entire election process and say that HUBERT HUMPHREY was elected President rather than Richard Nixon?

Mr. MUSKIE. I suppose we could do that with respect to our own election as Senators. I do not believe there is any question as to our right, as a Senate to pass finally upon the election of the qualifications of anyone elected to this body.

Mr. TALMADGE. There is a difference.

Mr. MUSKIE. If we anticipate venality——

Mr. TALMADGE. Senators are elected by popular vote, and each House is the judge of its own membership. But Presidents are elected by the electoral college. As I understand it, we exercise only the function of supervising the casting of those votes and declaring the result.

Mr. MUSKIE. I understand.

Of course, it was the intention of the founders to establish three separate departments of the Federal Government, each as independent of the others as possible. Yet, it was not possible to isolate them from one another because there is a relationship among the three that from time to time has had to be recognized, and the methods by which we recognized that relationship have been referred to as the checks and balances of the Constitution.

Here we have a problem: Electors are elected in accordance with the provisions laid down by State legislatures under the Constitution. Every election is certified by State officials, and they are required to meet on a day set by Congress for the purpose of casting their votes. That date last year was December 16, 1968. Prior to that time, their election as electors had been certified. The 13 North Carolina electors in question, including Dr. Lloyd Bailey, were elected on a Nixon slate. The names on that slate were not on the ballot. There was also a Wallace slate. The names of the Wallace electors were not on the ballot.

These electors were elected only because the presidential candidate of the same party was given votes by North Carolina voters which were then transferred to the electors by operation of State law. There was every anticipation, it seems to me, that the electors of any one of the three slates, if elected, would support the candidate of their party. Prior to December 16, there was nothing to indicate that this was not going to be the case. As a matter of fact, the North Carolina attorney general anticipated that these 13 electors would follow the apparent mandate of the people and that all 13 of them would vote for Mr. Nixon; and the papers were prepared to be transmitted to the seat of government in Washington in accordance with that assumption. But when the electors met, Dr. Bailey decided he was not going to follow that mandate, and he decided to vote for Mr. Wallace and Mr. LeMay.

As a consequence of that, the results of the meeting on December 16 could not be recorded on that day and transmitted to the seat of government, and they were received within the last few days, because it was necessary to revise the papers; and I understand it was necessary for those in charge to travel some 1,200 miles by automobile, from one elec-

tor to another, to get the signatures on the new papers.

So the entire process, up until the time Dr. Bailey cast his vote, was geared to the assumption that he had been nominated by district convention to be a Republican elector, that his nomination as such had been filed without his objection with the appropriate State officials, and that his party's candidate for President had gone on the ballot, carrying his vote with it. After the election, his election as a Republican elector was certified by the appropriate State officials, and he did not object. It was not until the electors met in Raleigh that he announced he was not going to do what everybody up to that point assumed he would do—that is, cast his vote for Mr. Nixon.

He announced what he did. He did not have to do that. The vote on the part of electors is by ballot, presumably secret, if they so choose. So it is conceivable that he could have done this without any warning or any announcement to anybody, that his action would not have been known until the North Carolina certificates were opened in the joint session of the two Houses, and that his action would then become known.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. MUSKIE. I should like to complete my statement; then I shall yield.

The questions that face us are these: First, did he have a right to do what he did? Second, if he did not, what provisions for relief are available, not only to the people of North Carolina but also to the people of the country? We are talking about the President of the entire country, not the president of North Carolina; and the North Carolina votes could well have been decisive in transferring the victory from Mr. Nixon to Mr. Wallace.

So if this surprise were sprung on us this afternoon, sometime between 1 and 2 o'clock, we must ask ourselves this question: Is it something the elector or electors had a right to do? If not, what remedy is available to the country ?

Finally, does Congress have any authority to apply a remedy?

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. TALMADGE. I agree with the Senator as to the breach of faith on the part of the elector. It seems to me that it would be even more dangerous if Congress undertook to nullify electoral votes or to change electoral votes, however they may be cast.

Mr. MUSKIE. In other words, the Senator is saying that the least danger involved in this situation is that fraudulent electors, motivated by improper purposes, might elect themselves under this weakness in the electoral process to change and frustrate the result indicated by the electorate and we should stand silently by and let it happen.

Mr. TALMADGE. I am not saying that. I say that it should be changed in a constitutional manner rather than resorting to an unconstitutional method of having Congress either nullify these votes or change them in accordance with its will. I think it would be more dangerous if Congress undertook to declare or to say that we are responsible for how this electoral vote should be cast. We could change the entire result.

Mr. MUSKIE. What I am proposing to the Senate, and I have not had an opportunity to get into my argument, is something far less than that.

Mr. TALMADGE. I thank the Senator for yielding. I do not wish to take any more of the Senator's time.

Mr. MUSKIE. I cannot think of a better time to go into the argument.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. BAYH. I think the point raised by the Senator from Georgia and replied to by the Senator from Maine is a point well taken. I do not in any way suggest that we, as individual Senators, do not have the right to interrupt the distinguished Senator from Maine. I think I speak for him, and I know I speak for myself.

This effort does not contemplate doing anything that is unconstitutional. I think the Senator from Georgia is correct in saying that we would be derelict in our duty not to do so. It does not contemplate anything unlawful.

I would suggest that the Senator from Maine make his presentation and deal with the constitutional question and the point of law involved; then this body could zero in on those two issues and decide whether the case has merit.

Mr. MUSKIE. I thank the Senator from Indiana. The purpose of the presentation is to answer questions. I believe some minimum presentation on my part will be helpful.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. MUSKIE. I am happy to yield to the Senator from Iowa.

Mr. MILLER. To point up this matter, as I understand it, the point raised by the Senator from Georgia and the Senator from South Dakota is that we are going to be faced with what amounts to a choice between two evils: The evil that if we reject the resolution, then a fraudulent vote can be cast——

Mr. MUSKIE. And counted.

Mr. MILLER. And counted. There is that proposition as against the evil that if we adopt the Senator's resolution, the State of North Carolina will be deprived of one of its electors. I think it comes down to that.

Bearing on that, there should be a discussion of the legal procedures that North Carolina either has gone through or could go through with respect to this particular elector. I would appreciate it if the Senator would include this point in his discussion or perhaps yield to the Senator from North Carolina for a discussion on that point, because I think the point as to whether North Carolina may or may not have forfeited its right to hang onto that elector would bear on my decision.

Mr. MUSKIE. If the Senator will remind me of that point later, I will be glad to touch on it. I would like, first, to touch on the positive argument and then come back to that specific point toward the end of my remarks.

This procedure is not intended as a way to achieve constitutional reform. In common with many of my colleagues in the Senate and in the House of Representatives, I am for constitutional reform, but only by constitutional amendment and reforms which must be much broader than the action we propose today. I think that in the history of the country there have been over 500 resolutions proposing the reform of this system. None of them has gotten anywhere, so we are still living with the present electoral system. I think it is possible for us to correct any inadequacies or to shore up any weaknesses, or eliminate them, not by unconstitutional means but by careful study and analysis of the options open to us.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield to the distinguished Senator from Kentucky.

Mr. COOPER. Perhaps the Senator has already discussed this problem, but if he has not I wish to direct attention to it. I shall be brief in my background remarks.

I think it is clear that article II of the Constitution and the 12th amendment, do not provide specific requirements of the electors as to the candidates for whom they should vote. Nevertheless, I believe that in the enactment of the 12th amendment it was made clear that they would vote separately for President and Vice President. However, the amendment did not provide that the electors must vote for that candidate for President or Vice President who received the majority vote in the State.

As the Senator pointed out in his remarks, the Supreme Court has upheld the constitutionality of a State statute which requires an elector to take a "loyalty oath" to vote for his party's nominee prior to his certification as an elector as not being contrary to the 12th amendment.

But none of these State statutes provide a remedy to enforce the elector's statutory requirement that he shall vote for the candidate for President or Vice President who receives the majority vote. The Supreme Court has avoided any determination of this issue. In fact, it has suggested in the Ray against Blair decision that such statutes are unenforceable.

As the Senator said, at the time of the Hayes-Tilden election Congress enacted the statutory provision providing for the method of counting the votes. As I read the statute, it simply provides that the votes shall be counted in both Houses of Congress but and I quote "the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been certified."

I now come to my question: Where do we find the authority, or what is the authority, which permits Congress to exclude the vote of this elector, or, to go further, not only exclude it but to reinstate it and count it for Mr. Nixon in this case? Where is that authority found?

Mr. MUSKIE. There are two possible places to look for the authority: The first is the Constitution itself, which may encompass greater authority for Congress in this respect than Congress has im-

plemented with the statute of 1887. The statute of 1887 was an attempt on the part of Congress to codify its understanding of its authority because of the crisis which the Hayes-Tilden situation created for the country.

I think the 1887 statute was broader than was necessary to merely deal with the situation of the Hayes-Tilden matter. It was broader than that, and the words of the key phrase are "regularly given."

The certification by the State relates to the election of the electors. It is not to that point of certification whether the vote cast by the electors was "regularly given." If the phrase "regularly given" involves the vote, then somebody must be in a position to decide whether or not the vote was "regularly given."

The State has not done so in this instance. Indeed, if the votes were cast by secret ballot, there was no opportunity for the State to do so; and since the sealed ballots are to be opened this afternoon after 1 o'clock, there will hardly be an opportunity then for the State to do so. If the phrase "regularly given" is to be evaluated by somebody between 1 and 2 o'clock this afternoon, there is only one instrument for doing so: The Congress of the United States.

Mr. COOPER. The Senator has answered my question. It is his view that the language "regularly given" provides to Congress the authority to determine whether an elector is required to vote according to the majority vote of the State. Is that the argument?

Mr. MUSKIE. That is the argument.

Mr. COOPER. One other question; then I will close. This language is found in the statute, which, since the Hayes-Tilden election, has been amended as recently as 1941. In the statute providing for the electoral vote for the District of Columbia. Congress provided that "each person" elected as elector of President and Vice President, shall in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent and it shall be his duty to vote in such manner in the electoral college." This indicates the intent of Congress.

Would the Senator consider, then, that to arrive at the result he desires, and to arrive at it properly, that Congress could amend the statute to cover this situation in the future?

These are technical questions but I think we should consider them so as to find out what our powers are.

(At this point the President pro tempore resumed the chair.)

Mr. MUSKIE. We could consider a broadening of the statute of 1887. As a matter of fact, it is arguable that Congress has greater authority to deal with this question than may be found in the statute, because the Constitution in the 12th amendment, which is the pertinent language here, reads:

> The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all certificates and the votes shall then be counted;

Bear in mind that the certificates are sealed, and that until they are opened and the contents disclosed, no one—including Congress—is in a position to know the extent to which votes may have been irregularly given. If Congress is helpless to act at that point, no one else is in a position to act effectively.

Mr. President, in view of the fact that the Senator from Florida (Mr. HOLLAND) is on his feet to ask me questions, I may point out that not more than 25 minutes remain to me, and I have not yet made my presentation, after which I should like to open the discussion to questions, unless the Senator from Florida has a very pertinent question on this point.

Mr. HOLLAND. Mr. President, I would be very happy to be recognized when the distinguished Senator from Maine completes his main statement, if he will recognize me at that time.

Mr. MUSKIE. Very well.

Mr. President, let me try to simplify my presentation.

To minimize the use of the precedents in order to give the Senate the thrust of my argument, it is clear that the Constitutional Convention intended that presidential electors shall be free agents.

I do not believe that we should consider custom since that time, whatever it has been, as a repeal of an effective constitutional amendment for that purpose. In other words, my argument proceeds on the understanding that it was the intent of the constitutional convention that electors shall be free agents, entitled to express their individual preferences on the day they cast their ballot. But then I add this: free to exercise their individual preferences on that day, unless they, by their act, have previously limited the scope of their freedom.

Mr. President, when the Constitution was written, it did not envision political parties. But, almost immediately, political parties developed and political parties assumed the responsibility of putting together slates of electors committed to the presidential candidate of that party.

From the beginning, that action, and the action of the electors in accepting nomination to such slates, has been regarded as limiting the freedom of choice of the electors on the day designated officially to cast the ballots.

Without any interruption of historical development, that has been the case since the first and second elections. Indeed, the Jefferson-Burr controversy arose out of the fact that the Federal electors felt bound to cast their votes for the two persons nominated for President and Vice President; and because they felt they were bound, and because there was no constitutional provision for separating their votes for President and Vice President, the election was thrown into the House of Representatives.

So that controversy was the direct result of the fact that the electors felt bound and did not feel they were free, on the day officially designated to cast their votes, to depart from the commitment and responsibility which they had accepted.

Thus, we had the Jefferson-Burr controversy, and the 12th amendment was adopted in 1804. The 12th amendment was adopted on the assumption that electors in the future would also feel bound. The 12th amendment was adopted in order to avoid just those stalemates similarly arising.

Why did they arise? Because the electors felt bound.

The solution of the 12th amendment was to permit the electors to vote separately and to do that for President and Vice President; not to eliminate the practice of bound electors, but to act on the assumption that they would feel bound.

If Senators will read the debates in the Senate and House they will find expression after expression by Members of both Houses that the objective was to tie the results as closely as possible to the wishes of the people.

Since that time, there have been 16,510 presidential electors and only six, including this one, have been faithless to a commitment which they had made. Only six.

One of these was in the election of 1796, when a Federalist elector voted for Mr. Adams rather than Mr. Jefferson. One of his constituents, commenting upon that action, stated:

> Do I choose Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chose him to act, not to think.

The second faithless elector voted in the election in which Mr. Monroe received a unanimous vote of the electoral college, except for this one elector. He was faithless because, he said that no man should enjoy Washington's distinction of a unanimous vote. That was his only excuse.

During the Hayes-Tilden controversy, a Republican elector from New York was tempted to vote for Mr. Tilden, because Mr. Tilden had a majority of the vote, in order to avoid a crisis which would follow the throwing the election into the House and into a special presidential commission. What did he say about his right to do so? I think his exact words are pertinent here. This was in 1876:

> In my own judgment, I have no choice, and am honor bound to vote for Hayes, as the people who chose me expected me to do. They did not choose me because they had confidence in my judgment, but because they thought they knew what the judgment would be. If I had told them that I would vote for Tilden, they would never have nominated me. It is a plain question of trust.

Now, from that time until the 1948 election there were no faithless electors, and the tradition of being bound to their party slate became more and more firmly fixed in the tradition of the country, not as an amendment of the Constitution, but because their acceptance of a place on the party slate indicated their preference for President before the general election, before the electoral college met, under circumstances that entitled the electorate to rely upon that expression of preference. This is the whole point. We are not proposing to amend the Constitution.

Now the question arises, Is it unconstitutional for the elector to limit his freedom of choice on the day the electoral college meets? Well, we have a little guidance from the courts on this question, and they say it is. In an Alabama

case they said it is. Let me read the language.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. MUSKIE. I know the Senator from North Carolina would put a different interpretation on it, but since my time is running out, I will have to ask the Senator to use some of his time to give his interpretation.

In Ray against Blair, in addition to responsibilities making it possible for parties to bind their electors by pledge to the party's presidential candidate, the question arose whether or not that was constitutional, and the Court said this:

> Neither the language of Article II nor that of the Twelfth Amendment forbids a party to require of every candidate in its primary a pledge of political conformity with the aims of the party.

Now, if it is possible for the party to require that of a presidential elector, surely it is possible for the elector to bind himself, by whatever act, but especially when he accepts a place on the party's slate, especially, as in North Carolina, where his name does not appear on the ballot. There can be no clearer indication that what is involved is not whether or not the electorate trusts the judgment of the elector. His name is not on the ballot. His identity is not disclosed. How can there be any reliance upon the judgment of an elector? His name was eliminated from the ballot because the legislature of the State regarded the electoral college, in the light of the long traditions of the country, as the means of accepting his ministerial act to record the will of the voters.

Thirty-five States have such statutes. That has a bearing upon the precedent that Congress does or does not set today. Are we going to say to those 35 States that none of these electors are bound by accepting nomination of the party as presidential elector on slates where their names do not appear on the ballot?

I think some 17 or 18 other States provide for explicitly pledged electors. Two States make it possible for slates of explicitly unpledged electors to be elected. May I say to my colleagues that if such a slate were elected and were to meet on electoral college day, in my judgment, notwithstanding all of the history, those electors would be perfectly free to cast their vote in accordance with their individual preferences on that day.

But we are not talking about that date. We are talking about a case in which a North Carolina elector understood the tradition of 180 years, of being bound to one's party's candidate. He understood when he was nominated that he was being nominated as a Republican elector, and he did not object. He understood that he was elected as a Republican elector, and he did not refuse the election after election day. He chose to wait until electoral college day to let us know that he had changed his mind. Has he a right to do so?

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield to the distinguished Senator from Idaho.

Mr. CHURCH. In the excellent memorandum the Senator has provided for our instruction, I read that—

> Since the foundation of the Republic, 16,510 electors have been chose to perform this formal duty. Only six of these votes have been cast in derogation of that duty.

I wish to ask the Senator what action has previously been taken by the Congress in connection with other maverick electors.

Mr. MUSKIE. They have never been challenged.

Mr. CHURCH. This is the first time Congress has been called upon to act?

Mr. MUSKIE. Yes. In the case of the 1796 and 1820 electors who were faithless, I have given my colleagues a description of what was involved. It was not critical to the result, and apparently people took the same view of their abberation as others have since—that it was of no consequence and unimportant.

The thing that troubles me today is that, beginning in 1948 we began to have a different line of examples, of a clear intention to use this constitutional freedom, so-called, for the purpose of frustrating the will of the electorate.

In 1960 the proposition was circularized to Kennedy-and-Nixon-pledged electors that they withhold their votes so that they could exact a bargain from the presidential candidate to whom they would give their votes—a bargaining commitment presumably on substantive policy matters. That campaign failed, except that an elector from Oklahoma who was elected on a party slate shifted from Nixon to our late colleague Senator Byrd of Virginia.

In this election campaign there was quite a bit of open speculation that one of the presidential candidates was going to undertake to use supposed constitutional freedom of electors to control the election in the electoral college.

So we face this question now not as an isolated instance, but as a deliberate design on the part of people to frustrate the popular will. We have to decide, whether we like it or not, whether we are going to encourage those kinds of movements; whether, in the light of history and the development of the statutes and the circumstances of this case, electors have limited themselves to that kind of freedom of action on electoral college day.

In each instance the record of our country was free of any examples of these faithless electors from 1820 until 1948. Then we began to have the emergence of inconclusive examples, but as a part of a growing philosophy of a belief that, if properly organized and mobilized, the electoral college could become the instrument of people, outside the college, to frustrate the result of the people's vote on election day.

So we have an opportunity here to eliminate that weakness, not on the basis of some new theory, nor on the basis of electors for 180 years, including this one, putting themselves in a position of committing themselves about their vote on election day. I think we ought to speak. Really, either way, this debate should be useful. Congress could say that this kind of thing is possible. Congress, by the failure to exercise this challenge, would encourage this kind of thing, and then we would really have a constitutional problem, to which we should address ourselves without a moment's delay.

If Congress should sustain the objection, then, as long as we operate under this system, we will have eliminated, or at least reduced, the risk of frustrating the popular will to take place.

Mr. CHURCH. I thank the Senator.

Mr. MUSKIE. I think I would like to reserve whatever time I have left.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 9 minutes remaining.

Mr. MUSKIE. I would like to reserve my time, and then perhaps we could divide our time for answering questions.

Mr. ERVIN. Mr. President I would like to ask the Senator a question. The Senator has made what I construe to be an argument on the statute which North Carolina adopted in 1933. This statute provides that instead of printing the names of the many candidates for elector on the ballot, the names of the candidates for President and Vice President will be printed on it, and that each vote cast for the candidates of a particular party will be counted as votes cast for the electors of such party. This statute is now codified as section 163–209 of the General Statutes, and merely provides, in substance that—

> A vote for the candidates named on the ballot shall be a vote for the electors of the party by which those candidates were nominated and whose names have been filed with the secretary of state.

A discussion of the effect of this statute appears in the North Carolina Law Review, volume 11, 1932–33, at page 229. I invite the Senator's attention to this, because I know he does not wish to give an incorrect impression about the law of North Carolina.

> Neither the old law nor the new law, however, pledges the elector to cast a party vote, and legally, at least, the individual elector, as was intended by the framers, still has discretion to cast his vote for whomsoever he individually desires.

Mr. MUSKIE. I understand that the statute is not expressly binding.

The question we have before us is whether or not the North Carolina statute and the form of the North Carolina ballot add another circumstance which the elector, if he is an intelligent man, ought to have taken into consideration in offering himself for elector.

There was a Wallace slate in North Carolina. There was a candidate in his district. If he were that committed to Mr. Wallace, he could have sought election on the Wallace slate. He did not do so; and, without having had an opportunity to read the North Carolina Law Review or an occasion, really, to read the statute, I think that the voters of North Carolina have a right to assume that, when the only names that appear on the ballot are the names of the presidential candidates, their action in voting has a direct relationship to the result.

In this election campaign in Ohio, the question arose as to whether or not Mr. Wallace's electors could find a place on the Ohio ballot, notwithstanding the fact

that he had not complied with the provisions of Ohio law with respect to filing, and notwithstanding the fact that his party did not hold a primary in Ohio.

The Supreme Court held that the names of his electors ought to be on the ballot, because otherwise the voters would not have an effective voice in the choice for President. That is what I call the "effective choice" doctrine.

We are talking about whether or not, if you can have this kind of faithless elector, those who wanted to vote for Mr. Nixon in North Carolina had an effective voice in the selection of a President of the United States, in the light of these circumstances, of which Mr. Bailey made himself a voluntary part.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. DIRKSEN. On whose time? I have yielded no time.

The PRESIDENT pro tempore. I understood the Senator from Maine to say he yielded to the Senator from North Carolina on the time of the Senator from North Carolina.

Mr. DIRKSEN. I have not yielded. The Senator from North Carolina has no time until I yield it.

The PRESIDENT pro tempore. The Senator from Illinois is correct.

Mr. DIRKSEN. And I have some requests for time.

Mr. MUSKIE. Mr. President, I reserve whatever time I have remaining, and I have no objection to taking out of my time the time that has already been used. I assume, with the usual graciousness of Senators to each other, that if it is imperative I say something further, I can obtain the time.

Mr. DIRKSEN. Mr. President, I yield whatever time it takes for one question.

Mr. MILLER. I thank the Senator.

The PRESIDENT pro tempore. Is the Senator yielding time to the Senator from Iowa?

Mr. DIRKSEN. Yes, for one question.

Mr. MILLER. I should like to ask the Senator from Maine, and if he wishes he may yield to the Senator from North Carolina for this purpose: What remedy do the people of North Carolina who feel aggrieved by this fraudulent casting of an electoral vote have within their own State? That is the question I should like to have answered. Are the people of North Carolina left without remedy, and they can only look to Congress now, or did they have a remedy which they could have used?

Mr. MUSKIE. To the best of my knowledge, there is no statutory remedy. Whether or not there is a remedy in the courts is a question that has been debated by legal scholars, without really resolving it. There is the question of whether or not what we are talking about is a political question, to which the courts will not address themselves, on the understanding that Congress has that responsibility. But that has not been settled in the courts, and we do not know.

The PRESIDENT pro tempore. The Senator is advised that the 1 minute yielded by the Senator from Illinois has expired.

Mr. DIRKSEN. I think we should hear the other side, and I yield 20 minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I was much gratified when the Senator from Maine said that the elector in question, Dr. Bailey, was under no legal obligation to vote for the Republican candidates for President and Vice President.

This whole objection to Dr. Bailey's vote is based on the theory that Congress can take what was an ethical obligation and convert it into a constitutional obligation.

Under the Constitution of the United States, North Carolina has a right to cast 13 electoral votes. The duly elected electors cast those 13 electoral votes, 12 for the Republican nominees for the offices of President and Vice President, and one for Governor Wallace for President and General LeMay for Vice President.

This is a proposal to deny the State of North Carolina the right to cast all its electoral votes. I have received no complaints from North Carolina, concerning how Dr. Bailey cast his vote; but I have received this telegram from Dr. David R. Stroud, the chairman of the Republican Second Congressional District Committee. That is the district for which Dr. Bailey was serving as presidential elector.

It says:

A majority of the Republican Executive Committee of the Second Congressional District of North Carolina has been polled, and reaffirmed their support of Dr. Lloyd W. Bailey, presidential elector, in performing his constitutional duty by his vote in the Electoral College.

North Carolina is not complaining about Dr. Bailey's vote, but North Carolina does complain, and I complain, of the effort to deprive the State of the right to have its 13 electoral votes counted as cast at the duly held meeting of the electors.

The Constitution is very plain on this subject.

The original constitutional provision on the subject of the election of the President and Vice President was article II, which read as follows so far as it is presently pertinent:

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose 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. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

In the election of 1800 Thomas Jefferson was supposedly the candidate of the Democratic Party for President, and Aaron Burr was supposedly the candidate of the Democratic Party for Vice President. When the electoral votes were counted under article II, it was disclosed that they had received the highest number of votes and that the totals of their respective votes were exactly the same. So the election was thrown into the House under article II, and Jefferson was chosen President over Burr.

This event engendered much controversy, and resulted in a demand that the Constitution be amended so as to require the electors to vote separately for President and Vice President.

Pursuant to this demand, Congress and the States adopted the 12th amendment, which is now the supreme law of the land on this subject and which all Members of Congress are bound by oath or affirmation to support.

Here is what the 12th amendment provides:

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the persons voted for as President, and in distinct ballots the 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;

I digress to observe that the 12th amendment says that—

The votes shall then be counted.

Not that they shall be rejected by the Congress.

I continue to read the 12th amendment:

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.

Then comes the provision for election by the House in case nobody has a majority.

Then the same procedure for Vice President:

The person having the greatest number of votes as Vice President, shall be the Vice President—

Provided he has a majority. Then the 12th amendment provides that in case no

candidate for Vice President obtains a majority of the electoral votes, the Vice President shall be elected from the two receiving the highest number of votes by the Senate.

What is the truth about this? The man who helped to draw the original article II, Alexander Hamilton, stated in as plain words as can be found in the English language, in Federalist No. 68, that presidential electors had the power under the Constitution to elect as President and Vice President the persons they thought best qualified for the two highest offices in the Nation.

In those days there were no rapid methods of communication or transportation—no radio, no television, and very little newspaper circulation. There were no railroads or airplanes. People traveled by horseback or stagecoach or boat.

So Alexander Hamilton says that this language was used in order to enable the voters to select a small group of sufficient intelligence and information to make a selection for President and Vice President for them.

Let us see what the latest book on this subject has to say on this point. I refer to Neal R. Peirce's "The People President." I may add that the book was written by a great researcher and scholar, who advocates a constitutional amendment which would abolish our present system of choosing the President and the Vice President. Here is what Mr. Peirce says at 121:

In 1826, Thomas Hart Benton, of Missouri—

Incidentally, he was a native of North Carolina—

said that the Founding Fathers had intended electors to be men of superior discernment, virtue, and information, who would select the President according to their own will and without reference to the immediate wishes of the people.

The case from Alabama, *Ray* v. *Blair* (343 U.S. 214), does not hold that Congress has a right to control the vote of an elector. It merely holds that a political party in Alabama—the Democratic Party—acting under authority conferred upon it by the legislature of Alabama, could exclude as a candidate for presidential elector in its party primary, any man who refused to take a pledge to support the nominees of the party for President and Vice President. That is all the case holds. Justice Reed, who wrote the opinion for the majority, conceded, in effect, that the Court could not enforce that decision in case a man made the pledge but did not keep it after being chosen elector.

I invite the attention of the Senate to what Justice Reed says on page 230.

That part of the opinion of Judge Reed, on page 230, holds that a political party, if permitted by State statute, can exclude a person who wants to run in its primary as a candidate for its elector if he refuses to take the pledge. That is all the case holds.

Let us see what one of the greatest men ever to adorn the Supreme Court declared in the same case. Justice Jackson, in a dissenting opinion in 343 U.S. 232, said:

No one faithful to our history—

I read those words again:

No one faithful to our history can deny that the plan originally contemplated, what is implicit in its text, that electors would be free agents to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest offices.

Certainly under that plan no State could control the elector in the performance of his Federal duty, any more than it could a U.S. Senator, who also is chosen by and represents a State.

Let me read another statement on this point—it is an admission to the same effect made in the Muskie-O'Hara memorandum, page 1:

The office of presidential elector was undeniably visualized by Article II, Section 1 of the Constitution as being one of judgment and independence. The Founding Fathers clearly intended that electors should be chosen for their good judgment and discernment of public men and issues, and that they should elect a President in fact as well as in form.

There has been no change on that point in the Constitution. The only change of article II, section 1, has been made by the 12th amendment, which provides that instead of the man receiving the highest vote becoming President and the man receiving the second highest vote becoming Vice President, the electors shall vote separate ballots, one for President and the other for Vice President. That is the only real change that is made.

The Senator from Maine argues for a new theory for changing or amending the Constitution.

Article V of the Constitution provides that the Constitution may be changed in only one way, and that is by the concurrent action of two-thirds of both Houses of Congress and that of three-fourths of the States. This whole case rests upon two premises, both without foundation: The first is that Congress can take an ethical obligation and convert it into a constitutional obligation. That is ridiculous.

Mr. MUSKIE. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. MUSKIE. I have not made that point. I have simply not made that point.

Mr. ERVIN. I am glad to hear the Senator say that.

Mr. MUSKIE. I have not made it in that way.

Mr. ERVIN. The point the Senator makes is that because political parties have developed and because men ordinarily pledge themselves to vote for particular candidates for President and Vice President when they seek appointment to the office of elector, in some way the words of the Constitution, which make it plain that an elector is constitutionally a free agent, have been altered.

Mr. MUSKIE. Mr. President, will the Senator further yield?

Mr. ERVIN. I yield.

Mr. MUSKIE. So long as the Senator is presuming to state my argument, I think I ought to interject long enough to state it in my own words.

What I am saying has nothing to do with a constitutional interpretation or a constitutional revision or amendment. What I am saying is that a presidential elector under the Constitution is a free agent, enttled to express his individual preferences on electoral college day; but that if prior to electoral college day he expresses his preference in a way which makes people justified in relying on what he himself says or the actions he takes, he himself limits the freedom which the Constitution gives him.

Mr. ERVIN. The Senator from Maine says, as I construe his meaning, that an elector is still a free agent; but that if he undertakes to act as a free agent when he casts his vote, he can be denied the right to vote. That is the proposition stated by the Senator from Maine.

Mr. MUSKIE. I would not expect a lawyer to convert my argument into that kind of language. There is such a thing as putting one's self in a position in which people rely on what he says and upon what he has done.

The Senator from North Carolina says that electors should be free of any consequences of their own action. I am saying that when they make it possible for other people to rely on what they say or do, they ought in some way be bound by their own actions.

Mr. ERVIN. The difference between what the Senator from Maine says in his own words and what I am saying in interpreting them is not as great as that between Tweedledum and Tweedledee.

Senator Benton said in 1826, 22 years after the 12th amendment was adopted, that the elector "may give or sell his vote to the adverse candidate, in violation of all the pledges that have been taken of him. The crime is easily committed, for he votes by ballot; detection difficult, because he does not sign it; prevention is impossible, for he cannot be coerced; the injury irreparable, for the vote cannot be vacated; legal punishment is unknown and would be inadequate."

In other words, Senator Benton said that, if a man has no ethical standards and feels no moral obligation, he can cast his electoral vote as he pleases, regardless of any pledges that may have been made by him.

The idea—which the Senator says he does not entertain—that the Constitution can be changed by a practice inconsistent with the words of the Constitution or by the lapse of time is emphatically rejected in the Alabama case of Ray against Blair, by Justice Jackson. On page 233 of his dissenting opinion in that case, Justice Jackson stated:

But I do not think powers or discretions granted to federal officials by the federal Constitution can be forfeited by the court for disuse. A political practice which has its origin in custom must rely upon custom for its sanctions.

Here the proposal is that, instead of relying on customs for sanctions, we shall rely upon positive action by the Senate and the House of Representatives, both of which are forbidden to interfere with these matters by the act of 1887, except in very restricted cases.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BAYH. I should like to return to

what the Senator from Maine said, inasmuch as he agrees with the general definition of the power of the elector, but his argument is based on acts taken by the electors which of themselves proscribe the freedom that the elector has.

Inasmuch as the Senator from North Carolina has been so free in quoting Thomas Hart Benton, I think we should look to what Thomas Hart Benton said in connection with the degree to which the electors by precedent had limited themselves. In 1826, Thomas Hart Benton said that the electors have degenerated into mere agents in a case which requires no agency and where the agent must be useless if he is faithful and dangerous if he is not.

Mr. ERVIN. Yes, he said that; and in the same document he said this:

> The Founding Fathers had intended electors to be men of "superior discernment, virtue and information," who would select the President "according to their own will" and without reference to the immediate wishes of the people.

The practice alluded to by Senator Benton has not changed the words of the 12th amendment.

Let me cite what the author of a recent treatise on constitutional law, Bernard Swartz, a scholar of liberal views, has to say on this subject in volume 2 of his book entitled "Powers of the President." On page 8, he declares that—

> The independence of electors still continues as a matter of constitutional law—regardless of the rarity with which it may, in fact, be asserted.

On page 9, he asserts:

> So long as article II and the twelfth amendment remain unchanged, a law cannot make a legal obligation out of what has become a voluntary general practice.

Also in this book, written by Neil R. Peirce, entitled "The People's President," on page 122 appears the statement I read, which Thomas Hart Benton made at the same time, that a man was not bound by any pledges. The author says:

> Since Benton's day, some efforts have been made to restrict the elector's independence—but his basic point still holds.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ERVIN. I ask for 15 additional minutes.

Mr. DIRKSEN. I yield 5 minutes to the Senator.

The PRESIDENT pro tempore. The Senator is allowed 5 additional minutes.

Mr. YARBOROUGH. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I have only 5 minutes.

Mr. YARBOROUGH. I shall be brief. Is there any statute in North Carolina that binds the electors to vote for the nominee of the party on whose ballot they are listed?

Mr. ERVIN. There is not.

In 1933, there was great confusion in balloting because we had 13 electoral votes. The State had to print 26 names on every ballot, 13 candidates for electors for each of the two major parties and 13 more names for each third party having candidates. To avoid confusion, the legislature passed a statute which provided for the printing of the names of the candidates for President and Vice President on the ballot and that votes cast for them would be counted as votes for the electors of the parties of those candidates.

The North Carolina Law Review, in interpreting that statute, said this:

> Neither the old law nor the new law, however, pledges the elector to cast a party vote, and legally, at least, the individual elector, as was intended by the framers, still has discretion to cast his vote for whomsoever he individually desires.

Consequently, Dr. Bailey was not bound to vote a party ticket.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. ERVIN. I do not yield. I do not have any time.

Mr. DIRKSEN. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. DIRKSEN. I yield the Senator from North Carolina 10 additional minutes.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. ERVIN. Not at this moment. I take this course simply because the time at my disposal is less than the time I need to state my position.

The press of North Carolina announced, before the electoral college met, that Lloyd W. Bailey made a statement in which he pointed out why he was going to vote for Wallace. He said he was against Johnson, and he decided that Mr. Nixon, on account of certain appointments he had made, would carry on the same policies as Mr. Johnson. Dr. Bailey said this:

> I realize that it is perhaps unusual for an Elector not to vote for his party's nominee, but as an Elector it is my duty to place loyalty to my country before loyalty to my political party.

He pointed out that in his district 46 1/10 percent of the voters voted for Wallace, and that he voted in accordance with the wishes of the majority of his constituents.

Mr. President, I ask unanimous consent that the statement of Dr. Bailey be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

ROCKY MOUNT, N.C.
December 16, 1968.

As the Republican Elector for the Second Congressional District of North Carolina, unpledged, I have had a very difficult decision to make. Having no interest in politics other than that of a concerned American citizen who believes that our Constitution is the greatest political document yet conceived by man, I certainly find that my position as an Elector is one which cannot be assumed as a mere formality. I realize that it is perhaps unusual for an Elector not to vote for his party's nominee, but as an Elector it is my duty to place loyalty to my country before loyalty to my political party. According to the Federalist Papers, the framers of our Constitution intended that Electors be free to elect even a man who had not been running for office instead of the nominee of the popular vote if evidence indicated that it would be in the national interest.

Mr. Nixon has a mandate to change the course of our Government as evidenced by the combined Nixon and Wallace vote against the present policies of the Johnson Administration. He has already clearly shown to us that we are going to have more of the same thing. Some of the men who have been appointed to high positions on his personal staff are members of the un-American and infamous Council on Foreign Relations. They include Paul W. McCracken, Henry Cabot Lodge, Robert Murphy, and Henry A. Kissinger. This organization, called the Invisible Government by Dan Smoot in his book by this title, is one which seeks to undermine our national sovereignty and merge us with other nations under a world government, perhaps like the United Nations. The goals of the Council on Foreign Relations appear to be uncomfortably close to the goals of the International Communist Conspiracy. Since the 1950's, men who are members of this internationalist organization have managed to have themselves appointed to the highest policy-making positions in our Government, regardless of which party was in office. Strangely, this makes it appear that the same men are running both parties. I strongly recommend that every concerned American read this book, The Invisible Government, for it shows beyond any doubt that our country has been guided by these appointed officials rather than by our elected representatives. It is apparent that we are going to have the same men running our Government in spite of the large vote against their policies. Daniel Moynihan, a national board member of the Americans for Democratic Action, a left-wing Democrat, is another appointee to a high position and it is abundantly clear from his record that he would not want to make any change toward Americanism and constitutional government for our Republic. I sincerely doubt that Mr. Nixon will find any support among his voters for this appointment. The response of the people toward a permanent surtax is already being investigated by the Nixon Administration. Mr. Nixon has endorsed the no-win Johnson foreign policy for Vietnam, and this includes the United States Government supplying more than 80% of the materials for the enemy to use against our own men. He has also asked Earl Warren to remain as Chief Justice of the United States Supreme Court until June. This is unthinkable!

The Electoral College is under fire as being antiquated. However, I wonder how many people stop to think of the fact that if it were not for the Electoral College, the Federal Government would run the elections and would be responsible for counting the votes. Under the present system the state governments manage the elections. Can you imagine how it would be if President Lyndon Johnson were running for re-election and counting his own votes? In our system of government the minority view is supposed to be respected and represented. The Electoral College is one part of the system of checks and balances which guarantees that the minority voice can be heard. Yet, strangely, the very ones who claim to represent minorities are the ones who are seeking to abolish the Electoral College.

In view of these facts, and in view of the fact that Mr. Wallace polled 46.1% of the vote in my district, I find that I cannot support Mr. Nixon until he gives definite evidence that he intends to make the changes which the people are demanding. I do not intend this as an attack upon Mr. Nixon personally, and I sincerely hope that he will lead us up from the depths to which our Republic has descended. Though it may not be the popular thing to do, I humbly take this position with the firm belief that it is my moral obligation to do so.

LLOYD W. BAILEY,
Republican Elector, Second Congressional District of North Carolina.

Mr. ERVIN. I do not defend Dr. Bailey's position. If I had been in his place, I would have felt morally bound, accord-

ing to the standard of ethics which I happen to entertain, to cast my ballot for the nominees of the party which had chosen me elector. But that is not the question. The question is whether we can throw Dr. Bailey's vote away because he has not done so.

This is one of the rare occasions on which the Washington Post and the New York Times agree with me. When the Washington Post and the New York Times agree with me, I must be right.

Mr. President, I ask unanimous consent to have an editorial published in the New York Times and an editorial published in the Washington Post printed at this point in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 6, 1969]

ELECTORAL CHALLENGE

Representative James G. O'Hara and Senator Edward Muskie—acting with Republican as well as Democratic support—plan to make an important challenge when Congress counts the electoral votes today. Viewed technically, their action may perhaps be seen as an effort to correct one wrong by committing another. It is, in a large sense however, a challenge to the nation to get on with the business of electoral reform.

The two Democrats plan to challenge the electoral vote cast in North Carolina by Dr. Lloyd W. Bailey, who was elected on a slate of electors committed to Richard Nixon, then became disenchanted with Mr. Nixon's initial appointments and switched to vote for George C. Wallace. Dr. Bailey chose to exercise the discretion that the Constitution gives Presidential electors. Yet he was wrong in the sense that his action violated party pledges and disfranchised those who voted for him.

Representative O'Hara and Senator Muskie will doubtless make this argument in their challenge. Congress is empowered to count electoral votes, and the power to count implies the power not to count. In the elections of 1820 and 1832 several electoral ballots were rejected by Congress on technical grounds. In 1880 the ballots of Georgia's electors were not counted because they had been cast on the wrong day. In 1872 Horace Greeley, the Democratic nominee, died after the popular voting but before the Electoral College convened, and Congress refused to count electoral ballots cast for him on the ground they had been cast for a deceased candidate. A Congressional commission set up after the disputed Hayes-Tilden election chose between several competing slates of electors.

All of this gives some precedent to the move expected today. Never before, however, has Congress refused to count the ballot of an elector who simply disregarded his pledge and voted his personal whim. This electoral discretion, enshrined in the Constitution, has formed the basis of unpledged elector and third-party movements. The two challengers would like to deny third-party candidates the leverage that Wallace planned to exercise by promising his electoral votes, in case of a deadlock, to whichever major candidate agreed to adopt certain of his policies.

The challenge itself raises constitutional issues. Certainly any attempt to give the defecting elector's ballot to Mr. Nixon, as Representative O'Hara and Senator Muskie have indicated they plan, would raise grave doubts. Who would cast this ballot? How?

In the sense that the challenge runs contrary to the Constitution, it too can be considered wrong. While two wrongs of this sort cannot make a right, the challenge nonetheless should serve to alert the nation once again to the dangers inherent in the present Electoral College system for choosing Presidents and Vice Presidents. And, by their own admission, this is the challengers' main purpose. Their action should remind a nation, which still seems to need reminding, that fundamental electoral reform is long overdue.

[From the Washington (D.C.) Post, Jan. 4, 1969]

MOMENTOUS ELECTORAL CHALLENGE

Sen. Edmund S. Muskie and Rep. James G. O'Hara are rendering a national service by challenging the vote of an unfaithful elector from North Carolina. That elector, Dr. Lloyd W. Bailey, was chosen as a Republican on the assumption that he would cast his vote for Richard Nixon, but he has cast it in fact for George Wallace. Messrs. Muskie and O'Hara will ask the Senate and House, when the electoral votes are counted on Monday, to "vacate" the Wallace vote and to count all the electoral votes from North Carolina for Mr. Nixon.

Justice, common sense and democratic principle run strongly in the direction that Sen. Muskie and Rep. O'Hara have taken. Regardless of what the Constitution says, the people have come to expect presidential electors to vote for the candidate to whom they are pledged, whether by law, party rules or custom. The casting of an electoral vote in defiance of such obligation is indeed a betrayal of trust which should not be tolerated.

It is a very different question, however, as to whether Congress has a right to alter such a vote for the purpose of thwarting the betrayal and making the will of the people prevail in the so-called electoral college. One has to start with the fact that the Founding Fathers did originally intend that the electors should use their judgment in the selection of the President, and the system has not been changed by constitutional amendment. Usage has changed it so that the electors customarily function as mere agents to carry out the will of the majority within their state. In six instances, however, electors have voted in defiance of their instructions and no means has been found to date to prevent them from doing so.

Messrs. Muskie and O'Hara now think that the Electoral Count Law of 1887 can be used for this purpose. That measure permits one Senator and one Representative to challenge electoral votes as they are counted. Since Dr. Bailey's vote will be challenged in both houses, the two bodies will have to decide whether, under the law, it has been "regularly given" by an elector "whose appointment has been lawfully certified."

In support of their argument the two congressional leaders note that North Carolina law provides for the nomination of elector candidates by party convention and deems them to have been appointed to represent the state in the electoral process if the presidential nominees of the same party receive a plurality of the votes cast for President and Vice President. But this would seem to mean that Dr. Bailey was undoubtedly elected in North Carolina. The only question at issue is whether Congress can force him to vote as the people who elected him thought he would.

There is little indication that Congress had any such intent in passing the 1887 act. Rather, its intent seemed to run in the other direction—to prevent Congress from setting aside any vote regularly given by an elector certified by the state. This act was the congressional response to the Hayes-Tilden scandal of 1876. Congress had disposed of that contest by setting up a congressional commission which gave all the disputed votes to Hayes, and Congress in 1887 wanted to make sure that this would never happen again. The law which Messrs. Muskie and O'Hara are trying to use was primarily intended to keep future disputes over electoral votes within the states. There is nothing in the history of the act that suggests any intent to let Congress change a vote by an elector because he had disregarded his supporters' wishes.

We think it is highly desirable, nevertheless, to test the issue. If Congress should decide that it can throw out electoral votes or recast them so as to conform to the majority wishes within a state, the consequences would be far-reaching. It would mean, for example, that the tactic which George Wallace has intended to use, of shifting electoral votes for him to another candidate who might lack an electoral majority, thus preventing a choice of the President by the House of Representatives, would no longer be available to third-party aspirants.

The sponsors of this "unfaithful-elector" challenge, however, make no pretense that acceptance of their view by Congress would eliminate the need for more basic reforms in the electoral system by constitutional amendment. Whatever the outcome, the need for a new electoral system is likely to be accentuated. For even if Congress asserted the right to overrule an unfaithful elector this time, it might not choose to do so in the future. A new system completely eliminating electors who may thwart the will of the people is the really urgent need.

Mr. ERVIN. We have heard about the times presidential electors have repudiated their pledges to their party's nominees. I wish every Member of the Senate could read this book, "The People's President," the latest publication on this subject, by a man who advocates an amendment to change the system for electing Presidents and Vice Presidents. He points out that in 1792 six Virginia electors shifted their votes from Adams to Clinton; that in 1796 a Pennsylvania Federalist elector voted for Jefferson; that in the same year former Senator William Plumer, of New Hampshire, cast his vote for Adams rather than for Monroe to whom he was pledged; that in 1824, North Carolina's 15 presidential electors went back on their pledge; and that in 1824, seven New York electors pledged to Clay went back on their pledges.

The book reveals that there have been several other incidents of this character in recent years and that in all of these cases the electoral votes as cast were counted.

I wish to read another statement from this same book showing first what the Court decided in the Alabama case. It did not decide that a State or a political party or any other power on earth could control the actual casting of an elector's vote:

> Even if a loyalty pledge were unenforceable, the Court said it would not follow that a party pledge as a requisite for running in a primary was unconstitutional, since any person not wishing to take the oath could run independently of party.

Incidentally, the Court did not decide anything except that a person could be excluded from running for elector in a party primary if he refused to pledge himself to support the party's nominees when a State statute authorized the party to require him to make such pledge.

This interpretation is rightly put upon *Ray* v. *Blair* (343 U.S. 214) by Mr. Peirce on page 126 of his book entitled the "People's President." I read what he says:

> But the Court did not rule on the constitutionality of state laws that require electors to vote for their party's candidates, or indicate whether elector pledges, even if given, could be enforced. The preponderance of legal opinion seems to be that statutes binding

electors, or pledges that they may give, are unenforceable. "If an elector chooses to incur party and community wrath by violating his trust and voting for some one other than his party's candidate, it is doubtful if there is any practical remedy," in the view of James C. Kirby, Jr., an expert on electoral college law. Once the elector is appointed, Kirby points out, "he is to vote. Legal proceedings which extended beyond the date when the electors must meet and vote would be of no avail. If mandamus were issued and he disobeyed the order, no one could change his vote or cast it differently. If he were enjoined from voting for anyone else, he could still abstain and deprive the candidate of his electoral vote."

Mr. President, I wish to raise one additional point. The Senate is forbidden by the very statute under which this objection is filed to reject Dr. Bailey's vote. If I construe the argument of the distinguished Senator from Maine right, the word "regularly" as used in title 3, section 15, can be made to mean anything. I challenge that interpretation. The statute speaks of votes being regularly given by an elector. By this it means simply that that vote must be given or cast in the manner prescribed by the Constitution. Section 8 of title 3, which is a part of the statute invoked by the Senator from Maine, provides:

> Manner of voting: The elector shall vote for President and Vice President, respectively, in the manner directed by the Constitution.

I would like to point out that these electors met on the day fixed by the Constitution; they voted two ballots as required by the Constitution, one for President and one for Vice President. Dr. Bailey voted for George Wallace for President and on a separate ballot voted for Gen. Curtis LeMay for Vice President. He has cast his vote regularly in the manner provided by the Constitution. This very statute so provides. I invite the attention of Senators to its language because it puts an end to this objection if the Senate is going to abide by the law which the Senate and the House of Representatives passed and which the President signed.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ERVIN. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from North Carolina is recognized for an additional 2 minutes.

Mr. ERVIN. Mr. President, section 15 of title 3 of the United States Code provides:

> No electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. ERVIN. No, I have only a few minutes remaining.

Mr. BAYH. It might be wise to read the rest of it.

Mr. ERVIN. The rest of it has nothing to do with this.

Mr. BAYH. With all due respect I think it is the critical question.

Mr. ERVIN. It has nothing to do with it. I have read the critical clause. The three conditions of the clause which forbids the Congress to reject Dr. Bailey's vote exist.

First. His vote was regularly given in the manner prescribed by the Constitution.

Second. More than 6 days before the meeting of the electors the executive of North Carolina, Gov. Dan K. Moore, certified as required by section 6 of title 3 of the United States Code that Dr. Bailey and his fellow electors had been duly appointed in accordance with the laws of North Carolina.

Third. The return of their votes made by Dr. Bailey and his fellow electors was the only return received.

In other words, Dr. Bailey's vote was cast in the manner provided by the Constitution. That is, regularly. It was cast by one certified to be a duly chosen elector for the State, by Governor Moore, the Governor of North Carolina, then it was reported to Congress in the only return received. Hence, under this act, Congress cannot reject Dr. Bailey's vote without violating both the Constitution and the statute—Title 3, section 15—implementing it.

Mr. President, I ask unanimous consent to have printed in the RECORD the certificate of Gov. Dan K. Moore.

There being no objection, the certificate was ordered to be printed in the RECORD, as follows:

CERTIFICATE

To the Administrator of General Services:

The undersigned, Dan K. Moore, Governor of North Carolina, hereby certifies, as required by United States Code, Title 3, Sections 6, 9, and 11, that the following named persons, electors for the Republican Party, were ascertained to be duly elected as Presidential Electors for the State of North Carolina, and that by the canvass and ascertainment under the laws of the State of North Carolina each of said persons hereinafter listed received six hundred twenty-seven thousand, one hundred ninety-two (627,192) votes, which vote has been duly ascertained by the State Board of Elections of the State of North Carolina and certified by said Board to the Secretary of State of North Carolina, and duly certified by the Secretary of State of North Carolina to the undersigned, in conformity with the laws of said State:

ELECTOR AND CONGRESSIONAL DISTRICT

A. W. (Billy) Houtz, First.
Dr. Lloyd Bailey, Second.
Sam E. Godwin, Third.
Russell N. Barringer, Sr., Fourth.
H. F. Stanley, Fifth.
James Rodgers, Sixth.
J. T. Clemons, Seventh.
W. S. Bogle, Eighth.
R. Powell Majors, Ninth.
Edward H. Smith, Tenth.
R. Curtis Ratcliff, Eleventh.

Electors at large

H. J. Liverman.
Mrs. Dorothy Presser Furr.

And each of the following named persons, electors for the American Party, received four hundred ninety-six thousand, one hundred eighty-eight (496,188) votes, which vote has been duly ascertained by the State Board of Elections of the State of North Carolina and certified by said Board to the Secretary of State of North Carolina, and duly certified by the Secretary of State of North Carolina to the undersigned, in conformity with the laws of said State:

ELECTOR AND CONGRESSIONAL DISTRICT

Byrd Hinshaw, First.
James Atwood Holmes, Second.
Dr. Donnie H. Jones, Jr., Third.
Brandon Bruner York, Fourth.
Bob Cook Miller, Fifth.
William E. DeLotch, Sixth.
J. Cardon Meshaw, Seventh.
Mrs. George C. P. Gilliam, Eighth.
Lowell C. Terry, Jr., Ninth.
Charles Boyce Falls, Tenth.
Dr. Henry T. Gunter, Eleventh.

Electors at Large

Charles R. Vance, Jr.
Jefferson Gordon Dildy.

And each of the following named persons, electors for the Democratic Party, received four hundred sixty-four thousand, one hundred thirteen (464,113) votes, which vote has been duly ascertained by the State Board of Elections of the State of North Carolina and certified by said Board to the Secretary of State of North Carolina, and duly certified by the Secretary of State of North Carolina to the undersigned, in conformity with the laws of said State:

ELECTORS AND CONGRESSIONAL DISTRICTS

Miss Ann Reid, First.
H. Maynard Hicks, Second.
Mrs. J. V. Whitfield, Third.
Brooks W. Poole, Fourth.
R. J. Harris, Fifth.
William C. Stokes, Sixth.
Robert M. Kerman, Seventh.
Hugh A. Lee, Eighth.
Gordon Rhodes, Ninth.
James A. Dugger, Tenth.
Frank Watson, Eleventh.

Electors at Large

James T. Hedrick.
Jonathan H. Woody.

In witness whereof, the undersigned, Dan K. Moore, Governor of North Carolina, has hereunto set his hand and caused to be affixed the Great Seal of the State of North Carolina, on this the 2nd day of December, 1968.

DAN MOORE,
Governor.

Mr. ERVIN. Mr. President, I do not agree with the ethics of the elector, but I think it would be more unethical for Congress to usurp power it does not possess under the statute under which it is acting. And even more unethical for Congress to usurp power denied it by the 12th amendment.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired. Who yields time?

Mr. DIRKSEN. Mr. President, I yield 5 minutes to the Senator from Florida.

Mr. HOLLAND. I thank the Senator for yielding. I hope the Senator from Maine will follow my remarks. First, I commend him. I think it is a good thing that this question has been raised, but I think the fact that it is being raised simply points out the need for constitutional amendment. Whether it be by constitutional amendment favored by the Senator from Indiana, or the one favored by the Senator from North Carolina and myself, or the one favored by the Senator from South Dakota is beside the question.

The Senator from Maine has made it very clear that we need to change this provision in our Constitution. Briefly, he admits that under the Constitution the electors are free agents. I note that the Senator shakes his head in affirmation of that point.

Mr. MUSKIE. May I say——

Mr. HOLLAND. I have only 5 minutes.

The Senator admits that six times heretofore, Congress, by canvassing and accepting votes cast in the same way that Dr. Bailey's votes were cast, has set a precedent for recognizing the fact that such votes can be cast, and the only difference between those situations and this situation is that this is the first time a direct proposal has been made against the receipt of the votes.

Mr. MUSKIE. May I say on my time——

Mr. HOLLAND. Not right now. I wish to finish my statement. The Senator did not yield to me. If the Senator will permit me to finish my remarks I will be glad to yield to him on his time.

Mr. President, the third matter I call attention to is the fact that while perhaps every Senator at one time or another has been complaining about Supreme Court encroachment on the Constitution and its making new law by judicial fiat, we are now being asked to do the very same thing by the procedure involved in this motion.

The next thing I wish to mention is that by one statement he made the Senator made it clear, or at least clear to me, that such a precedent as he proposes to set up affects only this one vote this time. He referred to the fact that one of the candidates for President this year made repeated statements indicating that he proposed to use his electoral votes in such a way as to avoid the election being thrown into the House of Representatives. Of course, that is a fact. We all heard Governor Wallace make that statement many times.

I am calling attention to the fact that the logical meaning of our establishing this precedent would mean that if a third-party candidate succeeded in getting enough votes to throw the election either way, because neither of the other two candidates received sufficient votes to have a majority of the electoral votes, and attempted to do so by asking his electors to vote one way or the other, the same procedure we are asked to approve here would apply and then Congress could throw this matter into the House of Representatives for the election of the President by simply vitiating votes cast by electors for the third-party candidate who instead voted for one of the candidates of the major parties.

I do not believe there is any doubt about it. I hope the Senator will think it through. That is exactly what is being proposed, because if this is good as to one elector, it is good as to more than one elector. What he is doing, in effect, here, is trying to set a precedent which, in effect, will draw the teeth of any third-party movement insofar as trading electoral votes prior to the action of the electoral college is concerned.

Mr. President, so far as the Senator from Florida is concerned, he agrees completely that we have need for change. He himself has suggested something comparable to the Lodge-Gossett amendment during the past several Congresses. I have already prepared an amendment which I hope to submit on the first day bills are submitted.

But, I do not favor setting a precedent as dangerous as this. I do not want to favor doing something which I regard as unconstitutional.

The ACTING PRESIDENT pro tempore. The time of the Senator from Florida has expired.

Mr. HOLLAND. I thank the Chair for ruling. I thank the Senator from Illinois (Mr. DIRKSEN) for yielding to me.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ALLEN. Mr. President——

Mr. DIRKSEN. Mr. President, I yield 10 minutes to the distinguished Senator from Alabama.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized for 10 minutes.

Mr. ALLEN. Mr. President, I thank the Senator from Illinois.

Mr. President, I rise with some degree of hesitancy to take the floor of the Senate so soon after having been sworn in on last Friday, because I subscribe to the policy and the custom which provides that a new Senator shall work hard, shall study long, and that while he may frequently be seen—and he should be seen at his desk and in committee sessions—he should seldom be heard on the floor of the Senate.

However, the name of a former Governor of my State, whom I greatly admire and who made a gallant race for the Presidency, receiving some 10 million votes without any machine, without any local ticket, and without adequate funds, has been raised on this floor.

Let me hasten to say, Mr. President, that whether Governor Wallace receives 45 or 46 electoral votes in the electoral college and in the canvass by the joint Houses, that will be of small consequence.

The question is the same, no matter who is losing the vote: I would be just as strongly against the objection that is to be filed if an effort were being made to take the vote away from the distinguished Vice President of this country and the distinguished junior Senator from Maine.

A great constitutional question, however, is involved. I agree with the distinguished junior Senator from Maine on one point, and on one point only, and that is that the matter under discussion and any other matter under discussion in the Senate should be subjected to lengthy debate. For that reason, I was glad when the junior Senator from Maine suggested that this informal session of the Senate be held so that arguments could be made that would not be limited by the 2-hour rule which will prevail this afternoon. I hope that the distinguished junior Senator from Maine will adopt the same view later in the session when, possibly, efforts will be made to limit the time for debate rather than to extend the time for debate, which he now stands for.

Mr. President, if there was ever a case of tilting at windmills, that is what we have in this objection which is to be filed this afternoon.

This is the wrong forum to consider this question. If a constitutional question is involved, it should be considered by the Supreme Court. I do not like the thought of the Senate's taking over the job of the Supreme Court. I do not like the idea of it interpreting the Constitution. I want to see Congress legislate; I want to see the Supreme Court not legislate but interpret.

I might say in passing that I believe I would come nearer resting a constitutional question—if that were permitted—in the hands of the Senate rather than in the hands of the Supreme Court as presently constituted. But that is not what the Constitution provides.

Thus, we are in the wrong forum. An effort is being made to amend the Constitution by usage and by custom.

Shorn of the legal technicalities and the legal verbiage involved, that is exactly what the junior Senator from Maine is trying to do.

Many points have been made that I had in mind making in my brief remarks. One suggestion, I believe, has not been covered. The junior Senator from Maine would seek to make robots of electors—rubber stamps who have no discretion of their own.

Mr. President, I should like to ask two questions of the junior Senator from Maine and hope that he will answer them during his rebuttal time.

Question No. 1. Suppose there is a great change in the President-elect or the person who receives the greatest number of votes, apparently, in the general election between the day of the general election and the time the electoral college meets, and it is found that the assumed President-elect is a crook, an embezzler, a disloyal American citizen, a Communist, if you will, Mr. President—would the junior Senator from Maine contend that the electors would have to go ahead and vote for such a man for President of the United States?

Question No. 2. In 1872, Horace Greeley was the nominee of the Democratic Party for the office of President. He was alive on election day but he died on November 29, 1872, before the electoral college met. Had Horace Greeley been successful in the general election of 1872 and apparently been elected President of the United States, would the Senator from Maine contend that when the electoral college met, the electors pledged to Mr. Greeley, on account of the fact that they were electors of a party, would have to vote for a dead man for the office of President of the United States?

Certainly the electors have discretion. They have discretion to act as free agents and any effort to change that rule by the House or Senate certainly would violate the constitutional provisions with regard to electors.

Mr. President, I hope that we will go ahead and canvass the returns of the electoral votes of the various States this afternoon. Mr. Nixon will be declared to be the President of the United States, and Mr. AGNEW will be declared to be Vice President of the United States.

I hope that if an objection is made—if, in fact, it is to be made, and I hope it will not be made, I hope that we will cease tilting at windmills—the Senate this afternoon will promptly reject that objection.

Certainly the attitude of the distinguished Senator from North Carolina should be persuasive in this matter. He does not want to see the electors of the

sovereign State of North Carolina and the people of North Carolina deprived of the number of electoral votes to which the State of North Carolina is entitled. And that is what the effort of the objectors would do.

I hope, Mr. President, that the Senate will vote against the objection, if it does come up for a vote.

I appreciate the time and attention of the Senate. I do not apologize, but I express my sincere appreciation for being allowed to speak on this subject, which is so vital to the people of Alabama and the Nation.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. DIRKSEN. As I understand, we will proceed to the House Chamber in time for the opening of the session at 1 o'clock. Is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DIRKSEN. At that time they will open the electoral votes, tellers will be appointed, and the President pro tempore or the Vice President will preside. Is that correct?

The ACTING PRESIDENT pro tempore. The President pro tempore will preside. Tellers have been designated.

Mr. DIRKSEN. They will undertake then to count the electoral votes, alphabetically, by States, as I recall.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DIRKSEN. I assume that when they get to North Carolina and the vote is announced, there will then be objection.

The ACTING PRESIDENT pro tempore. If objection were to be made, that would be the appropriate time to make the objection.

Mr. DIRKSEN. Mr. President, if objection is not made, we have been wasting a precious lot of time, and I could be dictating mail or seeing constituents.

But, Mr. President, assuming the objection is made, it is at that point, I take it, that something has to be said as to where the joint body proceeds from there and hears the something that is to be said.

The ACTING PRESIDENT pro tempore. The Presiding Officer will then receive the objection and announce that the separate bodies will return to their respective Chambers and debate the question, under the statute.

Mr. DIRKSEN. The Senate will then repair to its own sacred Chamber to further consider this matter; and I presume the first order of business will be the entertainment of a unanimous-consent request for a modification of the existing law with respect to a further consideration of this matter.

The ACTING PRESIDENT pro tempore. That would be up to the respective Members of the Senate. It would be in order to make such——

Mr. DIRKSEN. Mr. President, I should watch my language. It would be in order, then, to submit a unanimous-consent request?

The ACTING PRESIDENT pro tempore. It would be in order to submit such a request.

Mr. DIRKSEN. Now, that request could be submitted in one form or another. One form would be to ask consent to waive the provisions of the statute and take the 2-hour period and slice it in half and put it under the control of the majority and minority leaders, without any further provision or apportionment of the time that is in the consent request.

The ACTING PRESIDENT pro tempore. Such a request could be submitted and would be in order at that time.

Mr. DIRKSEN. Or a request could be made to limit the debate to 2 hours, notwithstanding the statute, and also apportion the time, but place a limitation of 5 minutes on each Senator who wishes to speak.

The ACTING PRESIDENT pro tempore. That is the present statutory provision.

Mr. DIRKSEN. Well, I will pursue it no further, because for the moment, then, it is in the laps of the gods, including my distinguished friend from Maine and the majority leader; but I think that is enough for the clarification of the Senate as to what will happen this afternoon.

The ACTING PRESIDENT pro tempore. Do Senators desire to yield further time?

Mr. DIRKSEN. Yes. I yield 5 minutes to the distinguished Senator from South Carolina (Mr. THURMOND).

The ACTING PRESIDENT pro tempore. The Senator has 6 minutes remaining.

Mr. DIRKSEN. I give the 6 minutes to the Senator from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized for 6 minutes.

Mr. THURMOND. Mr. President, I supported and voted for Richard Nixon for President of the United States. I want to say, however, that, in my judgment, under the Constitution an elector has the right to vote for whomever he pleases in the electoral college, once he has been selected as a duly qualified elector.

Down through history this precedent has been followed. Our method of choosing a President is unique in the world. Originally, if I conceive the purpose of those who wrote the Constitution, the idea was to select electors who would be free to look around over the country and select the best man for President. This conception was followed, as I construe history, up until parties came into being. Once parties came into being, it changed the concept, and people voted more for the President than they did for the elector.

With reference to the case in North Carolina, where a Republican elector voted for Wallace instead of Nixon, in my judgment he had the legal right to do so, although I think he had a moral obligation to vote for Mr. Nixon.

In 1948, when the Senator from South Carolina ran for President, one elector from the State of Tennessee who ran on the Democratic ticket voted for the States rights Democratic nominee. However, I understand that elector told the people while he was running that he was going to vote that way. The people were aware of his intention. That is a different situation from the elector in North Carolina, as I understand the facts; but in both cases the electors had the power to exercise discretion and vote as they chose.

As a legal and constitutional question, there is no doubt in my mind, unless there is a law that compels an elector to vote a certain way, that he is free to vote as he pleases. Whether we like it or not, that is the law, that is the Constitution. It can be changed, but only by constitutional amendment. Until it is changed, an elector is free to vote his convictions and for whom he pleases.

I repeat, if a citizen runs for elector with an announcement that he is supporting a certain candidate, I feel he has a moral obligation to support such candidate. On the other hand, he is not obligated, legally or constitutionally, to do so, unless a State has a statute that compels him to do so.

The Constitution provides, in article II and the 12th amendment, how the President shall be elected; and there is no prohibition upon an elector voting for any candidate he pleases for President of the United States.

I personally feel that an elector should vote for the ticket upon which he has been elected, unless some information appears that would drastically cause him to change his mind. But he is free to change his mind, I repeat, and I challenge those who are raising the objection today to point out any constitutional or statutory authority to the contrary.

Under the reasoning set out above, I feel the vote of the elector from North Carolina should be sustained as cast.

The PRESIDENT pro tempore (Mr. RUSSELL in the chair). The time of the Senator from South Carolina has expired. The majority leader has the remainder of the time.

Mr. MANSFIELD. Mr. President, I yield back the remainder of the time, and I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

JOINT SESSION OF THE TWO HOUSES—RECESS

Mr. MANSFIELD. Mr. President, in consonance with the earlier announcement made by the joint leadership, and in accordance with the previous order, I ask unanimous consent that the Senate now proceed in a body to the Hall of the House of Representatives for the purpose of counting the electoral votes.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senate will stand in recess subject to the call of the Chair.

Pursuant to the previous order, at 12 o'clock and 45 minutes, the Senate stood in recess, subject to the call of the Chair, for the purpose of attending a joint session for the count of electoral votes.

COUNTING OF THE ELECTORAL VOTES

At 1 o'clock and 39 minutes p.m., the Senate reassembled, when called to order by the President pro tempore.

The PRESIDENT pro tempore. As Senators are aware, we have just been meeting in joint session with the House to count the electoral votes to determine the election of the President and Vice President of the United States. When the name of the State of North Carolina was read, objection was filed, pursuant to law, to the validity of the certificate with respect to that State.

The clerk will read the formal objection.

The assistant legislative clerk read the objection, as follows:

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the ground that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and the State thereby appointed 13 electors to vote for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.

(Signed) EDMUND S. MUSKIE,
JAMES G. O'HARA.

The PRESIDENT pro tempore. The procedure in such cases is spelled out very fully in a brief section of the Code of the United States. Of course, this is the first time that such objection has been filed, and we are sailing in uncharted seas, parliamentarily speaking.

The clerk will proceed to read the section of the code which is applicable.

The assistant legislative clerk read as follows:

When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. DIRKSEN. Actually, what is proposed here now is, under the Senate rules, by unanimous consent, to waive the applicable provisions of a statute; is that correct?

The PRESIDENT pro tempore. I do not know of any motion to waive a statute.

Mr. DIRKSEN. I understood that was the way we would have to proceed.

The PRESIDENT pro tempore. The Chair is not advised of any proposal to waive a statute.

Mr. DIRKSEN. But it will be offered. There is a limitation in the statute of 5 minutes upon each Senator.

The PRESIDENT pro tempore. If so, the Chair would sustain a point of order by the Senator from Illinois or any other Senator.

Mr. DIRKSEN. I prefer not to raise a point of order until the Senator from Maine makes his unanimous-consent request.

Mr. MUSKIE. Mr. President, I assume that the Senator from Illinois has reference to the unanimous-consent request, which has been discussed with several Senators, but is not binding on any Senator, of course, unless he so chooses.

In order to liberalize the rules of the debate for this 2-hour period, this unanimous-consent request is made: I ask unanimous consent that debate on objections to the electoral vote of North Carolina for George C. Wallace and Curtis LeMay shall be limited to 2 hours, as provided by law in section 17, title 3, United States Code, and that the time be equally divided and controlled by the majority leader and the minority leader.

The PRESIDENT pro tempore. Is there objection?

Mr. DIRKSEN. Mr. President, I am not going to object. I merely wish to note for the RECORD that what we are doing is waiving provisions in a statute by a unanimous-consent request under the Senate rules, in particularizing that the time shall be divided equally between the majority and the minority leaders, and they are to parcel out the time, unless an alternative proposal is offered under which they fix 5 minutes for each Senator, as provided by the statute.

The PRESIDENT pro tempore. As the Senator well knows, one objection strikes down a unanimous-consent request, and we will then revert to the language of the statute.

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Nebraska will state it.

Mr. CURTIS. Is a unanimous-consent request in order which, by its terms, is not in accord with a duly enacted statute?

The PRESIDENT pro tempore. The Chair will state that unanimous-consent requests can also be received and entertained here that are in conflict with the statutes. Sometimes they are in conflict with the Constitution.

We have three sets of rules in the Senate. Some of them are spelled out in the Constitution, others are spelled out in the Senate rule book, and the great majority of them are embraced in the precedents of the Senate.

For example, one of the constitutional rules had to do with ascertaining the presence of a quorum. We see suggestions of the absence of a quorum made several times during a day, and withdrawn by unanimous consent. That can be done only by unanimous consent. If the proposal of the Senator from Maine can be made only by unanimous consent, any single Senator who thinks it is improper, and that we should follow the statute in this particular case—has a right to destroy it completely by uttering two words—"I object," and the proposal will fall.

Mr. BROOKE. Mr. President, reserving the right to object, do I understand the only difference between the unanimous-consent request and the statute to be that the time would be controlled by the Chair and not by the majority and minority leaders, under the statute?

Mr. MUSKIE. As the unanimous-consent request is worded, time would be under the control of the majority and minority leaders.

Mr. BROOKE. That is the only thing that was intended to be achieved by the unanimous-consent agreement?

Mr. MUSKIE. Plus liberalizing the 5-minute requirement. The statute requires that each Senator may speak for 5 minutes, and not more than once. This was discussed quite extensively, and it was felt that the ideal arrangement would be to have full and free debate, with the time controlled and free exchange between Senators. It was felt that this could be done, unless a Senator objected; so we decided to make the effort.

Mr. BROOKE. So under the unanimous-consent agreement, the 2-hour limitation would still be in effect, but one Senator may go beyond 5 minutes, and another Senator not get an opportunity to speak at all?

Mr. MUSKIE. That is correct.

Mr. BROOKE. I thank the Senator.

Mr. CURTIS. Mr. President, a further parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. CURTIS. If there is an objection, which would prevail—5 minutes for each Senator or 2 hours?

The PRESIDENT pro tempore. Well, not more than 5 minutes for each Senator, totaling 2 hours, is the construction of the Chair of this statute. Thus if each speaker used 5 minutes not more than 24 Senators could be heard; because no Senator can speak more than once, and he cannot be heard for more than 5 minutes. So if we have more than 24 who desire to speak, I hope each Senator will bear in mind the limitation of the statute.

Mr. ERVIN. Mr. President, reserving the right to object—and I shall not object—I express the hope that no Senator will object to this unanimous-consent request. The Senator from Maine and I have met with the Parliamentarians and the President pro tempore of the Senate, and have tried to devise a method by which this matter could be handled within the 2-hour limit and give a full and free opportunity for discussion. I have considered this at great length, and the Senator from Maine has given considerable thought to it, and this unanimous-consent request, we think, will conform to what is the custom in the Senate, generally speaking, and will also keep us within the overall provision of the statute as to time limitation.

The PRESIDENT pro tempore. The Chair reminds the Senate that debate on this request is not in order, unless it is charged to the time limitation. Is there objection? The Chair hears none.

Mr. CHURCH. Mr. President, reserving the right to object—and I do not object—I would still like someone to explain to the satisfaction of the Senator from Idaho how a unanimous-consent agreement of the Senate can vitiate the provisions of a statute passed by both Houses of Congress and signed by the President.

The PRESIDENT pro tempore. The Senator has a right to vindicate the

statute by saying, "I object," and the statute will be as virgin as ever; its provisions will not be affected in any way.

Mr. CHURCH. Mr. President, I have no desire to object, but I do not understand how this can be a proper proceeding.

The PRESIDENT pro tempore. The Chair is not permitted to enter any ruling that purports to pass upon the legality of a unanimous-consent request, any more than is any other Member of this body.

Is there objection?

Mr. BROOKE. Mr. President, it seems to me that the intent of the statute is to give as many Senators as possible an opportunity to be heard on this important issue. As I understand the distinguished Senator from Maine, under the unanimous-consent request, conceivably the distinguished Senator might use 1 hour of the time, and one Senator from the minority side use 1 hour of the time, which in my opinion would certainly frustrate the intent of the statute. I feel so strongly about it, Mr. President, that as much as I dislike to do so, I hereby object.

The PRESIDENT pro tempore. The Senator from Massachusetts objects. The Chair, having tolerated considerable discussion and parliamentary inquiries, now asks of the Senate unanimous consent that that time not be charged against the 2 hours. If there is no objection, it will not be charged; and that leaves the matter open for the Chair to recognize Senators who wish to speak on this subject.

The Chair recognizes the Senator from Maine for 5 minutes.

Mr. MUSKIE. Mr. President, I anticipated that this might result, and I fully understand the reservations expressed by Senators. I have another unanimous-consent request to propose. I ask unanimous consent that debate be limited to 2 hours, as provided by statute, that the time be equally divided and controlled by the majority leader and the minority leader, and that the statutory limitation of 5 minutes per Senator be included, but that the 5 minutes available to any Senator may be used to ask or answer questions.

The purpose of this request, Mr. President, is to do two things: First, to insure that both sides of the debate shall have equal access to the attention of the Senate; second, that the use of the 5 minutes shall not be so rigid that there cannot be the kind of exchange that would permit the answering of questions on the minds of Senators. The Parliamentarian has advised me that, in his judgment, this is consistent with the statute. It touches upon points not covered by the statute, and it embraces the limitations of the statute.

The PRESIDENT pro tempore. Does the Senator wish the new request for unanimous consent to be read?

Mr. MUSKIE. Yes.

The PRESIDENT pro tempore. The clerk will read the new request, the time to be charged to the Senator from Maine.

The assistant legislative clerk read as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That debate on the possible objection to the Electoral Vote of North Carolina for George C. Wallace shall be limited to 2 hours, to be equally divided between the proponents and the opponents of the objection, with each Senator limited to 5 minutes, as set forth in Title 3, sec. 17 of the U.S. Code.

Provided further, That the time allotted the proponents shall be under the direction of the majority leader (Mr. Mansfield) and the time allotted the opponents shall be under the direction of the minority leader (Mr. Dirksen), and notwithstanding the precedents and practices of the Senate, any Senator utilizing his time may either yield for a question or ask some other Senator a question for his own edification.

Mr. BAKER. Mr. President——

Mr. MUSKIE. Mr. President, this time is being charged to me. These 5 minutes, under the statute, are under the unanimous-consent agreement. If it is all used up, I shall have no opportunity to present my case.

The PRESIDENT pro tempore. The time is running against the Senator from Maine.

Mr. MUSKIE. I understand that it is.

The PRESIDENT pro tempore. The Chair will recognize any other Senator only by consent of the Senator from Maine.

Mr. BAKER. Mr. President, might I propound a parliamentary inquiry?

The PRESIDENT pro tempore. Only by the consent of the Senator from Maine.

Mr. BAKER. Does that mean that no time is allotted for propounding questions?

Mr. MUSKIE. Within the 5 minutes allotted to every Senator.

The PRESIDENT pro tempore. Is there objection to the unanimous-consent request? The Chair hears none, and the request is agreed to.

The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, may I inquire how much time I have?

The PRESIDENT pro tempore. The Senator has 3½ minutes remaining.

Mr. MUSKIE. This poses the problem. Now I have a little more than 3 minutes to spell out my position again, to answer any questions about it or to pose any questions of my own, and to cover rebuttal. These are the difficulties of trying to comply with the unanimous-consent agreement. All I can do in 3 minutes is to present the thrust of my argument.

I have said that it was the intent of the writers of the Constitution to make the elector a free agent. I think that is still his status under the Constitution. The question is whether an elector can, and whether in this case an elector has, so exercised his freedom of choice, and made it public, as to bind himself to the choice he has already indicated.

In this case, a North Carolina elector was nominated as an elector by a district convention of the Republican Party in North Carolina. He did not reject that nomination. His name was not placed on the ballot because under North Carolina law, as in the case of 34 other States, only the names of the party's presidential and vice-presidential candidates appear, and electors are elected for the presidential and vice-presidential candidates receiving the plurality of the vote in North Carolina.

Dr. Bailey and 12 other North Carolina Republican electors were so elected on November 5. The election was certified. Dr. Bailey did not reject that election or that certification. So up to that moment, so far as the people from North Carolina understood, he was committed as an elector on the Republican slate, riding under the names of Richard M. Nixon and SPIRO T. AGNEW, to vote for that presidential and vice-presidential ticket.

On December 16, the electors of North Carolina met in Raleigh to cast their votes. It was assumed by the State attorney general that they would do what was expected of them; that the papers to be transmitted to the seat of Government in Washington were made out accordingly; that is, that 13 votes would be cast for Richard M. Nixon. It was at that point that Dr. Bailey decided to cast his vote for the Wallace-LeMay ticket instead.

I say that under the Constitution he had a right of free choice, but that he began to limit his own free choice when he accepted the nomination of his party, when he consented to run on the same ticket with Nixon and AGNEW, when he consented to run under a ballot from which his name was absent, and which would generate votes for him only to the extent that the people of North Carolina chose to vote for Richard M. Nixon and SPIRO T. AGNEW.

So when election day had come and gone without his indicating this intention, I say that he had limited his own choice, and that under the Constitution it is permissible for him to limit his own choice. Having done so, he is bound by it when the electoral college convenes.

The PRESIDENT pro tempore. The Chair regretfully informs the Senator from Maine that his time has expired.

Mr. HATFIELD. Mr. President, will the Senator yield?

The PRESIDENT pro tempore. There is no time to yield.

Mr. HATFIELD. May I speak on my own time?

The PRESIDENT pro tempore. The Senator from Oregon does not have time unless it is allotted to him by the majority leader or the minority leader.

Mr. MUSKIE. I will be happy to yield time to the Senator from Oregon.

Mr. ERVIN. Mr. President, I seek recognition in my own right.

The PRESIDENT pro tempore. The Chair understood that the unanimous-consent request was agreed to. Was it not agreed to?

Mr. MUSKIE. It was agreed to.

Mr. HATFIELD. Was it not understood that questions and answers were excluded from the 5-minute limitation?

The PRESIDENT pro tempore. The agreement provides:

Provided further, That the time allotted the proponents shall be under the direction of the majority leader (Mr. Mansfield) and the time allotted the opponents shall be under the direction of the minority leader (Mr. Dirksen).

Therefore, there is no time that the Chair can allot; and he cannot recognize any Senator unless time is yielded to him.

Mr. DIRKSEN. Mr. President, I yield 5 minutes to the Senator from Oregon.

The PRESIDENT pro tempore. The

Senator from Illinois yields 5 minutes to the Senator from Oregon. The Senator from Oregon is recognized for 5 minutes.

Mr. HATFIELD. Mr. President, a point of inquiry: May I utilize my time to ask a question of the Senator from Maine?

The PRESIDENT pro tempore. Yes; under the unanimous-consent agreement, the Chair believes that that is permissible.

Mr. HATFIELD. I should like to ask the Senator from Maine whether the laws of North Carolina are so explicit as to indicate what the legal obligations of the elector, Dr. Bailey, are to cast his vote for Mr. Nixon and Mr. AGNEW. Was Dr. Bailey free under the laws of North Carolina as presently constituted to cast his vote for Mr. Wallace and Mr. LeMay?

Mr. MUSKIE. North Carolina makes no provision one way or another with respect to the effect upon a North Carolina elector's freedom of choice of this method of arranging the North Carolina ballot.

Mr. HATFIELD. Mr. President, will the Senator from Maine further yield?

The PRESIDENT pro tempore. The Senator is speaking on his own time.

Mr. HATFIELD. For a layman who is not an attorney, may I understand again the Senator's distinction between the legal responsibilities and the moral responsibilities of this elector?

Mr. MUSKIE. I do not know that I would use either of those words; but, as I understand it, the Constitution, as interpreted by the debates in the Constitutional Convention, clearly makes an elector a free agent. However, from the beginning of the country's history, political parties developed, and the political parties arranged for slates of electors assigned to their presidential and vice-presidential candidates. That political party slate of candidates has always been regarded, with but five other exceptions, as binding upon those who are electors on that slate.

So I argue that in the light of that tradition, when an elector chooses to go on a party slate, he is indicating his choice for President.

I say, secondly, that in the case of North Carolina and this statute, which is found also in 34 other States, the fact that only the presidential and vice-presidential names appear on the ballot is confirmation of this tradition; that when an elector accepts a place on a slate under these circumstances, in the light of this tradition, he knows that to the public at large he is saying, by his action, "I am for Nixon for President." He is saying implicitly, in my judgment, "If I am elected an elector under these circumstances, I will vote for Richard Nixon for President."

I believe that is the tradition. I believe that this undergirds the responsibility of an elector; and once he has set that train of understanding in motion, he cannot, after election day, when it is too late for the voters to respond to any change of mind on his part, say, "I changed my mind, and I am going to vote for somebody else." It is in the nature of estoppel.

Mr. HATFIELD. What are the implications in our action here today with respect to precedent for the future?

Mr. MUSKIE. I believe that if we refuse to sustain this challenge, we will be saying that under every circumstance which is present in this North Carolina case, notwithstanding the statutes and the traditions, electors are free to express the preferences they have on electoral college day, whatever their announced preferences may have been before, and that if we do this, we are without recourse. The votes cast on electoral college day are not required to be made public. They can be kept secret. And if at that point all 13 of the North Carolina electors surprised their State and the country by voting for Wallace instead of Nixon, would we or would we not be helpless to do something about their faithlessness? That is the question before us. If we decide today that we are helpless, that this can be done, we will be opening the door to that kind of maneuvering and faithlessness for the future.

Mr. HATFIELD. What is the Senator's feeling with respect to the free agent concept that the constitutional fathers created out of the elector? The Senator has indicated that this is only if the elector has pledged himself or has not pledged himself prior to the time of casting his electoral vote. Is that correct?

Mr. MUSKIE. Exactly.

The Court has spoken on one aspect of this problem, in an Alabama case, Ray against Blair. The statute provided that political parties could bind their electors to their party's candidate. That issue went into the Court, and the Court held that, yes, this is a permissible statute under the Constitution; so political parties could bind electors.

The PRESIDENT pro tempore. The Chair regretfully informs the Senator from Maine that his time has expired.

Mr. DIRKSEN. Mr. President, I respectfully request that the Chair recognize the Senator from Nebraska (Mr. HRUSKA).

The PRESIDENT pro tempore. The minority leader has designated the Senator from Nebraska (Mr. HRUSKA), and he is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, I rise in opposition to the objection. The Senate should be aware and it should bear in mind, in this very brief and inadequate debate, that the rights, responsibilities, and duties of both Congress—including this body—and the electors serving in their official capacity are conferred or imposed by the provisions of our Constitution. Let us start out with that proposition. There is no question about it.

We are asked, in a very limited period of time, to take action pursuant to a statute passed 80 years ago, a statute of highly doubtful constitutionality, a statute of highly doubtful applicability to the situation at hand. We are asked to act without study, without reference to a committee, without being given adequate opportunity to give this matter the type of consideration that Congress always should give very momentous decisions.

I believe we should give serious consideration to that proposition.

Now we are doing more than just acting under the Constitution. We are engaged in establishing a precedent. Whether we like it or not, we are establishing a precedent upon voting to proceed under the statute; and whatever action we take under this statute will be used in future cases to say, "But the Senate has already construed this statute. It has imparted color of constitutionality, of legality, of validity to it."

The Senator from Maine freely says in substance yes, if we make a decision here, in all future cases just like this we will be governed by this precedent.

Neither he nor anyone else will rise to say that this is as far as we will go; we will go this far and no further; and all cases adjudged to be similar to this will be followed according to the decision we make here today. There may be other cases under this statute going further than this, in which Congress will undertake to say such and such a ballot from such and such a State, in some future election, was not cast regularly, and therefore we, the Congress, assume that responsibility, and we will cast it according to the fashion we wish and instruct.

Mr. MUSKIE. Mr. President, will the Senator yield for a question?

Mr. HRUSKA. I shall yield after I complete this brief statement.

We are members of a body who are not qualified to serve as electors, and we are asked to arrogate unto ourselves, the right to pronounce judgment upon and act on behalf of those who are chosen as electors. Such a judgment, such an action, I believe, would be unconstitutional.

I yield to the Senator from Maine.

Mr. MUSKIE. I have no time.

Mr. HRUSKA. On my time.

Mr. MUSKIE. This is the point I make, and I ask it in this question: Is it not true that whatever we do or fail to do today, whether we sustain the challenge or do not sustain it, is a precedent for the future? That is the importance of this matter.

Mr. HRUSKA. It is.

Mr. MUSKIE. Whatever we do, we can say on the one hand that in no case, where circumstances like this obtain, is Congress empowered to do anything, or we can say Congress can take action.

Mr. HRUSKA. That is true.

But, I say to my colleagues, let us therefore be prudent. Let us say we will not go out to say that we will even take this much authority under a statute of doubtful constitutionality. Let us not take action under it and leave the way open at a time when we are about to engage in a regular legislative process later, starting a week from today, processing proposed legislation which will constitute a resolution to reorganize this entire electoral procedure. Let us refrain from approving the pending motion, and thus avoid the making of a dangerous and unnecessary precedent.

The PRESIDENT pro tempore. The time of the Senator from Nebraska has expired.

Mr. KENNEDY. Mr. President, I ask the Chair to recognize the Senator from Michigan (Mr. HART).

The PRESIDENT pro tempore. The Senator from Michigan is recognized for 5 minutes.

Mr. HART. Mr. President, would I be in order if I were to ask the following question of the Senator from Maine—

that he, for my edification, explain what else he wanted to say if he had 5 more minutes?

The PRESIDENT pro tempore. The right to ask questions is specifically in the agreement.

Mr. HART. I ask the Senator from Maine to develop what he would have developed more fully if he had had 5 more minutes.

Mr. MUSKIE. Mr. President, I believe it important to bring to the attention of the Senate some of the instances in which courts of one jurisdiction or another have spoken on questions that relate to this matter.

A case directly in point is Thomas against Cohen, in which a voter challenged the constitutionality of the practice of putting only the names of the presidential and vice-presidential candidates on the voting machine, as in the case of this North Carolina situation. He argued that since he was voting for electors who would be free to exercise discretion, he had a right to know for whom he was voting.

This is what the court said:

> The electors are expected to choose the nominee of the party they represent, and no one else. So sacred and compelling is that obligation upon them, so long has its observance been recognized by faithful performance, so unexpected and destructive of order in our land would be its violation, that the trust that was originally conferred upon the electors by the people, to express their will by the selections they make, has, over these many years, ripened into a bounden duty—as binding upon them as if it were written into the organic law. The elector who attempted to disregard that duty could, in my opinion, be required by mandamus to carry out the mandate of the voters of his State.

This is the one court case we have which speaks directly on the point before us.

Mr. HOLLAND. What was the name of the case?

Mr. MUSKIE. This was the case of Thomas against Cohen. It is a New York case found at 146 New York Misc. 836.

Mr. HOLLAND. I thank the Senator.

Mr. MUSKIE. It is a case from the New York Supreme Court.

I wish to call the attention of the Senate to one other case. In this very election campaign, in the State of Ohio, when Mr. Wallace, who had not met the requirements of the local law for putting his electors on the Ohio ballot, and had not met the time requirements, and had not held a primary election as required by Ohio law, went to the court to get his electors on the ballot, the court said he had every right to do so because to do otherwise would be to deprive the voters of an effective voice in the selection of the President of the United States. That is the effective voice doctrine I have been talking about.

If this elector could refuse to honor the mandate of his party and if all 13 of them could do so, and they could if we so hold today, the voters of North Carolina who wanted to vote for Richard Nixon would be deprived of an effective voice as was said by the court in Ohio.

We cannot ignore the responsibility of the consequences of what we do notwithstanding the statement of the Senator from Nebraska. If we question Dr. Bailey's action, we will be opening a door to fraud and saying that even though we knew Dr. Bailey was motivated by fraudulent reasons—and I do not charge he was—but even though we knew it, then Congress is powerless to act when that fact is exposed for the first time under similar circumstances.

Therefore, the precedent which we are in a position to make today should give pause to prudent-minded Senators. Neither choice is a happy one. I wish the Constitution were clear.

I understand, too, that what we do here will not fill up all the holes in the electoral process, but we have an opportunity to reduce one kind of risk that is potentially a serious risk, frustrating the will of the people and throwing the country into a turmoil in some future presidential election.

I have tried to bring this matter to the attention of the Senate.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. DIRKSEN. Mr. President, I ask that the Chair recognize the Senator from Massachusetts.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized for 5 minutes.

Mr. BROOKE. Mr. President, the question before us is a grave and complicated one. It appears that a serious inequity is impending. The people of North Carolina have voted in the expectation that their certified electors would cast their ballots for the presidential and vice-presidential candidates who carried the State. Thus, they no doubt expected all 13 electoral votes to be cast for the Honorable Richard Nixon and the Honorable SPIRO AGNEW.

It seems clear that the elector involved is guilty of bad faith, of violating the trust of the people who voted for the Republican ticket in North Carolina.

The injustice of this is evident, but the appropriate remedy is far less so. In the brief time allowed for comment, I cannot review all the factors involved. I would like to indicate the considerations which seem to me governing.

In a system of constitutional government matters of procedure often become vital issues of substance. I submit that such a case is now before us. There are strong constitutional grounds for the authority of a State to bind its electors to vote as they are pledged. If a State has so bound its electors, I would contend that the Congress can properly act to see that the State's legal requirements are fulfilled. This would be a reasonable construction of the 1887 statute which provides that Congress can reject an elector's vote which has not been regularly given.

But it is my considered opinion that, unless the State chooses to bind its electors, Congress cannot do so after the fact.

Among the many serious implications of this situation, one lesson in particular stands out:

No official should ever be granted discretionary authority unless the people clearly understand that, under some circumstances, he may actually use it. And if such authority, once granted, is deemed excessive or unwise, the people should explicitly and promptly rescind it.

As I understand the relevant constitutional guidelines, the power to remedy this particular problem lies with the people of North Carolina acting through their representative institutions at the State level. After all, they are the parties most directly abused by the elector's alleged faithlessness.

In addition, however, there is a national interest in removing so critical a loophole in our constitutional system. If the electoral college is to remain an element in our political life, surely we should move to design a constitutional amendment which, once and for all, binds electors to vote for the candidates to whom they are pledged. I hasten to add that this possible change in our electoral system will certainly not suffice. Indeed, one of the paramount tasks of this Congress will be to examine the full range of constitutional proposals to create a fair and secure procedure for presidential elections.

For these reasons, I cannot support the resolution to reject the vote in question.

The fact that such an obvious inequity can occur is, in my opinion, a most compelling argument for prompt and urgent efforts to amend the Constitution and eliminate this serious defect in our electoral system.

If I have time remaining, I am pleased to yield to the Senator from Maine.

The PRESIDENT pro tempore. The Senator has one-half minute remaining.

Mr. MUSKIE. I thank the Senator.

I wish to make this point. When the Senator concedes that an elector can be bound by a pledge to his party or under a State statute, it seems to me he must take the next step and agree that an elector may bind himself. He does if he accepts the pledge imposed by a party or if he accepts the pledge imposed by a State statute. If he puts himself in that position, it seems to me he would be bound.

The PRESIDENT pro tempore. The time of the Senator has expired. To whom does either leader yield time?

Mr. DIRKSEN. Mr. President, I ask that the Chair designate the distinguished Senator from Tennessee.

The PRESIDENT pro tempore. The Senator from Illinois designates the Senator from Tennessee. The Senator from Tennessee is recognized for 5 minutes.

Mr. BAKER. Mr. President, I am a stanch advocate and supporter of electoral reform. It has always seemed clear to me that a paramount goal of any democratic society must be the continuing effort to insure that the vote of each citizen is as equal as institutionally possible to the vote of every other citizen. Careful revision of statutes and ordinances at every level should be undertaken to guarantee the greatest possible participation of every enfranchised citizen in the processes of government.

The Presidency of the United States is the greatest, and most powerful symbol of elective office in the world. It and the Vice Presidency are the only offices in our republican form of government that belong to all of the people. The President's

constituency is not a district or a State but the entire Nation. It appears to me absolutely essential that the election of the President of the United States be accomplished in the most direct, democratic, and participatory manner that can be devised.

The existing electoral college system does not meet the needs of our modern democracy. The national election just past has made the dangers incipient in the system so perilously clear that large segments of the public and many Members of Congress are at last disposed to make long-needed changes in our manner of electing Presidents.

Mr. President, as I understand the argument of the distinguished Senator from Maine, there are two principal reasons for the challenge.

The first is that there is a moral comitment on behalf of Dr. Bailey, the North Carolina elector, to cast his ballot for the Republican nominee because of his acceptance of that nomination by his party.

The second is—and this may be, inferentially, assumed rather than directly stated by the distinguished Senator from Maine—that by drawing attention to the situation, we may heighten the pressure for constitutional reform and that this will obviously necessitate facing the problem in the future.

On the first point of the moral responsibility of this North Carolina elector, this Nation is and was conceived as a nation of laws and not of men. The laws on the statute books of this Government and the various State and local governments in the United States are our bulwark against capricious action by anyone or by any Executive or legislature now or in the future. If the Senate and the House now engage themselves in determining the morality or the propriety of an activity, as distinguished from the effects of statute law, it seems to me that we breach one of the principal safeguards of this Republic for individual freedom.

On the second point of whether the Congress can bring increased attention to the requirement for electoral reform, let me suggest that if we take this action by upholding the objection, instead of increasing the pressure for electoral reform, we will, in effect, diminish that pressure because many people around the country will say, "Well, maybe the electoral system is not so bad after all. If there are errant electors, Congress can, after all, take care of them."

Mr. President, I have no desire to see the Republic converted into a parliamentary system, but that is precisely the direction we will move if we uphold this objection. By establishing this precedent, we would, by implication at least, create within the House and Senate the authority to elect the President regardless of the electoral college or the electoral machinery that exists now or may exist in the future.

Mr. President, I applaud the purpose expressed by the distinguished Senator from Maine——

The PRESIDENT pro tempore. The time of the Senator from Tennessee has expired.

Mr. BAKER (continuing). But I cannot support his motion.

Mr. KENNEDY. Mr. President, I yield 5 minutes to the distinguished Senator from Idaho (Mr. CHURCH).

The PRESIDENT pro tempore. The Senator from Idaho is recognized for 5 minutes.

Mr. CHURCH. I should like to ask, for purposes of clarification, two or three questions of the distinguished Senator from Maine.

The first question, as I understand the distinguished Senator from Maine, is that he is not contending the Constitution is not perfectly clear that an elector is a free agent.

Mr. MUSKIE. The Senator is correct.

Mr. CHURCH. If Dr. Bailey had been unpledged, then I take it that there would be no basis for objecting to the vote that Dr. Bailey cast.

Mr. MUSKIE. The Senator is correct.

Mr. CHURCH. When Dr. Bailey made a pledge to the people of North Carolina, he assumed a moral obligation. It is argued that his failure to abide by his pledge was a violation of this moral obligation as distinguished from a legal obligation. But I would ask the Senator from Maine if it is not entirely possible, in fact, if it is not well known to the law of equity that a moral obligation can become a legal obligation, under the doctrine of estoppel; in particular, if a person makes a representation upon which others rely to their detriment, that person can be held to the representation he made by court action, is not that correct?

Mr. MUSKIE. That is correct, as I understand the laws of estoppel from my days in law school, which are quite a number of days behind me now.

Mr. CHURCH. Where the court finds this condition exists, then the court can enforce the commitment. Is that not essentially the argument which the Senator from Maine is making, that since Dr. Bailey represented to the people of North Carolina that he would vote for Mr. Nixon, that since they presumably voted for him in order to support the Nixon candidacy, he has, by his own act, declared in advance how he will act in discharging his agency when he casts his vote as an elector, so that under the doctrine of estoppel, he should be bound to that commitment?

Mr. MUSKIE. That is right. There is another way to put it; that under the Constitution he is free to express his individual preference, but the Constitution does not say that he has to express it only on electoral college day. If he starts expressing it several weeks or months before under circumstances that lead the voters to rely upon his expression, not only is he discharging his right under the Constitution to express his free choice but, in addition, he is putting himself in the position where the people rely on what he has done. So I think that what Dr. Bailey did, up until the time he cast his vote, is consistent with the Constitution and was consistent with the commitment on his part from which he should not have been able to back away.

Mr. CHURCH. I would say, in addition, that we are not discussing here merely a moral commitment but one that has become legally binding. If Congress recognizes the validity of Dr. Bailey's irregular vote, by voting down the objection raised by the distinguished Senator from Maine, then we declare our impotence to undo a fraud perpetrated upon the people of North Carolina.

Mr. MUSKIE. That is the way I see it.

Mr. ERVIN. Mr. President, will the Senator from Idaho yield for a question?

Mr. CHURCH. Yes, I am glad to yield, within the time I have remaining.

Mr. ERVIN. Does the Senator from Idaho seriously contend that the pledge Dr. Bailey made was a false statement as to who he should vote for and that that would amend the Constitution of the United States?

Mr. CHURCH. I would say to the Senator that there is no question here about the free agency of Dr. Bailey, had he run unpledged.

But the free agency of Dr. Bailey was pledged to the people of North Carolina when he told them he would vote for Mr. Nixon. That is the essence of the argument being made by the distingushed Senator from Maine.

Mr. ERVIN. My question is, Does Dr. Bailey, if he made a false promise, change the Constitution? That is the argument of the Senator, as I understand it.

Mr. CHURCH. I can merely repeat what I have already said, that when Dr. Bailey indicated his stand, he exercised his agency and should be held to it.

(At this point the Acting President pro tempore assumed the chair.)

Mr. SCOTT. Mr. President——

The ACTING PRESIDENT pro tempore. Does the Senator from Pennsylvania desire to yield time?

Mr. SCOTT. Mr. President, I yield 5 minutes to the distinguished Senator from North Carolina (Mr. ERVIN).

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized for 5 minutes.

Mr. ERVIN. Mr. President, in 1933 North Carolina had to print the names of 26, 39, or more candidates for electors on every ballot. To simplify matters, the State legislature provided that each political party should file the names of its candidates for electors with the secretary of state; that the name of the candidates of each party for President and Vice President should be printed on the ballot; and that votes for the candidates of a political party for President and Vice President should be votes for the electors of the party by which those candidates had been nominated and whose names had been filed with the secretary of state.

This statute merely undertook to avoid the confusion of printing the names of numerous candidates for electors on the ballot. It did not undertake to pledge the electors to do anything.

As a writer stated at the time on pages 229 and 230 of volume 11 of the North Carolina Law Review:

> Neither the old law nor the new law, however, pledges the elector to cast a party vote, and legally, at least, the individual elector, as was intended by the framers, still has discretion to cast his vote for whomsoever he individually desires.

Mr. President, this whole question is answered in the last comprehensive set of books on constitutional law written by a man who would be judged to be quite liberal in his philosophy of the Con-

stitution; namely, Bernard Schwartz. The relevant volume of this treatise, volume 2 of the Powers of the President, was printed in 1963. It answers the whole question here. The author points out that all the court held in Ray against Blair was that the State Legislature of Alabama could empower a political party to require one seeking the nomination of that party for an elector in the party's primary, to take a pledge to support the nominees of the party for President and Vice President.

The Supreme Court held, by a majority opinion, that under the authority of an Alabama statute the party could do this and exclude a man from running in a primary for its nomination as its presidential elector if he refused to take the pledge. That is as far as the Court went. It did not hold the State or the party or any other agency could control the vote of the elector when he violated his pledge.

I shall not take the time to read this statement of Bernard Schwartz, but it appears in volume 2, at pages 8 and 9. He takes up all the arguments that have been made here and he says emphatically that the independence of the electors still continues as a matter of constitutional law, regardless of the rarity with which it may, in fact, be asserted. He also said the Supreme Court, in reversing the Supreme Court of Alabama, made an undue effort to impair an elector's freedom to vote as he wishes.

Let me quote at length what Mr. Schwartz says on this question on pages 8 and 9 of volume 2 of the Powers of the President:

> The examples of electoral independence in 1948 and 1956 just referred to, and similar incidents in 1960, as well as attempts in recent years by dissident Democrats in several southern states to obtain the nomination of uncommitted Democratic electors, have led to attempts to deal with the problem of the personal role of electors. Thus, in 1952, the Democratic Committee of Alabama, acting under the authority of state law, adopted a rule requiring candidates for nomination as Presidential electors in the Democratic primary to take a pledge to support the nominees chosen by the party's national convention. A candidate for the office of elector in 1952 refused to take such pledge and the party officials, in turn, refused to certify him as a candidate in the Democratic primary. He then brought a mandamus proceeding. The highest state court held in his favor, on the ground that the required pledge violated the freedom of choice which the Constitution vested in Presidential electors.
>
> The Supreme Court reversed. According to it, the Twelfth Amendment does not bar a political party from requiring the pledge to support the nominees of the national convention. The Constitution does not prohibit an elector's announcing his choice beforehand—hence, in effect, pledging himself. A party may require such a pledge as a condition to running in its primary. Candidacy in a primary is a voluntary act which requires compliance with the rules of the party concerned. As the Supreme Court expressed it, "Where a state authorizes a party to choose its nominees for elector in a party primary and to fix the qualifications for the candidates, we see no federal constitutional objection to the requirement of this pledge."
>
> The high bench decision upholding the Alabama pledge is sound if we consider the pledge itself as of no more legal effect than the prevalent custom of electors to vote for their party's choices. An elector who violated his pledge would, it is true, subject himself to severe moral censure, but his ballot would not be subject to any legal attack.
>
> An entirely different situation is presented when the state does directly interfere with the elector's freedom of choice in actually casting his ballot. Such direct interference occurred under a 1945 Alabama law, which provided that electors "shall cast their ballots for the nominee of the national convention of the party by which they were elected." Such law, requiring the elector to cast his vote in a particular way, was declared unconstitutional by the Alabama court six months before the 1948 election. After the election, petitions were filed with the Supreme Court in Washington to enjoin the electors in Alabama from voting for other than the Democratic nominees, but the Court refused to entertain the action.
>
> It is difficult to see how a different decision could be reached than that of the Alabama court. It is one thing for electors to vote at their party's call, or even for them to be required to take a legally unenforceable pledge to do so. It is quite another for them to be bound by statute to vote a certain way. So long as Article II and the Twelfth Amendment remain unchanged, a law cannot make a legal obligation out of what has become a voluntary general practice.

I wish to emphasize Mr. Schwartz' assertion that even a State can not control the vote of an elector. He points out that after an election in Alabama, which had been held under the 1945 Alabama law, petitions were filed in the Supreme Court of the United States asking that the electors be compelled to cast their votes for the nominees of their party. The Supreme Court of the United States refused to entertain that suit, recognizing that it could not order electors how to vote in a presidential election.

The action of the Supreme Court is equivalent to a holding by the Supreme Court that no court, not even the Supreme Court of the United States, can compel a presidential elector to keep a pledge which he has made either under State law or voluntarily.

Mr. Schwartz concludes his discussion with these words:

> So long as Article II and the Twelfth Amendment remain unchanged, a law cannot make a legal obligation out of what has become a voluntary general practice.

Surely, Dr. Bailey's pledge could not change the meaning of the Constitution of the United States. It is absurd to maintain that it could.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I wish the Chair to recognize the Senator from Iowa (Mr. MILLER).

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Iowa for 5 minutes.

Mr. MILLER. Mr. President, the question before the Senate is whether or not to exclude the vote of one elector from the State of North Carolina.

As I brought out earlier in my colloquy with the distinguished Senator from Maine, it appears that we are in a position of making a choice between the lesser of two evils. If the pending motion is adopted, there will be the evil of depriving the State of North Carolina of one of its electoral votes. If the pending motion is not adopted, there will be the evil of sanctioning what appears, from all the facts and circumstances, to be a fraud—a fraud upon the people of the State of North Carolina, and, even more, a fraud upon the people of the United States.

I have carefully listened to the constitutional arguments given by both sides. I am impressed by the argument that the Constitution provides for freedom of choice of electors. However, I am even more impressed that freedoms set forth in the Constitution are not absolute. For example, the right of free speech is not absolute. Why should the freedom of an elector be absolute and the freedom of speech not be absolute? I do not think it should be.

It seems to me that the right of an elector to be free should not be equated with the right of an elector to be fraudulent. And I belive it would be most unfortunate to so interpret the Constitution.

It may be argued that the people of the State of North Carolina have a right to protect themselves from this elector's reneging on his pledge. Perhaps that right has been waived; and the telegram read by the senior Senator from North Carolina indicates that the local Republican organization in his State, which is directly concerned with this elector, has in effect waived its right.

But that does not mean that the right of the people of the United States to be protected from what could be considered a fraud is also waived. It is not, and it should not be. It would be a most unfortunate precedent to decide that Congress is powerless in such a case.

The only place the people can turn to for this protection is the Congress of the United States. As one of its Members, I shall vote to protect the people of the United States from what I regard as a fraudulent act. I will vote for the motion to exclude the electoral vote from being counted.

Mr. DIRKSEN. Mr. President, I designate the senior Senator from South Dakota (Mr. MUNDT).

The ACTING PRESIDENT pro tempore. The Senator from South Dakota is recognized for 5 minutes.

Mr. DIRKSEN. Mr. President, will the Senator yield briefly?

Mr. MUNDT. I yield.

Mr. DIRKSEN. Mr. President, I am serving notice on the Senate now that when we have concluded the discussion—and certainly a motion is not appropriate or in order until we have—I expect to move to table the matter.

Mr. MUNDT. Mr. President, may I first say that I shall vote for the motion to table if it can be offered and thus eliminate the question that the Senator from Iowa has just discussed. We would then no longer have to make a choice between two evils, but would only be laying the matter on the table for more careful consideration of the issues involved. Otherwise, I shall vote against the Muskie resolution.

There are four points that stand out clearly in my view.

No. 1 is that Dr. Bailey broke no law, because the only law that could be applicable to him as an elector would be the law of North Carolina; and the law

of North Carolina stands silent on the point.

He violated no constitutional concept, because the Constitution also stands silent in this connection.

It has been stated that there was a purpose to perpetrate a fraud on the members of the Republican Party in the State of North Carolina. I doubt that, because it seems to me the members of the Republican Party would be the best judges of whether or not fraud had been perpetrated on them. I listened to the Senator from North Carolina read the telegram from the executive committee of that Republican Party. Obviously they, living close to the issue, knowing all the circumstances, having studied all the statements, do not think that a fraud was perpetrated upon them and they take no violent objection to Dr. Bailey's action.

No. 4, Dr. Bailey performed a function which it was intended by the Constitutional Forefathers he should perform, and that is to vote in conformity with the directions given him by the voters of the district which he represented.

In our first three Federal elections the electors did vote in conformity with the instructions given them by the voters in their respective congressional districts. The congressional district represented by Mr. Bailey voted for Mr. Wallace, instead of Mr. Nixon. So, there is historic precedent for his action.

I believe therefore rather than make a hasty judgment on thin evidence and tenuous facts, we should vote to put this issue on the table or defeat the Muskie resolution and resolve it when we come to discuss the issue of reform of the electoral college.

I happen to be author of Senate Joint Resolution 12, which includes a provision which would solve this problem by providing a constitutional mandate that electors vote in conformity with the way in which they pledged.

I ask unanimous consent to have printed in the RECORD at this point in my remarks a copy of the resolution as it appeared in the 89th Congress together with two supporting newspaper items.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S.J. RES. 12

A joint resolution proposing an amendment to the Constitution of the United States providing for the election of the President and Vice President

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

"ARTICLE —

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

"The electors to which a State is entitled by virtue of its Senators shall be elected by the people thereof, and the electors to which it is entitled by virtue of its Representatives shall be elected by the people within single-elector districts established by the legislature thereof; such districts to be composed of compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the State to one Representative in the Congress; and such districts when formed shall not be altered until another census has been taken. Before being chosen elector, each candidate for the office shall officially declare the persons for whom he will vote for President and Vice President, which declaration shall be binding on any successor. In choosing electors of President and Vice President the voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that the legislature of any State may prescribe lesser qualifications with respect to residence therein.

"The electors shall meet in their respective States, fill any vacancies in their number as directed by the State legislature, and vote by signed 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, excluding therefrom any votes for persons other than those named by an elector before he was chosen, unless one or both of the persons so named be deceased, 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 the House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors chosen; and the person having the greatest number of votes for Vice President shall be the Vice President, if such a number be a majority of the whole number of electors chosen.

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

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

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

"SEC. 3. This article supersedes the second and fourth paragraphs of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution and section 4 of the twentieth article of amendment to the Constitution. Except as herein expressly provided, this article does not supersede the twenty-third article of amendment.

"SEC. 4. Electors appointed pursuant to the twenty-third article of amendment to this Constitution shall be elected by the people of such district in such manner as the Congress may direct. Before being chosen as such elector, each candidate shall officially declare the persons for whom he will vote for President and Vice President, which declaration shall be binding on any successor. Such electors shall meet in the district and perform the duties provided in section 1 of this article.

"SEC. 5. This article shall take effect on the 1st day of July following its ratification."

[From the Chicago Tribune, Dec. 29, 1968]

WHAT ABOUT THE ELECTORAL COLLEGE?

Vice President Humphrey has joined the growing chorus calling for a constitutional amendment to eliminate the electoral college and provide instead for direct popular election of the President.

Like a good many others, he says that the present system is "archaic" and threatens to thwart the will of the voters. It might have done this, for example, if Wallace had received more votes than he did last month and thus thrown the election into the House of Representatives, where Humphrey might have won even tho Nixon received a plurality of the popular vote.

Had this misfortune occurred, we doubt that Mr. Humphrey would be calling for reform—but that's beside the point. The electoral college has indeed thwarted the will of the voters on two occasions—in 1876 and 1888. Perhaps it can be improved. But eliminating it completely can make matters worse than they are now.

The major problem does not lie in the Constitution. True, the Constitution does give the electors the right to vote for whomever they wish, regardless of the popular vote. But this freedom has almost never been exercised and has never had any effect on the results.

What has caused the trouble, and can do so again, is the custom whereby each state casts all of its electoral votes for the candidate who carried it, no matter how slim his majority. This means that slim majorities in big states outweigh bigger majorities in smaller states. In a close election this may distort the results. Another and more pertinent objection to this custom is that it forces a candidate to play up to pivotal groups in the big cities, like organized labor and the poor, who are easily accessible and whose votes may tilt the state in his favor.

Both of these objections can be met by the proposal of Sen. Karl Mundt of South Dakota and others that the electoral college be retained but that the electors college be retained but that the electors be chosen by districts—perhaps congressional districts—instead of by whole states. This would bring the electoral vote closer to the popular vote, eliminate the distorted effect of tiny majorities, and reduce the temptation to play up to small but easily influenced groups.

But it would not jeopardize what is good about the electoral college. For one thing, the electoral college is a symbol of the presumed sovereignty of the states in a federal system. This sovereignty has been eroded badly enough as power has been centralized in Washington. To suggest that the electoral college is archaic is to suggest that the federal system itself is defunct.

In a more practical sense, the electoral college has helped to protect us from the multiplicity of political parties which perennially cripples so many governments abroad. It has done this by filtering the popular vote thru an agency controlled by existing parties in each state, and by thus discouraging the growth of minority parties. This has not dis-

couraged new ideas; it has simply channeled them into one of the major parties.

Those who advocate direct election of the President are happy to point out the two times the electoral college has frustrated the voters but never seem to mention the five times that a direct vote might have led to similar trouble. Presidents Lincoln, Wilson, Truman, Kennedy, and Nixon were all elected by fewer than half of the voters. Would these elections have meant costly and controversial runoffs? Would they have been referred to the House? Either would almost certainly have kept Abraham Lincoln from being President.

Fortunately the electoral college is not likely to be abolished. The big states like it because of the strategic advantage already mentioned. The small states like it because it gives them more votes than their population alone would warrant [each state has electoral votes for its two Senate seats as well as for its House seat or seats].

The Mundt proposal is both adequate and attainable. The "abolitionists" are using a sledgehammer where a flyswatter would do. And no one illustrates their own confusion better than Indiana's Democratic senator, Birch Bayh, who valiantly defended the college in 1956 as an essential part of the federal system but is now calling for its abolition. Transient politics should have no part in this discussion.

[From the Washington Post]

ELECTORAL REFORM BY A NEW AVENUE?

(By Merlo J. Pusey)

Has Congress really found a means of correcting the votes of unfaithful electors in the strange system by which the President and Vice President are elected? Sen. Edmund S. Muskie and Rep. James G. O'Hara will ask their colleagues on Monday to reject the vote of North Carolina Elector Lloyd W. Bailey for George Wallace and to count the vote instead for Richard Nixon. If they succeed, they will have accomplished a substantial electoral reform, but by very dubious means.

Before taking this route, every member of Congress will want to know something about the old law which the Muskie-O'Hara team seeks to invoke. It was passed in 1887, and the problems which Congress had in mind were very different from those of today. How far will the Senate or the House try to go in reshaping the law as a weapon to use against unfaithful electors?

Congress was chagrined in 1887 by the manner in which it had disposed of the Hayes-Tilden contest more than a decade earlier. It had reason to be ashamed of that outcome, for a commission which it set up had given the election to Hayes despite many circumstances pointing to Tilden as the rightful winner. To avoid any repetition of that shabby performance, Congress sought to create a new means of determining electoral contests.

Senator George F. Edmunds introduced a bill directing the House and Senate as to how the electoral votes sent in by the states should be counted. One provision of this bill would have allowed the Senate and House, acting concurrently, to reject the electoral votes of a state. That proposal produced a furor on the floor. Senators said it would deny the right of the states to control their own electoral votes. The bill was sent back to the Committee on Privileges and Elections and amended so as to give the states the right to settle their own disputes as to the validity of their electoral votes. The Senate passed it in this form.

The House went further to insure the right of a state to say whether its electoral votes were legal. A select committee amended the bill so as to require that "where there is but one return from a state the votes so returned shall be counted." Rep. W. C. Cooper contended that even if every member of Congress knew that none of the electors named in a state's certificate had been duly elected, Congress would have no authority to reject the vote. The state had the final word, if the state itself were speaking with a single voice.

This extreme form of the bill was modified, however, by an amendment sponsored by Rep. John R. Eden. His proposal, as he outlined it on the floor of the House, was that every electoral vote would have to be counted by Congress if there was but one return from the state and if "the vote was regularly given" and the credentials of the electors were in due form and in accordance with the laws of the state.

The Eden amendment was accepted by the House and was only slightly modified by the Senate-House conference committee. In his report to the two houses of Congress the conference committee gave this assurance: "Taken as a whole this amendment will ensure the counting of lawfully certified votes of states, objections of a Senator or a Representative to the contrary notwithstanding."

The conference report, which was later accepted by both the House and Senate, went on to declare that the purpose of the act was to "circumscribe to the minimum" the power of Congress to disfranchise a state. "Such a result can only happen when the state shall fail to provide the means for the final and conclusive decision of all controversies."

The Muskie-O'Hara challenge assumes that the vote of Elector Bailey is illegal because it was cast contrary to the wishes of the voters who chose him at the polls. But North Carolina did not challenge the vote for this reason. That state certainly contemplates that Republican electors chosen by the voters shall vote for the Republican presidential candidate, for it puts the name of the candidate (not that of the electors) on its ballot. Yet it does not require them by law to be faithful to their trust.

It is interesting to note that Bailey explained his vote as conforming to the will of the voters in his district. He said that he was nominated as a district elector and that his district went for Wallace. This did not of course, release him from his moral obligation to vote for the winning candidate in the state under the general ticket system. But the basic fact is that North Carolina did not legally bind him to support the winner of the popular vote in the state, and the Constitution leaves him free to make his own choice.

Under the Twelfth Amendment, Congress seems to have the duty of counting this vote as it was cast. Even if Congress should assert the right not to count it on the rather farfetched assumption that it was not legally given, where could Congress find any authority to change it from a vote for Wallace to a vote for Nixon? The duty imposed by the Twelfth Amendment and the act of 1887 is merely to count the votes—not to say for whom they should have been cast.

Since Congress itself has no right to intervene, it is scarcely persuasive to say that it can do so by pretending to enforce a North Carolina law that does not exist. To say the least, it is a very strange undertaking.

Congress has been importuned on many occasions to amend the Constitution so that there would be no possibility that "dummy" electors might frustrate the will of the people in choosing the President. But Congress has failed to do so. It can scarcely excuse that neglect or overcome its unfortunate consequences now by asserting the right to count votes so as to deprive electors of the discretion the Constitution gives them.

Mr. MUNDT. Other approaches could be made to the problem, but to make an ex post facto determination against Dr. Bailey or the people of North Carolina, by depriving them of an electoral vote to which they are entitled under the Constitution, and do it on the thin evidence we have, without having access to all the speeches and statements made, which might have carried the implications of Dr. Bailey's intentions before the election, it seems to me is injecting the Federal Congress far too deeply into the rights of the States and the determinations of local citizens.

If in fact he violated an ethical commitment or if he perpetrated fraud, the people of North Carolina have it within their power to take whatever action they deem appropriate to punish or reprimand Dr. Bailey. It is not the function of the U.S. Congress to pass on an ethical question of this type.

Mr. DIRKSEN. Mr. President, I designate the distinguished Senator from Texas.

Mr. YARBOROUGH. Mr. President, in voting today against the effort to throw out the vote of a North Carolina elector, I base my position on the Constitution.

Under the Constitution of the United States, electors are free to cast their votes for the person of their choice for President of the United States.

To vote to cast out the vote of a North Carolina elector would be to deny to North Carolina one of its constitutional votes in the electoral college. I do not believe that I have any constitutional power or right to substitute my vote for the vote of the North Carolina elector, chosen by the people of North Carolina.

I believe in amending the Constitution to bind the electors to vote for the nominees of the party on whose slate they are chosen, but I cannot conscientiously attempt to amend the Constitution by a simple vote of the Congress. The Constitution provides two methods for its amendment, each of which requires that amendments be submitted to the States for their approval or rejection. To vote to deny North Carolina one of her electoral votes is to attempt to amend the Constitution of the United States by act of the Congress alone. In my opinion, it would be an unconstitutional action by the Congress.

The emergence of this issue at this time is strong evidence of the need for reform in the electoral process for the Presidency. I hope that attention will continue to be focused on genuine reform and not be diluted by today's efforts, and I personally have offered several proposed amendments to the Constitution, in the hope of effectuating constitutional reform by constitutional methods.

I intend to offer additional proposed constitutional amendments, Mr. President, at this session, but I do not believe that a simple vote of Congress is the way to amend the Constitution.

I yield back the remainder of my time.

Mr. DIRKSEN. Mr. President, I designate the remainder of the time not used by my friend from Texas to the distinguished Senator from Rhode Island.

Mr. PELL. Mr. President, I warmly congratulate our colleague, Senator MUSKIE, and Mr. O'HARA from the other body, for providing the means for raising the whole question of the archaic legal framework under which our Presidents and Vice Presidents are elected. They have done our Nation a great service by dramatizing this issue as they have.

However, ours is a country under law, and we must be guided by law. If we believe the law is incorrect, let us change the law. And that is precisely our responsibility and prerogative as members of the legislative branch.

But just because an individual takes advantage of a constitutional provision, be it presently considered a loophole, that exists in law, I do not believe we should run over that individual by congressional fiat—or by any other vehicle.

Rather let us get on with the task of changing the law and move in a direction such as that set forth in Senator BAYH's proposed constitutional amendment providing for direct popular election.

Mr. KENNEDY. Mr. President, I ask that the Chair recognize the Senator from Indiana.

The PRESIDENT pro tempore. The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, I think it has been adequately expressed that the discussion here does not relieve us of our responsibility to find some way to provide basic reform for the electoral college system, the means by which we elect our President and Vice President.

Several Senators have proposals to amend the Constitution. I shall introduce one on the first day on which legislation is acceptable, which would provide for a popular vote for President. The Senator from South Dakota referred to his plan. The Senators from Florida and North Carolina also have plans. The Senator from Texas has a plan. I hope, regardless of the outcome of this particular effort, that the net result of the efforts of the distinguished Senator from Maine will be to galvanize this Congress into finding a way to elect our Presidents more equitably and democratically.

I shall attempt, in the brief time remaining, to deal with one or two items which have not yet been adequately touched upon because of the time restriction, but which I believe are pertinent to our consideration.

First of all, it has been suggested that Dr. Bailey's reason, or his stated reason, for casting his ballot for George Wallace, was because a plurality of the popular vote in his district went for George Wallace, and the distinguished Senator from North Carolina read a telegram from the district Republican committee pertaining to this.

But the electoral system which is now provided in the Constitution and State law does not have anything to do with election of electors by districts. This decision is a statewide, at large decision. I have taken the liberty, with my staff, of talking with some of the Republican officials of the State Republican Committee of North Carolina, and it is our impression that they are highly desirous of trying to find some way to keep Mr. Bailey's vote from being cast for Mr. Wallace.

The choice of electors is not an election by districts, as has been suggested by the Mundt proposal. The vote has traditionally been cast on a statewide basis and is now so cast in all States. Dr. Bailey's constituency is the whole State of North Carolina and not a particular district therein, so he should not be bound by the results in any one particular district.

Now let us look at the Constitution. Is the challenge to the casting of the electoral vote in question unconstitutional?

It clearly says, in the 12th amendment, that the electoral votes shall be counted in a joint session of the Senate and the House. By any reasonable interpretation Congress has the right and indeed the responsibility to implement specific mandates in the Constitution. Congress took advantage of that responsibility, in 1887, to pass a statute defining how the vote should be counted. This, for the information of Senators who might care to look at it, is chapter 1 of title 3 of the United States Code, which goes specifically to the point raised by the Senator from Maine. I shall read it, so there can be no question about what it says.

I read a part of paragraph 15:

And no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected.

That is as far as the Senator from North Carolina went. I suggest that to get the whole picture, we look at the next part of that sentence, which says:

But the two Houses currently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.

So it seems to me the key question actually is, Have the votes been regularly given?

Admittedly, there is a difference as to interpretation of the word "regularly." Let me suggest that we could look for an interpretation of the word "regularly" to three sources.

First, a point that has already been touched upon by several of our colleagues; the North Carolina statute. Let me ask this question: If you were a citizen in that particular district of North Carolina, and you wanted to vote for Dick Nixon, how could you do so? There would be no way, if we were to follow the position of our distinguished colleague from North Carolina, because even if one voted for the man designated to be an elector by his party, that vote is going to be cast for George Wallace. In essence, the effect could be to disfranchise everyone in North Carolina who wanted to vote for Dick Nixon.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. BAYH. Mr. President, I have only about 2 minutes. If it were not for the time limitation, I would be happy to discuss it with the Senator.

Mr. ERVIN. I just want to find out what the word "regularly" means to the Senator. Anything on earth?

Mr. BAYH. Mr. President, will the Senator permit me to continue? I wish we had more time for colloquy, because I respect the judgment of the Senator from North Carolina.

"Regularly," it seems to me, contemplates what has usually been done in North Carolina, which has been to give all of the electoral votes to the candidate who carries the State.

Second, I think we should look to the debate surrounding the adoption of the 1887 statute.

The PRESIDENT pro tempore. The time of the Senator from Indiana has expired.

Mr. BAYH. I support the position of the Senator from Maine.

Mr. KENNEDY. Mr. President, I would appreciate it if the Chair would recognize myself.

The PRESIDENT pro tempore. The Senator, of course, has the right to yield time to himself.

Mr. KENNEDY. I ask the Senator from Indiana what his second definition of the word "regularly" meant.

Mr. BAYH. I shall try my best to answer that question. I appreciate the Senator from Massachusetts permitting me to continue to define "regularly."

In the debate and in the process of passing that 1887 statute, the term "lawfully" was used as the measure was originally introduced. During the course of the debate, the word "lawfully" was stricken and the word "regularly" was substituted.

It seems, as one reads the information available about this debate, that the basic reason for this action was to try to guarantee that the choice of the voters should be preserved.

If the Senator would like to have me describe the situation, I shall be glad to do so.

Mr. KENNEDY. I wish the Senator would.

Mr. BAYH. I should like to read briefly from an article written by one of the leading constitutional scholars of that day, John W. Burgess, who was chairman of the Department of Public Law at Columbia University. He wrote, as follows, in the Political Science Quarterly, volume III, at page 648, issue of 1888, in commenting on the specific point in the law which had been passed the previous year:

(2) The rule that no electoral vote or votes from any state from which but one lawful return has been received shall be rejected seems to me to surrender too far the control of Congress over the counting of the vote. It is altogether conceivable that a state may make but one return, and yet that, in the election of the electors who sign the same, notorious fraud and terrorism may have carried the day. This rule cannot be justified except upon the principles that the purity of presidential elections is matter solely or at least chiefly of state concern, and that the state consciousness of right and wrong in reference to this subject is rather to be trusted than the national. It seems to me that such principles need only to be stated to be rejected. The constitution expressly provides a grave penalty for any such procedures within a state, and imposes upon Congress the duty of securing the execution of the same.

The author further states that—

the Constitution and the statutes specifically give to the two Houses the power to reject electoral votes that are not regularly cast.

Although this is a very difficult question—one which can be argued logically both ways—I come down on the side of the Senator from Maine, because it seems to me that, according to the precedents that have been established, we would be in much greater error if we were to vote the other way.

Mr. KENNEDY. I thank the Senator from Indiana for his exposition.

I should like to ask the Senator from Maine his opinion of the request of the Senator from Illinois with respect to the question of tabling. Does he feel that that would really reach the essence of the issue?

The PRESIDENT pro tempore. The Senator from Maine has a right to respond.

Mr. MUSKIE. Mr. President, I hope that the distinguished Senator from Illinois will reconsider his intention to make such a motion. This statutory procedure was clearly established for the purpose of coming to a decision. The purpose of the motion to table, as I take it, is to try to dilute whatever we do of its effect as a precedent. I do not think we can dilute what we do of its effect as a precedent.

We know how votes tc table are interpreted by our opponents in election campaigns. We have an obligation, if we are to contribute to a clarification of this constitutional problem, to take a stand, to take positions, and to make a decision before reporting back to the joint session.

I hope the motion to table will not be made; and that if it is made, it will not be supported.

I am restive under this limitation of debate, as is the Senator from South Dakota. I have tried to liberalize it. I did not write the statute. But on this question we are a court of last resort.

With all the limitations of the statute, with all the limitations of time, I think we ought not to try to wash our hands of the responsibility to make a decision one way or the other, so that we will at least have one clear-cut decision to guide our deliberations on this particular problem.

Mr. HOLLAND. Mr. President, has the Senator from Illinois any time that he can yield to me?

Mr. DIRKSEN. Yes; but first I must yield to the Senator from Nebraska.

The PRESIDENT pro tempore. The Senator from Illinois designates the Senator from Nebraska to speak for 5 minutes.

Mr. CURTIS. Mr. President, I ask unanimous consent to have printed in the RECORD the 12th amendment to the Constitution of the United States; section 15 of chapter 1, title 3, of the Federal Statutes; and section 163–209 of the Statutes of North Carolina.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

AMENDMENT [XII]

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for, as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.] [1]—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

SECTION 15. COUNTING ELECTORAL VOTES IN CONGRESS

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of. (June 25, 1948, ch. 644, 62 Stat. 675.)

SECTION 163–209 OF NORTH CAROLINA STATUTES. NAMES OF PRESIDENTIAL ELECTORS NOT PRINTED ON BALLOTS

The names of candidates for electors of President and Vice President nominated by any political party recognized in this State under Section 163–96 shall be filed with the Secretary of State but shall not be printed on the ballot. In place of their names, in accordance with the provisions of Section 163–140 there shall be printed on the ballot the names of the candidates for President and Vice President of each political party recognized in this State. A vote for the candidates named on the ballot shall be a vote for the electors of the party by which those candidates were nominated and whose names have been filed with the Secretary of State.

Mr. CURTIS. Mr. President, the Senate is not called upon to perform a legislative duty at this time. We are not here to advance a proposal to become a statute. We are not here called upon to advance an amendment to the Constitution. We have met today to perform a ministerial, quasi-judicial function—the counting of the electoral vote.

We are not called upon to decide how we think the vote ought to be counted.

[1] The part included in brackets has been superseded by section 3 of amendment XX, Senate Manual section [790.3].

We are not called upon to decide what we think ought to be the law. We are called upon to count the votes according to the law as it exists today and as it existed during the recent election.

The objections offered by the distinguished Senator from Maine fail to disclose or fail to enumerate any error in the certification of the elector. That has never been the question. There has not been one word of evidence that in the procedural form of casting his vote, that was not regularly done. In other words, the objection is to the way the elector voted. We are without authority to interfere in that.

The statute under which we are operating is not one dealing with how the resident shall be chosen; it is a statute dealing with the question of the counting of the electoral vote. It has been stated here that no electoral vote shall be rejected if but one return is made, unless an objection is made in writing, finding that it was not regularly given by the electors whose appointment has been so certified.

Not one word of testimony or argument has been presented that this elector was not duly certified. No criticism, argument, suggestion, or bill of particulars has been submitted that he did not, in the usual and regular way, cast his vote.

Guidelines are laid down in the statute—admittedly. We all agree that perhaps a new law, perhaps a new amendment to the Constitution, is advisable. I for one do not want the electoral college abolished in its entirety. I think that would be wrong. But this is not the day to debate that. Today we are called upon to count the votes under the rules that existed last November and that exist today; not to take action, as the distinguished Senator from Maine says we should, that would be a guide for some future action.

The PRESIDENT pro tempore. The time yielded to the Senator from Nebraska has expired.

Mr. KENNEDY. Mr. President, I yield to the Senator from Missouri.

The PRESIDENT pro tempore. The Senator from Missouri is recognized for 5 minutes.

Mr. SYMINGTON. Mr. President, once again, in bringing this important question before the Senate, the distinguished Senator from Maine has earned our respect and esteem.

Whether or not one agrees with all the details of his presentation, we can be grateful for the contribution this effort should make toward eventually assuring that the citizens of this country, in fact as well as in form, will be responsible for the selection of the President and Vice President of the United States.

Many States, including my own State of Missouri as well as North Carolina, have, by law, removed the electors' names from the ballot, and have deemed that a vote for the candidates of a party determines the electors from the State.

If the Constitution actually endows an elector with an unbridled right to vote his own personal judgment, it would seem that no State could, by statute, infringe on that constitutional prerogative; but we note that in the case of Ray versus Blair the Supreme Court decided that, acting under Alabama law, the rule of the Democratic committee of that State requiring a party candidate for presidential elector to take a pledge to support the party's nominee for national office was valid under the 12th amendment to the Constitution.

In any case, the people of North Carolina, under their laws, have not chosen their electors by name or knowledge; rather, have instead voted for their presidential choices, and depended upon the electors appointed to carry out their will.

Under these circumstances—whether they occurred in North Carolina or Missouri—surely it would seem logical that the vote of an elector should not be cast against the candidate who had the plurality of the vote of the citizens of the State in question.

The PRESIDENT pro tempore. Is there any assignment of time by the majority leader or the minority leader?

Mr. DIRKSEN. Mr. President, I designate the Senator from Florida (Mr. HOLLAND).

The PRESIDENT pro tempore. The Senator from Florida is recognized for 5 minutes.

Mr. HOLLAND. Mr. President, most of us have been in elective office a long time. Most of us have been elected on platforms. I dare say not one Member of the Senate has not found some situation existing after his election which has required him, in his conscience, to deviate from some provision contained in that platform. The Senator from Florida, having been in the State senate and Governor and here in the Senate for 22 years, certainly has found it necessary to deviate from good intentions beforetime made.

What has happened here, as shown by the news article placed in the RECORD this morning by the Senator from North Carolina, is that this elector was interested in supporting Mr. Nixon because he thought he would undo what the present President and the present administration had done; that the elector had become convinced, since the election, by reason of certain appointments announced, that such was not the case, and that, therefore, he changed his intention and his position and so announced it ahead of time.

The second point I make is this: It makes no difference in this election what we do with respect to this one vote. But the kind of precedent we establish does make a great deal of difference. The last time the change of position of delegates or electors from the State of North Carolina was in question was a long time ago, but there were then 15 of them. On another occasion since then, seven electors from the State of New York violated their instructions.

Mr. President, the point I make is that we are asked to set a far-reaching precedent; and if made, it could establish a rule under which third-party efforts or efforts akin to that, where people have deep principle and deep convictions which lead them to go one way or another, can be defeated in their effort to do what they want to do.

In the last race, one of the presidential candidates, an independent candidate, said that he did not want the election to go to the House, and that in the event certain things would happen, he would throw his electoral vote, if he could, one way or the other, to prevent the matter from going to the House.

If any Member of the Senate likes the thought of elections going to the House of Representatives with each State having one vote, the way to do it is to vote for setting up the precedent suggested by the distinguished Senator from Maine.

In closing, may I say to the Senator from Maine that nobody can claim that he is personal about this matter. I heard him make many good speeches during the campaign, and I never heard him make a speech for Mr. Nixon; yet, Mr. Nixon would be the beneficiary of this proposed action. I congratulate the Senator from Maine. I believe he is going ultimately in the right direction. But the right direction is toward constitutional amendment which would clear up this matter, not toward setting up a precedent which would make matters much worse, in my opinion, than they are now, as would be the case if this precedent were established. If established, it would apply not only to the one vote about which we are talking, but also to any number of votes cast against the decisions of the electorate in any State or in any group of States. That seems to me to be something which would help to defeat our effort for constitutional amendment.

What I am trying very hard to do now is to promote the necessity for constitutional amendment. I shall offer one. Two others will be offered. The Senate, in its judgment, can take its choice among them. The House can do so, also. One was passed in the Senate many years ago by more than the two-thirds vote required. I hope we can do that again this year. But I believe that to pass something, in this idle moment, that would be a precedent in a much graver time would be a very grave mistake.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield, if I have time.

Mr. MUSKIE. May I say to the Senator that over the years of this Republic, well over 500—I believe that is the correct number; I am sure it is a minimal number—resolutions have been introduced to reform the electoral college and the constitutional provisions dealing with it. I do not believe we should rely too heavily upon that prospect.

Mr. HOLLAND. Mr. President, a great many had been introduced on the poll tax question, but we finally got one through, and it was approved.

Mr. DIRKSEN. Mr. President, I suggest designating the Senator from Virginia (Mr. BYRD).

The PRESIDENT pro tempore. The Senator from Virginia (Mr. BYRD) has been designated to be recognized for 5 minutes.

Mr. BYRD of Virginia. Mr. President, I associate myself with the remarks recently made by the distinguished senior Senator from Texas, the distinguished junior Senator from Rhode Island, and the distinguished senior Senator from Florida.

However one may view the action of the North Carolina elector who chose

to vote against the presidential candidate who received the largest number of votes in North Carolina, he acted within his constitutional rights.

The Constitution makes no mention of an obligation on the part of electors to vote for any particular candidate. Indeed, it was intended, as the distinguished Senator from Maine concedes, that these electors be men of independent judgment.

Moreover, the 12th amendment, adopted in 1804, provides that electors shall "vote by ballot," a procedure that further implies their legal independence.

Those who would void the ballot of the North Carolina elector would do so on the ground that over the years there has grown up a practice of voting for the party candidate. This most certainly is correct. In fact, since the foundation of the Republic, 16,510 electors have been chosen, yet only a handful of these votes have been cast for a person other than the individual who received the largest number of votes in the elector's State.

But this is unwritten custom. It is not a matter of constitutional law. Custom, however well established, cannot supersede the Constitution.

Congressional action denying the North Carolina elector the right to cast his ballot clearly would be contrary to the Constitution. More than that, it would establish a dangerous precedent and could make it possible at some later date that Congress in a close election could void enough elector ballots so that Congress itself could determine the election of a President.

The proponents of today's resolution to deny the vote to the North Carolina elector say that the action is taken to focus attention on the need for electoral reform.

I strongly favor a change in the presidential electoral system. I feel the electoral votes should be awarded automatically and in proportion to each candidate's popular vote. The electoral college as such should be abolished. It is outdated and useless.

But I submit that this should be done by constitutional amendment.

We should not seek to reform the electoral system by unconstitutional action such as is being proposed today.

The way to reform the electoral system is to introduce constitutional amendments bringing about such reform and then to have thorough committee hearings and full floor debates on the various proposals. The Senator from North Carolina (Mr. ERVIN) will introduce one plan; the Senator from South Dakota (Mr. MUNDT) has a proposal; and the Senator from Indiana (Mr. BAYH) has still a different plan.

Each of these can be debated at length, and Congress can choose the one it deems the most advisable, and then the people themselves can make the final decision. That is the legal and proper way to change the Constitution.

I state against that I strongly favor a change in the present electoral system. But I oppose the Muskie-O'Hara resolution as being clearly unconstitutional and as establishing a dangerous precedent.

As one who believes that Congress should not surrender any of its responsibilities to either the executive or the judicial branch, I likewise feel that Congress should not usurp power not given it by the Constitution.

I shall vote against the proposal of the distinguished Senator from Maine.

Mr. President, I ask unanimous consent to have printed in the RECORD immediately following my remarks an article entitled "Electoral Reform by a New Avenue?" written by Merlo J. Pusey published in the Washington Post on January 5, 1969.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ELECTORAL REFORM BY A NEW AVENUE?

(By Merlo J. Pusey)

Has Congress really found a means of correcting the votes of unfaithful electors in the strange system by which the President and Vice President are elected? Sen. Edmund S. Muskie and Rep. James G. O'Hara will ask their colleagues on Monday to reject the vote of North Carolina Elector Lloyd W. Bailey for George Wallace and to count the vote instead for Richard Nixon. If they succeed, they will have accomplished a substantial electoral reform, but by very dubious means.

Before taking this route, every member of Congress will want to know something about the old law which the Muskie-O'Hara team seeks to invoke. It was passed in 1887, and the problems which Congress had in mind were very different from those of today. How far will the Senate or the House try to go in reshaping the law as a weapon to use against unfaithful electors?

Congress was chagrined in 1887 by the manner in which it had disposed of the Hayes-Tilden contest more than a decade earlier. It had reason to be ashamed of that outcome, for a commission which it set up had given the election to Hayes despite many circumstances pointing to Tilden as the rightful winner. To avoid any repetition of that shabby performance, Congress sought to create a new means of determining electoral contests.

Sen. George F. Edmunds introduced a bill directing the House and Senate as to how the electoral votes sent in by the states should be counted. One provision of this bill would have allowed the Senate and House, acting concurrently, to reject the electoral votes of a state. That proposal produced a furor on the floor. Senators said it would deny the right of the states to control their own electoral votes. The bill was sent back to the Committee on Privileges and Elections and amended so as to give the states the right to settle their own disputes as to the validity of their electoral votes. The Senate passed it in this form.

The House went further to insure the right of a state to say whether its electoral votes were legal. A select committee amended the bill so as to require that "where there is but one return from a state the votes so returned shall be counted." Rep. W. C. Cooper contended that even if every member of Congress knew that none of the electors named in a state's certificate had been duly elected, Congress would have no authority to reject the vote. The state had the final word, if the state itself were speaking with a single voice.

This extreme form of the bill was modified, however, by an amendment sponsored by Rep. John R. Eden. His proposal, as he outlined it on the floor of the House, was that every electoral vote would have to be counted by Congress if there was but one return from the state and if "the vote was regularly given" and the credentials of the electors were in due form and in accordance with the laws of the state.

The Eden amendment was accepted by the House and was only slightly modified by the Senate-House conference committee. In his report to the two house of Congress the conference committee gave this assurance: "Taken as a whole this amendment will ensure the counting of lawfully certified votes of states, objections of a Senator or a Representative to the contrary notwithstanding."

The conference report, which was later accepted by both the House and Senate, went on to declare that the purpose of the act was to "circumscribe to the minimum" the power of Congress to disfranchise a state. "Such a result can only happen when the state shall fail to provide the means for the final and conclusive decision of all controversies."

The Muskie-O'Hara challenge assumes that the vote of Elector Bailey is illegal because it was cast contrary to the wishes of the voters who chose him at the polls. But North Carolina did not challenge the vote for this reason. That state certainly contemplates that Republican electors chosen by the voters shall vote for the Republican presidential candidate, for it puts the name of the candidate (not that of the electors) on its ballot. Yet it does not require them by law to be faithful to their trust.

It is interesting to note that Bailey explained his vote as conforming to the will of the voters in his district. He said that he was nominated as a district elector and that his district went for Wallace. This did not, of course, release him from his moral obligation to vote for the winning candidate in the state under the general ticket system. But the basic fact is that North Carolina did not legally bind him to support the winner of the popular vote in the state, and the Constitution leaves him free to make his own choice.

Under the Twelfth Amendment, Congress seems to have the duty of counting this vote as it was cast. Even if Congress should assert the right not to count it on the rather far-fetched assumption that it was not legally given, where could Congress find any authority to change it from a vote for Wallace to a vote for Nixon? The duty imposed by the Twelfth Amendment and the act of 1887 is merely to count the votes—not to say for whom they should have been cast.

Since Congress itself has no right to intervene, it is scarcely persuasive to say that it can do so by pretending to enforce a North Carolina law that does not exist. To say the least, it is a very strange undertaking.

Congress has been importuned on many occasions to amend the Constitution so that there would be no possibility that "dummy" electors might frustrate the will of the people in choosing the President. But Congress has failed to do so. It can scarcely excuse that neglect or overcome its unfortunate consequences now by asserting the right to count votes so as to deprive electors of the discretion the Constitution gives them.

Mr. KENNEDY. Mr. President, I ask that the Chair recognize the Senator from West Virginia.

The PRESIDENT pro tempore. The Senator from West Virginia, having been designated by the Senator from Massachusetts, is recognized for 5 minutes.

NORTH CAROLINA CHALLENGE DRAMATIZES NEED FOR ELECTORAL COLLEGE REFORM

Mr. RANDOLPH. Mr. President, I am grateful that the assistant majority leader has given me the opportunity to participate in this discussion.

After study and deliberation I was one of those Members of the Senate who this morning signed the objection to the vote from the State of North Carolina for George C. Wallace on the basis that "it was not regularly given in that the plu-

rality of votes of the people of North Carolina was cast for Richard M. Nixon for President."

The controversy of the dissident elector dramatizes the urgent need for reform of the present system for selecting the President of the United States—a reform which will make the system responsive to the will of the electorate by personal vote. I support in principle the measures instituting a direct election of the President and Vice President and authorizing a national system of presidential primaries. I am a cosponsor of the resolutions to effect these changes and I will continue to work for this reform.

Nevertheless, it is my belief that the Congress must act affirmatively in meeting the existing problem of an elector who cast his vote against the choice of the people of his State. He is a man who failed to follow the will of the people.

In my thinking it is totally clear that the function of the elector is to be the agent of the people, with the citizens who elected him actually making the selection of a President.

Certainly, the statutes of the State of North Carolina or of West Virginia intend that the electors will vote for the nominee of their party. The voters in North Carolina vote for President and Vice President with the slate of electors being appointed if their party candidate receives a plurality of the votes cast. The electors do not appear on the ballot. Assuredly, the voters of North Carolina would believe that they are casting a ballot for the candidates appearing on the ballot—and not for an elector who has the right to make his own selection. To believe otherwise is to deny the right of the people of this State to cast an effective ballot for the President and Vice President.

I submit that the actions of Dr. Lloyd W. Bailey, North Carolina's dissident elector, confront us with a direct violation of the equal protection clause. The Congress has a constitutional mandate to redress this violation today.

There are those who argue that the Constitution permits us no role in passing on the actions of electors chosen by the respective States. They contend that the States have absolute power to establish or to remove whatever burdens, restraints, or limitations they please on the selection of electors. The Supreme Court has already rejected this argument in its recent decision in William against Rhodes. An examination of this case is most enlightening. I refer to this case as follows:

During the 1968 presidential campaign, the State of Ohio refused to list the name of George Wallace on its ballot. The State refused to recognize the slate of electors running on the Wallace ticket because his petitions had not been submitted by the filing deadline and because his party had not conducted a primary election. The State cited article II, section 1 of the U.S. Constitution to support its contention of absolute control over the electoral process. That provision reads:

> Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors. . . .

The Court recognized that this language is broad and grants extensive power to the States. But the Court also pointed out that the Constitution is full of provisions which grant to Congress or the States specific powers to legislate. These specifically granted powers, the Court explained, are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution.

The Supreme Court held in the Williams case that certain constitutional protections apply in the electoral setting. State law notwithstanding the Court ordered that Wallace's name be added to the Ohio ballot and that the Wallace electors be recognized as official representatives of the Ohio Independent Party. The basis of the Court's decision was that the strictures of the 14th amendment apply in the selection of presidential electors.

The State law was in violation of the 14th amendment, the Court said, because it interfered with the right of voters "to cast their vote effectively." The Court described the right to exercise a meaningful vote as that "most precious" freedom.

Certainly the existence of a dissident elector poses the exact same type of threat to an effective exercise of the franchise as did Ohio's refusal to add a candidate's name to the ballot. If electors are permitted to vote for whomever they please, if they are free to disregard the banner under which they ran, then, in effect they have the power to nullify the vote of the plurality of that State and deny those voters the right to an effective vote, guaranteed by the 14th amendment.

In all likelihood the overwhelming majority of North Carolina voters did not and do not know the names of their presidential electors. The names of the presidential and vice-presidential candidates appeared on the ballot and no mention was made of the names or even existence of a body of individuals who are presidential electors. When the North Carolina voters went to the polls and cast their ballots on November 5, they did so understanding that they were voting for one of the three candidates appearing on their ballot. Dr. Bailey's actions, if permitted to stand, would thwart that expectation. In fact, the voter's expectation can only be fulfilled if the presidential electors remain faithful to their party choices.

Unless the Congress moves to effectuate the choice of the people of North Carolina, the 14th amendment guarantee of a meaningful vote will be denied. Mr. President, I believe it is necessary to raise this issue in the Congress.

Mr. KENNEDY. Mr. President, I request that the Chair designate the Senator from New Hampshire.

The PRESIDENT pro tempore. The Senator from New Hampshire has been designated and the Senator is recognized for 5 minutes.

Mr. McINTYRE. I wish to inquire of the Senator from Maine as follows: First, I request that the Senator from Maine, for my benefit, go over how he rationalizes the fact that the electors, starting out as free agents, through their own conduct and actions lose this free agency. Then, I would like the Senator to expand on anything further in his argument to emphasize his reasons for the adoption of his proposal.

Mr. MUSKIE. I thank the Senator. With respect to the specific point the Senator raised, my position is that the elector, under the Constitution, is a free agent, and when, as a free agent, he begins to express his preference publicly under circumstances which would lead reasonable men to rely on his commitment to those preferences he cannot thereafter, at a point when those who relied upon his expression of preferences are powerless to act, repudiate his own commitment. As the Senator from Idaho mentioned earlier, there is involved a situation similar to the doctrine of estoppel in the courts of equity of our country, and I think it is a responsibility which the electors for President should recognize. When he puts in motion an understanding of his commitment which he later repudiates, he should not be able to profit from it by stating his own individual preference on electoral college day.

Some mention has been made about the right of the Congress to take this matter under consideration and to make a decision today.

It might be helpful to refer to a commentary in Political Science Quarterly written in December of 1888, shortly after the statute under which we are proceeding was enacted. This is the observation with respect to the power of the Congress, and it might be helpful to some Senators:

> No determination which a state can produce should be made *conclusive* against the judgment of both Houses of Congress in the counting of the electoral vote. In matters like this, the concurrent judgment of the two Houses of the Congress is the surest interpretation of justice and right which our political system affords; and the claim that they have no constitutional right to determine the legal genuineness of any electoral vote sent to them under any form of certification by any state, on the ground that the constitution vests the appointment of the electors wholly in the state, confounds the process of the appointment or election with that of the count, and seeks to rob the power of counting of its most important element, *vis.*, the power of ascertaining what is to be counted.

On that point, let me refer to something the Supreme Court of the United States declared in the case of Ex Parte Yarborough, 110 U.S. 651:

> If this government is anything more than a mere aggregation of delegated agents of other States and governments . . ., it must have the power to protect the elections on which its existence depends from violence and corruption.

Mr. President, that is the view of the Supreme Court of the United States with respect to the authority of Congress in counting the electoral votes to decide what shall be counted and to take into consideration whether the votes have been cast under fraudulent circumstances.

Mr. DIRKSEN. Mr. President, I designate the distinguished Senator from Georgia (Mr. TALMADGE).

The PRESIDENT pro tempore. The Senator from Georgia is recognized for 5 minutes.

Mr. TALMADGE. I thank the distinguished minority leader.

Mr. President, our foreparents, in devising the Constitution of the United States, decided that the President and the Vice President would be elected by an electoral college. If they denied that right to the people they also denied that right to the Congress. That provision is provided for in article II of the Constitution, which reads in part as follows:

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

Mr. President, amendment XII of the Constitution of the United States provides in part as follows:

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;

Mr. President, that is the responsibility of Congress in the election of the President and Vice President. That is its sole responsibility. The function has always been ministerial, that is, to count the votes, to ascertain the correctness of the votes. It has not been the function of Congress to determine that some votes shall be declared a nullity, to determine that other votes may be reversed, to determine for itself the election of the President and Vice President of the United States.

Mr. President, I have no faith with the elector from North Carolina who decided, after being elected, that he would vote for some other candidate; but that was his choice, a choice he made, a choice he made under the Constitution, a choice he made under the laws of North Carolina. That choice is not the responsibility of this Congress.

If this Congress can reverse the choice of that elector from North Carolina, or deny that right, then it can also deny the right of all of the electors of all of the States of this Union and arrogate unto itself the responsibility for the election of a President and Vice President, a responsibility which is denied to it by the Constitution.

Let us go from the ridiculous to the extreme. President-elect Nixon won this election for President, with Mr. AGNEW as his running mate, by a very close vote. That is a Republican ticket. The Democrats hold a majority of seats in the Senate and they hold a majority of seats in the House.

If we want to be completely venal, if we want to be completely disloyal, if we want completely to deny our constitutional responsibility, we could have filed objections this morning in the House to deny the Nixon ticket the victory it won last November and, by sheer brute force of numbers, this Congress could declare HUBERT HUMPHREY and our delightful colleague from Maine, ED MUSKIE, to be elected to the office of President and Vice President, respectively.

The PRESIDENT pro tempore. The time of the Senator from Georgia has expired.

Mr. TALMADGE. That is a precedent, Mr. President, I hope we will not establish here.

The PRESIDENT pro tempore. Is there further designation of time? If there is no further designation of time, the Chair will——

Mr. DIRKSEN. Mr. President, I ask the Chair to designate the minority leader.

The PRESIDENT pro tempore. I am happy to accept the designation of the minority leader himself. He is to be recognized for 5 minutes.

Mr. DIRKSEN. I thank the Chair.

Mr. President, I fancy that Dr. Lloyd Bailey of Rocky Mount, N.C., must be a very fine gentleman. I am sure he pursues his work under the best of escalating conditions in very good fashion. I am also sure that he follows his Hippocratic oath very faithfully. I am glad he participates in public life in North Carolina and got himself named as an elector in the election of 1968. I am also glad that he saw fit at one point to soldier under the banner of Richard Milhous Nixon and SPIRO T. AGNEW.

At some point in time, he must have suffered a change of heart. Who would quarrel with one who suffers a change of heart, if it is a matter of deep conviction? The entire electoral process was set up on the basis that since communication was difficult and transportation was little and far between, the Constitution makers felt that in selecting people with understanding hearts and some knowledge of public affairs, they should be entrusted with the responsibility of selecting a President and Vice President. Had I been at that convention, I would have done the same thing.

Now we modified it a little, but not very much. I think that the spirit of the Constitution must be preserved. It is so easy to talk about one who has departed from his pledge, or who has been unfaithful in his party promise; but Dr. Bailey may have concluded that there was a higher duty to perform and undertook, in the interests of his country, to perform it.

Now, I am not quarreling with him, and I am going to let North Carolina have his vote. Consequently, when this matter comes to us, we will be voting on whether or not the objection to the Bailey vote shall be sustained or disapproved. A vote to sustain the objection means that a Senator votes "yea." If he is opposed to it, he votes "nay."

I think there is a precedent here and I think there is a piece of mischief here that we will lament at some place along the line before we get through, and I am not going to take that chance.

I am sure Dr. Bailey did not realize that he was going to engage the time of the Senate for a couple of hours today and be the focal point of a joint session, and then send these great, dignified bodies to their Chambers to hash and rehash, and in fact bring the Senate under the 5-minute rule of the House for the first time in the history of this great deliberative body.

So, whatever comfort Dr. Bailey and the Tar Heels of North Carolina may get out of it, I am going to follow the spirit of the Constitution and vote against the objections.

I propose to table, but I note in the last sentence of that statute there is virtually a mandate that we shall proceed to the main question, and that does not allow for dilatory motions.

The PRESIDENT pro tempore. The Chair must advise the Senator, with profound regret, that his 5 minutes have expired.

Mr. DIRKSEN. Well, my 5 minutes have, but I have 2 minutes left.

The PRESIDENT pro tempore. The Chair does not know how the Senator has.

Mr. DIRKSEN. So I will take those "on the house." I will designate my friend from Arizona (Mr. GOLDWATER). Will the Senator from Arizona stand and be recognized?

Mr. GOLDWATER. I am happy to.

Mr. DIRKSEN. And then let me talk on the Senator's time? [Laughter.]

Mr. GOLDWATER. I am happy to yield to the Senator.

The PRESIDENT pro tempore. The Chair will respectfully ask the Senator from Arizona to remain on his feet during the time he has the floor.

Mr. GOLDWATER. Mr. President, will the Senator repeat his request?

Mr. DIRKSEN. Just stand. See, this has to be done according to Hoyle, so that there can be no mistakes and there can be no reversible error, as we say in court.

Well, Mr. President, that is the case. So, rather than set a bad precedent, and since electoral reform is virtually inevitable in the first session of the 91st Congress, I am not going about it piecemeal, as it proposed on the floor today, and therefore I shall vote against the objection. Under the statute, if there is disagreement between the two Houses, they shall cast the vote of the good doctor from Rocky Mount, N.C.

The PRESIDENT pro tempore. The time of the Senator from Arizona has expired.

Mr. KENNEDY. Mr. President, may I propound a parliamentary inquiry whether the motion to table is in order or is not in order?

The PRESIDENT pro tempore. The Chair would rule that it is not in order. The statute under which we are now proceeding states the main question shall be put. Let the Chair read the last clause of section 17 of title 3:

But after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Mr. KENNEDY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. COOPER. Mr. President——

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. COOPER. Is there any time left at all?

The PRESIDENT pro tempore. The time is available only to the acting majority leader and the minority leader, and all the time of the minority leader has been consumed.

Mr. KENNEDY. Mr. President, I yield to the Senator from Kentucky.

The PRESIDENT pro tempore. The Senator from Massachusetts designates the Senator from Kentucky. He is recognized for 5 minutes.

Mr. COOPER. Mr. President, I oppose the motion. I do not take this decision lightly. I think we all appreciate what the Senator from Maine has done in presenting this matter. I view the situation particularly dangerous whereby an elector can—I believe the Constitution permits him to do so—vote against the wishes of a majority of the people of his State.

In the last election it was either stated or rumored that if a majority of the electoral vote could not be obtained by either Mr. Nixon or Mr. HUMPHREY, that Mr. Wallace might be able to bargain with either of the parties, with the view that he might be able to direct his electors to support one or the other of the candidates. I want to emphasize that this is a very dangerous situation and will bear on the future elections of President and Vice President. I believe the Senator from Maine has done a fine job in presenting to us the necessity for immediate reform of the electoral system, particularly to require that if the electoral system is to be continued as it is, the vote of members of the electoral college must conform with the wishes of the majority of the people of their State.

In my view, the Constitution does not restrict the discretion of the electors in casting their ballots. The courts have not yet placed any restriction on the exercise of the elector's discretion. The States have not enacted any enforceable restrictions on the electors discretion.

The Congress itself, in enacting the statute, did not require that the electors must vote in conformity with the majority vote in the States. In fact, the history of the act simply shows that, while Congress claimed full power to validate votes, its role was limited to cases in which a State had failed to settle its own disputes.

I hope this effort will be successful to the extent that it will speed the enactment of electoral reform.

I repeat, I consider the situation which obtains today to be dangerous to the election processes of our country.

In connection with this debate two law review articles bearing on the subject of voting in the electoral college have come to my attention. I have found both articles helpful and informative.

Mr. President, I ask that an article by Prof. Albert J. Rosenthal appearing in the Michigan Law Review of November 1968 and an article by Prof. L. Kinvin Wroth appearing in the Dickinson Law Review of June 1961, be included in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Dickinson Law Review, vol. 65, June 1961]

ELECTION CONTESTS AND THE ELECTORAL VOTE

(By L. Kinvin Wroth*)

The extremely close presidential election of 1960 stirred a problem that has long lain dormant. As the result of a recount of the popular vote in Hawaii, Congress, in its joint meeting to count the electoral vote, was presented with conflicting returns from a state for the first time since the Hayes-Tilden controversy of 1877. Since the outcome of the election was not affected, the joint meeting accepted the result of the recount proceeding, and the votes given by Hawaii's Democratic electors were counted.[1] The once fiercely agitated question of the location and nature of the power to decide controversies concerning the electoral vote was thus avoided.

This question, arising from an ambiguity in the Constitution, has long been deemed settled by the statutory provisions for the count of the electoral vote made in the aftermath of the Hayes-Tilden controversy.[2] The system for resolving electoral disputes which this legislation embodies has never been tested, however. The events of 1960 raise serious doubts as to whether the present provisions would be effective either in resolving election contests on their merits or in producing a smooth solution to a political crisis on the order of 1877. Moreover, Mr. Kennedy's narrow margin is a reminder that the possibility of controversy is always present. With broad electoral reforms once again under consideration in Congress,[3] it seems appropriate to take a fresh look at the present constitutional and statutory scheme for dealing with disputed electoral votes.

The basis of our system of electing a President is laid down in the Constitution, which 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 Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

* * * * *

"The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States."[4]

The actions of the electors are regulated by the twelfth Amendment:[5]

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

The only other constitutional limitations on the election of a President are those which establish the age and citizenship requirements for eligibility to the office.[6]

Pursuant to the constitutional plan the electors are "appointed"—now uniformly by popular vote—on the Tuesday after the first Monday in November.[7] The procedure for counting the vote and ascertaining the result varies from state to state,[8] but in general it is something like this: The ballots, or the contents of the voting machines, are tabulated at the polls by precinct election judges, who send their tally sheets forward to a county canvassing board. This board makes an abstract of the votes shown for each candidate in the precinct returns, which it sends to a state canvassing or returning board. The state board tallies all the county returns and determines who have been appointed electors. This result is then relayed to the governor of the state, who under federal law is required to make a certificate of the result based on this ascertainment and forward it to Washington.[9] The electors, who have also received the governor's certificate, meet on the Monday after the second Wednesday in December to cast their votes, which they certify and send to the President of the Senate.[10] On January 6th, at a joint meeting of Congress, these votes are opened and tabulated and the result declared.[11]

At a number of points in this process, controversies may arise which could affect the validity of a state's electoral vote. (1) There may be fraud or error at the polls on the part of voters or election officials. (2) There may be fraud or error in the initial count of the ballots at the precinct level. (3) There may be fraud or error on the part of the county or state canvassing board, or one of these agencies may abuse whatever powers are given to it by state law. (4) The governor may act fraudulently or erroneously in certifying the electors. (5) An elector may be appointed who is constitutionally ineligible for the office. (6) The electors may act erroneously in the signing and sealing of their certificates of the vote. (7) The electors may cast their votes for an ineligible person. (8) The electors may vote on a day other than that ordained by Congress. (9) The electors may be influenced by fraud or a third party may somehow tamper with their deliberations. (10) The right of a state to participate in an election, or of a particular government to attest to the acts of a state may be called in question.

This group of controversies may be divided into those concerning the recognition of state governments and the status of states; those concerning their votes; and those concerning the manner in which the popular vote is given, counted, canvassed and communicated to Congress. The problems of greatest importance are those of the last class. Questions of statehood and the recognition of state governments are unlikely to arise short of another Civil War. When they do come up, Congress has sole jurisdiction.[12] Questions concerning the electors would be important in a great crisis such as that of 1877,[13] but they involve technicalities which are no longer of the essence of our electoral system. We view our presidential elections as popular elections. If the President is to take office free of uncertainty or scandal that might weaken his authority, controversies concerning the popular vote in a close election must be promptly resolved by a method that leaves no doubt of its fairness on the merits.

Problems of all three classes arose during the stormy century of legislative history which culminated in the Electoral Count Act of 1887.[14] Controversy focused on the congressional counting sessions, where three great questions were continually agitated. First, does the Constitution give the President of the Senate sole power to exercise whatever discretion the count involves, or are the two Houses of Congress the final judge of the validity of votes? Secondly, is the power to count merely the power to

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Footnotes at end of article.

enumerate votes given by electors declared by state authority to have been appointed, or is there power to determine the correctness of the state authority's declaration and to examine the validity of the acts of the electors? Thirdly, whatever the scope of the power, how is the evidence necessary to a decision to be presented, and by what means is the decision to be made?

Close scrutiny of the debates of the Constitutional Convention reveals no direct discussion of these problems. The possibility that a dispute might arise with which Congress would have to deal does not seem to have been considered. In fact, the machinery of the Electoral College, a compromise between popular election and election by Congress, was designed to provide a means for the election of a President free from any hint of the evils of Congressional influence.[16] The plain implication of the original scheme is that the states in their control of the manner of appointment were to provide for the settlement of whatever controveries might arise. Only local interests would be at state in the appointment process, because the electors were to be independent of any presidential candidate [16] and would thus be chosen solely on their own merits. Local authorities would naturally resolve any contest.

While state control guarded state interests, other features of the plan protected the national interest. If certain states failed to appoint electors, the President was still elected by a majority of those who were appointed.[17] If no state had appointed electors, the provisions for failure of a majority would come into play, and the election would devolve upon the House.[18] The method for electing a President may be contrasted with the provisions for congressional elections. In the latter instance, as Hamilton pointed out in the *Federalist*,[19] Congress must have ultimate control over the manner of election of its own members, lest the states, by refusing to elect Congressmen, cause the whole structure to fall. In the case of the presidency, since the House was ready to carry out the election if the states failed, congressional control was not only undesirable but unnecessary.

The absence of two elements in the original plan made it impossible to determine when a state had failed in its obligations. No provision was made for the states to validate their choice of electors to Congress, and the power to determine what were valid votes was neither defined nor expressly granted. The former gap was filled in 1792 by a statute providing that the "executive authority" of each state was to give to the electors a certificate of their appointment which they were to forward to the President of the Senate with their votes.[20] That this provision did not solve the problem, however, became apparent as the result of a development unforeseen in the Convention. After a very few elections the electors virtually lost their independence.[21] Their election thus took on a national interest, requiring that the electoral votes counted be those given by electors who were actually chosen, whatever the executive certificate might say. In the absence of provision as to the second missing element, it was considered that the President of the Senate had the power to "count," and thus to determine what votes were to be counted.[22] The dangers in such a system, especially when that officer was a presidential candidate soon appeared, however, and it was urged that Congress could by legislation provide a more satisfactory procedure.[23]

These problems were first faced after the good will surrounding Washington's administrations had been dissipated by strife over John Adam's efforts to deal with the foreign and domestic consequences of the French Revolution. In the spring of 1800 both Houses of the Federalist Congress, in a last ditch effort to stem the tide of Jeffersonian Republicanism,[24] passed different versions of a measure under which a joint committee was to meet prior to the count of the vote, with "power to examine into all disputes relative to the election of President and Vice President of the United States, other than such as might relate to the number of votes by which the electors may have been appointed." All petitions for the contest of electoral votes were to be referred to the Committee, which was to take any necessary additional evidence, and make a report of its entire proceedings, without opinion, to both Houses. Congress was then to meet in joint session, for the count of the vote. If objection was made to the vote of any state, the Houses were to decide it without debate in separate session. As passed by the House the bill provided that a disputed vote was to be counted unless the Houses concurred in rejecting it.[25] The Senate, agreeing in every provision of the bill but this one, passed an amendment providing that a disputed vote was to be *rejected* unless the Houses concurred in counting it. The House, less aggressively partisan than the Senate, refused to accept a measure which would permit rejection by vote of the Senate alone. The bill failed when neither House would yield.[26]

The bill of 1800 was a measure designed to achieve partisan ends. While it prohibited Congress from questioning a state's popular vote, it did not bind Congress to accept a particular determination of the popular result. Since the facts reported by the Committee were in no way made the basis of the ultimate decision, there was not even a procedural guarantee that the result reached by the two Houses would be based on a fair assessment of the facts. If the bill did not provide a satisfactory means of validating a state's votes, however, it left no doubt as to where the power to validate lay. Even the Republican members of both Houses seemed to concede that Congress had full power to deal with the matters over which the bill gave it jurisdiction.[27] In light of this understanding it can be argued that the Twelfth Amendment, the remedy for other defects appearing in the election of 1800, embodied the view that the power to count the vote lay in Congress, rather than in the President of the Senate.[28]

No measure materially affecting the electoral count was passed in the years prior to the Civil War,[29] but on three occasions, Congress assumed the power to reject the votes of a state which had not completed the formalities necessary for admission to the Union.[30] The only other question concerning the electoral vote during this period arose in 1857, when the votes of Wisconsin, unavoidably given on the wrong day, were counted after an inconclusive debate.[31] In all four of these cases, the disputed votes had no effect on the outcome of the election. The only consistent pattern in the debates is the call for legislation to deal with the problem of the count.[32]

Congress asserted total power over the electoral vote with the adoption of the Twenty-second Joint Rule in 1865. Even more than the bill of 1800, the Rule was a political measure, passed and used by Republican majorities of both Houses to assure control over the votes of the recently rebellious southern states. It thus contained no machinery at all for solution of disputes on the facts. The Rule first provided for the joint meeting of the two Houses, at which the certificates were to be opened by the President of the Senate and read out by tellers. The critical portion was as follows:

"If, upon the reading of any such certificate by the tellers, 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 the question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall in like manner state the 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 concurring vote of the two Houses, which being obtained, the Houses shall immediately reassemble, 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." [33]

Since concurrence was required to count a disputed vote, either House, by its negative, could cause rejection. This procedure created no problem, because in the post Civil War political climate there was little prospect of disagreement over which votes to reject.

The Twenty-second Joint Rule was not applied in the count of 1865.[34] In 1869, although serious questions arose, no votes were rejected under the Rule.[35] The count of 1873, in which the Rule was applied to the votes of five states, is the first case in which a dispute over the popular vote was presented to Congress.[36] In four cases objection was made to the acts of the electors and to alleged technical faults in the certification.[37] When the votes of Louisiana came up, Congress for the first time dealt with a "double return," the device with which all subsequent legislation has been designed to deal. Two bodies in the state claimed to be the final canvassing authority. One had certified the state's Grant electors, while the other had validated a slate of Democrats, who also had the certificate of the governor. After a debate in which members of both parties said that Congress could look to the facts of a disputed election, in order to prevent the acceptance of a corrupt return, the Senate Committee on Privileges and Elections was empowered to investigate the situation.[38] The Committee found that neither canvass was valid, and held that Congress itself could not canvass the votes without usurping the state's constitutional powers. The Committee's report suggested, however, that it would be proper for Congress to go behind the governor's certificate to determine whether a legal canvass had been made.[39] In the count proceedings this report was not mentioned, but objections based on its facts were made and both sets of votes were rejected by concurrent vote.[40]

Under the Twenty-second Joint Rule Congress not only claimed the power to count, but defined that power as permitting it to reject an invalid state canvass. As in 1800, however, Congress would not undertake to decide for itself which electors had actually been appointed. Moreover, the make-shift fact-finding provisions relied upon were effective only because the state contest was not material to the outcome of the national election. The solution that was reached may have been just, as far as it went, but it left unresolved the question of who actually carried Louisiana.

Between 1873 and 1876 Congress tried vainly to pass permanent legislation to regulate the electoral count. A bill drafted by Senator Oliver P. Morton of Indiana passed the Senate in February 1875,[41] but the House failed to act upon it. The bill was in essence the Twenty-second Joint Rule, with a provision that a single return from a state could not be rejected unless both Houses concurred in the action, but that in case of a double return, no vote could be counted unless both Houses concurred. Brief debate was permitted in the separate sessions of the Houses, but an amendment creating a committee to find the facts was rejected.[42] Since any serious contest would present a

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double return the bill gave no greater guarantee of a nonpolitical decision than did the Rule. When the 44th Congress convened in December 1875, the House was Democratic for the first time since before the Civil War.[43] In this situation the Senate did not re-adopt the Twenty-second Joint Rule, in effect repealing it.[44] The Morton bill was brought up again in an effort to fill the gap, but members of both parties apparently felt that the time was not ripe for a measure which would permit the action of one House to control the other. The bill was laid aside for good in August 1876.[45] The nation thus faced the election of 1876 with no machinery for resolving disputes over the electoral vote. Perhaps both sides expected a close fight and neither wished to put into effect a plan which might work to its disadvantage.

All such expectations were more than justified in the election of 1876, which resulted in the Hayes-Tilden controversy, the one great test of our electoral system.[46] In no other election have disputed electoral votes been sufficient to affect the outcome. On this occasion Tilden, the Democratic candidate, could win either by picking up one of twenty contested votes or by prevailing in an election in the Democratic House. Unless Hayes won all of the contested votes, he would lose the presidency. In the count the chief problem was presented by double returns from Florida, Louisiana, and South Carolina, where Republican returning boards, claiming that the Democrats had used force and fraud among the Negro voters, had thrown out sufficient Tilden votes to carry the states for Hayes. Questions were also raised as to the eligibility of certain Hayes electors in Florida and Louisiana, and in Oregon, where the Democratic governor had certified a Tilden elector in place of the ineligible Republican. To resolve the controversy, a bipartisan majority of both Houses passed an act [47] creating the Electoral Commission, a body with "the same powers, if any, now . . . possessed by the two Houses," to take evidence upon and arrive at a decision of the disputes. In the joint session for the count, single returns were to be dealt with as in the Morton Bill.[48] Questions involving double returns were to be sent to the Commission. Its decision was to be binding upon Congress in the count, unless rejected by the vote of both Houses.

The composition of the Commission reflected a game but unsuccessful attempt to attain impartiality. It consisted of five Senators, five Representatives, and five Justices of the Supreme Court. In this group there were seven Democrats and an equal number of avowed Repubicans. The fifteenth man, a Justice to be chosen by the other four Justices, was to be the neutral balance. After Mr. Justice Davis, an independent, thankfully declined the honor in somewhat dubious circumstances,[49] it fell upon Mr. Justice Bradley, a Republican, who seemed to the Democrats the next most likely to decide impartially. Whether for partisan reasons, or because he saw the issues that way. Bradley consistenty voted with the Republicans, giving Hayes an eight-man majority on every important question before the Commission. As a result, the view that the decision was at least influenced, if not corrupted, by political considerations was widely held at the time and seems difficult to avoid today.[50]

The main issue before the Commission was its power (and thus the power of Congress) to go behind a state's own determination of the results of the popular election, as reflected in the findings of the returning board, duly certified by the governor. It seems clear, that whatever acts of violence the Democrats may have committed, in the three southern states, the Republican boards, in throwing out votes wholesale, had exceeded even the broad powers which reconstruction statutes had given them.[51] The Democrats argued that pursuant to the national interest in a true result, the Commission should look to the facts of the election and find that the Tilden electors had been appointed. In the alternative they urged that, as in the case of Louisiana in 1873, there were no valid returns from the states in question. These arguments failed to persuade the Republican majority of the Commission, which held by an eight to seven vote in each case that it was bound by the certificates based on results reached by the validly constituted state returning boards and would look to no evidence of the facts of the election.[52] The Commission also held that it had power to look into eligibility only if ineligibility at the time of voting were alleged. In the case of Oregon it made clear that the unchallenged result reached by the returning board could not be overruled by the governor's certificate.[53] In denying that it had power to go behind the returns, the majority was careful to leave open the possibility that Congress might provide by law some proper means for determining such qeustions.[54]

The decision of the Commission was accepted by the Senate in each case and so was binding in the count in spite of rejection by the House. The more eager Democratic partisans threatened to prolong the proceedings past the end of Grant's term on March 4, but other forces were working for compromise. Those who honestly feared civil tumult worked with those who saw the chance for personal advantage in a series of desperate negotiations that finally persuaded a majority of the House to desist, in time for Hayes to be declared elected on March 2.[55]

Congress had again taken control of the power to validate electoral votes, but Democratic hopes that the validation would be based on the merits of the individual controversies were illusory. The Commission not only refused to make impartial findings of fact, but allowed itself to be bound by the findings of partisan state agencies that were the source of the dispute. In spite of its judicial trappings, the Commission was a political body, an arm of Congress, and so it reached a partisan result. This result did not itself resolve the great controversy. It rather provided a medium for political compromise. The legal arguments involved had merit on both sides and would have divided Congress unalterably on political lines. The Commission prevented such a split by reaching a result which one House was bound to accept. A House compromise could then be reached without loss of face on either side. Considering the potential for civil disturbance which underlay the Hayes-Tilden controversy, an acceptable political solution was of great importance. Crisis might have been avoided altogether, however, if there had already been in effect a provision for fair determination of state controversies on the merits.

The Hayes-Tilden decision marked the end of a fifteen-year period of national crisis, but it did not halt congressional efforts to pass legislation that would solve the problems made manifest in 1877. The bill which finally became the Electoral Count Act was introduced by Senator Edmunds of Vermont in May 1878.[56] Spurred by two close presidential elections,[57] the Senate passed the bill three times in the next decade, but each time could not win the agreement of the House.[58] Finally, in 1887, when the passions of Reconstruction had cooled, the Republican Senate and Democratic House of the 49th Congress were able to pass a compromise measure in an atmosphere relatively free of partisan pressures.[59]

The Electoral Count Act as introduced in 1878 and passed in 1887 involved one significant change from the plan of the Morton Bills of 1875–76. If a state provided for the determination of contests over the electoral vote, the result of any proceeding under such a provision was to be binding on Congress in the count. Only in the failure of such a determination was Congress to have the power to reject votes. In its report in December 1886, the House Select Committee on the Election of President and Vice President described the effect of the proposed legislation:

"The bill provides the means of determining what is the vote, how it shall be counted, its count, and the authoritative declaration of the result.

"The two Houses are by the Constitution authorized to make the count of the electoral votes. They can only count legal votes, and in doing so must determine from the best evidence to be had, what are legal votes; and if they cannot agree upon which are legal votes, then the state which has failed to bring itself under the plain provisions of the bill and failed to provide for the determination of all questions by her own authorities will lose her vote.

"Congress having provided by this bill that the State tribunals may determine what votes are legal coming from that State, and that the two Houses shall be bound by this determination, it will be the State's own fault if the matter is left in doubt."

The great problems of the first century of our electoral system seemed solved. A measure had finally been passed providing for a fair determination of the facts of individual contests that would be binding upon Congress in the count. The national interest in a true result was thus vindicated without offense to state control of the process of appointment. While Congress claimed full power to validate votes, its role was limited to cases in which a state had failed to settle its own disputes and to questions beyond state competence. If the Act worked in practice, no dispute could again disrupt the orderly process of a presidential election.

The pertinent provisions of the Electoral Count Act as presently found in the United States Code [61] are as follows:

"If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned." [62]

Congress is to meet in joint session in the House at one P.M. on January 6th for the count of the vote, with the President of the Senate in the chair. The latter is to open "all the certificates and papers purporting to be certificates of the electoral votes," in alphabetical order by states and hand them to tellers who are to read them out.

"Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all objections made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose

Footnotes at end of article.

appointment has been lawfully certified to according to Section 6 of this title[63] from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in Section 5 of this title[64] to have been appointed, if the determination in said section provided for shall have been made . . . but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in Section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State under the seal thereof, shall be counted."[65]

A survey of the sessions of Congress called to count the vote under the Electoral Count Act shows that prior to 1961 no question was presented at any count that might have called any of these provisions into play.[66] It is thus necessary to look closely at the language of the Act and its legislative history in order to understand its operation and effect in dealing with the problems of single and double returns so familiar to its drafters.

(1) *Single Returns.* If those who wish to contest the vote of a state have not sent forward a paper purporting to be a certificate of the electoral votes which they urge to be the correct ones, then the return which Congress has received is given virtually binding effect. The intention here was to insure that the election result reached by proper state authority would not be questioned in Congress if it were unchallenged in the State. Even in such a case, however, Congress must have power to see that the state governor has certified the results actually reached in the state canvass, and to deal with any irregularity in the acts of the electors.[67] By concurrent action the Houses may thus reject even votes in a single return that they find not "regularly given by electors whose appointment has been lawfully certified to" by the executive authority of the state under the terms of the Act.

The power of Congress over a single return is carefully limited to these two areas, but even in carrying out this mandate, difficult problems of interpretation could arise. Presumably votes "regularly given" are given in accordance with the requirements of the Constitution as to time and form. The language undoubtedly, also means that the electors have acted without mistake or fraud. Does it have the further meaning that they have voted for an eligible candidate? Likewise, votes "lawfully certified to" would seem to be votes certified to in accordance with the terms of the Act. Presumably the phrase also extends to a case in which the governor has certified electors other than those shown to have been elected by the state canvass, as in the case of Oregon in 1877. Could Congress look further under this provision and refuse to accept a governor's certificate based on a canvass illegally made? Does a vote cast by an ineligible elector otherwise properly certified to, who is ineligible to the office of elector fall within either of these categories upon which Congress may act? These unanswered questions could lead to the arbitrary congressional action which the Act sought to avoid.

(2) *Double Returns.* Since a return need only "purport" to be a certificate of the vote to merit consideration under the Act, in any serious contest, double returns will be presented. There are four situations which may arise.

(a) *Final Determination by Appropriate State Authorities.* The state contest provision was considered the central provision of the Act. Since the result of a contest was to be absolutely binding upon Congress as to the identity of the electors,[68] a return so validated would be counted if otherwise proper. The Act requires that only votes "regularly given" must be counted. The implication seems clear that votes not meeting this standard could be rejected as in the case of a single return,[69] and the problems of interpretation in that case would again be present.

Unfortunately the contest provisions present such difficulties, both of interpretation and application, that in the great majority of cases they will not apply. In the first place there is another problem of definition. Although the language of the Act was intended to give the states the broadest latitude to provide for the final determination of contests by any means—judicial or otherwise—only 19 states have passed contest legislation expressly dealing with presidential electors in any way.[70] In the remaining states a variety of provisions exist which deal generally with election contests.[71] In these states the courts would first have to decide whether they had jurisdiction in a contest involving electors.[72] If a state court took jurisdiction, Congress would then face two questions: (1) Does the language of the Electoral Count Act include contest provisions which do not specifically deal with electors? (2) If the state result is otherwise binding, is it the "final determination" envisioned by the Act? The Act does not provide for the decision of such questions. There seem to be grounds for argument that concurrence would be required to reject a state determination on these grounds, as in the case of a single return, but the question is open.

Problems of definition aside, there is a further difficulty in the time provisions of the Act. In Edmund's original bill a state determination made at any time prior to the date of the meeting of the electors would bind Congress. To insure that contests would be completed, the electors were to be appointed on the first Tuesday in October and were not to meet until the first Monday in January.[73] In the Act as passed, although a November election day was retained and the requirement that a state determination be made at least six days prior to the meeting of the electors was added,[74] contests were still practicable, because the electoral meeting was to be on the second Monday in January.[75] When the Twentieth Amendment changed Inauguration Day from March 4 to January 20, the legislation enacted to implement it made a corresponding change in these provisions.[76] The electors now are to meet on the Monday after the second Wednesday in December, only 40 days after they are appointed. In order to be of binding effect, a contest must be completed six days prior to that date, a mere 34 days after the election.

In only two states are the election contest provisions certain to produce a final result within this short period.[77] In the rest, finality would depend on a number of factors, such as the diligence of the contestant, the success of his opponent with delaying tactics, the number of votes questioned, and the time limitations of the contest procedure.

The aftermath of the 1960 election highlights the time problem. In Hawaii the official count of the popular vote showed that Mr. Nixon had carried the state by a mere 141 votes out of some 184,000 cast.[78] In the latter part of November the Democratic electors petitioned in the circuit court for a recount, which was allowed on December 13th, over the protest of the State Attorney General that federal law required a decision six days prior to the meeting of the electors.[79] Both sets of electors met on the appointed day, December 19, 1960, and cast their votes. The governor of Hawaii gave his certificate to the Republican electors. On December 30, 1960, the court handed down its decree, finding that the Kennedy electors had prevailed by 115 votes. On January 4, 1961, the governor forwarded to the Administrator of General Services a copy of the court decree and his revised certificate, validating the Democrats.[80] In the counting session the certificate of the Republican electors with its validation by the governor, the certificate of the Democratic electors, and the governor's revised certificate were all presented. After ascertaining that there was no objection, Mr. Nixon, presiding as Vice President, accepted the revised determination, with a careful statement that he was not to be considered as setting a precedent.[81] With the best will in the world the contestants in Hawaii were not able to reach a result until seventeen days after the deadline set in the Act. If Hawaii's three votes could have affected Mr. Kennedy's lead, Republican objections to the acceptance of the decree as binding would have been sound, whatever their fate in a Democratic Congress.

In Illinois, where Mr. Kennedy had prevailed by 8900 votes out of 4½ million cast, Republicans launched a vigorous campaign to uncover vote frauds in heavily Democratic Cook County and carry the state's 27 electoral votes for Mr. Nixon.[82] Amidst charges and counter-charges, they soon discovered that even without hindrance from Democratic election officials, it would be impossible to achieve a result in time.[83] They then urged that there was sufficient evidence of fraud that the State Election Board could refuse to certify the Democratic electors.[84] After maximum delay the Board, which was four-to-one Republican, certified the Kennedy electors, in the absence of "an overwhelming showing of fraud."[85] While the Republican tactics had an obvious political motivation, the episode illustrates that in a state the size of Illinois,[86] any kind of final state determination would be impossible within the time allowed by the Electoral Count Act. The culmination of inappropriate procedures, large numbers of votes to be recounted, and delaying tactics would undoubtedly mean that in any serious contest no state result could be reached six days prior to the meeting of the electors.

(b) *Conflicting Determinations by Different State Authorities.* The question of which state tribunal has been empowered by the legislature to determine contests could arise either in a dispute between two groups of men, each claiming to be the same final authority, or between two different tribunals, each claiming the power to act under a different provision of state law. The drafters of the Act left the decision of this problem to Congress. The concurrence of the two Houses was necessary for an affirmative result, as in any question of the recognition of a state government.[87] If the Houses cannot agree on the authoritative determination, or, if, as in the case of Louisiana in 1873, they agree that no determination was authorita-

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tive, the principle of the Twenty-second Joint Rule is applied and no vote from the state in question is counted. This result follows regardless of the governor's action. Congress in this case looks to the executive certificate only as evidence of the decision reached by a tribunal authorized by the state legislature. If the decision of the authorized tribunal cannot be made out, then there is no valid return for the governor to certify.[88] Congress must here decide a difficult factual and legal question, in addition to the problems already noted in the cases of single returns and single state determinations.

(c) *No Determination by State Authorities.* As the previous discussion of state contest provisions indicates, this situation is the one most likely to arise. If the Houses are in agreement, they can decide to count any set of votes that they find to have been "cast by lawful electors appointed in accordance with the laws of the State." This language presents difficulties. If double returns are presented they must be based on conflicting versions of the true state canvass. The decision of the governor should not be permitted to bind Congress if the state has not made him its final canvassing authority, but how far may Congress go? Is it limited to determining which of two contesting bodies is the lawfully appointed canvassing board of the state, or can it find that the lawfully appointed board has itself violated state law in the manner of its canvass? [89] If the Act really does embody a policy that Congress may act in the national interest to find the true result when the states have failed to do so,[90] then the latter course should be permissible. There might be practical limitations on reaching a fair result in this case, however. If the question were merely one of the legal effect of the board's action, the decision would be easy to make, but if the board had taken no action, and there were unresolved contests in the state, Congress would be ill-equipped to solve the problem on its merits.

If the Houses disagree, then the votes certified by the state executive are counted. Presumably the Houses could then agree that some or all of the votes so certified were not "lawful," that is, not "regularly given," [91] and so reject them. This turnabout, however, is politically unlikely. The provision reflects a long-standing concern that no votes should fail merely through disagreement of the Houses, but it seems more dangerous than the ill that it is meant to cure. In an election where contested votes in one or two states are decisive, the actual choice of a President will devolve upon the governors, who may act to serve a personal interest in the outcome.

(d) *No Executive Certification; Conflicting Certifications.* None of the returns presented may have a valid certificate because the governor has refused to certify any electors, or because one who has certified votes may have done so without authority under state law. There may be two claimants to the office of governor, or to the right to exercise executive authority under state law, each of whom has certified a different return. In these cases if the two Houses concur, either return may be counted, subject to the problems noted in the case where there is a governor's certificate. If the Houses disagree, the clear implication of the Act is that the vote of the state fails altogether, merely through lack of concurrence.[92]

The contest provisions of the Electoral Count Act were intended to provide a balance of the state interest in the process of appointment and the federal interest in reaching a result free of fraud or unfairness in time to inaugurate the winning candidate. If these provisions work as planned contests over the popular vote will be resolved in a fair manner, and few matters will be left to the decision of Congress. State contests are not likely to be effective, however. All disputes—even those involving the facts of the popular election—will thus be presented to Congress in the first instance.

The questions of fact or law which Congress must resolve in these disputes are problems of the sort which courts are accustomed to decide, but Congress is not a court. The facts upon which a court bases its decision are adduced according to stringent rules of evidence, and the legal questions before it are decided under long-established canons of construction and interpretation. At best Congress can get its facts at second hand through the medium of an investigating committee,[93] with only a little further light to be shed during the brief debate which the Act permits. Moreover, even if the facts are carefully and completely put before it, Congress is under no obligation to justify its decision by reference to the evidence or to rules of law. Courts may not be free from bias and prejudice in their treatment of the issues before them, but the paraphernalia with which their decisions are surrounded at least forces them to carry the burden of self-justification. Moreover, courts decide single cases, whereas Congress would unavoidably be dealing with the entire range of political questions involved in the election. There is no way of demonstrating whether each Congressman who votes on a question such as an electoral contest would pose is deciding it on the merits, but it is a fair inference that he is not.[94] Perhaps he should not even be expected to so decide, since he was elected to serve the political interests of those whom he represents. Congress is thus not only ill-equipped to solve the kind of problems which it will face, but is more than likely to decide these problems according to political needs. It is difficult to imagine public confidence of a high order in an election result arrived at in this manner.

If the Houses of Congress are of differing parties, partisanship may reach such heights that no decision under the Act is possible. While there is some question as to the effect of the rejection of votes on the number needed for a majority,[95] the situation could arise in which enough votes were rejected to throw the election into the House.[96] If in spite of the provisions of the Act designed to guard against dilatory tactics, the count is prolonged past January 20th, the Speaker of the House would assume the presidency until one of the candidates should have qualified, or until the next election, if the deadlock is impenetrable.[97] In either case, while the country is not left without a leader, the public is unlikely to feel that its interests have been served in the choice.

Congressional control of any phase of the appointment of electors can be justified only if it serves the interest of all the states in finality and accuracy of result. The Electoral Count Act gives to Congress a substantial measure of control, but it fails to serve the requisite national interest. If a dispute arose the mechanism of the Act would undoubtedly lead Congress to a final result, but a President chosen in this way could never completely refute the charge that his title depended on mistake or illegality in the election process.

The Electoral Count Act must be revised to provide for the impartial and conclusive settlement of all contests arising out of the popular vote. It is possible that the number of such contests could be reduced by state election law reform [98] and their effect minimized by change in or abolition of the Electoral College,[99] but prospects for these developments are unclear. The dangers in an unresolved electoral dispute are clear, however, and provision must be made to meet them, whatever other reforms are enacted.

There are at least four possible methods by which the present system might be improved. The basic pattern of the existing legislation could be retained, with revisions that would make effective its original provisions for the final determination of state contests by state authority. The existing legislation could be strengthened by making a state determination within certain time limits mandatory, with an alternative action in federal court if the state failed to provide an appropriate procedure. Exclusive jurisdiction of contests could be lodged in the federal courts. Finally, federal control might be established over all phases of the presidential election. Federal contest jurisdiction is the most satisfactory of these alternatives. Technical changes in the present plan would not insure a state finding in every case, because the requirement of a timely proceeding is not binding. If the state proceeding was made mandatory, this objection would be met, but the removal proceedings would be cumbersome and subject to abuse by a dilatory defendant. A provision for total federal control, which would have to be made by constitutional amendment, would totally defeat the wisdom of the original plan by making the executive at least indirectly subject to control by Congress.

Exclusive federal jurisdiction of contests offers a number of advantages. It insures that questions which are suitable only for judicial decision are heard by a tribunal versed in the law and accustomed to the role it must play. It utilizes the federal judiciary. State judges and other state officials are often subject to election and may be dependent upon a local political leader with national ambitions. Federal judges, on the other hand, having life tenure, are less likely to be influenced by partisan considerations.[100] Other advantages are procedural. Congress can provide a schedule for filing, hearing and decision of all contests. Since this schedule and other rules of procedure applied by the federal courts will be uniform, a contest in any state will be decided according to a single standard and within the time requirements of the electoral system.

For maximum fairness and effectiveness the plan must contain features. Selection of judges on an impartial basis must be provided for in advance, perhaps by requiring each circuit to establish an election contest calendar prior to the election.[101] The importance of the questions to be decided and their potential for conflict with state authority might justify trial before a special three judge court.[102] The court should have jurisdiction of all questions arising out of the popular election which affect the validity of votes and the accuracy and fairness of the count and canvass. To preserve state control over the manner of appointment the court would be bound to apply state election law in these matters.[103] The court's jurisdiction should further extend to questions of the eligibility of the electors under the Constitution. It should be made clear that an objection on these grounds is waived unless it is raised during the contest proceeding. In addition to the ordinary powers of a trial court to compel testimony and subpoena documents, the court should have express power to order the preservation of the ballots for a recount under the direction of a court-appointed master.[104]

A maximum of sixty days should be allowed between election day and the date of meeting of the electors. A complaint could be filed at any time after the election and until ten days after the completion of the state canvass. Answer and hearing should follow within ten days at most. This period is none too long for settling a controversy in a major state, but the nation cannot afford a longer period of uncertainty between administrations. At this point the interest in continuity of government must prevail even over the interest in an absolutely accurate result. The shortness of the time limit will be alleviated to some extent by procedures designed to achieve the maximum speed commensurate with fairness and accuracy. Moreover, the

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short time limitations will tend to prevent the bringing of exploratory contests without specific claims of mistake or fraud. Provision for direct appeal to the Supreme Court within the time limit should be made.

To eliminate the double return problem altogether, the court rather than the state governor should certify the electors to Congress, even in states where no contest has been brought. Upon completion of the canvass the final state canvassing authority should certify its results to the appropriate court. If a contest has been, or is filed, the court should hear it and certify the result to Congress. If no contest is filed within ten days after the final state canvass is received, the court should forward the state certificate with the endorsement that it is uncontested. In any case Congress will be bound to accept as duly appointed and as eligible those electors named in the certificate of the court, subject to the action of the Supreme Court on appeal.

Certain questions will necessarily remain for Congress to decide. As previously noted, no other authority can determine the right of a state to participate in an election, or of a given government to represent it.[105] If such a situation arose, the court might properly refuse jurisdiction. As long as there are electors, there will be the possibility that they will carry out their trust in a fraudulent or erroneous manner. The vestigial nature of the office and the publicity attendant on any effort to corrupt them decrease the probability that such problems will arise. If they do come up, they must be left to Congress. A tribunal can be appointed to find the facts, but the action which Congress will take on the findings is not as clear as in the case of a contested election. Whether a given deviation is sufficient ground for disfranchizing all who voted for a challenged elector is a policy question which only Congress should answer.[106] Finally, if for some reason the judicial system failed to reach a result, the old problems would be present. This situation, too, is an unlikely one. Should it come to pass, Congress would have to decide the underlying questions as best it could.

In those questions which are remitted to Congress, the present provision for acceptance only by the separate and concurrent vote of the two Houses should be retained. No plan can eliminate the political motivations of individual legislators. When the two Houses act as legislative bodies, however, individual prejudice is at once removed from the final decision, and they may serve as a check on one another. If the Houses are divided, they reflect a divided sentiment in the country. In these circumstances it is better that a vote not be counted at all than that one House be able to dictate a result.

The effect of the rejection of votes on the number needed for a majority should be made clear.[107] If it is found that there was no valid election in a state, then no electors were appointed there, and the number needed for a majority should not include the votes of that state. Likewise, the votes of a state excluded from the count by Congress for failure to comply with the conditions of statehood do not reflect electors who have been appointed, and should reduce the majority figure accordingly. When votes are rejected for reasons that do not have to do with failure of appointment, rejection should have no effect on the majority.[108]

A statutory provision for federal court jurisdiction of contests over the appointment of presidential electors could be enacted by Congress under the Constitution as it now stands. Until the passage of the Electoral Count Act of 1887 Congress had always refused to look into the facts of a state election. It was often suggested, however, that Congress could, by legislation passed prior to the election, give itself the power to do so. The Electoral Count Act may be construed as an expression of this view.[109] If Congress itself can step in to protect the national interest in honest and accurate election results, there would seem to be nothing to prevent the delegation of the task to the federal courts.

The power of Congress to establish federal jurisdiction over contests in presidential elections has never been ruled on by the courts. In the absence of specific provision it is clear that no such jurisdiction exists.[110] The Supreme Court has recognized that state power over the appointment of electors is broad enough to justify state prosecution of violations of state law in presidential elections.[111] This state jurisdiction is not exclusive, however. The federal courts would undoubtedly take jurisdiction of a criminal or civil proceeding under the appropriate Civil Rights Acts, based on a discriminatory deprivation by state action of the right to vote in a presidential election.[112] Moreover, the court has upheld statutory criminal penalties for individual action which interferes with the lawful conduct of presidential elections. This decision was justified on the ground that Congress has inherent power to protect the vital structure of the nation by preserving the purity of elections.[113]

With this inherent power Congress may provide a means for settling contests over the appointment of electors. Each state has a right to control the manner of appointment of its electors, but this right does not permit a state to determine that it shall appoint no electors, or that its appointment process shall be tainted with fraud or error. Any candidate for the office of elector, or any voter for that office, as a citizen of the United States, has a right to insist that the states carry out their function in a manner that will insure the integrity of the national government. That right is one granted by the federal Constitution. The mere fact that the Constitution provides that the right shall be made effective through state law does not deprive the federal courts of jurisdiction. There are numerous other situations in which rights that are defined by state law may be enforced in federal court.[114] In each such instance a national interest is present which establishes the right to federal enforcement. Diversity jurisdiction embodies a national interest in providing justice for citizens outside of their own states.[115] The interest involved in admiralty is that in having a single forum to dispense a uniform maritime law.[116] Here, the clear national interest is in preserving national stability through a fair and accurate presidential election.

Although there are strong arguments in favor of congressional power to provide by statute for electoral contests, it would be desirable to make the necessary changes by constitutional amendment. Legislation is now pending in Congress for amendments which would provide other much-needed reforms in the electoral system.[117] If an amendment is finally passed that alters the system in such a way that the requirements for contest provisions will be radically changed, the location of the power to resolve contests under it should be made explicit. Even if the basic structure of the electoral system is altered only in minor detail, the chance to make a new provision for contests should not be overlooked. At the very least, an amendment should provide that Congress may resolve, or pass legislation to resolve, all controversies arising out of the count or canvass of the popular vote.[118] While such a provision would finally settle the question of the location of the power to resolve disputes, it would not insure a timely and accurate resolution in every contest. Even if Congress were to pass legislation, there is good reason to expect that in a real crisis the provisions might be evaded or ignored altogether. Clearly, if the President approved, legislation providing an *ad hoc* political solution for a particular crisis could be passed, whatever prior statutes said. For this reason a constitutional amendment should make clear that contests involving the popular vote are to be decided by the federal courts in a trial on the merits. The plan could then be implemented by legislation similar to that suggested in the absence of constitutional change.

In a government of divided powers, no judicial decision, however fair, can prevent Congress from exercising its political authority in the election of a President. On the other hand, a Congress which hopes to preserve political stability cannot exercise its authority in a manner that is so clearly erroneous or self-seeking that it is offensive to the electorate at large. A legislative scheme that provides stringent measures for the fair decision of election contests will act as a check on arbitrary action. If Congress ignores or evades such a scheme, it carries a heavy burden of demonstrating that it has governed fairly. The present system for resolving contests imposes no such burden. Fair-minded men could reach a fair result under it, but unfair men could easily act to serve their own interests. In either case there is no certainty that the result reached is the true one.

The President of the United States will increasingly require strength based on national and international respect if he is to guide the nation through times of mounting crisis. This respect will not come to one who is elected under the slightest suspicion of error or fraud. To insure that no electoral contest will mar or disrupt the orderly succession to the presidency in the difficult future, Congress must give to the federal courts the power to reach a timely, final, and binding decision of all controversies.

Footnotes at end of article.

FOOTNOTES

* Teaching Fellow, Dickinson School of Law; B.A., Yale University; LL.B., Harvard University

[1] 107 CONG. REC. 281–284 (daily ed., Jan. 6, 1961). For an account of the proceedings in Hawaii, see *infra*, notes 78–81.

[2] Act of Feb. 3, 1887, ch. 90, 24 Stat. 373 [hereinafter referred to as the Electoral Count Act]. For subsequent legislative history, see *infra*, notes 61, 63, and 76. The Act provoked considerable debate following its passage, but recent commentators have treated it only in passing, or have viewed it as solving all problems. See Burgess, *The Law of the Electoral Count*, 3 POL. SCI. Q. 633 (1888); Carlisle, *Dangerous Defects in Our Electoral System*, 24 FORUM 257, 264 (1897); DOUGHERTY, THE ELECTORAL SYSTEM OF THE UNITED STATES 214–249 (1906); Tansill, *Congressional Control of the Electoral System*, 34 YALE L.J. 511, 524 (1925); Mullen, *The Electoral College and Presidential Vacancies*, 9 MD. L. REV. 28, 41–42 (1948); Dixon, *Electoral College Procedure*, 3 WEST. POL. SCI. Q. 214, 222–223 (1950); WILMERDING, THE ELECTORAL COLLEGE XI (1958).

[3] *Infra*, note 117.

[4] U.S. CONST. art II, § 1.

[5] See *infra*, notes 18 and 28.

[6] U.S. CONST. art II, § 1.

[7] 3 U.S.C. § 1 (1958). As to state methods of appointment, see Wilkinson, *The Electoral Process and the Power of the States*, 47 A.B. A.J. 251, 253–4 (1961).

[8] See HARRIS, ELECTION ADMINISTRATION IN THE UNITED STATES, 236–307 (1934).

[9] 3 U.S.C. § 6 (1958). See *infra*, note 63.

[10] 3 U.S.C. §§7–11. To insure safe arrival of the elector's certificates, five duplicates are deposited with various other officers. *Id.*, § 11. Provision is made for the President of the Senate to send for these duplicates if necessary. *Id.*, §§ 12–14. See 20 OPS. ATT'Y GEN. 522 (1893).

[11] *Id.*, §§ 15–18.

[12] See *infra*, note 30.

[13] See *infra*, note 53.

[14] *Supra*, note 2. The history of the electoral system can be only sketched here. For fuller treatment, see MCKNIGHT, THE ELECTORAL SYSTEM OF THE UNITED STATES (1878); DOUGHERTY, *op. cit. supra*, note 2; STANWOOD, A HISTORY OF THE PRESIDENCY FROM 1788 TO 1897 (Bolton ed. 1926); Tansill, *supra*, note 2. A complete compilation of all congressional proceedings on the subject from 1789 until 1876 may be found in *House Special Committee on Counting Electoral Votes*, H.R. MISC. Doc. No. 13, 44th Cong., 2d Sess. (1877) [Hereinafter cited as *Counting Electoral Votes*]. When appropriate, reference will be made to this work, rather than to the original sources in the congressional debates. Dates will be given, however, so that the referenced matter may be found in the original.

[15] See 2 RECORDS OF THE FEDERAL CONVENTION OF 1787 109, 501 (Farrand ed., 1911). The Convention wavered between election by Congress and a number of other methods. The Congressional plan was actually approved and then reconsidered. *Id.* 101, 171.

[16] U.S. CONST., art. II, § 1; 2 RECORDS OF THE FEDERAL CONVENTION, *supra*, note 15, at 500–501. THE FEDERALIST No. 68, at 452 (Ford ed. 1898) (Hamilton).

[17] Before the present language was adopted in the Convention, a motion that the provision read "who shall have balloted," intended to prevent the number needed for a majority from being increased by non-voting electors, was lost. 2 RECORDS OF THE FEDERAL CONVENTION, *supra*, note 15 at 515.

[18] U.S. CONST., art. II, § 1; *cf. id.*, amend. XII. In the original provision, if the electoral vote ended in a tie, or if no candidate had a majority, the House, balloting by states, was to choose the President from the tied pair. If there were no majority, the choice was to be from among the five highest candidates. In any case the Vice President was to be the man who placed second. The Twelfth Amendment, in providing for the separate election of the Vice President, preserved the power of the House over the Presidential election and gave the Senate similar powers in the case of the Vice President. See *infra*, note 28.

[19] THE FEDERALIST, *supra*, note 16, No. 59, at 392–393. Hamilton did not discuss the electoral count or contests over the electoral vote. *Id.*, No. 68.

[20] The Act of March 1, 1792, ch. 8, 1 Stat. 239, also established the times at which the electors were to be appointed and were to vote, as well as the date on which Congress was to meet for the count of the vote.

[21] The rise of party feeling was apparent enough by 1796 to cause outspoken comment when a Federalist elector voted for Jefferson. STANWOOD, *op. cit. supra*, note 14, at 51. While the electors retain their independence as a theoretical matter, in practice virtually every elector ever appointed has voted at his party's call. DAVID, GOLDMAN & BAIN, THE POLITICS OF NATIONAL PARTY CONVENTIONS 222n (1960); *cf.* CORWIN, THE PRESIDENT—OFFICE AND POWERS, 1787–1957 40–41 (4th rev. ed. 1957). One court has gone so far as to suggest that mandamus would lie to compel an elector to vote as the party directed. Thomas v. Cohen, 146 Misc. 836. 262 N.Y. Supp. 320, 326 (Sup. Ct. 1933) (dictum), and the statutes of at least five states require a pledge. Wilkinson, *supra*, note 7 at 254. The Supreme Court has indicated, however, that while a political party may exact a pledge from a primary candidate, its enforceability is constitutionally dubious. Ray v. Blair, 343 U.S. 214, 230 (1952) dictum). Recent legislation in the southern states seems to embody express recognition of the principal of independence, CORWIN, *supra*, at 41; Wilkinson, *supra*.

[22] Resolution of September 17, 1787, 2 RECORDS OF THE FEDERAL CONVENTION, *supra*, note 15, at 665–666; *Counting Electoral Votes* 7–8 (April 6, 1789); 1 KENT, COMMENTARIES ON AMERICAN LAW 258–259 (1826); MCKNIGHT, *op. cit. supra*, note 14, at 140–147, 157–167, 179–181.

[23] In 1797 John Adams did not hesitate to count for himself the four votes of Vermont, which apparently had been improperly cast by the state legislature. STANWOOD, *op. cit. supra*, note 14, at 52. Although this act gave Adams the presidency, no objection was raised in the counting session. *Counting Electoral Votes* 13, 15 (Feb. 8, 1797). In the tied election of 1800, Jefferson, also without opposition, counted dubious votes that gave a majority to himself and Burr. 2 DAVIS, MEMOIRS OF AARON BURR 71–73 (1837); STANWOOD, *op. cit. supra*, at 69–73; *Counting Electoral Votes* 30 (Feb. 12, 1801). As to the idea that Congress could by legislation provide another agent for the count, see *Counting Electoral Votes* 16 (Senate, Jan. 23, 1800); KENT, *op. cit. supra*, note 22; H.R. REP. 31, 40th Cong., 3d Sess. 84–88 (1869). *Cf.* 2 STORY, COMMENTARIES ON THE CONSTITUTION § 1470 (3d ed. 1858).

[24] Their purpose was to prevent the appointment of Republican electors by the Pennsylvania legislature. BEVERIDGE, THE LIFE OF JOHN MARSHALL 452–458 (1916); MCKNIGHT, *op. cit. supra*, note 14, at 262–269; DOUGHERTY, *op. cit. supra*, note 2, at 62–63.

[25] *Counting Electoral Votes* 23, 27 (April 25, May 2, 1800). The original version of the bill in the Senate had provided for a "Grand Committee" with a majority of its members drawn from the Senate, having power to arrive at a binding final determination of all disputes except those over the popular vote. *Id.*, 21 (March 27, 1800). The milder House version reflected the efforts of John Marshall, a somewhat more moderate Federalist than his New England colleagues, to prevent the passage of a measure that would have excited even greater popular ill will against his party. BEVERIDGE, *op. cit. supra*, note 24.

[26] *Counting Electoral Votes 28, 29 (May 8, 9, 1800).*

[27] In both Houses they had urged substitute measures that gave the power to decide disputes to a majority of the joint convention. *Id.* 19 (Senate, March 25, 1800); *id.* 26 (House, April 30, 1800).

[28] The amendment did not alter the language of the original instrument regarding the count of the vote. *Cf.* U.S. CONST. art. II, § 1. As to the changes actually made, see *supra*, note 18. The amendment was passed by the Republican 8th Congress on December 8, 1803, in a strict party line vote. 2 Stat. 306; STANWOOD, *op. cit. supra*, note 14, at 77–82. The language of the act which implemented it suggests that someone other than the President of the Senate was to count the vote. Act of March 26, 1804, ch. 50, 2 Stat. 295. The language used in the count of 1805 indicates an understanding that Congress was the counting authority. *Counting Electoral Votes* 36, 37 (Feb. 13, 1805).

[29] In 1824, another year of impending crisis, the Senate passed a bill providing that the Houses should separate to decide disputed votes, with votes to be rejected only if the Houses concurred. The bill died in the House without being considered. *Id.* 57–60 (March 4-April 21, 1824). The Act of January 23, 1845, ch. 1, 5 Stat. 721, established the present election day and permitted the states to remedy minor defects in the electoral process. Sec. 3 U.S.C. §§ 1, 2, 4 (1958).

[30] In 1817 the votes of Indiana were counted after a debate in which it was assumed that if Indiana were not a state her vote would not be counted. *Counting Electoral Votes* 44–47 (Feb. 10-11, 1817). In 1821, Missouri not having complied with the anti-slave conditions to its admission, Henry Clay put through a compromise resolution which provided that the result should be announced in alternative form, both as though the vote of Missouri had been counted and as though it had not. *Id.* 48–56 (Feb. 6–14, 1821). Michigan's vote was counted in similar fashion in 1837, and the ineligibility of certain electors was pointed out. *Id.* 70–76 (Jan. 26–Feb. 8, 1837). The power of Congress to make such decisions is derived directly from its power to provide for the admission of new states. U.S. CONST., art IV, § 3. If the two Houses cannot agree as to whether a certain entity is a state, or whether certain acts are the acts of the lawful government of a state, no other authority can resolve the question. See Luther v. Borden, 48 U.S. (7 How.) 1 (1849). For the treatment of similar problems in 1865 and 1869, see *infra*, notes 34, 35.

[31] *Counting Electoral Votes* 87–144 (Feb. 11–12, 1857).

[32] *Id.* 47 (House, Feb. 11, 1817), 52 (House, Feb. 14, 1821), 71 (Senate, Feb. 4, 1837), 129–132 (Senate, Feb. 12, 1857).

[33] *Id.* 224 (Senate, Feb. 6, 1865). The rule was hastily passed in sparsely attended sessions of both houses. *Id.* 223–226. *Cf. id.* 536 (March 13, 1876) (Remarks of Senator Whyte).

[34] The Twenty-second Joint Rule was only an alternative to the chief measure upon which the Radical Republicans relied to block the votes of lately reconstructed Louisiana and Tennessee. The Houses had previously resolved that no votes from those two states should be counted. *Id.* 147–149 (House, Jan. 30, 1865); *id.* 149–223 (Senate, Feb. 1–4, 1865; House, Feb. 4, 1865). In the count of the vote this resolution, reluctantly approved by Lincoln at the last minute, was relied on by the President of the Senate to keep the votes of Louisiana and Tennessee from the floor. *Id.* 227–228 (Feb. 8, 1865). In a message received two days after the count Lincoln made it clear that he deemed his approval of the measure unnecessary, if not improper, since Congress had "complete power to exclude from counting all electoral votes deemed by them to be illegal." *Id.* 229–230 (Senate, Feb. 10, 1865).

[35] The vote of Louisiana was objected to under the Twenty-second Joint Rule on the ground that no valid election had been held there. During the debate it appeared that there was no evidence of any misconduct, and the Houses concurred in accepting the questioned votes. *Id.* 237–244 (Feb. 10, 1869). The votes of Georgia, whose statehood was then pending before Congress, were counted under an alternative measure similar to those used in the pre-war crises, *supra*, note 30. The radicals of the House had sought to have Georgia's vote rejected altogether under the Twenty-second Joint Rule. Outraged, they debated a censure proposal for two days after the count. *Id.* 231–236 (Senate, Feb. 8, 1869; House, Feb. 8, 1869); *id.* 246–266; 267–320 (House, Feb. 11, 12, 1869). After the election an intensive and enthusiastically partisan investigation in New York City by a House Committee produced evidence of fraud which Republican members claimed would have given the state's electoral votes to Grant. H.R. REP. No. 31, *supra*, note 23.

[36] In several instances between 1836 and 1872, the returns of isolated counties had been thrown out in the state canvass for various irregularities, but no protest was made in the count. BURNHAM, PRESIDENTIAL BALLOTS, 1836–1892 895–949 (1955).

[37] Three votes from Georgia cast for Greeley, the Democratic candidate who had died after the election, were rejected on the vote of the House, the Senate voting to accept them. *Id.* 368, 377 (Feb. 12, 1873). Objections on various technical grounds to the votes of Texas and Mississippi were denied by both Houses. *Id.* 369–371, 380, 383, 386–389. Arkansas's votes for Grant were rejected by the Senate for lack of a seal, suggesting that the Republicans were seeking to create an impression of fairness. *Id.* 402. It later appeared that Arkansas had no seal at the time of the election. *Cf. id.* 510 (Feb. 25, 1875) (Remarks of Senator Logan).

[38] *Counting Electoral Votes* 336–345 (Senate, Jan. 7, 1873).

[39] *Id.* 358–363 (Senate, Feb. 10, 1873). The Republican returning board had been upheld by the state supreme court, but the majority voted to ignore this fact, since the decision came after the meeting of the electors. *Id.* 362. See State *ex rel.* Attorney General v. Wharton, 25 La. Ann. 2 (1873).

[40] *Counting Electoral Votes* 399, 406 (Feb. 10, 1873).

[41] Id. 519 (Feb. 25, 1875). Prior efforts to pass a Constitutional Amendment giving Congress "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," had been unsuccessful. *Id.* 345–357 (Senate, Jan. 17, 1873), 408–444 (May 28, 1874, Jan. 21–27, 1875). A proposal to change the Twenty-second Joint Rule to provide that concurrence was necessary for rejection also failed. *Id.* 444–458 (Feb. 4, 1875).

[42] S. 1251, 43 Cong., 2d Sess., *id.* 459 (Feb. 25, 1875). The amendment was thought too great a delegation of the congressional power over the count. *Id.* 480–487, 498–499. An amendment to eliminate the broad language of the Twenty-second Joint Rule, *supra*, note 33, permitting decision of "any other question," was passed, in order that the bill would not be construed as covering questions over which Congress had no jurisdiction, such as the determination of state contests. *Id.* 463.

[43] U.S. Bureau of the Census, Historical Statistics of the United States 692 (1960) [Hereinafter cited Historical Statistics].

[44] *Counting Electoral Votes* 786–787 (Jan. 20, 1876).

[45] *Id.* 519–520, 676–687 (Senate, March 13, April 19, Aug. 5, 1876).

[46] For fuller treatment of the controversy, see HAWORTH, THE HAYES-TILDEN ELECTION (2d ed. 1927); DOUGHERTY, *op. cit, supra*, note 2, at 105–213; NEVINS, ABRAM S. HEWITT, 305–399 (1935); WOODWARD, REUNION AND REACTION (1951); Lewis, *The Hayes-Tilden Election Contest* 47 A.B.A.J. 36, 163 (1961). The proceedings of the Electoral Commission are found in 5 CONG. REC., part 4 (1877), a separately paged supplement to the CONGRESSIONAL RECORD [Hereinafter cited as 5(4) CONG. REC.]. See also U.S. CONGRESS, ELECTORAL COMMISSION, ELECTORAL COUNT OF 1877 (1877).

[47] Act of Jan. 29, 1877, ch. 37, 19 Stat. 227. For a summary of the debates on the Act, see DOUGHERTY, *opt. cit. supra*, note 2, at 110–135. The committee deliberations that led to the acceptance of the measure are documented in NEVINS, *op. cit. supra*, note 46, at 342–364.

[48] During the count single returns from Michigan, Nevada, Pennsylvania, Rhode Island, Vermont, and Wisconsin were objected to on eligibility grounds. All were accepted, either by concurrent vote or by the vote of the Senate. 5 CONG. REC. 1720, 1728, 1938, 1945, 2054, 2068 (1877).

[49] Davis was unexpectedly chosen by the Illinois legislature to fill a vacancy in the United States Senate. It is unclear whether this transpired through Democratic stupidity or Republican cleverness. See NEVINS, *op. cit, supra*, note 46, at 361–367.

[50] The letters of Mr. Justice Miller, avowedly a Republican, leave little doubt that he was heavily in favor of Hayes and greatly relieved by the outcome. FAIRMAN, MR. JUSTICE MILLER AND THE SUPREME COURT, 1862–1890 280–291 (1939). For the torrent of abuse to which Mr. Justice Bradley was subjected both before and after the proceedings, see Klinkhamer, *Joseph P. Bradley: Private and Public Opinion of a "Political" Justice*, 38 U. of DET. L.J. 150 (1960). The role of the five justices in the controversy increased public criticism of the opinion of the Court in the Granger Cases (Munn v. Illinois), 94 U.S. 113, handed down on March 1, 1877. 2 WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 583 (Rev. ed. 1926). For more recent views, see NEVINS, *op cit. supra*, note 46, at 370–373, 378n; FAIRMAN, *op. cit. supra*, at 292; WOODWARD, *op. cit. supra*, note 46, at 155–163.

[51] The applicable Florida statute provided that the Board of State Canvassers might throw out any returns which appeared so false and fraudulent that the Board could not determine the true vote. Acts and Resolutions of Fla. 1872, ch. 1868, § 4. See FLA. STAT. ANN. § 102.131 (1960). The Board had taken testimony regarding alleged offenses and had thrown out numerous individual votes. In the gubernatorial contest the state supreme court rules this action illegal, holding that the statute gave the Board discretion to look only to the *bona fides* of the returns, not to the votes themselves. State *ex rel.* Drew v. Board of State Canvassers, 16 Fla. 17 (1877). In Louisiana the statute set up an elective returning board. If sworn complaints regarding fraud or violence at the polls were made to it, the board could investigate the charges and exclude from the count any return which it found materially affected by these influences. Acts of La. 1872, No. 98. § 3. Without complying with these formalities, the board had thrown out some 13,000 Democratic votes. 5(4) CONG. REC. 60–61. The South Carolina statute gave the State Canvassing Board power to decide "cases under protest or contest." S.C. REV. STAT. tit. 2, § 26. (1873). See S.C. CODE § 23–476 (1952). The Board had refused to entertain Democratic allegations of fraud in certain of the county canvasses. 5(4) CONG. REC. 180. For the unsuccessful efforts of the South Carolina Democrats in the state courts, see State ex rel. Barker v. Bowen, 8 S.C. 382 (1876); *Id.* 400 (1877).

[52] 5(4) CONG. REC. 56, 119, 192. In the case of Florida the Commission further held invalid the certificate of the newly elected Democratic governor based on a state quo warranto proceeding completed subsequent to the date of meeting of the electors. In Louisiana it decided that a group of Democrats claiming to be the returning board was not authorized to act as such. In South Carolina it rejected Democratic arguments based on the failure of the state to enact a registration statute required by its constitution and on alleged federal interference in the election. *Ibid.* See generally, DOUGHERTY, *op. cit. supra*, note 2, at 136–183, 202–207.

[53] 5(4) CONG. REC. 38, 57, 117, 119, 179. DOUGHERTY, *op. cit. supra*, note 2, at 153, 160, 180, 184–202.

[54] 5(4) CONG. REC. 56, 192; *cf. Id.* 263–264 (Opinion of Mr. Justice Bradley).

[55] 5 CONG. REC. 2068 (1877). The story of the negotiations is told in full detail in WOODWARD, *op. cit. supra*, note 46. See also, NEVINS, *op. cit. supra*, note 46, at 379–399.

[56] S. 1308, 45th Cong., 2d Sess., 7 CONG. REC. 3739. *Cf.* Edmunds, *Presidential Elections*, 12 AM. L. REV. 1, 15–19 (1877).

[57] Garfield defeated Hancock in 1880 by only 7,368 votes out of some 9,000,000 cast, and won in the Electoral College by 214 votes to 155. In 1884 Cleveland's popular vote lead was some 68,000 out of 9,500,000, but his electoral vote lead was a mere 37. He carried New York with its 36 electoral votes by a plurality of only 1167 out of nearly, 1,200,000 votes. HISTORICAL STATISTICS 682–683, 689, *Cf.* BURNHAM, *op. cit. supra*, note 36, at 130, 137. As to the counts in 1880 and 1884, see *infra*, note 58.

[58] S. 1308, *supra*, note 56, passed the Republican Senate in December 1878, but was allowed to die in the still Democratic House. 8 CONG. REC. 51–54, 68–74, 157–170, 197 (1878). In the 46th Congress, with both Houses Democratic, efforts to pass legislation to control the count of 1881 failed, and a compromise was adopted, providing for the alternative count of the votes of Georgia, which had been cast on the wrong day. STANWOOD, *op. cit. supra*, note 14, at 399; 11 CONG. REC. 19–32, 39–48, 61–73, 132–134 (1880). The count proceeded peacefully under this device. *Id.* 1386–1387 (1881). The bill reappeared in the Republican 47th Congress as S. 613. 13 CONG. REC. 859, 2651–2652 (1882). It died in the House, after an unsuccessful effort to amend it to provide that the losing candidate might contest the election in federal court after the President of the Senate had declared the result. *Id.* 5142–5150. On its next appearance the bill passed a Republican Senate for the third time. S. 25, 48th Cong., 1st Sess., 15 CONG. REC. 430, (1883). The House, again Democratic, passed a substitute giving decision of all questions to a per capita vote of the joint session, which was unacceptable to the Senate. *Id.* 5460–5468, 5547–5551 (1884); 16 *Id.* 1618 (1885). As in 1876, neither party would give ground in an election year, but the count of the vote in 1885 passed without incident. *Id.* 1532. As to the composition of Congress, see HISTORICAL STATISTICS 692.

[59] S. 9, 49th Cong., 1st Sess. It was introduced in the form in which it had last passed the Senate. 17 CONG. REC. 122, 242 (1885). After a brief debate, a substitute was reported back. *Id.* 1021, 1057–1064, 2387 (1886). This version passed the Senate without amendment. *Id.* 2427–2430. Numerous amendments were added in the House, and the final form of the bill was the result of a conference. 18 CONG. REC. 29–31, 45–52, 77 (1886); 668 (1887).

[60] H.R. REP. No. 1638, 49th Cong., 2d Sess., 18 CONG. REC. 30 (1886).

[61] Act of February 3, 1887, ch. 90, 24 Stat. 373, 3 U.S.C. §§ 5–7, 15–18 (1958). Technical changes were made by the Act of October 19, 1988, ch. 1216, 25 Stat. 613, and by the Act of May 29, 1928, ch. 859, 45 Stat. 945. For later changes, see *infra*, notes 63, 76. The Act, prior provisions still in effect, *supra*, notes 20 and 29, and subsequent changes were codified as 3 U.S.C. §§ 1–20 (1958), by Act of June 25, 1948, ch. 644, § 1, 62 Stat. 672.

[62] 3 U.S.C. § (1958).

[63] *Id.*, § 6 provides that the executive of each state, "as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment," is to mail a certificate of the electors appointed and the number of votes to the Administrator of General Services. Copies of this certificate are also given to the electors, who forward them with the certificates of their votes. *Supra*, note 10. If there is a subsequent determination of a controversy under 3 U.S.C. § 5, *supra*, note 62, evidence of it is to be forwarded in similar fashion. As to the role of the Administrator of General Services, see 107 CONG. REC. 265 (daily ed. Jan. 6, 1961) (Remarks of Senator Russell). This function was transferred from the Secretary of State as part of the reorganization of 1950. Act of Oct. 31, 1951, ch. 655, §§ 4–9, 65 Stat. 711.

[64] *Supra*, note 62.

[65] 3 U.S.C. § 15 (1958). The Act also provides for brief recesses during the count, *id.* § 16; for a maximum of two hours of debate in separate session, with each speaker limited to five minutes, *id.* § 17; and in joint session for no debate and consideration of no other question except a motion to withdraw, *id.* § 18.

[66] In the count of 1889 there was some confusion, but no actual problems were present. 20 CONG. REC. 1859–1860. For the subsequent counts, see 3 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, §§ 1960–1963 (1907); 6 *Cannon's Precedents of the House of Representatives*, §§ 442–446 (1935); 81 CONG. REC. 83 (1937); 87 *id.* 43 (1941); 91 *id.* 90 (1945); 95 *id.* 89 (1949); 99 *id.* 130 (1953); 103 *id.* 294 (1957). The procedure presently followed has been purely a formal ritual for many years. See *Cannon's Procedure in the House of Representatives*, H.R. Doc. No. 122, 86th Cong., 1st Sess., 193–196 (1959).

[67] See 8 CONG. REC. 54 (1878) (Remarks of Senator Edmunds); 18 CONG. REC. 30–31

(1887) (Remarks of Mr. Caldwell); *id.* 49 (Remarks of Mr. Eden); *id.* 668 (1887) (Report of Conference Committee).

[68] 8 CONG. REC. 52 (1878) (Remarks of Senator Edmunds). In the course of the debates in 1882, the Senate rejected an amendment that would have given the two Houses power to overturn the state determination by concurrent vote. The proponents of the bill made it clear that they deemed the state's determination to be absolutely binding. 13 CONG. REC. 2651–2652. *Cf.* H.R. REP. No. 1638, *supra*, note 60.

[69] 8 CONG. REC. 54 (1878) (Remarks of Senator Edmunds); 18 CONG. REC. 31 (1886) (Remarks of Mr. Caldwell).

[70] As to the legislative intent, see 17 CONG. REC. 2387, 2427 (1886). In five states the legislature has provided a special contest proceeding in an existing court. COLO. REV. STAT. ANN. §§ 49–14–1, 49–14–2 (1953); CONN. GEN. STAT. ANN. §§ 9–315, 9–323 (1958); DEL. CODE ANN. tit. 15, §§ 5921–5928 (1953); MASS. ANN. LAWS, ch. 54, §§ 119–120 (1953); S.D. CODE, §§ 16.1902–1914 (1939). In two states a special court has been established. IOWA CODE ANN. §§ 60.1–60.6 (1949); N.D. CENT. CODE §§ 16–06—16–15 (1960). In two states express provision is made for trial in the manner decreed for contests for other offices. OKLA. STAT. ANN. tit. 26, §§ 518, 392 (1955), 391 (Supp. 1960); PA. STAT. ANN. tit. 25, §§ 3291, 3351–3352, 3456–3475 (1938). The legislature of one state has provided that it shall determine all contests for the office of elector. VERNONS ANN. MO. STAT. § 128.100 (1952). Three states have provided for final determination of contests by the canvassing authority. KANS. GEN. STAT. ANN. § 25–1433 (1949); R.I. GEN. LAWS ANN. § 17–22–4 (1956); VERNON'S ANN. TEX. STAT. ELECTION CODE, § 9.29 (1952). In two other states there are similar provisions, but court decisions cast doubt on their finality. ME. REV. STAT. ANN. ch. 5 § 50 (1954) (See Bounds v. Smart, 71 Me. 380 (1880)); *cf. infra*, note 71; S.C. CODE §§ 23–475, 23–476 (1952) (See Redfearn v. Board of State Canvassers, 234 S.C. 113, 107 S.E.2d 10 (1959)). In two states the provisions specifically applicable to electors are not the exclusive form of contest. FLA. STAT. ANN. tit. 9, §§ 102–121, 131; 99.192–221 (1960) (See *infra*, note 71); N.H. REV. STAT. ANN. §§ 59:94–98, 68:1–11 (1955) (See *infra*, note 71). Two southern states have passed identical legislation giving to a special board broad powers over the electoral vote which might be construed to include final power to determine contests. ARK. STAT. ANN. § 3–327 (Supp. 1959); GA. CODE ANN. § 34–2515 (Supp. 1960). If the Arkansas provision does not apply, then contests would be tried as for supreme court judge. ARK. STAT. ANN. § 3–313 (1947). In Georgia the contest provisions for members of the General Assembly would govern. GA. CODE ANN. §§ 34–2101, 2901, 2801–2803 (1936). One proposal for legislation to implement the Twenty-third Amendment, giving the District of Columbia the presidential vote, would provide both a recount and a special contest proceeding in the United States District Court for the District of Columbia. Washington Star, April 2, 1961, § 1, p. 7; cf. S. 1883, 87 Cong., 1st Sess., 107 CONG. REC. 7478–9 (daily ed. May 16, 1961).

[71] In 17 states provision has been made for the contest in the state courts of election to "any office," "any public office," "any state office," or a similar variation, ALASKA SESS. LAWS 1960, ch. 83, §§ 4.71–4.93; ARIZ. REV. STAT. ANN. §§ 16–1201–1207 (1956); CAL. ELECTIONS CODE §§ 8510–8575; FLA. STAT. ANN. tit. 9, §§ 99.192–99.221 (1960) (See *supra*, note 70); HAWAII REV. LAWS §§ 11–85.1–.5 (Supp. 1960); ILL. ANN. STAT. ch. 46, §§ 23.19–.30 (1944; Supp. 1960); KY. REV. STAT. §§ 122.070–.090 (1955); MD. ANN. CODE art. 33, §§ 145–146 (1957; Supp. 1960); MINN. STAT. ANN. §§ 209.02–209.10 (Pamphlet Supp. 1959); MONT. REV. CODES ANN. §§ 23–1459–1467 (1955); NEV. REV. STAT. §§ 296.505–.515 (1959); N.J. STAT. ANN. §§ 19:29–1–29–11 (1940); N.M. STAT. ANN. §§ 3–9–1—3–9–10 (1953); N.Y. ELECTION LAW §§ 330–333, *cf.* N.Y. CIVIL PRACT. ACT §§ 1208–1221; OHIO REV. CODE §§ 3515.08–.15 (Baldwin, 1960) ORE. REV. STAT. §§ 251.025–.090 (1957); UTAH CODE ANN. §§ 20–15–1—15–12 (1953). Two states provide for such contests in the legislature. IND. STAT. ANN. tit. 29, §§ 5601–5617 (1949); N.C. GEN. STAT. §§ 163–99 (1952). The general contest provisions of the remaining states do not extend to presidential electors, but all of these states provide an action in quo warranto against one who "usurps, intrudes into or unlawfully holds or exercises any public office." In 11 of the states there is little doubt that a lack in the general contest provisions is to be supplied by a quo warranto proceeding. ALA. CODE tit. 17, §§ 231, 254 (1959); *id.* tit. 7, §§ 1136–1155 (1960) (Provision that no election triable under the Code may be tried by quo warranto is to be strictly construed. Walker v. Junior, 247 Ala. 342, 24 So. 2d 431 (1946); IDAHO CODE ANN. §§ 34–2001–2011, 6–602–609 (1948) (See Tiegs v. Patterson, 79 Idaho 365 318 P.2d 588 (1957)); ME. REV. STAT. ANN. ch. 129, §§ 21, 22 (1954) (Common law right of action preserved) (See *supra*, note 70); MICH. STAT. ANN. §§ 27.2315–2326 (1938), 6.1861–1892 (1956) (Statutory recount proceeding does not abridge common law right); MISS. CODE ANN. §§ 1120–1145, 3287–3290 (1956) (Quo warranto lies in cases not covered by election contest provisions. Kelly v. State *ex rel.* Kiersky, 79 Miss. 168, 30 So. 49 (1901); Warren v. State *ex rel.* Barnes, 163 Miss. 187, 141 So. 901 (1932); N.H. REV. STAT. ANN. § 491.7 (Supp. 1960) (Common law right of action preserved). Stickney v. Salem, 96 N.H. 500, 78 A.2d 921 (1951) (See *supra*, note 70); TENN. CODE ANN. §§ 2–1901–2017, 23–2801–2821 (1955) (Provision that no election triable under the Code may be tried by quo warranto is designed to insure that there be only one contest proceeding. State *ex rel.* Anderson v. Gossett, 77 Tenn. 644 (1882)); VT. STAT. ANN. tit. 12, §§ 4041–4045 (1958), tit. 17, §§ 1361–1365 (1939) (See States *ex rel.* Ballard v. Greene, 87 Vt. 515, 89 Atl. 743 (1914)) WASH. REV. CODE §§ 29.65.010–.130 (1951), WASH. REV. CODE ANN. §§ 7.56.010–.100 (1961) (See State *ex rel.* Holt v. Hamilton, 118 Wash. 91, 202 Pac. 971 (1921)); WIS. STAT. ANN. §§ 6.66 (1957), 294.01–.13 (1958) (See State *ex rel.* Dithmar v. Bunnell, 131 Wis. 198, 110 N.W. 177 (1907)); WYO. STAT. ANN. §§ 22–296, 22–306–324 (1957), 1–896–929 (1959) (See State *ex rel.* Watson v. Christmas, 48 Wyo. 239, 44 P. 2d 905 (1935)). In the remaining four states serious doubts exist as to whether the writ would lie in an election contest. LA. STAT. ANN. §§ 18:1251, 42:76–85 (1951); NEBR. REV. STAT. §§ 25–21,121–21,134 (1956), 32–1001–1034 (960); VA. CODE ANN. §§ 24–419–434 (1950), 8–857–865 (1957); W. VA. CODE ANN. §§ 193–207, 5310–5316 (1955). As to quo warranto generally, see MCCRARY, AMERICAN LAW OF ELECTIONS §§ 393–395, 425 (4th ed. 1897).

[72] This question in most cases would turn on the definition of the term "public" or "state" office in the applicable statute. The United States Supreme Court has held that electors are "state officers" in denying habeas corpus in a conviction under state law for vote fraud in a presidential election. In re Green, 134 U.S. 377 (1890). Interpretation in state courts has varied from case to case, however, according to the intention of the legislature. *Compare* State v. Mountjoy, 83 Mont. 162, 271 Pac. 446 (1928), *with* Spreckels v. Graham, 194 Cal. 516, 228 Pac. 1040 (1924); Harless v. Lockwood, 85 Ariz. 97, 332 P. 2d 887 (1958), *with* Lane v. Melamore, 169 S.W. 1073 (Tex. Civ. App. 1914); *cf.* Annot., 68 A.L.R.2d 1320 (1959). See also Smith v. Ruth, 308 Ky. 60, 212 S.W.2d 532 (1948); Lillard v. Cordell, 200 Okla. 577, 198 P.2d 417 (1948).

[73] 8 CONG REC. 51 (1878).

[74] In the third version of the bill, S. 25, *supra*, note 58, Senator Hoar, floor manager, insisted that it was unchanged from its previous passage in the Senate, but the six-day requirement was in the version taken up by the House. 15 CONG. REC. 430, 5076 (1884). Amendments to eliminate the provision from the final version of the bill, S. 9, *supra*, note 59, were rejected in the House. 18 CONG. REC. 77 (1886).

[75] 24 Stat. 373.

[76] Act of June 5, 1934, ch. 390, §§ 6–7, 48 Stat. 879. The Twentieth Amendment altered Inauguration Day to January 20th, and the first meeting of the new Congress to January 3d. The Act, in providing that the counting session should be on January 6th, insured that the count would not be made by a lame-duck Congress.

[77] The statutes of Connecticut and Iowa, *supra*, note 70, expressly provide that a result is to be reached prior to the deadline in the federal statute.

[78] N.Y. Times, Dec. 16, 1960, p. 28, col. 2 (city ed.).

[79] Lum v. Bush, Civil No. 7029, Circuit Court of the First Judicial Circuit. See N.Y. Times, Nov. 30, 1960, p. 29, col. 7 (city ed.); *id.* Dec. 2, 1960, p. 17, col. 6; *id.* Dec. 15, 1960, p. 39, col. 1; 107 CONG. REC. 282–3 (daily ed. Jan. 6, 1961). See Hawaii's contest statute, *supra*, note 71 .

[80] For the various certificates, the court decree, and the governor's letter of explanation, see *ibid.* The governor noted that the time for appeal would not expire until January 9th, but that no appeal was planned. *Id.* 282.

[81] *Id.* 283. *Cf.* N.Y. Times, Jan. 7, 1961, p. 1, col. 4; p. 8, col. 2 (city ed.).

[82] N.Y. Times, Nov. 29, 1960, p. 17, col. 1 (city ed.); *id.* Nov. 30, 1960, p. 29, col. 1; *id.* Dec. 2, 1960, p. 17, col. 2; *id.* Dec. 3, 1960, p. 23, col. 3. *Cf.* 107 CONG. REC. A-1402 (1961).

[83] Under Illinois law a "discovery" recount, which is of no effect on the official count or in a subsequent contest, may be undertaken by a defeated candidate in order to determine whether or not he has grounds for contest. ILL. ANN. STAT., ch. 46, § 22–6 (Supp. 1960). This proceeding bogged down due to a difference of opinion between the parties as to the scope of the recount. N.Y. Times, Dec. 1, 1960, p. 22, col. 3; *id.* Dec. 3, 1960, p. 23, col. 3; *id.* Dec. 6, 1960, p. 30, col. 1. An attempt to get mandamus requiring the Cook County Canvassing Board to change its result in accordance with the discovery proceeding failed. *Id.* Dec. 13, 1960, p. 23, col. 1.

[84] The Board, composed of the governor and four other executive officers, is required to meet within twenty days after the election and "proceed to open and canvass" the returns from the counties in order to ascertain which presidential electors are the winners. ILL. ANN. STAT. ch. 46, §§ 1–3, 7–14, 21–2, 21–3 (1944; Supp. 1960). The Republican claim was based on a "1912" decision which would permit the Board to reject county returns. The Democrats consistently argued that the Board had ministerial powers only and could do no more than tabulate the county canvasses. N.Y. Times, Dec. 1, 1960, p. 22, col. 4 (city ed.); *id.* Dec. 7, 1960, p. 24, col. 3. The Republicans' case was apparently People *ex rel.* Hill v. Deneen, 256 Ill. 536, 100 N.E. 180 (1912), in which the state board was permitted to refuse a revised proclamation by a county board based on a court proceeding in which there was no jurisdiction. The board was directed to accept the original county canvass. This case is far from giving the state board power to hear facts and decide a contest for itself. If anything, it stands for the proposition that the county canvass is conclusive upon the board unless attacked in a proper proceeding, which under Illinois law is a statutory election contest. *Supra*, note 71. See People *ex rel.* Wilson v. Mattinger, 212 Ill. 530, 72 N.E. 996 (1904); People

ex rel. Ganschinietz v. Renner, 334 Ill. App. 302, 79 N.E. 2d 298 (4th Dist. 1948).

[86] N.Y. Times, Dec. 15, 1960, p. 39, col. 1 (city ed.).

[87] Illinois ranked fourth in the 1960 census, with 10,081,158 inhabitants. Chicago, with a population of 3,550,404 is the nation's second largest city. *World Almanac 1961* 81–82.

[88] 8 CONG. REC. 52–54 (1878). See *supra*, note 30.

[89] In the debates and in the final report of the Conference Committee, it is clear that the provision for the governor's certificate to control in the disagreement of the Houses was to apply only in the case of double returns without a state determination. See 17 CONG. REC. 1020, 1022 (Remarks of Senator Hoar); 18 *id.* 49–50 (Remarks of Mr. Eden); *id.* 668 (1887) (Conference Committee Report).

[90] This situation might have arisen if the Illinois Election Board had failed to certify the Kennedy electors. See *supra*, note 84. In 1877 the Electoral Commission would not extend Congressional power beyond an inquiry into the credentials of the state board. *Supra*, note 52.

[91] This was the view of Mr. Caldwell of Tennessee, House floor manager of the bill. 18 CONG. REC. 30–31 (1886).

[92] *Id.* 31.

[93] 17 *id.* 2427–2428 (Remarks of Senator Hoar).

[94] In the Senate the Committee on Privileges and Elections, now a standing sub-committee of the Committee on Rules and Administration, has jurisdiction over "matters relating to the election of the President, Vice President, or Members of Congress; corrupt practices; contested elections; credentials and qualifications; Federal elections generally." Senate Standing Rule XXV 1(o)(1)(D), *Senate Manual*, S. Doc. No. 2, 87 Cong., 1st Sess. (1961). Similar jurisdiction is vested in the appropriate sub-committee of the Committee on House Administration. House Rule XI.9. (K), *House Manual*, H.R. Doc. No. 458, 85 Cong., 2d Sess. (1959). See GALLOWAY, THE LEGISLATIVE PROCESS IN CONGRESS 358 (1953). *Cf.* the activities of Senate investigators in 1873, *supra*, notes 38–40, and committees of both Houses in 1877. DOUGHERTY, *op. cit. supra*, note 2, at 141, 164.

[95] Congress has long had a reputation for the partisan decision of contests over its own membership. Out of 382 cases decided in the House between 1789 and 1907 only three members not of the majority party were seated. ALEXANDER, HISTORY AND PROCEDURE OF THE HOUSE OF REPRESENTATIVES 313–324 (1916). Decisions in the years since 1907 seem to have been somewhat less partisan. 1 HAYNES, THE SENATE OF THE UNITED STATES 126n (1938); *cf.* GALLOWAY, *op. cit. supra* note 93. In the most recent contest in the House, minority members of the Sub-Committee which had conducted a partial recount agreed in seating the Democratic candidate, but accused the majority of partisanship in certain decisions regarding the application of Indiana law. Roush v. Chambers, H.R. REP. No. 513, 87 Cong., 1st Sess. 65–70 (1961). On the floor Republican members raised the same objection, urging that the state determination should have been binding, but conceded that to object was "an exercise in futility" in view of the Democratic majority in the House. 107 CONG. REC. 9647–9661 (daily ed. June 14, 1961).

[96] In 1877, because no votes were rejected, the problem never arose. Since the constitutional language, *supra*, note 5, calls for election by a majority of the electors appointed, the answer would seem to depend on whether the votes in question were rejected because of a failure in the appointment process, or because of a subsequent failure on the part of the elector. Precedents drawn from other electoral counts are inconclusive. In 1873 the total announced by the President of the Senate as necessary for a majority included the votes of Louisiana, even though both sets of electors had been rejected because neither was found to be supported by a valid canvass. *Counting Electoral Votes* 408 (Feb. 12, 1873). In the years in which the vote was counted in the alternative, the number needed for a majority was reduced by the amount of the questioned votes. In these cases, however, it is clear that a state which cannot vote at all has not appointed electors. *Id.* 266 (Feb. 10, 1869); see *supra*, note 30; *cf.* 11 CONG. REC. 1387 (1881) (electors voted on wrong day; majority not reduced). On several occasions the majority figure was reduced to account for electors who had been appointed, but had not voted through death or disability, *Counting Electoral Votes* 40 (Feb. 8, 1809); *id.* 50 (Feb. 14, 1821); *id.* 226, 229 (Feb. 8, 1865); see STANWOOD, *op. cit. supra*, note 14, at 63, 113. This practice is in direct contravention of the express intention of the Constitutional Convention, *supra*, note 17. Whatever the precedents, the sponsors of the Electoral Count Act clearly intended that votes rejected under it would reduce the number needed for a majority accordingly. 17 CONG. REC. 821 (1886) (Remarks of Senator Hoar).

[97] U.S. Const. amend. XII.

[98] For the succession, see U.S. CONST. amend. XX; 3 U.S.C. § 20 (1958).

[99] See HARRIS, ELECTION ADMINISTRATION IN THE UNITED STATES (1934); *cf.* Note, 106 U. PA. L. REV. 279 (1957).

[100] See WILMERDING, THE ELECTORAL COLLEGE 85–86, 115–116 (1958); *cf.* Margolin, *Proposals to Reform Our Electoral System* 30, 46, 66 (Library of Cong. Legisl. Ref. Serv. 1960).

[101] Federal judges owe their positions to executive appointment with the advice and consent of the Senate, but they have life tenure during good behavior and may be removed only by impeachment. U.S. CONST. art. II, §§ 2, 4; art. III, § 1; art. I, §§ 2, 3.

[102] In England, where contested seats in Parliament are tried before a two judge election court, all the judges of the King's Bench Division meet annually to select three of their number to serve on a special rota for the court during the coming year. Supreme Court of Judicature Act (Consolidation), 1925, 9 & 10 Geo. 5, c. 64, § 67. See Representation of the People Act, 1949, 12 & 13 Geo. 6, ch. 68, §§ 119–137. *Cf.* SCHOFIELD, PARLIAMENTARY ELECTIONS 503–544 (3d ed. 1959). Efforts to introduce such a system for congressional contests have been unsuccessful. Haynes, *op cit. supra*, note 94, at 122n.

[103] These factors led to the present requirement that a three judge court sit on proceedings where injunction of state action is sought. 28 U.S.C. §§ 2281–2284 (1958). See HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 47–48, 843–849 (1953).

[104] Federal courts apply state substantive law in many cases in which they serve as the forum for the enforcement of state-defined rights. See Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) (Diversity jurisdiction); Hess v. United States, 361 U.S. 314 (1960) (Admiralty); cases and sources cited in Hill, *The Erie Doctrine in Bankruptcy*, 66 HARV. L. REV. 1013, 1033–34, nn.87–89 (1953) (National bank winding-up, trade-mark infringement, tax appeal, bankruptcy). Congress in deciding contested congressional elections, has often claimed the power to view state law as merely advisory in such questions as the validity of ballots. HAYNES, *op. cit. supra* note 94, at 155; H.R. REP. 513, *supra*, note 94, at 22, 69–70. This power is justified in the complete control over its own elections and contests which the Constitution vests in Congress. U.S. CONST., art. I, §§ 4, 5. Since there is no such federal control provided over the appointment of electors, the courts should be limited to the liberty which they now exercise in appropriate cases to interpret state law freely in the absence of a clear state pronouncement on the point in question. 1 MOORE, FEDERAL PRACTICE ¶¶ 0.307–0.309 (2d ed. 1959).

[105] To insure that the recount is carried out as quickly and impartially as possible, great care must be exercised in the selection of the personnel who actually count the ballots. In the most recent contest in the House, this chore was performed by auditors from five regional offices of the federal General Accounting Office. H.R. REP. 513, *supra*, note 94, at 12. If it is objected that what are essentially executive employees should not participate in the count of the presidential vote, then the court might be authorized to assign private accountants to the job.

[106] *Supra*, p. 5; note 30.

[107] All of these problems would be resolved by what one political scientist has pointed out to be the simplest and least controversial of all Electoral College reforms—eliminating the office of elector. Burns, *A New Course for the Electoral College*, New York Times, Dec. 18, 1960 (magazine), p. 10, at 28. President Kennedy proposed such a change as a Senator in 1957. S.J. Res. 132, 85th Cong., 1st Sess. The Kennedy plan is again pending in the Senate. See *infra*, note 117.

[108] See *supra*, note 95.

[109] The distinction may be difficult to make. Has an ineligible elector been "appointed"? When votes are rejected merely because the Houses disagree, has the state appointed electors? Questions of interpretation such as this must await an actual case.

[110] See H.R. REP. No. 31, *supra*, note 23, at 84–88; *cf.*, *supra*, note 54.

[111] See State ex rel. Barker v. Bowen, 8 S.C. 382 (1876). Congress has given the District Courts jurisdiction of election disputes in which the sole question arises out of the denial of the right to vote on account of race, creed, color, or previous condition of servitude. The offices of elector, Senator, representative, and state legislator are excluded from these provisions, however. 28 U.S.C. § 1344 (1958). The provision has been held to bar federal jurisdiction over a contest in a primary election for United States Senator. Johnson v. Stevenson, 170 F.2d 108 (5th Cir. 1948), *cert. denied*, 336 U.S. 904 (1949). After the 1960 presidential election jurisdiction over a contest proceeding was refused by the United States District Court for the Southern District of Texas. New York Times, Dec. 13, 1960, p. 23, col. 1 (city ed.).

[112] In re Green, 134 U.S. 337 (1890). As to the variety of methods of appointment permissible, see McPherson v. Blecker, 146 U.S. 1 (1892).

[113] See Nixon v. Herndon, 273 U.S. 536; (1927); cf James v. Bowman, 190 U.S. 127 (1903); see Wilkinson, *The Electoral Process and the Power of the States*, 47 A.B.A.J. 251, 252–3 (1961).

[114] Burroughs v. United States, 290 U.S. 534 (1934). The decision was based on the broad language of *Ex Parte* Yarborough, 110 U.S. 651 (1884), which did not distinguish between congressional and presidential elections in holding that Congress could legislate to preserve the rights of citizens that were essential to the continuance of the government. These cases may be distinguished from Walker v. United States, 93 F.2d 383 (8th Cir. 1937), *cert. denied*, 303 U.S. 644; *reh. denied*, 303 U.S. 668 (1938) in which it was held that a conspiracy against the right to vote for presidential electors could not be prosecuted under a federal statute making conspiracy to injure a citizen in his constitutional rights a crime. The latter case holds only that the citizen's individual right to vote is not protected by the Constitution, since it is subject to the control of the state legislatures. The power of Congress to protect the integrity of elections remains unchallenged.

[115] See *supra*, note 103.

[116] See HART & WECHSLER, *op. cit. supra*, note 102, at 892–893.

[117] *Id.* 20–21, 789–790.

[117] See S. 102, a proposal for "a commission to study and propose improvements in the methods of nominating and electing the President and Vice President"; S.J. Res. 1, a proposal for a Constitutional amendment to abolish the electoral college altogether in favor of direct popular election, including power in Congress to provide by legislation for the settlement of controversies; S.J. Res. 2, a proposed amendment to abolish the electors and to apportion the electoral vote among the candidates according to the proportion of the popular vote each has received; S.J. Res. 4, a proposal similar to S.J. Res. 2, with the proviso that if no candidate gets at least 40% of the vote a combined session of the House and Senate will choose the President and Vice President; S.J. Res. 12, a proposed amendment that would divide the states into equal districts in which each person votes for a district elector and for two electors at large; S.J. Res. 17, a proposal similar in effect to S.J. Res. 1, *supra*, with no provision for settling controversies and with some additional features S.J. Res. 28, a reintroduction of S.J. Res. 2, 81st Cong., 1st Sess., in the form in which it passed the Senate in 1950, a proposal generally similar to S.J. Res. 4, *supra;* S.J. Res. 113, a proposal embodying the Kennedy plan, *supra*, note 106. Similar measures have been introduced in the House. Hearings began before the Senate Constitutional Amendments sub-committee on May 23, 1961. New York Times, May 24, 1961, p. 13, col. 1 (city ed.). For a general discussion of the various proposals, see Margolin, *op. cit. supra*, note 99.

[118] The only measure presently pending which deals with the problems of contests has such a provision. S. 102, *supra*, note 117.

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THE CONSTITUTION, CONGRESS, AND PRESIDENTIAL ELECTIONS

(By Albert J. Rosenthal) *

Although Alexander Hamilton characterized the method provided in the Constitution for the selection of the President as "almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents," [1] its critics soon made up for lost time, and it has probably been the subject of more proposed amendments than any other provision of the Constitution.[2] Recent years have seen an intensification of interest in the subject, reflecting both widespread concern that a President might be chosen who was not the leader in popular votes and fear over the dangers of a stolen or stalemated election. This heightened attention may have sprung in part from the near crises of 1948 and 1960,[3] but undoubtedly it has also been influenced by the rapid growth in the power and significance of the presidency itself. Evidence for this may be seen in the fact that of the last six constitutional amendments adopted, five have concerned the presidency in whole or in part.[4] Still, the basic method of electing the President has continued almost without change.

While a wide variety of amendments intended to remove various apparent shortcomings in the method of selecting our Presidents have been proposed over the years, the current drive is centered on the proposal to employ a direct, nationwide, popular vote. This would eliminate the possibility that the popular favorite might be defeated, as was Grover Cleveland in 1888, by an opponent with fewer popular but more electoral votes. If coupled with a provision that less than a majority of the popular votes (for example, 40 per cent) would suffice for election, or that a runoff election would be held if no candidate obtained a required percentage,[5] this proposal would defeat the strategy of regional third-party candidates who seek to deprive either major party candidate of a majority of electoral votes and to throw the election into the House of Representatives where a stalemate could easily result. Finally, a direct popular vote would also prevent the "theft" of an election by the action of presidential electors defying the mandate of the voters who had selected them on the assumption that they would support their party's nominees.

It is not surprising that this proposal has garnered widespread support. It has been recommended by a prestigious commission of the American Bar Association [6] and endorsed by the ABA's House of Delegates. The Bar Association of the City of New York, which had previously recommended a different proposed amendment,[7] has now shifted its support to direct popular vote,[8] as has Senator Birch Bayh, Chairman of the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary.[9] A Gallup poll indicates that 66 per cent of the nation supports this amendment, with only 19 per cent opposed.[10]

It must be remembered, however, that a decision to amend the Constitution is, as a practical matter, usually an irreversible step.[11] It is the purpose of this Article to examine the gravity of the evils sought to be eliminated, the possibility that the proposed amendment might give rise to undesirable side effects, and the availability of alternative remedies.

I. DEFEAT OF THE POPULAR CHOICE

We still choose our chief magistrate by a method which is both anachronistic and undemocratic. There is much that is attractive in the view that the President should be chosen by a completely democratic process—that if the principle of "one man—one vote" has validity elsewhere it ought to be applied here. For a nation professing dedication to democratic ideals, the selection of its most important officer through a method not completely democratic must, inevitably, be a source of dissatisfaction. And under *any* system in which the presidency is determined by some method other than direct popular vote, there is necessarily a possibility that the popular favorite may not win.

There are, however, difficulties with a completely democratic selection process both in principle and practicality. As an abstract proposition, complete equality of influence of every voter in the country might well be a worthy goal. But we are not living under an abstract proposition. In other parts of the real system under which we live, voters do not always have equal influence: compare the Senate. The way in which the President is chosen must be considered in the context of the entire governmental structure rather than in isolation. Moreover, since there is no real possibility of achieving total equality in every component of our political life, it may be particularly pertinent to consider the desirability of direct popular election of the President in terms of practical consequences as well as democratic theory. What forces in our society would be strengthened, and what weakened, if the change were made? Which needs would be likely to be served, and which put aside?

The Founding Fathers, of course did not contemplate a purely democratic procedure for choosing the President. The device selected was the product of compromise between those favoring and those opposing popular participation in the choice; [12] it also reflected an earlier compromise between the large and the small states as to congressional representation.[13] Even the right to vote for presidential electors was not assured, since each state could "appoint" its electors as it saw fit. In fact, in some states—South Carolina until 1860 [14]—the legislatures retained this power.

The original constitutional framework has, with minor exceptions,[15] remained unchanged to this day; yet, as a practical matter the manner of presidential selection evolved very quickly into a form which would have been unrecognizable to the Framers. With the growth of political parties, the elector soon became a mere functionary expected to vote for his party's candidates.[16] And with the advance of democracy, each state eventually directed that its electors be chosen by universal suffrage. However, the electors are still chosen on a state-by-state basis, and in turn, they elect the President.[17]

When the voters first began choosing electors, many states were divided into electoral districts with the result that if party strength differed from district to district a mixed delegation of electors was chosen. A few states, however, employed statewide balloting, and the party that prevailed in total vote secured the entire electoral count. This device enabled a state to achieve an influence far greater than a state whose electoral vote was divided; by a sort of Gresham's Law, the states in the latter group felt obliged, in self-defense, to follow suit. Before long, the statewide or "general ticket" method became universal, and it has seldom been departed from in the last century.[18]

Thus, as the system now operates in practice, the candidate obtaining a plurality [19]—however small—of a state's popular votes receives its entire complement of elector votes. A candidate carrying a number of states by small margins can therefore prevail over his opponent whose total popular vote may be greater. Although this has seldom happened, the possibility cannot be ignored.

Three elections are often cited as examples of the defeat of the popular favorite—those of 1824, 1876, and 1888. In 1824, the two-party system had temporarily broken down, and all four candidates—Andrew Jackson, John Quincy Adams, William H. Crawford, and Henry Clay—were, nominally at least, Democrats. No candidate received either a majority of the electoral vote or a majority of the popular vote in the eighteen (out of twenty-four) states in which the people chose their electors by popular vote. The vote was divided as follows; [20]

Candidate	Popular	Electoral
Jackson	152,933	99
Adams	115,696	84
Crawford	46,979	41
Clay	47,136	37

Pursuant to the Constitution, the choice devolved upon the House of Representatives, with each state casting one vote and a majority (thirteen states) necessary for election. Clay threw his support to Adams, who won on the first ballot. The result has generally been interpreted as a defeat for democratic principles, and that interpretation was successfully employed by Jackson in his return match with Adams four years later. But because in six states the electors were chosen by the legislatures rather than at the polls, and because of the possibility that Adams may well have been the second choice of most of the supporters of Clay and Crawford, Adams' election is not a conclusive case of a defeat of the popular will.

In 1876, by anyone's count, Democrat Samuel J. Tilden secured a clear popular majority over Republican Rutherford B. Hayes.[21] However, disputes arose in four states, and double sets of returns were sent to Congress. Apart from the disputed votes, Tilden had 184 electoral votes and Hayes 165; twenty electoral votes were at stake, and Tilden needed only one of these to win.[22] Congress established an Electoral Commission to resolve the disputes, and the Commission, by a strict eight-to-seven party vote, found for Hayes in each instance. Thus, the final count was 185 for Hayes and 184 for Tilden. In this instance, the defeat of the popular choice may be ascribed to the election frauds which gener-

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ated the controversy and to the party-line votes of the Electoral Commission, rather than to the unresponsiveness of the electoral college to the popular vote. Yet, even under the Republicans' count of popular votes, Tilden had a majority; this demonstrates that the system itself could have thwarted the popular will even if there had been no controverted returns.

The only apparently clear example of defeat of the popular will was the election of 1888, in which Grover Cleveland, who led Benjamin Harrison in popular votes, was decisively defeated in the electoral count. The vote was tabulated as follows: [23]

Candidate	Popular	Electoral
Harrison	5,445,269	233
Cleveland	5,540,365	168
Minor parties	404,205	0

Although neither candidate had a majority of the popular vote, this would seem to be an unquestionable instance in which the plurality candidate lost the election. Yet we cannot be certain that, had the President been elected by direct popular vote, Cleveland necessarily would have won. If the gound rules regarding election had been different, the candidates would presumably have campaigned differently, aiming at total votes rather than at carrying critical states. A larger voter turnout would have been likely in those one-sided states where interest lagged because the choice of electors was fairly certain. For example, a more active attempt to bring out Republican votes in the then solid Democratic South might have been made. Of course, this could have been outweighed by an even larger turnout of otherwise complacent Democrats. In short, we will never know.

A significant feature of the 1888 election was that, while Cleveland's 95,096 popular vote plurality availed him nothing, a switch of a mere 7,189 votes out of well over 1,000,000 in New York would have swung its thirty-six electoral votes to his column and enabled him to win by 204 to 197.[24] Ironically, four years earlier, Cleveland had beaten Blaine by 219 electoral votes to 182, also prevailing in the popular vote by a margin of 23,737. Yet a shift of 575 votes in New York would have elected Blaine (218–183), despite Cleveland's nationwide plurality.[25]

The tremendous potential significance of a handful of votes in the larger states has not been overlooked; the party conventions usually choose candidates from the largest states, and campaigns are tailored to capture their electoral votes. Yet this seemingly swollen influence of the large-state voter appears inconsistent with the mathematics of the electoral college. The smaller states seem to be accorded disproportionately large representation because each state, regardless of population, is accorded two electoral votes corresponding to its two senators as well as one for each representative; thus, Alaska casts one electoral vote per 75,389 inhabitants, as contrasted with California's one per 392,930.[26]

Whose vote, then, really does count for more? Does the large-state voter wield more influence than his counterpart in the small state? Is the answer dictated by the electoral vote/population ratio or is the instinct of the politicians more accurate? Not until this year has the solution been forthcoming. In a brilliant mathematical analysis, John E. Banzhaf, III, has demonstrated algebraically that the general ticket system accords each large-state voter a greater chance than his smaller-state counterpart to affect the ultimate result of an election despite his smaller theoretical share of the electoral vote.[27] In effect, the voters in a state may be compared to participants in a caucus, each of whom agrees to cast his vote in accordance with the decision of the majority; each thereby gains potential power, and the larger the number of participants in the caucus the greater the power. This factor outweighs the higher electoral vote/population ratio of the smaller states; a voter in California or New York has been calculated to have almost three times the chance of affecting the final result as a voter in any of several smaller states.[28]

Despite the difficulties encountered by the Constitutional Convention in resolving the competing interests of the large and small states, few issues have polarized the nation along such a dividing line. Until about twenty years ago, proposals to change the system were at least ostensibly predicated more upon theoretical objections to unequal voting power and to the possibility of a popular winner becoming an electoral-college loser than upon fostering or frustrating any interests supposedly concentrated in a particular group of states classified by size. Over the years, the types of changes proposed have taken several forms. A perennial favorite has been the reversal, by constitutional amendment, of the practice of employing the general ticket. Mandatory choice of electors by separate districts within a state was first proposed in 1800 and has since been repeatedly urged; its current champion is Senator Mundt of South Dakota. A proposal to split each state's electoral vote in proportion to its popular vote was first offered in 1848; under the sponsorship of Senator Lodge of Massachusetts and Representative Gossett of Texas it came close to success in 1950, when it carried the Senate by more than the required two-thirds but died in the House. A combination of both proposals, whereby a state could choose either procedure but could not adhere to the present winner-take-all method, picked up no fewer than fifty-four sponsors in the Senate but nevertheless failed to carry, largely because of the brilliant opposition of Senator Paul Douglas and freshman Senator John F. Kennedy. Depending on the observer's political leanings, he may find poetic justice or irony in the fact that, under either of the two procedures, Kennedy probably would have lost to Nixon in 1960.

Pursuant to either the district or the proportional plans, the small states would retain the mathematical advantage stemming from their higher electoral vote/population ratios, while the larger states would lose the advantage of the countervailing "caucus" factor. Banzhaf has calculated that under the district plan, a voter in Alaska would have over three times the influence of one in California or New York, and under the proportional plan, over five times as much.[29]

But by the 1950's something new had entered the picture. Theoretical considerations undoubtedly motivated some of the proponents of change, but there were many who openly deplored what they regarded as the growing influence of urban minority and labor groups upon the selection of Presidents and their conduct in office. They attributed this influence to the concentration of electoral votes in the populous states, where these minority and labor groups might hold the balance of power.[30] While direct election of the President would have eliminated these supposed discrepancies, the essentially conservative leadership of the drive for the district and the proportional amendments soundly defeated direct popular vote when it was proposed.[31] Instead, this leadership strove for changes which would have discriminated *against* the large-state and large-city voters in the choice of the President, despite the fact that these voters already faced disadvantages in the composition of the Senate, the districting of the House of Representatives, and the apportionment of the state legislatures.

While proposed from time to time over the years, the direct popular vote amendment has only recently attracted much support. Hesitation may have sprung from the assumption that the smaller states would never accept the destruction of their theoretical advantage; since over half of the states partook of that advantage, the possibility that three fourths of them would ratify such a constitutional amendment seemed remote indeed.[32] Other factors, however, would seem necessary to explain the almost two-to-one vote against the proposal among 254 heads of university political science departments in a 1961 survey conducted by the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee.[33] It may be that the political scientists were moved by the same consideration asserted by John F. Kennedy in the 1956 Senate debate: "[I]t is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider all the others." [34] Kennedy was talking about the proposed district or proportional systems, but the same considerations would apply, albeit with somewhat less force, to direct popular election.

Of course, Kennedy was speaking—and the political scientists were voting—before *Baker* v. *Carr*,[35] *Reynolds* v. *Sims*,[36] and *Wesberry* v. *Sanders*,[37] which invalidated the subordination of the cities to the rural areas in the composition of state legislatures and the House of Representatives. Much of the reason for retaining the disproportionate influence of the large states (and therefore of the large cities within those states) [38] in the choice of the President as a countervailing inequality to balance their weakness in other political areas has since disappeared. In the light of these more recent constitutional developments, a fresh look at the problem is needed.

Is there any longer a respectable case for opposing direct popular election? I, for one, believe that there is. First of all, it is too soon to assume that the reapportionment decisions are going to stick. As the readers of the March 1968 issue of this *Review* must be especially aware, a substantial effort has been mounted to reverse those decisions, either through an ordinary constitutional amendment or through the calling of a new constitutional convention.[39] Before the populous states and cities previously prejudiced by malapportionment should be asked to give up whatever advantage they are accorded by the present method of choosing the President, they might want some assurance that there will be no reversion to the dominance of state legislatures and the House by rural interests.[40]

Apart from the danger of a recrudescence of rural domination of legislatures and the House, the permanent underrepresentation of larger states in the Senate is frozen into the Constitution even beyond the reach of the amending process.[41] Each Alaskan's vote counts seventy-four times as much as each New Yorker's in the composition of the Senate; by comparison, the advantage accorded to New Yorkers by the present method of electing the President is slight indeed. Even without regard to legislative apportionment, therefore, we still must face the issue which Senator Kennedy raised in 1956. Too many elements in the "solar system of governmental power" are still loaded against the voter in the large states to warrant the conclusion that fairness obliges him to give up the one advantage which he retains.

Perhaps more significant than countervailing inequalities are the practical consequences of the proposed change. It would scarcely be prudent to effect a permanent alteration in our political structure without careful examination of its probable effects on governmental processes. What influences would be strengthened, what weakened, if Presidents were to be chosen by direct vote?

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The most obvious consequence of the proposed change would be a reduction in the importance of the large states in the choice of the President. But, as mentioned above, issues in American politics have rarely been polarized between large and small states, so at first glance the change might not seem to be very significant. But large states do contain large cities; according to the 1960 census, of the eight largest cities, seven are located, one each, in the seven largest states.[42] And the cities, until recently the victims of rural-dominated apportionment of state legislatures and unequal districting in the House of Representatives, are in serious trouble. To whatever extent our Presidents may be influenced by the voting strength of the urban voters, it would seem imperative that this influence not be curtailed.

Even more important, there has in recent years been an enormous influx of Negroes into the cities—to a point where over two thirds of all Negroes outside of the South are concentrated in our twelve largest cities,[43] with all signs pointing to even further concentration in the future. The appalling conditions imposed upon all but a tiny fraction of them has been detailed elsewhere.[44] The result is the most serious domestic crisis the nation has had to face in a century. Can we afford to reduce, even in the slightest, the likelihood that the federal government will take the heroic measures urgently needed to cope with this crisis? [45]

Changing the method of choosing the President means much more than turning a potential losing candidate into a winner and vice versa. The choice of a party candidate reflects at least in part the judgment of the convention delegates as to his chances for victory; under the present structure great attention must necessarily be paid to the popularity of the candidate with urban and Negro voters.[46] If we reduce the influence of those voters, we will reduce the attention which conventions will pay to urban and Negro preferences when nominating candidates. Similarly, an incumbent President seeking re-election—or hoping that his successor will be of the same party—will probably pay more attention to urban and Negro needs under the present system than if the balance of power were changed.

The plight of the cities is becoming increasingly desperate. Racial tensions seem to be worsening rapidly. Compared with the magnitude of the problems, little enough has been done about them even under existing rules. Should the rules be changed in a way which will undoubtedly diminish just those influences which might prod us toward implementing the measures we so badly need? [47]

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Advocates of direct popular vote do not rest their case on equalization of voting power alone. They point out two additional weaknesses in the present system which would be cured by their proposed amendment: the possibility of a standoff in the electoral college followed by a stalemate in the House of Representatives, and the danger that a sufficient number of electors to deprive the apparently victorious candidate of the presidency will vote contrary to the expectation of the voters. Do these dangers, considered together or separately, justify adoption of the proposed amendment?

II. THE CONTINGENT ELECTION PROCEDURE

Criticism has perennially been directed at the procedures applicable if no candidate secures a majority of the electoral vote. In such cases, the election is thrown into the House of Representatives, which must choose among the three leading candidates. In the House, each state's delegation casts one vote, and the votes of a majority of states (twenty-six today) are required for election.

Only twice has this procedure been invoked[48]—and not since 1824—but there have been several near misses. A third-party candidate whose total popular vote is large but evenly spread throughout the nation may not secure any electoral votes and thus could not normally prevent one of the major party nominees from attaining a majority in the electoral college.[49] The danger arises from a regional candidate, such as George Wallace, who carried five Southern states; if the major party candidates run closely enough, a candidate like Wallace can hold the balance of power. There is reason to believe that this was a major purpose of the Wallace candidacy and of the campaigns of his "Dixiecrat" predecessors. If a standoff in the electoral college were followed by a stalemate in the House, Wallace would have presumably tried to trade his support to one of the major party candidates in return for assurances of retrogression on civil rights and perhaps for promises to appoint conservatives (or even racists) to the Supreme Court and to other sensitive positions such as that of the Attorney General.

If there is no majority in the electoral college, it is highly unlikely that there will be a majority of states supporting one candidate in the House. This conclusion does not rest solely upon the probability that the political complexion of each state's congressional delegation will resemble the distribution of its presidential vote. If the delegation of a state is evenly divided it can cast no vote; yet a majority of all the states, voting or not, is necessary to elect a President. Under the current apportionment, twenty-nine of the fifty states are assigned an even number of representatives; in a close year, at least a few evenly split delegations are inevitable. Such a stalemate almost occurred in 1948. Truman led Dewey by over 2,000,000 popular votes, and by 303 electoral votes to 189. The States Rights candidate, Strom Thurmond, garnered only slightly more than 1,000,000 votes but carried four states and secured thirty-nine electoral votes. Hence, no resort to the House was necessary. But if there had been a small shift in the popular vote in key states,[50] there would have been no electoral vote majority. Assuming that all representatives would have supported the candidates of their respective parties and that the delegations from the states carried by Thurmond would have supported him, the House vote would have been: [51]

Candidate	*States*
Truman	21
Dewey	20
Thurmond	4
Evenly divided	3

How the impasse would have been resolved is a matter, fortunately, only of conjecture. Edward S. Corwin has remarked that we continue to rely "on the intervention of that Providence which is said to have fools and the American people in its special care." [52]

Again in 1960, a shift of only 9,421 votes in Illinois and Missouri, or several other combinations of small numbers of votes in other states,[53] would have thrown the election into the House of Representatives with no clear assurance as to the outcome there. Certainly, the present method for contingent election is unsatisfactory—indeed, it is dangerous. As Professor Paul J. Piccard stated: "A certain amount of perseverance is needed in order to discover something good to say about the possibility of an election of the President by the House of Representatives." [54] But it does not follow that the entire electoral system must be overhauled merely to eliminate this one undesirable feature. If the advocates of change are motivated primarily by fear of the success—this year or some year—of a Wallace-type candidate in stalemating the election, their purpose can be achieved by curing the objectionable part of the procedure.

Any number of remedies suggest themselves. The simplest might be to reduce the portion of the electoral vote needed for election of the candidate receiving a plurality from an absolute majority to something less—40 per cent or one-third. American electoral practices with respect to the requirement of a majority, as distinguished from a mere plurality, have been ambivalent; in most instances, pluralities are sufficient. In almost all states, we choose our Senators, Representatives, and governors by plurality vote.[55] And within each state except Georgia,[56] a plurality is sufficient to elect the presidential electors themselves. The winners of fifteen presidential elections [57] have received less than a majority of the popular vote; indeed, this was true in nine of thirteen elections from 1844 to 1892, and has again been true in 1948, 1960, and 1968.

Another solution would be to call an immediate run-off election between the two leading candidates, with all electors required to vote for one or the other.[58] Still another alternative which would work in most though not all cases would be to replace the contingent election by states in the House of Representatives with a joint session of the House and the Senate, in which each senator and representative would vote as an individual.[59] In brief, there is no shortage of possible remedies for this part of the problem, and there is no need to throw out the entire system to cure one objectionable element.

III. THE FAITHLESS ELECTOR

The third weakness in the present system for choosing the President springs from the possibility that presidential electors will vote contrary to the assumption of the voters who selected them. If such action on the part of a sufficient number of electors were to reverse the decision of the voters, the ensuing dispute over the legitimacy of the election of a new President might well inflict grave injuries upon the nation. If we assume that discretion on the part of electors to override the expectations of their constituents must be eliminated, there are three possible ways in which this may be accomplished: by the courts under existing law, by statute, or by constitutional amendment.

The Founding Fathers intended the electors to be free agents,[60] but they did not foresee the growth of political parties. Hamilton's concept of the electors as "men most capable of analyzing the qualities adapted to the station . . . likely to possess the information and discernment requisite to such complicated investigations" [61] did not accurately reflect the situation for long. In 1788 and 1792 Washington was everyone's choice anyway. By 1796, political parties were evolving, and electors were being pledged to support their respective parties' candidates. In that year, Samuel Miles, a Federalist elector from Pennsylvania, voted for Jefferson instead of Adams, evoking this comment from a Federalist voter: "Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chuse him to act, not to think." [62] By 1800, party discipline had already evolved to a point where it caused the Democrats acute embarrassment. In that year, each of their electors dutifully voted for both Jefferson and Burr, causing a tie that could be resolved only with the assistance of some of the Federalist members of the House of Representatives.[63] With the removal of this problem by the twelfth amendment, the compulsion for the strict adherence to party mandate grew even stronger.

In 1820, elector Samuel Plumer—contrary to the expectations of his constituents—voted for John Quincy Adams instead of James Monroe, thereby preventing Monroe from sharing Washington's distinction of being the unanimous choice of the electoral college. But apart from some unclear cases arising from the four-way election of 1824,[64] there has not until recently been a single subsequent instance of an elector following his own bent.[65] Indeed, in 1876, when James

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Russell Lowell, a Republican elector from Massachusetts, might have cast his vote for Tilden and thereby spared the nation the crisis that followed,[66] he felt obliged not to do so. He wrote to Leslie Stephen:

"In my own judgment I have no choice, and am bound in honor to vote for Hayes, as the people who chose me expected me to do. They did not choose me because they had confidence in my judgment, but because they thought they knew what that judgment would be. If I had told them that I should vote for Tilden, they would never have nominated me. It is a plain question of trust. The provoking part of it is that I tried to escape nomination all I could, and only did not decline because I thought it would be making too much fuss over a trifle." [67]

As Justice Jackson stated in 1952:

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

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

"As an institution the Electoral College suffered atrophy almost indistinguishable from *rigor mortis*." [68]

Three electors have voted contrary to mandate in recent years. In 1948, Preston Parks appeared on two slates in Tennessee, one committed to Truman and one to Thurmond. Although the Truman ticket carried the state, Parks cast his vote for Thurmond. In 1956, W. F. Turner, a Democratic elector in Alabama, cast his vote for Walter E. Jones, a local judge, instead of supporting cases, as with Samuel Plumer in 1820, the Adlai Stevenson, the party nominee. In these votes involved had no consequence, and the purpose of the electors was apparently to make a gesture rather than to affect the choice of the President. But in 1960 a much more disquieting incident occurred.

Shortly after election day, one Lea Harris of Montgomery, Alabama, circularized the newly chosen electors, urging them to withhold electoral votes from Kennedy (and Nixon as well) and to agree upon a ticket acceptable to conservative sentiment, particularly in the South. As one of several such tickets, Harris suggested Byrd for President and Goldwater for Vice President. One Republican elector, Henry D. Irwin of Oklahoma, sent out further solicitations of his own. In the end, however, he alone switched, And since his vote represented a shift from Nixon to Byrd it did not diminish Kennedy's majority. Called to testify before a Senate Judiciary subcommittee considering constitutional amendments relating to the election of the President, Irwin claimed to have had the "tacit support" of the Republican National Committee, but on cross-examination it was established that he had garnered little more than vague expressions of sympathy from a few national committeemen and had been rebuffed in many quarters.[69] But it is disquieting to speculate on what a better-organized campaign to subvert electors might have achieved, or what Messrs. Harris and Irwin themselves might have accomplished if Kennedy had had only, say, two or three instead of thirty-four electoral votes over the 269 necessary for a majority.

Still, four runaway electors in 144 years is not very many, especially when balanced against the 15,245 electoral votes [70] cast in all the elections between 1820 and 1964. Adherence to party candidates is still, overwhelmingly, the norm. The insignificance of the electors is reflected in the election laws of thirty-five states, which do not even list them on the ballots or voting machines. Instead, these states recite the names of the presidential and vice-presidential candidates, in some cases prefaced by the phrase "Electors for." [71] Clearly, the people believe they are voting for the President, and on the Wednesday after the first Tuesday after the first Monday in November the newspapers unhesitatingly report the election results with complete confidence that the electoral vote will be cast in accordance with the preferences of the voters.

Despite this solidly established practice of fidelity on the part of electors, suppose a plan such as that of Mesrs. Harris and Irwin were to succeed, and a sufficient number of electors voted contrary to pludge or expectation to defeat the candidate who would have won and confer victory upon his opponent. Can the Constitution be regarded as having been changed by almost two centuries of nearly consistent practice, so that the preference of the voters can take precedence over the decision of the electors? And even if the disobedient vote of an elector is regarded as legally improper, is there an effective judicial remedy for its correction?

The first question is whether such an unfaithful vote would be illegal at all. Certainly, electors' discretion conforms to the original concept of the Framers [72] and has never been changed by explicit constitutional amendment. Can the practice of the ensuing years be deemed nevertheless to have amended the Constitution to the point where an elector who attempted to vote contrary to the voters' mandate would be deemed to have violated a legal, as distinguished from a moral, obligation? The Constitution is an evolving instrument, but can it evolve to a point diametrically opposite its original import?

A lower New York court once answered this question affirmatively. In *Thoma v. Cohen*,[73] a voter challenged the constitutionality of the practice of putting only the names of the presidential and vice-presidential candidates on the voting machines, arguing that since he was voting for electors who would be free to exercise discretion he had a right to know for whom he was voting. While conceding that the Framers intended electors to use their own judgment, the court concluded that intervening history had imposed a legal obligation on the electors to vote for their parties' nominees:

"The electors are expected to choose the nominee of the party they represent, and no one else. So sacred and compelling is that obligation upon them, so long has its observance been recognized by faithful performance, so unexpected and destructive of order in our land would be its violation, that the trust that was originally conferred upon the electors by the people, to express their will by the selections they make, has, over these many years, ripened into a bounden duty—as binding upon them as if it were written into the organic law. The elector who attempted to disregard that duty could, in my opinion, be required by mandamus to carry out the mandate of the voters of his State." [74]

The court relied [75] on a quotation from Chief Justice Hughes' opinion in *Smiley v. Holm*: "General acquiescence cannot justify departure from the law, but long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning." [76] Since the New York court conceded, however, that the original intention was clear, the use of practical construction to alter it would seem to go well beyond Hughes' reference. It should be noted in passing that the practice of omitting the electors' names from the ballot might have been sustained without deciding that the electors no longer have discretion. The practice was upheld in Ohio, for example, on the basis of the broad authority conferred upon the states by the Constitution to direct the manner in which electors are to be chosen.[77]

Thomas v. Cohen stands almost alone.[78] The issue has seldom arisen squarely, but dicta in a number of state court decisions indicate that the discretion of the electors still endures.[79] The Supreme Court has never passed on the issue, but it arose tangentially in *Ray v. Blair* [80] in 1952.

Alabama had authorized political parties to choose their respective presidential electors in a state-controlled party primary election and to fix the qualifications for the candidates. The State Executive Committee of the Democratic Party required all candidates for presidential elector to take a pledge to support the nominee of their party's national convention. One Edmund Blair refused to take such a pledge, and the Executive Committee refused to certify him as a candidate. He obtained from the Alabama courts a mandamus directing the chairman of the Executive Committee to certify him as a candidate for elector in the forthcoming primary, and the state supreme court upheld the mandamus on the ground that the pledge requirement was an unconstitutional restriction on an elector's discretion to vote as he chose in the electoral college.[81]

The Supreme Court of the United States reversed in a five-to-two decision, declaring:

"A state's or a political party's exclusion of candidates from a party primary because they will not pledge to support the party's nominees is a method of securing party candidates in the general election, pledged to the philosophy and leadership of that party. It is an exercise of the state's right to appoint electors in such manner, subject to possible constitutional limitations, as it may choose. U.S. Const., Art. II, § 1." [82]

The Court went on to point out that pledges to support party nominees were common from the earliest days of the Republic:

This long-continued practical interpretation of the constitutional propriety of an implied or oral pledge of his ballot by a candidate for elector as to his vote in the electoral college weighs heavily in considering the constitutionality of a pledge, such as the one here required, in the primary.

"However, even if such promises of candidates for the electoral college are legally unenforceable because violative of an assumed constitutional freedom of the elector under the Constitution, Art. II, § 1, to vote as he may choose in the electoral college, it would not follow that the requirement of a pledge in the primary is unconstitutional." [83]

Justice Jackson's dissent, joined by Justice Douglas, pointed out the atrophied independence of the elector,[84] but nevertheless declared that "the balloting [of the electors in the electoral college] cannot be constitutionally subject to any such control because it was intended to be free, an act performed after all functions of the electoral process left to the states have been completed." [85] He added:

"It may be admitted that this law does no more than to make a legal obligation of what has been a voluntary general practice. If custom were sufficient authority for amendment of the Constitution by Court decree, the decision in this matter would be warranted. Usage may sometimes impart changed content to constitutional generalities, such as 'due process of law,' 'equal protection,' or 'commerce among the states.' But I do not think powers or discretions granted to federal officials by the Federal Constitution can be forfeited by the Court for disuse. A political practice which has its origin in custom must rely upon custom for its sanctions." [86]

Two Justices thus indicated squarely that they regarded the elector's freedom of choice to be untrammeled. The majority did not directly reach the issue.

Thus, the question of whether a state may bind the vote of an elector is still open. At least thirteen states [87] and the District of

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Columbia [88] now have legislation which may be regarded as doing so, and it can be argued that all thirty-five states which omit the names of the electors from the ballot implicitly do the same thing.[89] While the Supreme Court has not been noticeably reluctant in recent years to invalidate the laws of large numbers of states when issues of civil rights or civil liberties have been involved, there is nevertheless a heavy presumption in favor of the constitutionality of legislation the enactment of which has been widespread. It may follow that there is a stronger case for upholding a restriction on the freedom of electors where it has been decreed by state legislation than where it has not. *Thomas v. Cohen* is all the more remarkable for having been decided as it was in the absence of express statutory provisions purporting to bind the electors.

Apart from the long-standing practice of elector fealty and the state legislation on the subject, there are two additional points which might add strength to the case for binding electors. First, Congress itself has in one area attempted to bind electors. The twenty-third amendment was adopted in 1961, providing for representation of the District of Columbia in the electoral college, and declaring:

"The District . . . shall appoint in such manner as the Congress may direct [a designated number of electors who] shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment." [90]

Congress promptly enacted implementing legislation prescribing the procedures for participation by the District of Columbia in presidential elections, stating in pertinent part: "Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and *it shall be his duty to vote in such manner in the electoral college.*" [91] This would seem to reflect a determination by Congress either that all electors are bound to vote for their party's candidates, or that since the states are empowered to bind electors so to vote, Congress, acting like a state legislature with respect to the District of Columbia, can do the same. We therefore have what might be regarded as a contemporaneous construction of a constitutional amendment by Congress, which, although not necessarily decisive,[92] should be accorded great weight.[93] But the construction is contemporaneous only with respect to the twenty-third amendment, while its principal significance lies in connection with the much more ancient article II, section 1, and the twelfth amendment.

Second, the twenty-fourth amendment, ratified in 1964, abolishing the poll tax in connection with presidential and congressional elections, speaks of the right to vote "in any primary or other election for *President or Vice President*, for electors for President or Vice President, or for Senator or Representative in Congress . . . ." [94] The legislative history does not explain why it was deemed necessary to include the italicized phrase, but a possible inference is that Congress and the ratifying states regarded the voters, at least in those states not listing the electors on the ballot, as voting directly for the President and Vice President.[95] If so, the argument that the electors are bound would seem to be strengthened.

None of the foregoing adds up to a clear case for the proposition that the elector is bound to vote for his party's choices, or even that the state legislatures may so bind him. But there seems to be at least a respectable argument for either of these propositions.[96]

Let us assume that our constitutional system has indeed evolved to a point where the elector is no longer free. How would his obligation to honor the voters' mandate be enforced in a concrete case?

Thus far, in those few instances in which an elector disregarded his party mandate, the results of the election were unaffected; there was no interest in instituting litigation to compel or reverse his vote.[97] Suppose, however, that in a close election a sufficient number of electors were persuaded, or even bribed, to vote in such fashion as to deprive the apparent winner of a majority in the electoral college—either throwing the election into the House of Representatives or handing victory to the apparent loser. Would, and could, the courts act to prevent such a "theft" of the presidency?

First of all, let us assume a case in which the intention of the runaway electors was manifested in advance. Presumably actions would be instituted, in either the state or federal courts, to test the propriety of their expected conduct.

As for state court actions, a case might be based either on the theory that the Constitution now forbids elector discretion or on a state statute purporting to restrict it; in the latter case, the constitutionality of the state statute would of course be an issue. In any event, it would not be safe to generalize as to whether state courts would find that a candidate, state official, voter, or taxpayer has sufficient standing to raise the issue. Moreover, it is not clear whether relief in mandamus or by way of injunction could be granted. While mandamus would seem appropriate enough to test the contention that the duties of electors are purely ministerial, there may be doubt as to the propriety of mandamus where the time for the official to act has not yet arrived.[98] And there may still be some vitality in the discredited doctrine that injunctions are not granted to protect mere political rights.[99] Mere declaratory relief, without sanction, might not be a sufficient deterrent. If what is really sought is a quick dispositive ruling by the United States Supreme Court, there would be no way to ensure that the delay involved in appeals through the state judicial system would not exhaust, many times over, the precious few days remaining before the electors were to cast their ballots.[100]

Federal court actions would seem to offer more hope. *Baker* v. *Carr* [101] probably assures standing to voters alleging that their votes are about to be nullified.[102] Since electors have been characterized as state rather than federal officials,[103] even though they perform a federal function, the mandamus jurisdiction conferred by section 1311 of the Judicial Code [104] would probably be inapplicable. Injunctive relief, however, would appear to be available under section 1343(3) of the Judical Code, which reads:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . .

* * * * *

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." [105]

If, as we are assuming *arguendo*, a voter has a constitutional right to cast an effective vote for President, an elector who casts his ballot contrary to the voters' mandate may be said to be acting under color of state law to deprive the voters of that constitutional right. While section 1343 was intended primarily to implement the Reconstruction amendments,[106] and while the limitations on state action under the Reconstruction amendments dwarf those under all other provisions of the Constitution, the provision has nevertheless been used occasionally to redress deprivations of other constitutional rights.[107]

The losing party in an action under section 1343 could seek speedy Supreme Court review by immediately docketing an appeal in the court of appeals and asking the Supreme Court to grant certiorari before decision by the court of appeals pursuant to section 1254(1) of the Judicial Code.[108] If the Supreme Court were willing, it could also render a quick decision in advance of the preparation of full opinions.[109]

It is far from clear, however, whether the Supreme Court would either consider the case or permit lower federal or state courts to do so. There is a serious chance that the action would be barred as raising a "political question." Although *Baker v. Carr* held the political question doctrine inapplicable in one type of voting rights case (state legislative apportionment), the Court stated that "it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the 'political question,'" [110] While issues of federal-state relationships are obviously present in an action challenging the vote of an unfaithful elector, the main problem involves the intrusion of the courts into a decision-making process which arguably has been committed finally to Congress. The twelfth amendment requires the electors in each state to sign and certify lists of their votes for President and Vice President "and transmit [them] 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. . . ." [111]

This is not definitely a final commitment to Congress of the power to resolve disputed votes, but it has some of the hallmarks of one. In using the passive voice—"the votes shall then be counted"—the Framers broke one of the cardinal rules of draftsmanship; [112] yet it seems clear that the counting shall be done by the President of the Senate (usually the Vice President of the United States) or by some individual, committee, or the whole of the legislative branch. On the other hand, it can be argued that "[t]he person having the greatest number of votes" connotes an objective standard, and is not the same as saying "the person having the greatest number of votes, as so counted."

In any event, Congress has taken this function unto itself. While disagreements in the past concerned the credentials of opposing slates of electors rather than the validity of votes cast by electors whose title to the office was undisputed, nevertheless Congress itself established the procedures whereby the Hayes-Tilden imbroglio was decided [113] and has since enacted permanent legislation purporting to regulate future disputes.[114]

In *McPherson v. Blacker*,[115] an 1892 decision in which the United States Supreme Court upheld Michigan's statute providing for the district system for selection of electors, counsel for the state contended that the "political question" doctrine barred court action. The Court rejected this contention for the reason that "the validity of the state law was drawn in question as repugnant to [the United States] constitution and laws, and its validity was sustained.[116] A mere recital of the statutory basis for what was then the jurisdiction of the Court on writ of error does not meet the "political question" contention; the doctrine is normally invoked in cases in which the statutory basis for jurisdiction is undisputed. If the vote of an unfaithful elector were challenged today, the statutory basis would be present in a federal district court, or in the

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Supreme Court on review from either a lower federal court or the highest state court. There would remain, however, the question whether the case was appropriate for judicial action. The principal distinction between such a case and *McPherson* is that the way in which the electors are chosen is committed by the Constitution to the states, while the way in which the votes of the electors are counted may arguably be regarded as having been committed to Congress.[117]

In *Coleman v. Miller*,[118] the Court held nonjusticiable under the political question doctrine the issue of whether a state legislature's attempted ratification of a proposed constitutional amendment was invalid either because of prior rejection by the same state or because of an excessive lapse of time. The Court based its decision on "the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment." [119] But the commitment to Congress is even less clear in the case of constitutional amendments than it is in the case of presidential elections. Lapse of time is usually provided for in the joint resolution proposing an amendment, so perhaps the lack of such a clause in the child labor amendment involved in the *Coleman* case may be regarded as raising an issue for congressional determination. But there is not a whisper in the language of the Constitution as to any function committed to Congress in connection with the ratification of amendments it has proposed to the states, and it may be assumed that an amendment takes effect when a sufficient number of ratifications are reported even if Congress is not in session at the time. On this basis, the argument for nonjusticiability would be even stronger in the presidential election case than it was in *Coleman*.

On the other hand, the Court in *Coleman* stated: "In determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." [120] Viewed in the light of this pronouncement, the issue is less clear. A decision by the courts rendered before transmission of the electoral votes to Congress would not upset the finality of something Congress had already done; yet the possibility of conflict would remain, since Congress might make its own determination at variance with the decision of the Court. In any event, there would quite clearly be "satisfactory criteria for a judicial determination" in the case of an unfaithful elector; whether an elector is or is not obliged to vote for the candidates of his party, and whether or not a specific elector has in fact done so, are readily manageable judicial questions.

Returning to *Baker v. Carr*, the Supreme Court's last word on the problem, some guidance may have been intended by Justice Brennan's summary:

"Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[121]

The implication seems to be that if any one of these elements is present, the courts should abstain. Some of them are at least arguably involved in the counting of electoral votes. Whether that process may be regarded as having been finally committed to Congress has been discussed above.[122] Lack of respect for Congress might be harder to find if the Court acted before Congress did. In any event, a judicial decision would seemingly have to be rendered before Congress counted the votes, or not at all; once a President was proclaimed by Congress to have been elected, anything short of "unquestioning adherence" to its decision would probably provoke a far more serious crisis than that which the courts were seeking to avert.

This is not an attempt to analyze in depth the problem of whether the issue of electors' independence is to be regarded as justiciable, but merely an effort to show that the question is a close one, with no assurance that a judicial determination could be obtained. Moreover, even if such a determination were obtained, the possibility that an elector would defy an injunction and vote contrary to his mandate should not be overlooked; with the stakes so high, fear of contempt proceedings might not prove to be a sufficient deterrent. A further stretching of legal theory would be required in order to negate or reverse a vote so cast.

As uncertain as the prospects appear for securing effective aid from the courts to prevent electors from voting contrary to the voters' expectations if the electors are cooperative enough to reveal their intentions in advance, the problems would be magnified if knowledge of their defection were to trickle out only after they had cast their votes. It would then be too late to enjoin them from voting in such fashion, and perhaps too late to enjoin the certifying officials of their states from reporting their votes as cast. Even if an aberrant vote could be nullified on some theory (thus dividing its effect in half), could it be treated affirmatively as cast in accordance with the expectations of the voters? Once the "list" of electoral votes has been transmitted to Congress, against whom would a lawsuit be brought? The purpose would have to be to control the counting of the electoral votes. But courts would obviously be most reluctant to issue an injunction or mandamus against the President of the Senate [123] or the Congress as a whole.[124]

Thus, in addition to the chance that our present electoral system would give the presidency to the less popular candidate and the danger of a stalemate in the House of Representatives, there is the possible nightmare of a dispute over a "stolen" presidency. But while this eventuality would be prevented by the proposed constitutional amendment providing for direct popular election, there are other ways of accomplishing the same result with perhaps fewer side effects.

Both the Kennedy and Johnson Administrations have advocated the adoption of an amendment preserving the present method of assigning electoral votes to the several states, but recording the electoral votes automatically upon the basis of the popular votes cast in each state, eliminating the electors as such.[125] As part of this plan, the general ticket system—now universally employed by custom—would become mandatory.[126] Originally gaining substantial support, including sponsorship by Senator Bayh and endorsement by the Bar Association of the City of New York, the proposal has more recently been eclipsed by the strong drive in favor of direct popular election. Nevertheless, it has the distinct virtue of completely eliminating the problem of the straying elector without causing the shift in the political balance of power discussed above.[127]

Could Congress solve the problem without the necessity of a constitutional amendment? Would an act of Congress providing that all electoral votes are to be counted as votes for the candidates of the electors' respective parties be valid? Could such a statute at least provide for this result in those states in which the names of the presidential and vice-presidential candidates appear on the ballots? (Or where, in addition, the electors' names do not appear?) At the outset, we are faced with the difficulty that the Constitution appears to entrust the process of choosing electors to the discretion of the respective state legislatures. Congress is authorized only to "determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." [128] Otherwise, the process of selecting electors is committed to the states, and, as pointed out above, need not even be by election.[129]

A possible foothold may be found in the fact that the states are obliged to transmit their lists to the President of the Senate, who "shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted." [130] It is at least arguable that some power to decide how the votes are to be counted is thereby conferred, if not upon Congress per se in its legislative capacity, nevertheless upon the two houses of Congress in a special vote-counting capacity.

Is there sufficient basis for Congress to legislate? It should be remembered that Congress is granted power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers [presumably the powers specifically enumerated in article I, section 8], *and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.*" [131] The power to count electoral votes is a power vested in the President of the Senate and the members of both houses of Congress, all of whom are officers of the United States. Congress presumably legislated on this basis when it prescribed the procedures for resolution of the Hayes-Tilden controversy in 1876–1877,[132] as well as in enacting its permanent rules pertaining to the counting of electoral votes.[133]

Assuming some power of Congress over the procedures governing the count of electoral votes, does this power extend, beyond determining which of two contending slates of electors was validly chosen, to the question of how to count the vote of an elector whose right to office is undisputed? Is there any basis for concluding that Congress may prescribe that the vote of an unfaithful elector shall be counted as though he had voted for his party's candidate rather than as he actually voted? It may well be that whatever Congress does in this respect is immune from scrutiny by the courts.[134] But Senators and Representatives, like judges, are bound by oath or affirmation to support the Constitution [135] and should, and presumably would, act conscientiously in accordance with their conception of its requirements.

Even though the choice of electors is committed to the states, Congress has been held to have at least some power in this realm. In *Ex Parte Yarborough*,[136] the Supreme Court upheld the constitutionality or two Reconstruction statutes punishing conspiracies to intimidate a person in the exercise of a constitutional right [137] and conspiracies to prevent, by force, intimidation, or threat, a citizen entitled to vote from supporting a candidate for presidential elector or Congress.[138] While the indictment in question involved only a congressional election and was based on intimidation of Negro voters—undoubtedly a special case under the fifteenth amendment—the reasoning of the Court went much further:

"That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly,

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has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration.

"If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption. . . .

"[T]he importance to the general government of having the actual election—the voting for those members—free from force and fraud is not diminished by the circumstance that the qualification of the voter is determined by the law of the State where he votes. It equally affects the government, it is as indispensable to the proper discharge of the great function of legislating for that government, than those who are to control this legislation shall not owe their election to bribery or violence, whether the class of persons who shall vote is determined by the law of the State, or by the law of the United States, or by their united result.

"* * * * *

"In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption is a constant source of danger." [139]

Again, in *Burroughs v. United States* [140] the Court upheld a provision of the Federal Corrupt Practices Act of 1925 [141] requiring any political committee accepting contributions or making expenditures in two or more states for the purpose of influencing the election of candidates for presidential electors to render certain financial reports. The Court stated:

"The congressional act under review seeks to preserve the purity of presidential and vice presidential elections. Neither in purpose nor in effect does it interfere with the power of a state to appoint electors or the manner in which their appointment shall be made. It deals with political committees organized for the purpose of influencing elections in two or more states, and with branches or subsidiaries of national committees, and excludes from its operation state or local committees. Its operation, therefore, is confined to situations which, if not beyond the power of the state to deal with at all, are beyond its power to deal with adequately. It in no sense invades any exclusive state power.

"While presidential electors are not officers or agents of the federal government (*In re Green*, 134 U.S. 377, 379), they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States. The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." [142]

The Court has also held that Congress may make the miscounting of votes in congressional elections and primaries a federal crime.[143] While such cases rest upon the express grant of power to Congress to regulate "the Times, Places and Manner of holding elections for Senators and Representatives," [144] and although there is no corresponding grant of power with respect to selection of electors, the inherent power of the federal government to protect the election of its officials from corruption, discussed in *Yarborough* and *Burroughs*, would seem applicable where votes for presidential electors are fraudulently counted.

But of what avail is it to be able to protect a voter against interference with the casting or counting of his ballot in the first stage of the process—the choosing of electors—if Congress cannot ensure that his vote will be *effective* in the election of the President? It would of course be easier to sustain a federal statute punishing bribery of presidential electors designed to reverse the popular choice than it would be to uphold one punishing such an effort based on political persuasion. It would be still more difficult to uphold a statute which, in either circumstance, substituted for the electoral votes cast the votes which would have been cast if the electors had been faithful to their trust. (It would be easier to make bribery of a Senator a crime than to nullify, after the fact, the vote of a Senator who has been bribed.) Yet Congress might well conclude that the stakes in the choice of the President are sufficiently high that no criminal sanction consistent with the constitutional prohibition of cruel and unusual punishment would deter an errant elector who had both the desire and the reason to believe that his vote might be decisive; nothing short of nullification of the unfaithful vote would ensure the effectuation of the voters' wishes. Such a judgment on the part of Congress would seem well within the range of the necessary and proper clause.[145]

Such a statute need not ride completely roughshod over the power accorded the states to choose the means by which their electors are "appointed." If a state should choose to revert to the once-frequent practice of entrusting the choice of electors to its legislature, or if its ballot should list only the names of the electors without those of the presidential and vice-presidential candidates, the voters might not be deceived if an elector were to ignore his mandate; in either case there would perhaps be no authority for congressional interference.[146] But where the ballot names the presidential and vice-presidential candidates, a gross deception is practiced upon the voters if any of the chosen electors votes contrary to expectation. Would not the sanctity of the ballot be protected by legislation nullifying the vote of an unfaithful elector just as it is by legislation forbidding the miscounting of votes? [147] Such legislation would be unconstitutional only if one reads into the constitutional provision empowering electors to choose the President a rigid rule that nothing may interfere with the electors' discretionary power.

Legislation injected into so delicate an area as the choice of the President would be much more salutary if enacted to provide for future eventualities rather than directed to an existing election controversy. And if such a law were once enacted, it would be unfortunate for Congress to overturn it in order to favor one of several candidates in a specific controversy. Yet as matters now stand, such an eventuality is possible. The twentieth amendment provides that the new Congress shall take office on January 3, while a federal statute [148] prescribes the counting of electoral votes on January 6; repeal or amendment of a previously enacted law to achieve ad hoc purposes would thus be conceivable between January 3 and 6. But the likelihood of obtaining acquiescence of both houses of Congress and the President (or two-thirds of both houses without the President) in that short a time would be small indeed, especially at a time when, by hypothesis, a close presidential vote had just taken place.

Assuming such a statute was not repealed, is there any assurance that Congress as legislature can bind Congress as vote-counter? Even if there were a law directing a count of electoral votes in accordance with the voters' intentions, could the two houses, in joint session, nevertheless revert to counting the electoral votes as actually cast? Is there any way, short of a constitutional amendment dispensing with *any* action by the electors or Congress, for "Congress sober" to guard against "Congress drunk"?

One possible solution is the inclusion in the statute of a provision for expedited judicial review of any action in the course of vote counting contrary to the statutory mandate. Original jurisdiction (with appropriate enforcement power) could be vested in the Federal District Court for the District of Columbia, perhaps a three-judge court, with direct expedited appeal to the Supreme Court.

I revert to the earlier discussion of whether questions pertaining to the counting of electoral votes are justiciable, or whether they fall instead into the "political question" category because they are regarded as entrusted by the Constitution to final determination by Congress.[149] Suppose it is decided that these questions fall into the latter category, but Congress enacts legislation designed to confer upon the judiciary the authority, indeed the obligation, to pass upon them. Would such a jurisdictional grant be constitutional? Can Congress confer upon the judiciary a power to decide questions which, in the absence of such legislation, would be deemed inappropriate for judicial decision as "political" in nature? Is the "political question" doctrine a constitutional command or merely a judicially created rule of practice?

This issue seems not to have come before the Supreme Court,[150] moreover, it may not be susceptible of a single answer. To the extent that the "political question" characterization reflects a determination that the case involves issues or requires remedies so different from those usually considered by courts that the constitutional requirement of "case or controversy" [151] is lacking, no act of Congress can create jurisdiction.[152] On the other hand, where a decision of nonjusticiability is based on notions of convenience, propriety, or deference to Congress not constitutionally compelled, Congress can presumably free the courts from their self-imposed reticence.[153] Much can be said for the conclusion that such legislation would be valid. A "judicially manageable standard" would have been provided, and a case or controversy—at least to the extent that there would be a real adversary proceeding leading to a final meaningful judgment—would be present. Any qualms based upon the unseemliness and possible ineffectiveness of an attempt by the courts to give directions to Congress [154] would be answered by reference to the fact that Congress itself had consented to the courts' action.

In short, it would seem that there are a number of ways of coping with the problem of a "theft" of the presidency by independent action on the part of the electors. This problem may be dealt with alone; it need not be part of an omnibus reform—such as the direct popular vote proposal—which would change the political balance of power in the country, possibly in a direction which would prove disastrous. The Court might hold electors bound to respect the choice of the voters without further legislative or constitutional amendment; but we cannot be sure. A legislative solution is possible; but its effectiveness could never be completely free from doubt, and it is most important that any possibility of a disputed presidency be avoided. Such legislation might serve as a

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temporary expedient, however, pending adoption of a constitutional amendment expressly removing the discretion of electors or, preferably, providing for counting electoral votes automatically. Thus, although changes in the present method of electing our Presidents are urgently needed, an amendment providing for direct popular election is neither the only, nor the best, solution.

FOOTNOTES

*Professor of Law, Columbia University A.B. 1938, University of Pennsylvania; LL.B. 1941, Harvard University.—Ed.

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Since this Article was in page proofs before November 5, it has been possible to make only minor changes to reflect the results of the most recent presidential election. The author believes, however, that none of the points made herein need be qualified in response to that election.

[1] THE FEDERALIST No. 68, at 508 (J. Hamilton ed. 1868) (Hamilton).

[2] Through 1966, 513 resolutions proposing amendments to the provisions of the Constitution pertaining to the election of the President were introduced in Congress. N. PEIRCE, THE PEOPLE'S PRESIDENT 151 (1968) [hereinafter PEIRCE].

In both of these close elections, a shift of only a few thousand votes in certain key states would have prevented either major party candidate from obtaining a majority of the electoral votes; a "Dixiecrat" candidate would have held the balance of power. The election would then have been referred to the House of Representatives, in which the delegation from each state would have cast one vote, and a majority of all the states would have been required for election. In each instance, the House was closely enough divided that a stalemate might well have ensued. *See* page 15 *infra*.

There is some doubt as to whether demonstration of the shortcomings of the system in a recent election is in itself sufficient to induce a change. In five successive elections from 1876 through 1892, the winning candidate failed to obtain a majority of the popular vote; in two of them the popular leader lost; in all five an infinitesimal shift of votes would have reversed the result; and in one (1876) a national crisis was narrowly averted. Yet the Constitution was not amended. While some modern observers might conclude that the quality of the candidates in those elections was such that it mattered little who won, it is unlikely that the people of the time so regarded it.

[4] The twentieth amendment changed the President's term of office and provided for the death of the President-elect or his failure to qualify. The twenty-second amendment limited the President to two terms; the twenty-third provided for representation of the District of Columbia in the electoral college; the twenty-fourth eliminated the poll tax in elections for the President and Congress; and the twenty-fifth provided for the disability of the President and the designation of a Vice President when that office is vacant.

Fortunately, few of our recent Presidents have been either drunkards or teetotalers; hence the twenty-first amendment, repealing Prohibition, cannot be viewed as bearing with any particular emphasis on the presidency.

[5] For example, S.J. Res. 2, 90th Cong., 1st Sess. (1967), introduced by Senator Bayh and a bipartisan group of 18 other senators, *See also* the recommendations of the A.B.A. Commission, *infra* note 6.

[6] ABA COMMN. ON ELECTORAL COLLEGE REFORM, ELECTING THE PRESIDENT (1967). *See also* Freerick, *The Electoral College—Why It Ought To Be Abolished*, 37 FORDHAM L. REV. 1 (1968).

[7] The amendment which had been supported by the Association provided for automatic award of the electoral votes of each state to the candidate securing a plurality of the popular vote therein, eliminating the presidential electors as such. *See* 20 RECORD OF N.Y.C.B.A. 503 (1965); text accompanying note 125 *infra*.

[8] 6 REPS. OF COMM. CONCERNED WITH FEDERAL LEGISLATION, ASSOC. OF THE BAR OF THE CITY OF N.Y. 9 (1967).

[9] *See* note 5 *supra*; *Hearings on S.J. Res. 4 Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess., 90th Cong., 1st Sess., 245-46 (1968).

[10] *See* N.Y. Times, Sept. 22, 1968, at 61, col. 2.

[11] Constitutional amendments are difficult to pass. The provisions of the original Constitution are seldom changed; amendments, by hypothesis more nearly contemporary, are even more difficult to alter once adopted. Only one, the eighteenth, has ever been repealed.

[12] *See, e.g.*, 3 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 132, 166 (1937); L. WILMERDING, THE ELECTORAL COLLEGE 19–22 (1958); Roche, *The Founding Fathers: A reform Caucus in Action*, 55 AM. POL. SCI. REV. 799, 810–11 (1961); *cf.* Kirby, *Limitations on the Power of State Legislatures Over Presidential Elections*, 27 LAW & CONTEMP. PROB. 495, 506 (1962); Truman, Book Review, 59 COLUM. L. REV. 838, 840 (1959). *See also* Gray v. Sanders, 372 U.S. 368, 376 n.8 (1963): "The electoral college was designed by men who did not want the election of the President to be left to the people."

[13] PEIRCE 35–37.

[14] In 1876 Colorado, just admitted to the Union and perhaps lacking sufficient time to provide for elections, chose its electors by legislative appointment.

[15] Article I, section 2, provided that each elector vote for two persons; the one with the greatest number of votes (if a majority) became President and the next highest Vice President. Following the election of 1800, when all Democratic electors voted for both Jefferson and Burr causing a tie which had to be resolved in the House of Representatives, the twelfth amendment was adopted providing the separate balloting for President and Vice President and making several other minor changes.

The fourteenth, fifteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth amendments have all had some bearing on the process of selecting the President but have not changed the basic mechanical structure set forth in article II, section 1, as amended by the twelfth amendment.

[16] J. DOUGHERTY, THE ELECTORAL SYSTEM OF THE UNITED STATES 17–18 (1906).

[17] Since the electors meet in each of the state capitals, "electoral college" (not a constitutional phrase) in the singular is a misnomer. A single deliberative body was never contemplated.

[18] In 1892, the Michigan legislature, controlled by Democrats, correctly foresaw a statewide victory by the Republican presidential candidate and sought to salvage something for his Democratic opponent by dividing the state into separate electoral districts. This was challenged, but sustained by the Supreme Court in McPherson v. Blacker, 146 U.S. 1 (1892). In 1896 Michigan reverted to the general ticket method.

[19] Georgia requires a majority, rather than a mere plurality, of the popular vote, to elect presidential electors. In the event of a failure of any slate to attain a majority, GA CODE ANN. § 34–1514 (Supp. 1967) calls for a runoff between "the two candidates receiving the highest number of votes." This provision, applicable to other offices as well, would seem not to be readily adaptable to the election of a number of presidential electors. It replaced GA. CODE ANN. § 34–2503 (1962), which called, instead, for appointment of the electors by the state legislature in the event of failure to attain a majority of the popular vote.

The selection of electors must be made on the first Tuesday after the first Monday in November, the date set by Congress pursuant to art. II, § 1, par. 4 of the Constitution. It has been held that this constitutional provision also requires that the day be uniform throughout the nation, and that the receipt and counting of absentee ballots after that date would violate the requirement of uniformity. Maddox v. Board of State Canvassers, 116 Mont. 217, 149 P.2d 112 (1944). This would imply that any runoff election (as provided by Georgia law) would be invalid. But the language of the Constitution does not compel that interpretation. It reads: "The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." The last clause may be regarded as applying only to the "Day" on which the electors are to give their votes, and not to the "Time" of "chusing the Electors." Congress has apparently adopted this construction, since it has provided [3 U.S.C. § 2 (1964)]: "Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct." *See also* 3 U.S.C. § 4 (1964).

Maryland, while apparently permitting an elector to be chosen by a mere plurality, until recently required its electors to cast their ballots for the presidential and vice presidential candidates receiving "the majority of the votes cast in the State of Maryland." MD. ANN. CODE art. 33, §§ 153, 156 (1957). The Election Code of which this provision was a part was repealed in 1967, and its replacement requires Maryland electors to vote for the candidates receiving a plurality of the popular vote in the state. *Id.* art. 33 § 20–24 (Supp. 1967).

[20] S. PETERSEN, A STATISTICAL HISTORY OF THE AMERICAN PRESIDENTIAL ELECTIONS 18 (1963) [hereinafter PETERSEN].

[21] PEIRCE 87.

[22] Colorado's three electors, chosen by the legislature rather than the voters (*see* note 14 *supra*), voted for HAYES. PETERSEN 45, 46. If those electoral votes had not been counted, Tilden would have had a clear majority of the valid votes, even accepting the Republicans position as to all twenty disputed electoral votes. It is striking that in all of the protracted debate in Congress, in the Electoral Commission, and elsewhere, the argument never seems to have been advanced that direct appointment by the legislature was invalid. *See* McPherson v. Blacker, 146 U.S. 1, 35 (1892).

[23] PETERSEN 55.

[24] PETERSEN 54.

[25] PETERSEN 51–52.

[26] These figures are based on the 1960 Census.

[27] Banzhaf, *One Man, 3312 Votes: A Mathematical Analysis of the Electoral College*, 13 VILL. L. REV. 304 (1968).

[28] *Id.* at 329.

[29] *Id.* at 330, 331.

[30] *See, e.g.*, remarks of Congressman Gossett of Texas, in *Hearings on Amendment of Constitution To Abolish Electoral College System Before Subcomm. No. 1 of the House Comm. on the Judiciary*, 82d Cong., 1st Sess. 264–65 (1951):

"Now, please understand, I have no objection to the Negro in Harlem voting and to his vote being counted, but I do resent the fact that both parties will spend a hundred times as much money to get his vote, and

that his vote is worth a hundred times as much in the scale of national politics as is the vote of a white man in Texas. I have no objection to a million folks who cannot speak English voting, or to their votes being counted, but I do resent the fact that because they happen to live in Chicago, or Detroit, or New York, that their vote is worth a hundred times as much as mine because I happen to live in Texas. Is it fair, is it honest, is it democratic, is it to the best interest of anyone in fact, to place such a premium on a few thousand labor votes, or Italian votes, or Irish votes, or Negro votes, or Jewish votes, or Polish votes, or Communist votes, or big-city-machine votes, simply because they happen to be located in two or three large, industrial pivotal States? Can anything but evil come from placing such temptation and such power in the hands of political parties and political bosses? They, of course, will never resist the temptation of making undue appeals to these minority groups whose votes mean the balance of power and the election of President. Thus, both said groups and said politicians are corrupted and the Nation suffers."

[31] An amendment introduced by Senator Humphrey in 1950 was defeated 63–28. 95 CONG. REC. 1276–77 (1950). A similar amendment introduced by Senator Lehman in 1956 was also defeated 66–17. 102 CONG. REC. 5657 (1956).

[32] *See* PEIRCE 185; L. WILMERDING, THE ELECTORAL COLLEGE 97–98 (1958); Kefauver, *The Electoral College: Old Reforms Take on a New Look*, 27 LAW & CONTEMP. PROB. 188, 195–196 (1962).

[33] *Hearings on S.J. Res. 1 Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary*, 87th Cong., 1st Sess., 691–714 (1961).

[34] 102 CONG. REC. 5150 (1956).

[35] 369 U.S. 186 (1962).

[36] 377 U.S. 533 (1964).

[37] 376 U.S. 1. (1954).

[38] *See* note 42 *infra* and accompanying text.

[39] *Symposium on the Article V Convention Process*, 66 MICH. L. REV. 837–1016 (1968), especially Dirksen, *The Supreme Court and the People*, *id.* at 837, and ERVIN, *Proposed Legislation To Implement the Convention Method of Amending the Constitution*, *id.* at 875.

[40] Attempts to delay the redistricting of congressional seats have also come close to success. *See* N.Y. Times, April 28, 1967, at 27, col. 4.

[41] "Provided . . . that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." U.S. CONST. art. V. It seems clear that this article, establishing the amending process, cannot itself be amended to permit destruction of the guaranty of equal representation of the states in the Senate.

Even the process of amending the Constitution is itself loaded in favor of the smaller states. Three groups participate in the normal amendment process: the Senate, the House of Representatives, and the state legislatures. Of these, only the House comes close to reflecting population; in the Senate and in counting the ratification votes of the state legislatures, the rule is not one man-one vote, but one state-one vote.

[42] The eight largest cities, in order of population, were New York, New York; Chicago, Illinois; Los Angeles, California; Philadelphia, Pennsylvania; Detroit, Michigan; Baltimore, Maryland; Houston, Texas, and Cleveland, Ohio. The seven largest states were New York, California, Pennsylvania, Illinois, Ohio, Texas, and Michigan.

[43] REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 243 (Bantam ed. 1968) [hereinafter COMMISSION REPORT]. According to Banzhaf's computations, all major cities except Baltimore and Washington, D.C., are in states in which voters have a greater vote than the national average in the election of the President. Banzhaf, *supra* note 27, at 329.

[44] *See, e.g.*, COMMISSION REPORT.

[45] *See* COMMISSION REPORT 455: The principal burden for funding the programs we have proposed will fall upon the Federal Government. Caught between an inadequate and shrinking tax base and accelerating demands for public expenditures, the cities are not able to generate sufficient financing. Although there is much more that state governments can and should do, the taxing resources available at this level are far from adequate."

[46] Possible illustrations include: President Franklin Roosevelt's alleged instruction, "Clear it with Sidney [Hillman]," with respect to the Democratic nomination for Vice President in 1944—probably resulting in the choice of Truman over Byrnes; the Republican nomination of Eisenhower rather than Taft in 1952 (even if based on misconceptions as to the former's political philosophy); and Kennedy's victory over Johnson and others in the 1960 Democratic Convention. This factor seems to have been less influential in the 1968 Conventions. *See also* note 30 *supra*.

[47] We have no assurance, of course, that the leverage now exercised by the large states will continue to be applied in favor of improvement of the condition of Negroes. Disquieting signs of "backlash" have appeared in some of these states. At the least, however, political concentration upon the vote in the "swing" states should serve to keep attention upon the sore spots in our society.

The time may come when leadership of the civil rights movement will pass to the small towns, or even to a new generation of liberals in the South. It is fair to assume, however, that for the time being at least the voting power of the metropolitan areas will weigh in the balance in favor of the amelioration of the plight of the Negroes—and of the cities as well.

There are additional political consequences, of possibly undesirable character, which may follow adoption of direct popular election of the President, but which are beyond the scope of this Article. For example, some feel that the two-party system, with its tendency to exclude doctrinaire extremism and one-issue parties from the mainstream of American politics, may be jeopardized if this change is made. *Compare Brown, Proposed Amendment a Power Vacuum for Political Blackmail?*, TRIAL, June/July 1967, at 15, *with* REPORT OF THE A.B.A. COMMN. ON ELECTORAL COLLEGE REFORM 5–6 (1967).

[48] In 1800, all Democratic electors voted for both Jefferson and Burr, resulting in a tie. In the House of Representatives, eight states initially voted for Jefferson, six for Burr, and two were tied—giving no candidate the necessary majority of nine out of the total sixteen states. It was not until the thirty-sixth ballot that Jefferson prevailed.

The other such case, in 1824, is discussed in the text accompanying note 20 *supra*. John Quincy Adams was chosen on the first ballot in the House, but only following considerable maneuvering on behalf of the respective candidates.

[49] Since there are usually an odd number of Representatives and an even number of Senators, until recently there would generally have been an odd total of electors. In 1961, however, the twenty-third amendment accorded the District of Columbia what will almost always be three electoral votes, thus resulting in an even total of votes and a possibility of a tie even when there are only two candidates obtaining electoral votes.

[50] For example, a shift of only 12,487 votes in California and Ohio. PETERSEN 102.

[51] *See* Wechsler, *Presidential Elections and the Constitution: A Comment on Proposed Amendment*, 35 A.B.A.J. 181 (1949).

[52] E. CORWIN, THE PRESIDENT, OFFICE AND POWERS 67 (1957).

[53] PETERSEN 112.

[54] Piccard, *The Resolution of Electoral Deadlocks by the House of Representatives*, in SELECTING THE PRESIDENT: THE TWENTY-SEVENTH DISCUSSION AND DEBATE MANUAL (Aly ed. 1953–1954), reprinted in *Hearings*, *supra* note 33, at 826, 828.

[55] The Georgia Constitution has an unusual provision that if no candidate for governor receives a majority of the votes, the General Assembly shall choose the governor from between the two candidates with the largest number of votes. This provision was sustained by the Supreme Court in Fortson v. Morris, 385, U.S. 231 (1966). The requirement of a majority in primary elections is common in the South but not elsewhere in the country.

[56] *See* note 19 *supra*.

[57] Those elections were in 1824, 1844, 1848, 1856, 1860, 1876, 1880, 1884, 1888, 1892, 1912, 1916, 1948, 1960, and 1968.

[58] This proposal is being strenuously urged by Congressman Jonathan Bingham of New York. *See* Bingham, *Keep It out of the House*, ATLANTIC, Sept. 1968, at 85.

[59] This alternative was apparently first proposed by James Madison in 1823. Piccard, *supra* note 54, at 840. It has also been included in amendments advocated by Presidents Kennedy and Johnson which would abolish the electoral college and substitute automatic computation of the electoral vote of each state in favor of the candidate polling a plurality of the popular vote therein. *See, e.g.*, S.J. Res. 58, 89th Cong., 1st Sess. § 3 (1965); H.R.J. Res. 278, 89th Cong., 1st Sess. § 3 (1965). *See also* text accompanying note 125 *infra*.

[60] *See* Ray v. Blair, 343 U.S. 214, 232–33 (1952) (Justice Jackson dissenting); THE FEDERALIST No. 68 (Hamilton).

[61] THE FEDERALIST No. 68, at 508–09 (J. Hamilton ed. 1868).

[62] E. STANWOOD, A HISTORY OF THE PRESIDENCY 51 (1928).

[63] *See* notes 15 and 48 *supra*.

[64] *See* PEIRCE 123.

[65] As Thomas Hart Benton wrote, in S. REP. No. 22, 19th Cong., 1st Sess. 4 (1826):

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

[66] *See* text accompanying note 21 *supra*.

[67] 2 H. SCUDDER, JAMES RUSSELL LOWELL 216–17 (1901).

[68] Dissenting, in Ray v. Blair, 343 U.S. 214, 232 (1952).

[69] *See Hearings*, *supra* note 33, at 562–656.

[70] PEIRCE 124.

[71] PEIRCE 338.

[72] The requirement in both art. II, § 1 and the twelfth amendment that the electors "vote by ballot" may be regarded as implying a written, secret vote, adding further support for the notion of untrammeled discretion. But, "by common practice since the earliest days, the ballot is not secret and sometimes is not even a ballot at all." PEIRCE 129–30.

[73] 146 N.Y. Misc. 836, 262 N.Y. Supp. 320 (Sup. Ct. 1933).

[74] 146 N.Y. Misc. at 841–42, 262 N.Y. Supp. at 326.

[75] 146 N.Y. at 846, 262 (N.Y. Supp. at 330–31.

[76] 285 U.S. 355, 369 (1932).

[77] State *ex rel.* Hawke v. Myers, 132 Ohio St. 18, 4 N.E. 2d 397 (1936).

[78] State *ex rel.* Nebraska Republican State Cent. Comm. v. Wait, 92 Neb. 313, 325, 138 N.W. 159, 163 (1912), may also be regarded as premised upon the notion of a legal duty on the part of electors to support their party's nominees. Theodore Roosevelt won the 1912 Nebraska Republican preference primary, but Taft received the national Republican nomination. Six Roosevelt supporters who had been nominated by the Republican Party as Nebraska electors were also chosen as the nominees of the state Progressive Party. The petitioner was awarded a peremptory writ of mandamus to compel the secretary of state to print the names of other persons as Republican candidates for electors instead of the six Roosevelt men. The Nebraska supreme court affirmed on the ground that the six had forfeited their position as Republican candidates by accepting the Progressive nomination. The court stated:

"Here the persons who have been nominated as presidential electors, having, if elected, but a single duty to perform, viz., to vote for the candidates nominated by the party by whose votes they were themselves nominated, openly declare that they will not perform that duty, but will vote for the candidates of another and distinctly antagonistic party. This would make performance of their duty impossible, and a judicial determination of the existence of a vacancy was, therefore, unnecessary. The candidates had by their own acts, vacated their places as Republican presidential electors."

See also Johnson v. Coyne, 47 S.D. 138, 142, 196 N.W. 492, 493 (1923), holding that despite a state law permitting only one office for each nominating petition, a single petition for an entire slate of electors was valid, because "presumably this group stands as a unit for one candidate for President."

[79] *See, e.g.*, Opinion of the Justices, No. 87, 250 Ala. 399, 400, 34 S.2d 598, 600 (1948); Breidenthal v. Edwards, 57 Kan. 332, 337, 46 P. 469, 470 (1896); State *ex rel.* Beck v. Hummel, 150 Ohio St. 127, 146, 80 N.E.2d 899, 908 (1948).

[80] 343 U.S. 214.

[81] 257 Ala. 151, 57 S.2d 395 (1952).

[82] 343 U.S. at 227.

[83] 343 U.S. at 229–30.

[84] *See* text accompanying notes 60–71 *supra*.

[85] 343 U.S. at 233.

[86] 343 U.S. at 233.

[87] ALASKA STAT. § 15.30.090 (1962); CAL. ELECTIONS CODE § 25105 (West 1961); COLO. REV. STAT. ANN. § 49–20–1 (5) (1963; CONN. GEN. STAT. REV. § 9–176 (1967); FLA. STAT. ANN. § 103.021 (Supp. 1968); HAWAII REV. LAWS § 11–221 (Supp. 1965); IDAHO CODE ANN. § 34–904 (Supp. 1967); MD. ANN. CODE. art 33, § 20–4 (Supp. 1967); NEV. REV. STAT. §§ 298.050 (1967); N.M. STAT. ANN. § 3–10–1.1 (Supp. 1967); OKLA. STAT. ANN. tit. 26, § 519–21 (Supp. 1967); ORE. REV. STAT. § 248.355 (Replacement Part 1965); TENN. CODE ANN. § 2–403 (1956). *See also* VA. CODE ANN. § 24–290.6 (1950), declaring how electors are "expected" to vote. None of these laws appears to have come before the courts.

[88] D.C. CODE ANN. § 1–1108(g) (1967).

[89] While some of these state laws prescribe criminal punishment for violation of an elector's pledge, none expressly purports to reverse his vote in such a case.

"A law which would fully test legislative power over elector discretion would be one which automatically forfeited his office upon casting a defecting vote. Other electors or party officials could be authorized to fill the vacancy on the spot. His initial appointment would have been conditional upon his performing his promise. This would require open voting and would certainly encounter a contention that the balloting must be secret." Kirby, *Limitations of the Power of State Legislatures Over Presidential Electors*, 27 LAW & CONTEMP. PROB. 495, 509 (1962).

[90] U.S. CONST. amend. XXIII.

[91] D.C. CODE ANN. § 1–1108(g) (1967) (emphasis added) (derived from Act of Oct. 4, 1961, 75 Stat. 818).

[92] *Cf. e.g.*, Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176 (1803).

[93] *Sec. e.g.*, McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 401 (1819); Stuart v. Laird, 5 U.S. (1 Cranch) 299, 309 (1803).

[94] U.S. CONST. amend. XXIV.

[95] Another possible purpose might have been to cover presidential preference primaries, where held. *Cf. Hearings on S.J. Res. 4 Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess., 90th Cong., 1st Sess., 145 (1968).

[96] See Llewellyn, *The Constitution as an Institution*, 34 COLUM. L. REV. 1, 12 (1934): "[W]herever there are today established practices 'under' or 'in accordance with' the Document, *it is only the practice which can legitimatize the words as being still part of our going Constitution*. It is *not* the words which legitimatize the practice. This is the first principle of a sane theory of our constitutional law. Its necessity is patent wherever practice has flatly abrogated a portion of this 'supreme law of the land.' Discretion in the electoral college is the classis instance; can any doubt that if that college should today disregard their mandate, such action would be contrary to our Constitution? Yet 'vote by ballot'—the original language, repeated in the Twelfth Amendment—is a strange way of saying 'act as rubber stamps.' [Emphasis in the original]."

For an interesting and persuasive argument that state power to bind electors would implement, rather than defeat, the purposes of the Framers, *see* Note, *State Power To Bind Presidential Electors*, 65 COLUM. L. REV. 696 (1965); *cf.* Kirby, *Limitations on the Power of State Legislatures Over Presidential Elections*, 27 LAW & CONTEMP. PROB. 495, 505–06 (1962).

[97] In each such instance, Congress counted the electoral votes as actually cast.

[98] While one frequently encounters the statement that even where the duty of a public official is merely ministerial, mandamus will not lie if the violation of duty has not yet occurred but has merely been threatened for the future [*see, e.g.*, 55 C.J.S. MANDAMUS § 33 (1948)], it is doubtful whether most courts would refuse to grant mandamus on that ground. *See, e.g.*, People *ex rel.* Hotchkiss v. Smith, 206 N.Y. 231, 241, 99 N.E. 568, 571 (1912).

[99] *See* Note, *Injunctive Protection of Political Rights in the Federal Courts*, 62 HARV. L. REV. 659, 666–67 (1949); *cf.* Giles v. Harris, 189 U.S. 475, 486, 488 (1903).

[100] Supreme Court review of state court decisions may apply only to "[f]inal judgments or decrees rendered by the highest court or a State in which a decision could be had . . ." 28 U.S.C. § 1257 (1964).

[101] 369 U.S. 186, 204–08 (1962).

[102] A candidate himself would apparently also have standing to raise the question.

[103] *See* Ray v. Blair, 343 U.S. 214, 224–25 (1952).

[104] 28 U.S.C. § 1311 (1964).

[105] 28 U.S.C. § 1343(3) (1964).

[106] *See* Holt v. Indiana Mfg. Co., 176 U.S. 68, 71–72 (1900).

[107] *See* Hague v. C.I.O., 307 U.S. 496, 531 (1939) (opinion of Justice Stone). (The test is whether the "gist of the cause of action was not damage or injury to property, but unconstitutional infringement of a right of personal liberty not susceptible of valuation in money."); Anglo-American Provision Co. v. Davis Provision Co., 105 Fed. 536 (C.C.S.D. NY. 1900) (full faith and credit clause).

28 U.S.C. § 1331(a) (1964) might also confer jurisdiction upon federal district courts, since the action seemingly "arises under the Constitution . . . of the United States," but the $10,000 jurisdictional amount would probably defeat any plaintiff other than the presidential or vice-presidential candidates themselves.

[108] 28 U.S.C. § 1254(1) (1964).

[109] For examples of announcement of the decision prior to publication of the opinion in cases involving presidential elections, *see* McPherson v. Blacker, 146 U.S. 1; 22 n.1 (1892); Ray v. Blair, 343 U.S. 154, *full opinion delivered*, 343 U.S. 214 (1952).

While an attempt might be made, instead, to invoke the original jurisdiction of the Supreme Court, it seems unlikely that a state would be a proper plaintiff, and even more improbable that either the United States or another state would be the appropriate defendant.

[110] 369 U.S. 186, 210 (1962).

[111] U.S. CONST. amend. XII.

[112] "The famous phrase of the Constitution 'the votes shall then be counted' has been like an apple of discord almost since the beginning of the Government." J. DOUGHERTY, THE ELECTORAL SYSTEM OF THE UNITED STATES 254 (1906). The respective roles of the Vice President and of the two houses of Congress were the subject of frequent congressional debates over the years, and passions frequently rose high over what was only of theoretical importance in every election save that of 1876. *See id.*, chs. 2, 4; Wroth, *Election Contests and the Electoral Vote*, 65 DICK. L. REV. 321 (1961).

[113] Act of Jan. 29, 1877, ch. 37, 19 Stat. 227.

[114] 3 U.S.C. §§ 5, 15–18 (1964). 3 U.S.C. § 15 (1964) permits the rejection of electoral votes even of electors whose appointments have been lawfully certified by proper state authority if both houses of Congress "agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified." *Cf.* J. DOUGHERTY, *supra* note 112, at 235. No definition of "regularly given" is provided, and while Congress has thus far always recorded the electoral votes as actually cast, it might at some time treat this clause as authorizing it to reject votes cast contrary to pledge or expectation. At most, this would seem only to cancel such votes and not to record them in favor of the party candidates.

[115] 146 U.S. 1.

[116] 146 U.S. at 23.

[117] In a recent case challenging the method used by the states in choosing electors—specifically the general ticket system—the Supreme Court refused to entertain a complaint brought before it pursuant to its original jurisdiction. Delaware v. New York, 385 U.S. 895 (1966). No reason for the refusal was stated. *See also* Williams v. Virginia State Bd. of Elections, 37 U.S.L.W. 2065 (E.D. Va. July 16, 1968); Penton v. Humphrey, 264 F. Supp. 250 (S.D. Miss. 1967).

[118] 307 U.S. 433 (1939).

[119] 307 U.S. at 450.

[120] 307 U.S. at 454–55 (footnote omitted).

[121] 369 U.S. at 127. *See also* Powell v. McCormack, 395 F. 2d 577, 591–96 (D.C. Cir. 1968) (opinion of Burger, J.).

[122] *See* text accompanying notes 111–14 *supra*.

[123] One can imagine, in the 1968 election, a case entitled Humphrey v. Humphrey; or Nixon v. Nixon in 1960.

[124] "The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance." Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 500 (1866).

[125] *See Hearings on S.J. Res. 1 Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary*, 87th Cong., 1st Sess., 363–91 (1961); *Hearings, supra* note 95, at 151–71; H.R. Doc. No. 364, 89th Cong., 2d Sess. 5–6 (1966).

[126] *See Hearings, supra* note 125.

[127] *See* text accompanying note 29 *supra*.

[128] U.S. CONST. art. II, § 1.

[129] *See* text accommpanying note 14 *supra*.

[130] U.S. CONST. art II, § 1.

[131] U.S. CONST. art I, § 8, cl. 17 (emphasis added).

[132] *See* note 113, *supra*.

[133] *See* note 114 *supra*.

[134] *See* text accompanying notes 110–24 *supra*.

[135] U.S. CONST. art. VI, cl. 3.

[136] 110 U.S. 651 (1884).

[137] Act of May 31, 1870, ch. 116, § 6, 16 Stat. 141, the present equivalent of which is 18 U.S.C. § 241 (1964).

[138] Act of April 20, 1871, ch. 22, § 2, 17 Stat. 13, 14, which resembles the present 18 U.S.C. § 594 (1964).

[139] 110 U.S. at 657–58, 663, 666.

[140] 290 U.S. 534 (1934).

[141] 2 U.S.C. §§ 241–56 (1964).

[142] 290 U.S. at 544–45.

[143] United States v. Classic, 313 U.S. 299 (1941); *Ex Parte* Siebold, 100 U.S. 371 (1879). In United States v. Mosely, 238 U.S. 383, 386 (1915), Justice Holmes stated: "We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in the box."

[144] U.S. CONST. art I, § 4.

[145] *See* Burroughs v. United States, 290 U.S. 534, 547–48 (1934):

The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress. If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship of the means adopted and the end to be attained, are matters for congressional determination alone.

[146] *Cf.* United States v. Classic, 313 U.S. 299 (1941); a state may be under no constitutional obligation to provide primary elections, but if it does they fall within the reach of congressional regulatory power.

[147] Section 5 of the fourteenth amendment may serve as an alternative basis of congressional power. *Cf.* Katzenbach v. Morgan, 384 U.S. 641 (1966). Some doubt arises, however, as to which provision of section 1 of the fourteenth amendment Congress would be enforcing. If *all* voters are denied an effective vote for President, the equal protection clause may be inapplicable. The right to cast a meaningful vote, however, may be protected as a "liberty" under the due process clause. And, while there is no Supreme Court holding presently extant finding a violation of the privileges and immunities clause, the right to vote for President might fall within the test suggested in the Slaughterhouse Cases, 83 U.S. (16 Wall.) 36, 79 (1873), as among those "which owe their existence to the Federal Government, its National character, its Constitution, or its laws." *But cf.* Pope v. Williams, 193 U.S. 621 (1904). Perhaps an argument could also be based on the rights of citizenship conferred by the first sentence of the fourteenth amendment. *Cf.* Schneider v. Rusk, 377 U.S. 163, 166 (1964). In invalidating the Ohio laws that made it difficult for third-party candidates to appear on the ballot, the Supreme Court recently held that the equal protection clause protects "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Williams v. Rhodes, 37 U.S.L.W. 4001, 4003 (Oct. 15, 1968). 37 U.S.L.W. at 4006. Whether it follows that the fourteenth amendment forbids breaches of faith by presidential electors, as a denial of the right to cast effective votes, a determination by Congress that such conduct violates the fourteenth amendment might be upheld.

[148] 3 U.S.C. § 15 (1964).

[149] *See* text accompanying notes 110–22 *supra*.

[150] An unsuccessful attempt to raise such an issue was made by appellants' counsel in Banco Nacional de Cuba v. Farr, 383 F.2d 166 (2d Cir. 1967), *cert. denied*, 390 U.S. 956 (1968). The Supreme Court had previously held that the "act of state" doctrine prevented the courts from examining the validity of certain acts of the Cuban Government. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964). The "Hickenlooper Amendment," 22 U.S.C. §§ 2370(c)(2) (Supp. III 1968) provided, in part, that "no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law. . . ." On remand, the Banco Nacional de Cuba contended that this was an unconstitutional attempt to confer upon the courts jurisdiction over nonjusticiable questions. The Court of Appeals for the Second Circuit interpreted the *Sabbatino* decision as not based upon the Constitution, but as a choice "among a number of constitutionally permissible alternative rules" (383 F.2d at 181), and proceeded to apply the modifying statute.

[151] U.S. CONSTR. art. III, § 2.

[152] *Cf.* Muskrat v. United States, 219 U.S. 346 (1911).

[153] *Cf.* Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937). This may be true even if the bar to court action is found in the Constitution—not in the lack of a case or controversy under article III, but in the sense that the Constitution has conferred final decision-making power upon Congress. Conceivably, Congress might be deemed empowered to withdraw that barrier to court action. (This would clearly not be possible if the function involved were inherently of a nonjudicial nature, such as the determination whether to enact legislation or ratify a treaty; but it may be possible where the types of questions to be considered and relief requested are similar to those often coming before courts.)

Perhaps there is an analogy to be found in the areas of state interference with interstate commerce and intergovernmental immunities: courts have held state action to violate the Constitution in the absence of congressional expression, but Congress may legislate to remove the barrier. *Compare* Leisy v. Hardin, 135 U.S. 100 (1890), *with In re* Rahrer, 140 U.S. 545 (1891).

[154] *Cf.* Powell v. McCormack, 395 F.2d 577, 595–96 (D.C. Cir. 1968) (opinion of Burger, J.).

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. I designate the Senator from Tennessee.

The PRESIDENT pro tempore. The Senator from Tennessee is recognized for 5 minutes.

Mr. GORE. Mr. President, the senior Senator from Tennessee is persuaded that the presidential elector duly chosen is an independent agent. The senior Senator from Tennessee does not recognize the degree of independence of agency in this regard; but, out of respect for the distinguished Senator from Maine, and out of appreciation for the services he is rendering in dramatizing the need for constitutional change, I would like to inquire of the Senator from Maine if he would have some views to rebut the views given by the senior Senator from Tennessee.

Mr. MUSKIE. Mr. President, I thank the Senator. I shall not engage in further arguments on the substance of this question. I think an important purpose may have been served. The distinguished Senator from Kentucky has referred to it.

I hope that this has been a useful exercise. I hope that all of us have a better understanding of the nature and dimensions of the problem that is involved; and I hope that, whatever the result, this exercise will be a stimulus to the kind of electoral reform we should be considering.

I am somewhat pessimistic about such reform because over 500 such resolutions have been introduced in the history of the country, and none of them has gotten anywhere. That is one reason why I took this previously unused method of raising the issue. I hope we have stimulated this forum with that exercise.

Let me point out, before closing, that whether we accept the challenge or defeat it, we will be setting a precedent.

In my judgment, defeating the challenge means a further dilution of the tradition which was almost unchallenged until 1948—the tradition that electors elected on a party slate shall honor their party's candidate for President. Until 1948 that was an almost unbroken and unchallenged tradition.

Since that time, there have been three or four instances of the maverick or faithless elector, so called. Then in this election, as in the previous one, there was the suggestion that the electors ought to be organized to frustrate the will of the electorate.

After this long historic period of commitment by electors to their parties' candidates—if we defeat this challenge today, we will further undermine that responsibility, and encourage the development, the maneuverability, and the flexibility of presidential electors, with kinds of consequences that ought to give us pause. That would be, I think, the effect of defeating the challenge. Supporting the challenge, I think, would tighten up, or at least tend to tighten up, the electoral process, until such time as we reform it, and reduce the risks to which I have referred and which trouble the distinguished Senator from Kentucky.

Having spelled out the issue as best I could today, with these limitations of debate, I think I have said as much as I should, and perhaps more; and I thank my colleagues for what I think has been excellent attention to this issue, and deep concern over its implications.

The PRESIDENT pro tempore. If there are no further designations of time by the majority or minority leaders——

Mr. KENNEDY. Mr. President, I designate the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may be permitted to insert in the RECORD a statement pertinent to the matter under discussion.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR BYRD OF WEST VIRGINIA

Mr. President, on the vote to sustain the objection, properly filed by Senator Edmund Muskie and Representative James O'Hara, to the counting of the vote of Dr. Lloyd Bailey, a duly elected elector from the State of North Carolina, I voted "no." While Dr. Bailey was ethically and morally required, in my judgment, to cast his electoral vote for Mr. Richard M. Nixon and Mr. Spiro T. Agnew, I be-

lieve, that, under the Constitution of the United States, he was not bound to do so. As an authorized elector, he was a free agent to vote as he pleased, under the Constitution, despite the fact that it has usually been customary to vote for the party nominee. Custom cannot change the Constitution.

The vote in question was regularly cast by an elector certified by the State of North Carolina as being duly chosen, and, although I believe that the Constitution should be amended either to abolish the Electoral College system or, at least, to bring about a fairer and better method of allocating the electoral votes under the Electoral College system, I do not believe the Congress has any Constitutional power to reject the vote of Dr. Bailey. To do so would be to set a dangerous precedent and would, in effect, amend the Constitution of the United States.

The Constitution, under Article V thereof, provides for its own amendment by the people of this Republic, and I do not believe that we in the Congress can arrogate this function to ourselves alone.

Mr. MANSFIELD. Mr. President, will the Senator from Massachusetts yield me one-half minute?

The PRESIDENT pro tempore. The Senator can designate himself for one-half minute. He has the floor.

ORDER FOR ADJOURNMENT UNTIL THURSDAY, JANUARY 9, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon Thursday next.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I designate the Senator from Virginia.

Mr. SPONG. Mr. President, I ask unanimous consent to file a statement pertinent to this debate in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR SPONG

Mr. President, the challenge to the vote cast by a North Carolina elector made during the count of the electoral votes before the Congress today dramatizes the need for immediate and effective reform of our system of electing the President and Vice President of the United States.

The elector in question ran and was elected to his office as a nominee of the Republican Party. However, when the North Carolina electors met to cast their votes in the State Capital at Raleigh he voted, not for the Republican nominees for President and Vice President but for the nominees of the American Independent Party.

When the North Carolina vote was announced during the count of the electoral vote before Congress, it was challenged and the Congress was urged to refuse to count the ballot cast by the North Carolina elector for the nominees of the American Independent Party. It was argued by those who raised the objection that by running on a slate committed to the Republican nominees, the North Carolina elector was bound to vote for them in the Electoral College.

However desirable and logical it may be that electors be prevented from disregarding their pledges the clear meaning of the Constitution and its history indicates that they are free to act as they wish.

When the Constitution was written it was clearly the intent of the framers of that document that electors be free and independent in casting their votes. Nothing has happened since the Constitution was written to seriously limit the discretion of the electors in casting their ballots.

While the Constitution has remained unchanged in this respect the growth of political parties and tradition has led the voters to expect that electors will act as agents of the electorate and will vote for those they indicate they will support.

The instance today of the wayward North Carolina elector demonstrates the dangerous gap between the form of electing the President outlined in the Constitution and the reality of our political system. In this case an elector's defection has no impact on the choice of a President, but in a close election the switching of a few electoral votes could create a very real and dangerous crisis in our nation.

As one who is pledged to uphold the Constitution, I have no choice but to vote to reject the objections to the North Carolina electoral vote and allow its vote to be counted as cast by its electors.

However, it is also my duty to state my belief that it is imperative that the Congress undertake a fundamental Constitutional reform of our electoral system before this nation is faced with a political crisis of the highest magnitude.

The PRESIDENT pro tempore. The Chair reminds Senators that speeches they receive unanimous consent to file, under the strict rule under which we are operating, will not appear in speech type, but will appear in insertion type in the RECORD.

Mr. KENNEDY. Mr. President, I designate the Senator from New York.

The PRESIDENT pro tempore. The Senator from New York (Mr. JAVITS) is recognized for 5 minutes.

Mr. JAVITS. Mr. President, I think the arguments have been very well made here, except for one distinction which I should like to make. That is that I shall vote to sustain the challenge because I believe Congress has the power to correct deception on the people. In 16 States, including North Carolina, the designation on the ballot is not of the electors, but of the President and Vice President by name. That is also the case in my State. Clearly, both the 12th amendment and the North Carolina statute contemplate good faith on the part of the elector.

However, Mr. President, I have serious doubt, constitutionally, as to whether or not the vote can be given to any candidate. Having been invalidated, it is my judgment that it falls. That is a very important precedent.

So I wish to state that in my vote, I shall not vote to give the vote to Nixon or any other candidate, but I shall vote to sustain the challenge invalidating the vote itself.

I am grateful to my colleague for yielding.

The PRESIDENT pro tempore. Are there any further designations?

Mr. KENNEDY. Mr. President, I designate the Senator from Minnesota.

Mr. MONDALE. Mr. President, I ask unanimous consent that a statement I have prepared be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR MONDALE

Mr. President, I would like to join in the objection to counting the electoral vote of North Carolina as received, which has been offered by my distinguished colleague from Maine and the distinguished member from Michigan.

The immediate issue is whether or not a Presidential elector can disregard the choice of a presidential candidate by a plurality of the voters in his State and cast his vote for another individual. This is what the elector from North Carolina has done in casting his vote for George C. Wallace instead of for Richard Nixon, the candidate who received a plurality of the votes of the people of North Carolina.

The basis of this challenge is that the vote of the "faithless elector" of North Carolina was not "regularly given" as specified by the Electoral Count Law of 1887 and that it should not be counted.

My colleagues maintain that while the office of Presidential elector was originally conceived of under the Constitution as being one of judgment and independence, the principle soon begins to emerge that the electors were to be instructed "agents" of the people and that the choice of a President was to be made by the people themselves. They point out that this principle has become an integral part of our system for electing a President. Consequently, when the elector cast his vote for George Wallace, he violated this principle, as well as the law of North Carolina, which contemplates that electors will vote for the nominees of their party.

After considering the arguments which have been made, I have decided to support my colleagues' challenge. In supporting this challenge, it is my hope that we do not lose sight of the fact that there is an urgent need for reform in the Presidential election system—reform which will fully effectuate the principle that the choice of a President is to be made by the people themselves.

If this challenge is successful, Congress will establish the precedent that it is prepared to invalidate the vote of a "faithless elector." This precedent would offer limited assurance that an individual elector or a group of electors will not be able to ignore the choice for President of a plurality of voters from the State which they represent.

But a successful challenge amounts to little more than applying a Bandaid to a serious wound. At best, this procedure is only a "stop gap" measure, a method of reducing the degree of damage which can be done by an antiquated system of electing a President. What is needed is full scale reform of the electoral system.

I do not think that a successful challenge will demonstrate that there is no need for such reform.

To begin with, this problem of the "faithless elector" does not go to the heart of the electoral college problem, which is the ever present possibility of an election being thrown into the House of Representatives. Furthermore, a successful challenge to this particular "faithless elector" may establish an important precedent, but it does guarantee that future challenges will be accepted by Congress. And finally, the very need to go through such a cumbersome procedure to ensure that the choice for President by the voters in a particular state will be effectuated constitutes a harsh judgment on the present system.

If the challenge does not succeed, it will dramatically illustrate to the American people that there is nothing to prevent Presidential electors from thwarting the will of a plurality of voters in a particular State. The threat of the "faithless elector" will hang over every Presidential election conducted under the present system.

While there may be some danger in establishing a precedent that a majority of Congress can change the vote of the Electoral College, this danger itself serves to emphasize the need of electoral reform. For a system which creates the need for such action by Congress in order to ensure that a State's electoral votes will be cast in accordance with the will of a plurality of voters should

not be preserved. The danger inherent in such a precedent can be easily eliminated by reforming the system.

The PRESIDENT pro tempore. If there is no further debate, the question now recurs on the objection entered by the Senator from Maine and the Representative from Michigan. The question is, Shall the Senate sustain the objection so entered? All those in favor of sustaining the objection will vote "yea"; those opposed will vote "nay." The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD (when his name was called). Mr. President, on this vote I have a pair with the distinguished Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

The rollcall was concluded.

Mr. PELL (after having voted in the negative). Mr. President, on this vote I have a pair with the senior Senator from Rhode Island (Mr. PASTORE). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Rhode Island (Mr. PASTORE) are absent on official business.

I also announce that the Senator from Louisiana (Mr. LONG) and the Senator from Utah (Mr. Moss) are necessarily absent.

On this vote, the Senator from Utah (Mr. Moss) is paired with the Senator from Minnesota (Mr. MCCARTHY). If present and voting, the Senator from Utah would vote "yea," and the Senator from Minnesota would vote "nay."

The result was announced—yeas 33, nays 58, as follows:

[No. 2 Leg.]

YEAS—33

Aiken	Hart	Packwood
Bayh	Hartke	Proxmire
Boggs	Jackson	Randolph
Burdick	Javits	Ribicoff
Case	Kennedy	Saxbe
Church	McGee	Schweiker
Dodd	Metcalf	Smith
Dominick	Miller	Stevens
Gravel	Mondale	Symington
Griffin	Muskie	Williams, N.J.
Harris	Nelson	Williams, Del.

NAYS—58

Allen	Ellender	Montoya
Allott	Ervin	Mundt
Anderson	Fannin	Murphy
Baker	Fong	Pearson
Bellmon	Fulbright	Percy
Bennett	Goldwater	Prouty
Bible	Goodell	Russell
Brooke	Gore	Scott
Byrd, Va.	Gurney	Sparkman
Byrd, W. Va.	Hansen	Spong
Cannon	Hatfield	Stennis
Cook	Holland	Talmadge
Cooper	Hollings	Thurmond
Cotton	Hruska	Tower
Cranston	Hughes	Tydings
Curtis	Jordan, N.C.	Yarborough
Dirksen	Jordan, Idaho	Young, N. Dak.
Dole	Mathias	Young, Ohio
Eagleton	McClellan	
Eastland	McIntyre	

PRESENT AND ANNOUNCING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mansfield, for.
Pell, against.

NOT VOTING—7

Inouye	McCarthy	Pastore
Long	McGovern	
Magnuson	Moss	

So the objection was rejected.

Mr. DIRKSEN. Mr. President, I move that the Senate reconsider the vote by which the objection was rejected.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ARRANGEMENTS FOR INAUGURATION OF PRESIDENT-ELECT AND VICE-PRESIDENT-ELECT OF THE UNITED STATES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House of Representatives on House Concurrent Resolution 1.

The PRESIDENT pro tempore. The Chair lays before the Senate House Concurrent Resolution 1, which will be stated.

The ASSISTANT LEGISLATIVE CLERK. A concurrent resolution (H. Con. Res. 1) to make the necessary arrangements for the inauguration of the President-elect and Vice-President-elect of the United States.

The PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (H. Con. Res. 1) was considered and agreed to, as follows:

H. CON. RES. 1

Resolved by the House of Representatives (the Senate concurring), That effective from January 3, 1969, the joint committee created by Senate Concurrent Resolution 73, of the Ninetieth Congress, to make the necessary arrangements for the inauguration of the President-elect and Vice President-elect of the United States on the 20th day of January 1969, is hereby continued and for such purpose shall have the same power and authority as that conferred by such Senate Concurrent Resolution 73, of the Ninetieth Congress.

COUNTING OF THE ELECTORAL VOTE

The PRESIDENT pro tempore. Under the procedure that is published in the provisions of law, consonant with section 15, title III, United States Code, it is the understanding of the Chair that the Senate will repair to the joint session in the Hall of the House of Representatives without any motion. But if there is any question in the mind of any Senator, the Chair will entertain a point of order.

Mr. MANSFIELD. Mr. President, I so move.

The PRESIDENT pro tempore. The Senator from Montana moves that the Senate proceed to the joint session in the Hall of the House of Representatives. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDENT pro tempore. The Chair suggests that the Senate wait for just a moment until the status of the action in the House of Representatives can be ascertained, and whether they have concluded their action and are ready to receive the Senate.

The Chair also is advised that when the Senate returns to its Chamber, the only business that will be transacted prior to adjournment will be the report of the tellers on the part of the Senate as to the election of a President and Vice President. The Chair knows of no other business that will come before the Senate.

Mr. MANSFIELD. Mr. President, if I correctly understand the statement just made by the distinguished President pro tempore, it will not be necessary for any Senator to return to this Chamber, except for one, two, or three, for the purpose of attending to the business which must be considered before we can adjourn.

The PRESIDENT pro tempore. It will be necessary for the tellers to return to the Chamber. The Chair knows of no business that will require the attendance of other Senators.

The Chair further advises the Members of the Senate that the report just received from the other body is to the effect that it is not quite ready to receive the Senate.

RECESS

The PRESIDENT pro tempore. Without objection, the Senate will stand in recess for a few minutes, subject to the call of the Chair.

Thereupon (at 4 o'clock and 1 minute p.m.) the Senate took a recess subject to the call of the Chair.

At 4 o'clock and 37 minutes p.m., the Senate reassembled, when called to order by the President pro tempore.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, informed the Senate that the House had rejected the objection submitted by the Representative from Michigan (Mr. O'HARA) and the Senator from Maine (Mr. MUSKIE) and is now ready to further proceed with the counting of the electoral votes for President and Vice President.

The PRESIDENT pro tempore. The Senate will now proceed to the Hall of the House of Representatives to complete the process of counting electoral votes for President of the United States.

At 4 o'clock and 40 minutes p.m., the Senate took a recess, subject to the call of the Chair, and proceeded to the Hall of the House of Representatives to complete the counting of the electoral votes.

(The Senate reassembled at 5:16 p.m., when called to order by the President pro tempore.)

The PRESIDENT pro tempore. The Chair recognizes the distinguished Senator from Nebraska.

REPORT OF TELLERS

Mr. CURTIS. Mr. President, on behalf of the tellers on the part of the Senate, I wish to report on the counting of the vote for President and Vice President.

The state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of electors appointed to vote for President of the United States is 538, of which a majority is 270.

Richard M. Nixon, of the State of New York, has received for President of the United States 301 votes.

HUBERT H. HUMPHREY, of the State of Minnesota, has received 191 votes.

George C. Wallace, of the State of Alabama, has received 46 votes.

The state of the vote for Vice President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of electors appointed to vote for Vice President of the United States is 538, of which a majority is 270.

SPIRO T. AGNEW, of the State of Maryland, has received for Vice President of the United States 301 votes.

EDMUND S. MUSKIE, of the State of Maine, has received 191 votes.

Curtis E. LeMay, of the State of California, has received 46 votes.

NOTICE OF HEARING

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Tuesday, January 14, 1969, at 10:30 a.m., in room 2228, New Senate Office Building, before the Committee on the Judiciary, on John N. Mitchell, of New York, Attorney General-designate.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

ADJOURNMENT UNTIL THURSDAY, JANUARY 9, 1969

Mr. KENNEDY. Mr. President, if there is no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon on Thursday next.

The motion was agreed to; and (at 5 o'clock and 18 minutes p.m.) the Senate adjourned until Thursday, January 9, 1969, at 12 o'clock meridian.

EXTENSIONS OF REMARKS

FIFTEEN YEARS OF PROGRESS: A REVIEW OF THE U.S. DESALTING PROGRAM

HON. HAROLD T. JOHNSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. JOHNSON of California. Mr. Speaker, as chairman of the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, I have taken a very active interest in the efforts of this Nation to develop new sources of water through desalting programs. Currently responsible for the major effort of this is the Honorable Max N. Edwards, Assistant Secretary for Water Quality and Research, U.S. Department of the Interior. Mr. Edwards should be commended for his contribution to the progress which we have made here in this Nation.

Not long ago, Mr. Edwards addressed an international symposium on nuclear desalination conducted in Madrid, Spain. He reviewed the 15 years of progress which this Nation has made in our desalination program and looked to the future of where we can go from here.

Since there is no greater problem facing the scientific and engineering communities of the world today than to provide cheap and inexhaustible sources of pure fresh water for all mankind, I want to share with you Secretary Edwards' comments and evaluation at this point. Accordingly, Mr. Speaker, I insert his remarks in the RECORD, as follows:

FIFTEEN YEARS OF PROGRESS: A REVIEW OF THE UNITED STATES DESALTING PROGRAM

The Bible records what is perhaps the oldest desalting feat: "So Moses brought Israel from the Red Sea, and they went out into the wilderness, and found no water. And when they came to Marah, they could not drink of the waters of Marah for they were bitter; therefore, the name of it was called Marah. And the people murmured against Moses, saying, 'What shall we drink?' And he cried unto the Lord; and the Lord shewed him a tree, which when he had cast into the waters, the waters were made sweet."

Desalting? Perhaps. Unfortunately, the Book of Exodus with this earliest reference to what may have been desalting does not report what type of tree that was. I can assure you that many scientists and engineers wish they knew. Some experts have speculated that it may have been history's first ion exchanger, but they have not been willing to provide us with a cost estimate.

The earliest authenticated opinion that the ultimate structure of matter is discrete, rather than continuous, is ascribed to Democritus, who lived about 450 B.C. According to Democritus, "The only existing things are the atoms and empty space; all else is mere opinion."

These two ancient reports set the stage for man's struggle in the ensuing decades: to repeat Moses' miracle and turn bitter waters sweet . . . to change Democritus' opinion of matter to fact. This generation of man—in the past three decades—has achieved marked success in his desalting efforts.

Most early interest in desalting stemmed from the seafarers' fear of an agonizing death—perishing of thirst.

U.S. interest in desalting can be traced back to 1791, when Thomas Jefferson, then Secretary of State, presented one of the first technical reports on the subject. It described a simple distillation experiment he had conducted. This data, he instructed, was to be printed on the reverse of all ships' papers, so that our merchant marines could produce an emergency source of fresh water if their water casks became foul or empty at sea.

The first practical conversion units were developed to meet the requirements of steam ships for fresh boiler water. The conversion device made the steamship an economic reality. Without it, most of the available cargo space would have been required to store boiler-feed water.

By World War II, all major naval vessels and passenger liners carried their own battery of evaporators. Hundreds of small mobile desalting units were also constructed to supply fresh water for U.S. military forces in the South Pacific and North Africa. While these field units helped to solve a difficult military logistics problem, they were difficult and expensive to operate.

On December 2, 1942, the first sustained, controlled production of atomic energy was accomplished. No one realized then that this secret effort to develop the most powerful weapon ever devised by man might also bring vast new quantities of water to a parched world.

It is an exciting experience to have lived during a time when desalting technology has advanced from relative obscurity to the prominence of practical application. It is a great achievement of man that the awesome destructive power of the atom has been harnessed to peaceful productivity—to provide the enormous quantities of energy needed to wrest a limitless supply of fresh water from the world's salty oceans and seas.

Soon after World War II a water crisis struck. In the United States and elsewhere water problems had been growing. After the war we recognized these problems to be sufficiently serious to require U.S. Government action to stimulate the *economic* production of potable water from saline waters. A few small land-based plants were in operation in the U.S. at that time, but in remote arid locations and only as last resort for water supply.

Up to that point in our history, desalting was primarily within the province of naval vessels and the maritime industry, who wanted a reliable supply of water and equipment of a manageable size. The cost of the water, while important, was of secondary consideration.

In 1952 cost became a critical factor. Forward-looking legislation passed by the U.S. Congress that year called for the development of practicable means to produce fresh water from sea water or from other saline waters . . . *at low cost*. That water was to be of a quality suitable for agriculture, industry, municipal supply and other desirable uses. The ultimate goal of the program was to find out if it was feasible to desalt water and distribute it on a large scale basis.

Congress had issued a considerable challenge. The few small land-based desalting plants in existence in the world at that time produced a trickle of fresh water at costs ranging upward from $4 per 1000 gallons. But enormous volumes of water were needed for agriculture and at very low costs. The challenge for scientists and engineers was this—increase plant size at least one hundred-fold and cut costs 95%.

The Office of Saline Water was established by the Secretary of the Interior to come to grips with this challenge. The Saline Water Act of 1952 authorized $2 million for a five-year program. However, it quickly became evident that this was insufficient time and inadequate funding for a giant task. So, the original law was amended a number of times to extend the life of the program and to increase its funds. More than $160 million has been devoted to desalting development and the quest for new or improved processes continues.

We have made marked progress toward our desalting goal. This has been a result of OSW programs, private industry's research and engineering, and the growing attention being given to desalting by the governments and industries in other countries.

We in the United States operate our na-

tional program by means of contracts and grants to individuals, universities, private research organizations and industrial firms. Many of these contracts have been awarded to universities and organizations outside the United States in order to take advantage of talents outside our own country.

When significant new information and data are obtained from a research study, the results are published and disseminated throughout the world. Over 350 such reports have been issued and they currently are being released at the rate of about two reports per week. In addition, an annual report which summarizes the work sponsored each year by the Office of Saline Water is distributed throughout the world. Many of you may have received the 1967 Saline Water Conversion Report, but for those of you who do not have this publication, over 100 copies are available for distribution at this meeting.

We welcome visitors at any of the plants or test facilities operated by the Office of Saline Water. Hundreds of scientists and engineers from many nations have come to study first-hand the pilot plant and test-bed units which we use to advance our engineering development program.

I have just highlighted the information dissemination program of the Office of Saline Water. Since the very beginning of the U.S. saline water conversion program we have maintained a policy to make the results of our research and development efforts available to the entire world. It is a policy which we shall continue, and we urge all nations to adopt similar procedures.

In 1956, the Office of Saline Water sponsored its first study of the applicability of combining nuclear reactors with saline water distillation processes. One statement in the report that was issued as a result of that study bears repeating at this meeting.

"The conversion of sea water to fresh water in quantities approaching only a few percent of the current water consumption rate will require the expenditure of a staggering amount of energy—either as thermal energy for distillation or mechanical energy for pumping. The energy requirements are so large indeed that it seems unlikely that fossil fuels can supply this energy without seriously affecting the supply-demand balance.

"Nuclear energy has, in general, a major advantage over other energy forms in that the cost of the energy is practically independent of the geographical location of the nuclear reactor because the energy is in an extremely compact form. Shipping charges are not completely eliminated, of course, but they are greatly reduced."

In the twelve years that have elapsed since that statement was written there have been great forward strides in nuclear technology. In spite of this progress, the "major advantage" of nuclear energy for desalting over other energy forms has not yet been realized. Not one nuclear powered desalting plant is in operation.

In the United States, we developed plans to construct a dual purpose nuclear power and water desalting plant in Southern California. This project has been delayed, as a paper to be presented at this meeting will describe in detail. While our original concept for the Bolsa Island plant in California has been abandoned, we are proceeding with studies of alternative possibilities, and prospects for a reconstituted project are encouraging. One alternative that has been considered in the re-evaluation of the project is the use of fossil fuel. I want to emphasize, however, that fossil fuel has only been considered—no final decision has been reached. For a number of reasons, it appears that nuclear energy will have an advantage over fossil fuel in Southern California. In other areas of the United States and the world, however, fossil fuels may well offer the most economic source of energy for large dual-purpose power and water plants.

Since our own plans to construct a dual-purpose nuclear power and water desalting plant have been delayed, we will be looking forward to receiving data from the USSR relating to the dual-purpose plant now under construction at Shevchenko. We also would be interested in any information they may wish to provide concerning their plans for additional nuclear desalting plants in the Donets Basin or elsewhere.

Commercial plants marketed by the fledgling desalting industry a decade ago had reached fresh water production rates of over 1-million gallons per day. Water costs were on the range of $2 per 1000 gallons, though, because of very low performance ratios and frequent shut-downs because of scale control problems. But even at this high water cost, the market for desalting plants began to grow.

It was in this same time period that the present work-horse process of the desalting business began to emerge: multistage flash distillation. With the advent of this new distillation cycle the pace of desalting applications began to quicken.

Multistage flash distillation took a great forward stride with the construction of a 1-million gallons per day experimental plant at San Diego, California in 1962. New design, construction and operating data that emerged at San Diego became the standard design or procedure for many of the commercial plants that followed.

When a water crisis developed at the U.S. Naval Base at Guantanamo, Cuba, the San Diego plant was transferred to Guantanamo, where it was subsequently enlarged to a production capacity of 2.1 million gallons per day. It continues in operation today providing all of the fresh water needs of the military installation.

Continuing our development of multistage flash distillation, in 1966 construction began on a 1-million gallons-per-day plant of advanced design. Named the Clair Engle plant, in honor of a U.S. Senator who had been a great supporter of the desalting program, the plant utilizes a multieffect-multistage flash distillation cycle. The plant has achieved a performance ratio of 20 pounds of product water for each pound of steam. This efficiency was considered virtually impossible a few years ago. On October 4, 1968, the Office of Saline Water awarded a contract for the construction of a high temperature unit, which, coupled with a new pretreatment system, will enable engineers to operate the plant at temperatures of up to 350° F. This is approximately 100° higher than heretofore achieved in a multistage flash operation. The modified plant, operating at this higher temperature, is expected to increase the fresh water product output of the plan by 25 percent.

The newest unit at San Diego was completed this past summer. It is the first experimental plant designed to provide actual construction and operating data. We hope it will bridge the technological gap between present plants in the 2.5 million gallons-per-day range and the projected units of 50 million gallons per day or more of the next decade.

The module represents only a slice of a complete 50 million gallons-per-day plant, but all of the equipment and components are full size. A 78,000 gallons per minute brine recirculation pump provides full hydraulic characteristics of a complete plant. It has been designed to provide maximum experimental flexibility. It can be operated as the high temperature or the low temperature end of a complete plant. Further, in order to permit investigation of different operating conditions, field modifications and adjustments to the module can be made.

Depending on which method of operation, high or low temperature, is selected for test, the actual fresh water output of the plant ranges from 2.6 million gallons per day to 3.2 million gallons per day.

The amount of water produced by the plant is incidental—the real product of the operation is engineering data.

Another distillation method which utilizes the vertical tube evaporators has been under intensive development by the Office of Saline Water since 1956. Although vertical tube evaporators had long been used in the chemical industry to concentrate and separate liquors, a 15,000 gallons per day plant constructed at Wrightsville Beach, North Carolina was the first attempt to adapt this cycle to desalting. The data the Office of Saline Water obtained from the construction and operation of this small unit provided the basis for the first large plant constructed by the Office of Saline Water.

This first plant, located at Freeport, Texas, was completed in 1961. Although the plant quickly reached its design capacity of 1-million gallons of fresh water per day, its operation was plagued by a variety of problems.

The problems we encountered at Freeport were a direct result of "too much too soon." By that, I mean in its effort to push desalting technology as rapidly as possible, the Office of Saline Water attempted to utilize too many new designs, equipment, materials, and operating innovations at one time. As a result, serious questions were raised concerning the potential of the process. Citing just one example, the 40 foot long vertical tubes in the evaporators were made of mild steel, which, contrary to the data obtained from the operation of the small pilot plant, quickly deteriorated under the corrosive attack of the hot sea water.

A series of modifications were made to the plant and as new operating techniques were developed, the potential of the process gradually improved. With the advent of newly designed tubes which provided substantial advances in heat transfer rates, the process that once looked like a poor contender in the search for lower-cost desalted water, now appears to have excellent technical merit and good economic potential. In fact, next week, Secretary of the Interior Stewart L. Udall will dedicate the world's first commercial VTE plant. Located on St. Croix, in the Virgin Islands, the 1-million gallons-per-day plant was competitively priced below multistage flash distillation plants in open bidding. OSW engineers are now studying a potential technological advance in desalting which combines the best features of the VTE process with multistage flash. From the data available there is good reason to believe that such a hybrid process may offer as much as 40 percent improvement in performance over use of either process individually. Additionally, studies of a single-purpose plant utilizing the vapor compression cycle powered by a gas turbine give promise of further reduction in product water costs. A conceptual design study of an 8-million gallons-per-day desalting plant utilizing the vapor compression cycle with the power provided by a gas turbine will be published by the Office of Saline Water early next year.

Every facet of distillation technology that appears to offer an opportunity for improvement is under active study. A materials development and testing program is constantly searching for cheaper alloys that will provide high heat transfer coefficients and at the same time resist the corrosive attack of the hot brine. The use of concrete is being studied and evaluated as a construction material for evaporator shells with considerable promise. Higher and higher heat transfer coefficients are being obtained from fluted, double-fluted, and spiral tubes. Plant geometry is being optimized. Operating procedures are being perfected. Scale control methods are being improved and operating temperatures are reaching higher and more efficient levels.

These developments, and others too numerous to mention, are not "breakthroughs" in the classic sense, but in the aggregate they offer substantial advances in distillation

technology and point the way to lower-cost product water.

But that is just part of the picture. In support of all these engineering advances, the OSW program is balanced by a deep searching basic research program which includes fundamental studies on heat and mass transfer, fluid mechanics, thermodynamic and transport properties of multicomponent fluid interfaces, thermodynamics, kinetic behavior of water, etc. These probing studies, which nourish the work of the engineer, usually receive little publicity. One measure of the extent of the OSW basic research effort is revealed in the 1967 Saline Water Conversion Report. Two hundred and forty-four pages of this four hundred and twenty-one page report are required to provide an abstract review of the basic research sponsored by OSW last year.

My remarks have been directed primarily to developments in distillation techniques because the present state-of-the-art indicates that the multimillion or billion gallons-per-day desalting plants that will be built in the coming decades will utilize a distillation system. If distillation continues to maintain its present performance advantage over other processes for desalting sea water, we can expect to turn more and more to nuclear reactors to provide the enormous volumes of process steam these great water factories will require. Since the cost of that steam will represent upwards of 50% of the cost of the product water, the economic efficiencies of reactors will be critical to the success of any large distillation operation, and that is the challenge I ask every nuclear scientist and engineer to consider.

We cannot say with certainty, however, that distillation will continue to be the preferred process of the future. One scientist, perhaps he is an optimist, told me it was his opinion that the ultimate desalting process had not yet been conceived.

Perhaps he is more of a realist than we are willing to admit. Let us consider, for example, the phenomenon of osmosis which has long been of scientific interest. As far back as the eighteenth century it was observed that when certain aqueous solutions were separated from water by animal membranes, water spontaneously passed through the membrane into the solution. The membrane served the function of permitting the water to pass while blocking the counterflow of the solution.

Since then, osmosis has had a significant place in textbooks on physical chemistry. It is frequently used to illustrate the concept of reversibility. A proposal submitted to the Office of Saline Water in 1953 "Development of Synthetic Osmotic Membrane for Use in Desalting Saline Waters" suggested that this effect of reverse osmosis might be practical for purifying saline waters. However, no membrane was known that could be used in such a process. In fact, no synthetic organic membrane has yet been discovered that would function effectively as a semipermeable membrane in salt water.

After testing hundreds of different chemical combinations, a specially treated cellulose acetate membrane was developed which permitted fresh water to pass through when pressure was applied to the saline solution. Even though the fresh water thus obtained was measured in microliters per day, it was a major scientific achievement.

Years of exacting study have followed in a search to discover exactly what occurs inside that thin sheet of membrane to accomplish this separation. As scientists developed a better understanding of this phenomenon, they have cast new membranes which incorporate improved salt rejection and water flow properties.

There have been sufficient advances in membrane technology over the past ten years to propel this new process from the laboratory to the commercial market place. While reverse osmosis plants are now available commercially for desalting brackish waters, experimental operations already are underway for the use of this exciting new process to desalt sea water. If progress in the next decade continues at the rate it has in the past ten years, it may well be that this process will be competitive or perhaps even superior to distillation. Should such be the case, the energy requirements now calculated for desalting will be vastly diminished with obvious implications as far as the type of energy source is concerned.

While distillation continues to receive the greatest share of OSW funds allocated to process development, the potential of reverse osmosis is commanding ever greater attention and support. I have talked to no one who is willing to predict its ultimate potential, but I think it is apparent from the remarkable advances that continue to accrue that reverse osmosis will play a great future role to provide an incremental source of fresh water.

There will be several papers presented at this symposium by U.S. scientists and engineers, which will present in considerable technical detail specific desalting developments. We look forward to receiving the information that will be presented here by authors from many other nations as well.

I congratulate the International Atomic Energy Agency for providing us with this excellent forum to exchange ideas and information. I am sure we all will leave this meeting far more optimistic about the future of desalting than we were when we arrived.

In his message to the First International Symposium on Water Desalination in October, 1965, President Lyndon B. Johnson said:

"The need is world-wide, so must be the effort. Knowledge, like thirst, belongs to all men. No country can be sole possessor. We in this country are ready to join with every nation—to share our efforts, to work in every way. We cannot wait—for the problem will not wait."

In the past, man has often failed to solve his water problems because he did not possess the technology to do the job. Will desalting fail for the same reason? The answer to that question is NO! I am confident that the scientific and engineering communities of all nations working cooperatively toward this common goal will solve the remaining problems that block the path to a cheap and inexhaustible source of pure fresh water for all mankind.

TAX SHARING

HON. JOHN V. TUNNEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TUNNEY. Mr. Speaker, I am reintroducing legislation to establish a system for sharing Federal tax receipts with the States. This legislation would direct the Secretary of the Treasury to return to the States a percentage of Federal income taxes. We must begin to untangle the redtape of the Federal grant-in-aid program. Although many of these grants have been successful, there is no reason for continually expanding the grant-in-aid program to the point of diminishing returns and ever increasing centralized controls.

Federal revenue sharing can become a viable alternative to the more than 220 Federal grants administered by 21 departments and agencies in Washington. Communication between all levels of government is needed and even more important, increased participation by State and local governments in the solution of our problems. State and local initiative has been hampered by the ever expanding and increasingly uncoordinated Federal grant-in-aid programs as well as highly restrictive and diminishing local and State tax base.

The magazine, Nation's Business alluded to this in 1967:

> A community's acquisition of funds on the basis of what is available, rather than local priorities, also amounts to less than the best use of resources, especially in view of the need to match federal grants with local money.

The magazine goes on to point out the plight of local officials faced with raising taxes to finance increased local services such as police, fire, schools, and utilities.

Joseph Pechman of the Brookings Institution and one of the founders of the tax-sharing concept pointed this out:

> Between 1953 and 1963, the school age population (those 5 to 19) rose 40% while the total population increased by only 19%. In the same period, the number of persons over 65 increased 35%. Thus, the age groups which require the costliest government services and contribute least to the tax base—the old and the young—increased much faster than the rest of the population.

Former Orlando, Fla., city commissioner John Newsom points out that:

> Local elected officials are not held responsible for high Federal income taxes for (they) are considered heroes for getting some of this "free" money returned to their cities.
>
> On the other hand, if they tried to raise the money for—programs through increased local taxes, they would be called bums and probably get voted out of office.

In 25 years after World War II, State and local government spending increased by 525 percent while revenues increased by only 432 percent and the State and local debt increased by 575 percent.

While 58 percent of State revenues come primarily from retail sales and gross receipts taxes and 21 percent from individual and corporate taxes, 88 percent of all local revenues come from the antiquated property tax. In California, the revenues from the property tax have reached the saturation point. Tax sharing can be a useful alternative to this dilemma. While Federal assistance must be continued and increased, local and State participation must keep pace and where possible and practical carry the greater share of the burden. States have traditionally practiced revenue sharing with local governments. I see no reason why the Federal Government cannot practice a similar policy vis-a-vis the States.

I believe that tax sharing offers an opportunity to foster efficiency, diversity and imagination in local and State governments and decrease the growing tendency toward an increasingly centralized Federal Government. Many programs now administered in Washington could be performed at the State and local level where there is a greater familiarity with their own needs and problems. Tax sharing would produce State and local governments with a stable revenue source which would be applied according to their particular priorities

and needs while the Federal Government could apply itself to matters of national uniformity and priority. Long-range planning by government at all levels would be facilitated.

FRANK T. McGAUGHAN DIES—RETIRED OBSERVER EDITOR

HON. DOMINICK V. DANIELS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. DANIELS of New Jersey. Mr. Speaker, on December 24, 1968, Mr. Frank T. McGaughan, retired editor of the Observer of Kearny, N.J., passed to his reward. Mr. McGaughan was 76 years of age at the time of his death.

A very able and distinguished newspaperman of the old school, Mr. McGaughan brought honor and distinction to the newspaper profession. Fair, honest, and objective, his passing is a great loss to the whole West Hudson community, whose affairs he reported for more than 30 years with the Observer.

Mrs. Daniels joins with me in extending our deepest sympathy to his family and to his many friends.

Mr. Speaker, in honor of the memory of Frank T. McGaughan, I insert his obituary, which was printed in the December 30, 1968, edition of the Kearny Observer, at this point in the RECORD:

FRANK T. McGAUGHAN DIES—RETIRED OBSERVER EDITOR

"Mainly About West Hudson," a well-known column which appeared on this front page for some 32 years, was not, in reality, "mainly" about West Hudson. It was also about a man—Frank T. McGaughan—and his personal look at life in the community.

Only a professional newspaperman with a career of more than half a century behind him could look at West Hudson in just that way.

That career came to an end on the morning of Christmas Eve when Frank McGaughan died in West Hudson Hospital at the age of 76.

Associated with the Observer since 1936, the year he started writing his column, Frank McGaughan knew the newspaperman's job from the positions of reporter, columnist, assistant editor and, for his last six and a half years with the newspaper, editor.

An editorial published at his retirement in February of this year read, in part:

"But Frank McGaughan has been more than a columnist. He has covered the police and political beats in the tradition of the old time reporter who knew every cop by name and was privy to the plans of politicians of both parties, who knew he would never betray a confidence to make a headline.

"He has been more, too, than a reporter . . . he has striven each week to bring the community the news that makes a town a hometown—news of the people, their clubs, their schools, their churches, their births, their marriages, their deaths."

Frank McGaughan knew about West Hudson, having been a resident of Kearny for approximately 55 years. But, he was a native of Albany, N.Y., and came to work as a bookkeeper at the old Edison plant in Harrison when he was about 20 years old.

About 50 years ago, he started to report sports for the old Newark Star Eagle, predecessor of the Star Ledger. A major crime in the West Hudson area found him taking up the role of police reporter.

In 1939 he became assistant superintendent of the Coca Cola plant in Kearny. Also, during World War II he was appointed to the local draft board, after which he was cited by the federal government for his services in that capacity.

During all that time, Frank McGaughan still wrote, in addition to many other things, "Mainly About West Hudson." He later served as the West Hudson correspondent for two daily newspapers in the area.

A resident of 58 Beech St., he was also active in a number of local Scottish clubs.

He is survived by his wife, Elizabeth Ford McGaughan, whom he married almost 54 years ago; three sons, Francis J. of Delaware, John E. of Packanack Lake, and J. Raymond of Kearny; two daughters, Mrs. Ruth Dowling of Staten Island, N.Y., and Mrs. Lillian Kelleher of Wantaugh, N.Y.; two sisters, Miss Marie and Mrs. Lillian Cartan, both of Albany, N.Y.; a brother, Elliott of Troy, N.Y.; and 17 grandchildren. He was also predeceased by a sister, Mrs. Anna O'Brien; and two brothers, James and Hugh.

The funeral was held Saturday morning from the Reid Home for Funerals, Belgrove Dr., Kearny. A Solemn Mass of Requiem was offered in St. Stephen's Church. Interment followed in the Cemetery of the Holy Sepulchre, East Orange.

NORTHEAST AFRICAN FIASCO

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. RARICK. Mr. Speaker, a potential religious war has been escalated into dangerous potential by the age-old motive of profit.

The United States furnishes the Israelis 50 jet fighters and to equalize the armament, the British—never to turn their backs on a pound—sell the Jordanians missiles. And everyone protests violence.

This is indeed repulsive behavior for our leaders who panicked passage of antigun legislation to deny a squirrel gun to an American youth, and sheer hypocrisy for the Socialist leaders of both Britain and the United States who accuse Rhodesia of being "a threat to international peace," while at home soothing the peacelovers with celebrations on U.N. human rights.

Mr. Speaker, we are still losing American lives in Vietnam. The American people have no interest in seeing their sons in combat in Africa, nor their country branded as a supplier of weapons of war. I am unable to comprehend how one can be a dove on Vietnam where American boys die but a hawk in Africa in a war that doesn't involve us—yet.

The leadership of our country lacks legal authority to commit the United States in an arms race. Let Congress vote on any involvements—we want no more Vietnams or Koreas.

I included a clipping from the Washington Evening Star for January 3, 1969, and a UPI release:

[From the Washington (D.C.) Evening Star, Jan. 3, 1969]

BRITAIN TO SUPPLY MISSILES TO JORDAN FOR $14.4 MILLION

Britain is supplying surface-to-air missiles to Jordan that could be operational by the time Israel gets 50 American Phantom jet fighters, the missile maker said today.

According to Short Brothers and Harland, a partially state-owned aircraft manufacturer in Belfast, Northern Ireland, the $14.4 million deal involves Tigercat missiles, a land version of the British Seacat.

The Tigercat, a small and highly maneuverable rocket that can by operated from mobile trailers, has a range of some 20,000 feet and is largely intended for the protection of airfields.

The deal reportedly was concluded prior to Saturday's Israeli commando raid on Beirut International Airport in Lebanon. The initial contract was signed last year, the Associated Press reported.

Britain has been a strong advocate of an arms embargo for the Middle East. But unwillingness of the superpowers, notably Russia, to halt arms supplies has prompted Britain to keep her options open.

SKIRMISHES CONTINUE

Britain has been strongly critical of the recent American decision to supply 50 Phantoms to Israel.

There were, meanwhile, these other developments in the Mideast situation.

Israel and Lebanon each accused the other of starting a 2½-hour exchange of fire last night.

The Israeli army said rockets from across the border hit the settlement of Kiryat Shmoneh, and its guns silenced the Lebanese guns. No injuries were reported on the Israeli side.

A Lebanese military spokesman said the Israeli artillery opened up first. He said there were no Lebanese casualties.

CAIRO OK'S SUMMIT

In Cairo, the authoritative newspaper Al Ahram said President Gamal Abdel Nasser has endorsed Jordanian King Hussein's call for an Arab summit meeting.

The paper said Nasser sent Hussein a message signifying agreement. Arab sources said, however, that only 6 of the 15 Arab states have so far expressed any enthusiasm for such meeting.

The Soviet Union said today its naval forces are in the Mediterranean Sea to protect Arab nations. It accused the U.S. 6th Fleet of "inspiring Israeli aggressions."

The statements came from Fleet Adm. Vladimir Kasatonov, first deputy commander of Soviet Naval forces, in an interview with the Soviet news agency Novosti.

PORTS OPENED TO RUSSIANS

Beirut newspapers reported that the Lebanese cabinet had decided to admit Soviet ships to Lebanese ports if the Kremlin requested permission. At the same time, the reports said U.S. Navy ships would be unwelcome because of the Phantom jet sale to Israel.

Government officials said they had no confirmation of the reported sharp switch in Lebanon's traditional pro-Western policy.

Chief Rabbi Yitzhak Nissim, head of Israel's Sephardic community, criticized Pope Paul VI for his message to Lebanon expressing sympathy for the loss of 13 commercial aircraft destroyed by the Israeli commando raid on Beirut airport.

In a broadcast over the state radio, Rabbi Nissim said the Pope had kept silent after the Nov. 22 bombing that killed 13 Israelis in a Jerusalem market and after the Dec. 26 Arab attack on an El Al airliner in Athens in which one Israeli died.

The Jerusalem Post, which often reflects foreign ministry thinking, counseled moderation today and said Rabbi Nissim had "overreacted" to the Pope's words.

UNITED STATES SELLS JETS TO ISRAEL

WASHINGTON.—The State Department announced today that the United States has agreed to sell Israel 50 F4 Phantom jet fighters for slightly over $200 million.

The department said a "small amount" of the purchase price was being advanced to Israel as a loan.

PFC. J. A. SNITKO

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. PICKLE. Mr. Speaker, today I am reintroducing a bill initially submitted last year to confer U.S. citizenship posthumously on Pfc. Joseph Anthony Snitko.

The story behind this bill is as sad as it is tragic, and I believe it is fitting that we take the opportunity to respond to the responsibilities a grateful country owes her defending sons.

Joseph Snitko lived 19 of his 21 years in Austin, Tex., but still retained his native Polish citizenship.

Private Snitko was killed June 13, 1968, while on patrol in Vietnam. At the time of his death, he had filed a petition for U.S. citizenship, and his request had been approved by the Immigration and Naturalization Service. But before Snitko could appear in Federal court to take the oath, he was called to active duty. Later, he was killed in Vietnam while serving his country.

Mr. Speaker, in the Austin-American of June 18, 1968, there appeared a touching account of Private Snitko, and at this point in the RECORD, I include it for reprinting.

I am most hopeful that we may see action on this bill during this new Congress.

The article follows:

PFC. SNITKO: "FACES I SAW DON'T EXIST ANYMORE—PRAY FOR PEACE"

(By Nat Henderson)

"The faces I saw when I came don't exist anymore. They have been replaced by all new faces.

"I've brought back many dead and wounded, and I can't help but wonder when it's my turn."

Time ran out last Thursday for Pfc. Joe Snitko of Austin after only 21 years in this world, 19 of them in the United States. The last two and a half months of his life were in Vietnam.

He was an American soldier but not yet a citizen of the United States. Pfc. Snitko, a citizen of Poland, was fighting against a threat that caused his parents to flee from Europe and bring him to America in 1949.

Snitko was killed in action while serving with Company A, 2nd Battalion, 501st Infantry, Second Brigade, 101st Airborne Division. He had asked to be transferred to the 101st so that he could fight beside Marshall Nelson of Austin.

They were close friends before entering the Army, and Snitko thought the drudgery and danger in Vietnam might seem a little more bearable beside somebody from home.

He did not know Nelson had been killed in action on March 10 until after he started looking for him in the 101st.

Snitko, son of Mr. and Mrs. Stanley Snitko of 500 W. 55th St., wrote a letter in May to Harry Brady, who was among a group of boys in the same neighborhood in high school in Austin. Brady will be a premedical student at the University of Texas next fall.

"Dear Harry . . . Well, you don't know how many times I've started to write you. But always something came up. It's so hard to write for me now. I've been trying to get ahold of Marshall ever since I came over.

"But I see now why I haven't heard from him. Harry, it really hurt to hear about Marshall. Me and him could have had a lot to talk about.

"But we are in a rough unit. They volunteer us for everything. They think we are made of steel and guts. I don't think Marshall ever saw base camp since he came over. It's been two months for me. Ever since I came to this damn place I've been fighting.

"My first day was hell, and it's been that way ever since. In the first five days I lost eight out of my squad. There is only me left now with all new replacements. . . .

"The faces I saw when I came don't exist anymore. They have been replaced by all new faces. I've brought back many dead and wounded, and I can't help but wonder when it's my turn. We lose men every day, and you just have to live with it.

"Maybe peace will come soon, but you know more about that than I do. I don't hear much news. . . .

"Tell me, was Marshall walking point? He must have been. I walk point a lot, and it's rough. You luck out a lot. Do you know where the area was where he got killed?

"I was reading in the paper once, and I saw his name and address. I was so happy to see him alive, but now you write and tell me different.

"I'm sending you the little clipping. At least we know he got one before they got him. But me and you know he was real proud of being in the 101st.

"He never found out that I was in this same unit. I wanted to transfer to his brigade so we could be together. Do you realize how much better it would have been to fight alongside a close friend from home? It would have been a great feeling.

"How bad did his parents take it? I hope it wasn't too bad.

"Well, Harry, I better close. We are about to move on. Don't blame yourself for anything that happens to me. Anything I've done has been my fault, and I have no one to blame but myself. . . . Always, Joe. P.S.: I misplaced the clipping."

Pfc. Snitko was an American who almost was a citizen of the United States. He already had filed a petition for naturalization in the country his parents and older brother chose for him when he was a baby.

His father was in the Polish Army during World War II. The family was separated and spent time in prison and concentration camps. As the war was coming to a close, the family was reunited at Hildesheim in West Germany in 1945.

Ted P. Snitko of Austin, who was eight at the time, says, "My father was a sensitive man. My father saw that communism was coming. Dad asked me where we wanted to go, and we picked the United States."

The family applied to America, but there was a long wait. Joe Snitko was born at Hildesheim, but he was a Polish citizen because of his parents. A sister also was born in West Germany before the family finally made it to the US.

They settled at Rockne in Bastrop County and later moved to Austin.

The parents and Ted Snitko have received their American citizenship. Ted served on active duty with the Texas National Guard during the Berlin Crisis.

Joe Snitko graduated from McCallum and attended Southwest Texas State College at San Marcos. He was planning to go to Blinn College when he entered the Army.

He completed his basic training at Fort Polk, La. He filed his petition for American citizenship. The Immigration and Naturalization Service approved the petition.

All that Snitko needed to do was to appear in Federal Court in Austin to renounce all "foreign potentates or princes." All he needed to do was to swear allegiance to the United States, promising to uphold her laws and serve her in war or peace.

He went to Vietnam before he could go to Federal Court, and he was killed on a combat patrol last Thursday while serving his chosen nation in war. Funeral arrangements are pending the return of his body to the city where he became an American except for a slip of paper formalizing his US citizenship.

He was looking forward to serving his nation in peace. His last letter to his brother said:

"I was glad to see peace talks finally start. However, the limited bombing has hurt. The NVAA have infiltrated many troops since the halt . . .

"Pray for peace, and I'll be the happiest man in the world. I hope it comes soon."

Besides his parents and older brother, Pfc. Snitko is survived by a younger brother, Rickey Snitko, and two sisters, Lillie Snitko and Mrs. Jeneva Perrone, all of Austin; and one niece, Tina Snitko, and one nephew, Richard J. Perrone Jr., also of Austin.

MOTION TO SEAT ADAM CLAYTON POWELL

HON. JACOB H. GILBERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, January 3, 1969

Mr. GILBERT. Mr. Speaker, I voted for the composite motion to seat the gentleman from New York, Mr. ADAM CLAYTON POWELL, as a Member of the House of Representatives. But I do not want my vote to be interpreted as an endorsement of all the parts of that motion.

Like many of my colleagues, I found myself in a parliamentary dilemma when presented with the motion. As the House indicated in earlier votes, it would not vote to approve the seating of Mr. POWELL without conditions attached. This was the only way, due to conditions existing on the House floor, under which the gentleman from New York could take his seat. It was my judgment that this body must not deprive 500,000 American citizens of their congressional representation. I considered the issue of seating to be of principal importance. But I did not feel there was either right or justice in levying a fine against the gentleman from New York or in depriving him of his seniority.

I recognize the good intentions of those of my colleagues who share my objectives but voted differently from me on this matter. Some voted against the motion. Some abstained from voting. I understand their argument that they did not want to lend themselves to an act of retribution against Congressman POWELL. This House is not a punitive body.

I personally have serious doubts as to the constitutionality of action by the House of Representatives to set an additional condition for the seating of a Member-elect. But be that as it may, I felt the first obligation facing me was to get the gentleman from the 18th District of New York into the seat to which his constituents had legally elected him. That objective has been achieved.

TOWARD A NEW SCIENTIFIC ERA

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. MOORHEAD. Mr. Speaker, the thrill and wonder of Apollo 8, and its astronauts, whom we will honor here this week, is still so fresh in our minds that it hardly seems necessary to "state the case for a new scientific era."

Yet, I think it not inappropriate to include at this point in the RECORD the remarks of Dr. Seaborg, Chairman of the AEC—calling for a new scientific spirit—spoken on the occasion of the dedication of the Richard King Mellon Hall of Science in my congressional district.

Dr. Seaborg's eloquent plea is for the renaissance man of the 20th century—truly "a man for all seasons"—one who has this awareness of his special bond with nature, and with the sure knowledge of science and love of the arts and humanities, applies its disciplines toward solving the many staggering problems wrought by today's scientific burst.

Dr. Seaborg's remarks follow:

TOWARD A NEW SCIENTIFIC ERA

(Remarks by Dr. Glenn T. Seaborg, Chairman, U.S. Atomic Energy Commission, at a convocation dedicating the Richard King Mellon Hall of Science, Duquesne University, Pittsburgh, Pa., November 15, 1968)

Following in the spirit of your symposium yesterday on "Science in the Future of Man," and in anticipation of the dedication this afternoon of your new Richard King Mellon Hall of Science, I thought I might speak to you this morning on a topic that relates strongly to the meaning of both events. In doing so I also hope to state the case for renewed dedication to science and for a new scientific spirit to guide us into that "future of man." As I plan to point out, such a spirit and sense of dedication will be essential if we are to enjoy that future. And I will try to convince you that I mean "enjoy" in the brightest, most optimistic sense of the word.

To build my case for this new scientific spirit let me first discuss some conditions that to many of us here have become almost self-evident. Unfortunately, they have not become self-evident to enough people, nor have their meanings and implications been made clear enough or strong enough to elicit the kind of thoughtful concern and positive action these conditions so urgently deserve.

If I were asked to outline these conditions briefly—and to do so is almost to summarize the state of man these days—I might put it this way: We are entering a new phase of the Scientific Age—a transitional one that is putting both science and man to a new series of tests. The signs of this testing are all about us. But they are manifest in three major confrontations.

The first is the confrontation of nations obsessed with military security in a world of gross economic disparities. These disparities, and the almost anachronistic degree of nationalism many nations still cling to in dealing with some of them, keep the world a tinderbox of international tensions. And most tragically, this condition syphons off into vast expenditures for military power a great deal of the knowledge and resources that could eliminate much of the basis for our self-perpetuating distrust and the human misery it generates. In this process, science, unfortunately, has become enmeshed in the hot and cold wars of our day. Many of these wars are caused by the clinging to historical grievances or fading ideological differences—grievances or differences that at one time may have been based on the life-and-death necessity of controlling territory and resources, but today could be solved by the application of science and technology with some degree of patience and perseverance. And how ironic this is. In one sense we are using science to help wage these continuing "holy wars" when both the tenets and teachings of science—applied by men of reason and good will—could truly "save" most of mankind. In this regard, there is great wisdom in Pope Paul's statement that "development is the new name for peace." How we might use science to begin to unravel this Gordian knot I will touch on later, but for now let me state the second confrontation.

This involves man and nature. It is less a confrontation than a moment of truth in which we are experiencing an exploding awareness of our environmental bond. For a long time we proceeded on the assumption that man progressed by "conquering" nature. And for quite some time nothing interfered with this belief. Now our growth in sheer numbers and some indiscriminate technological excesses have moved us eyeball-to-eyeball with our true relationship to nature. We realize now that we do not conquer nature. We coexist with her—or even more correctly, within her realm—and for every insult to her or assault on her we sooner or later pay some price. Today the price is demanded sooner and is increasingly greater. (And as a scientist in Washington I can tell you that one does not have to see a polluted river or inhale smog to be aware of our environmental confrontation today. In Washington one is quickly made aware of pollution by the administrative complexities in dealing with it on a national level—by the very fact that there are 15 to 20 federal departments or agencies which receive direction and funding in this field from some two dozen different congressional committees.)

Our third confrontation is between man and certain aspects of his man-made environment—primarily the urban complex and its numerous subsidiary problems. In a sense this urban confrontation epitomizes most of our problems today. Let me explain.

Consider that three-quarters of all the people in this country—about 150,000,000 persons—have been drawn into some 200 densely packed urban centers occupying only about 10 percent of our land, some 35,000 square miles. And compound this picture by emphasizing the diversity of these people's economic, educational and cultural background, combined with their immediate needs and growing aspirations—all fanned with the help of our modern mass media.

Consider the physical aspects of this urban implosion and explosion; where every day the greater part of 90 million automobiles and trucks are drawn in and repelled from the core cities with a pulsating regularity through increasingly congested arteries; where 30 billion gallons of water per day must flow in—pure enough for drinking—and about 22 billion gallons flow out carrying an enormous burden of waste; where every 24 hours about three billion kilowatt-hours of electricity must be generated and distributed without fail, and where during the same 24-hour period are produced some 600 million pounds of trash to be disposed of in the most economic yet least offensive way.

But stating these few statistics tells only part of the story, for the situation is not static—it is dangerously dynamic. And I use the word "dangerously" to emphasize that as in all the confrontations I mentioned there is a rapid growth involved and a precarious input-output balance to be achieved. If there is any lesson we have learned in the past decade or so that must be heeded, it is that our scientific and technological progress can no longer be measured solely in terms of what we call "productivity." We still live within a limited environment—our "Spaceship Earth," as Barbara Ward calls it—with its limited resources, existing within a pinpoint range of temperature, at the mercy of a delicately balanced atmospheric system. And as human beings, in spite of the creative way we have increased our adaptation to physical extremes, we still have our limitations. We can tolerate only so much physical and mental stress—noise, crowding, emotional strain, changes in our body chemistry—before there is a deleterious effect. We realize now that almost all human activity can lead to a point—a "boiling point," "breaking point," a "point-of-no-return," call it what you will—beyond which we cannot go.

We have reached or are approaching that point in many areas and as a result are getting dramatic "feedback." And rest assured, this feedback is going to grow in its intensity until equally dramatic adjustments—physical and social—are made. We have expanded into and filled too many frontiers too rapidly. Wherever we have done this—both with people and technology—we have multiplied what engineers call "interfaces," places or surfaces where unlike materials come together. These interfaces can be of people of different races, backgrounds or social or economic status. They can be points where different systems meet—like terminals where there is a need to change modes of transportation. Or they can be any environment where we release effluents faster than nature can process them, or of a kind that she cannot assimilate at all.

To some degree we can tolerate trouble at these interfaces. To some extent we can introduce adjustments—usually of a temporary nature—to lubricate these areas, to reduce the friction, to cool the hot spots, to soothe or cover the symptoms of the trouble for awhile. This seems to be true in both social and physical interfaces. We can make all sorts of promises or form ad hoc committees or commissions to make investigations and issue reports—too many of whose valuable recommendations we then refuse to act upon. We can widen a street here or there, clamp down on littering or open burning of trash. We can even do some worthwhile urban renewal, build a few more pools or playgrounds, or even increase welfare payments. But as necessary and as humane as these measures may be on a short-term basis, we know that they are not the true ways we are getting to solve today's problem. And if there is one thing that our scientific and technological explosion of today has done, it is to expose the raw nerve of truth. It has forced us into a great period of what Kenneth Boulding refers to as "self-consciousness" and we are reacting in a number of ways—some good, some not so good.

On the negative side has been the tendency, as I just intimated, to continue to handle our problems piecemeal and on a crisis-to-crisis basis. There are still too many of us who are modern-day Micawbers—who believe that even if we do nothing, "Something will turn up." Considering the rate of change we are experiencing today such an attitude can be catastrophic.

Also on the negative side has been a tendency on the part of many to turn on science and technology as scapegoats. As the editor of The Bulletin of the Atomic Scientists, Eugene Rabinowitch, expressed it last year, this is "Open Season on Scientists." Throughout the country many people, hastily surveying the state of things and realizing the involvement of science and technology, have just as hastily decided that scientists and engineers brought us to this state of affairs. The pursuit of this attitude is a fruitless, self-defeating exercise. What these people fail to realize is that when we hold

up this new mirror of "self-consciousness" we see not the failure of scientists and engineers but the reflection of altogether broader human weaknesses magnified by our scientific age. We see that science and technology, as well as serving man the pioneer, the builder, the provider and the healer, can also amplify his less admirable traits. They can hasten the day of retribution resulting from his lack of foresight. They can impersonalize his inhumanity to his fellowman. They can add to his self-indulgence. And although I have tried to soften the blow by using the word "can," we all know to what extent they have done these things. The remarkable thing is that it has taken us so long to see all this as clearly as we do today.

Now, the question is what do we do about it? How do we take this great power of science, with its even greater potential for the future, and direct it toward building a better society here at home, and eventually an ideal global civilization on this planet? How do we use it to create peace, a healthy environment and as much human fulfillment as possible?

To begin with, we must establish a more positive and forward-looking approach to the future. There is "no return to Eden," as Professor Boulding points out. While we can recall, study and learn from our past, we know we cannot relive it. Nor do I believe that most people would want to if they were to sample more than a day or two of any era of history. But neither do I believe, as does a rather vocal minority today, that we must necessarily tear down all of today's institutions to make way for tomorrow's. (This makes even less sense when you have no idea of what you plan to build in their place.)

The renewed scientific spirit I propose today embraces then the ideal that we, first of all, free science from sin—that we stop wasting time and energy flailing science for some of our current predicaments. At the same time that we do this we must pursue the idea that it is more science, better science, more wisely applied that is going to free us from these predicaments. What I am speaking of here is the application of science and scientific thinking both to alleviate immediate ills and to set the underlying philosophy for a rationale for the future handling of our technological and social development.

But rather than speak theoretically, let me illustrate what I mean by applying some of this scientific thinking to the areas of confrontation I summarized earlier.

First, within the context of the search for world peace, let us look at the problem of nuclear proliferation. We cannot prevent the spread of nuclear weapons by decrying the discovery of fission, trying to restrain the growth of nuclear technology abroad, or simply shouting "ban the bomb." But we may make progress in reducing, and eventually reversing, the arms race by a series of realistic steps that tie in scientific and political-economic developments. The nuclear nonproliferation treaty (NPT) is, in fact, such a step. It was drawn up by nations, including the two major nuclear powers, who realized that it is in their mutual interest to contain the spread of nuclear weapons without denying to any country the peaceful benefits of the atom—and these, I must point out, are considerable and constantly growing.

One direct scientific and technological advantage of adherence to the NPT, and the international safeguards involved, is that it establishes a climate and a method wherein the nuclear nations can export with increasing confidence the proliferating peaceful uses of nuclear energy—materials and technology for power reactors and desalting plants, for biological and medical applications, for industry and research of all kinds. The NPT does not deprive any nation of the right to enter the nuclear age. To the contrary, it opens up unparalleled opportunity to share in the prizes of that age—in return for a guarantee not to develop nuclear weapons, a costly and unproductive task for most nations and particularly if it involves them in a nuclear arms race with their neighbors.

Nuclear power, which is now a safe, reliable and highly competitive means of generating electricity in this country, can be an important factor in the overall development of many other countries. The time may not be far off when this compact source of energy will be the basis of a new level of industrialization and agricultural productivity in many areas of the world, when the atom will help provide electricity, fresh water, fertilizer and many other badly needed products and services. But that time will come much sooner if there can be full cooperation between today's nuclear and nonnuclear powers based on guarantees that materials shared for peaceful purposes are not diverted to weapons. And considering that the projected growth of nuclear power around the world could produce by the 1980's enough plutonium for the manufacture of dozens of nuclear weapons a day, such guarantees are essential.

The indirect advantage of an effective nonproliferation treaty is that it could also create a climate of trust and hope so essential to other steps leading to arms limitation and disarmament. For in a world where the smaller nations could make substantial progress with the peaceful assistance of the larger ones tensions would be reduced and there would not be so much of the social and political ferment that causes conflicting ideologies to polarize. In other words, we might have a period conducive to taking further steps to reverse the arms race—cutbacks in weapons production and further agreements on restricting types of weapons and areas where they might be employed—these combined with positive steps of building new economic and cultural ties. Hopefully, all this would also allow the developed nations of the world to divert a greater amount of funds from arms—now at a total world cost of about $180 billion annually—to projects that would significantly aid the developing countries, many of which could "take off" agriculturally and economically with a certain amount of additional assistance.

Unfortunately, this rather slow step-by-step way to peace is the only realistic one. I am afraid that many of those who so loudly advocate "instant" peace and "instant" freedom have never had the chance to know how closely these highly prized ideals are tied to responsibility and hard work. But I think we can achieve peace and freedom more rapidly if we use science and technology, and particularly nuclear power, as a lever rather than as a club.

We must also use science and a scientific approach to solve our environmental problems. Here again there is no instant solution to our almost instant pollution. There is the "affluence-is-the-cause-of-our-effluents" school of thinking that blames all our waste on our productivity. But it does not necessarily follow that the good life of the future (materially speaking) must be the wasteful one of the past—not when we have the knowledge and ability to deal rationally with our environment. The enormous amount of scientific and technical literature on this subject—and a good amount of it seems to find its way to my desk in Washington—hopefully indicates that we are becoming fully aware of our waste and conservation problems. More importantly, it indicates that we are on our way to solving most of them, not only by developing various new technologies to deal with specific areas such as air and water pollution, solid waste and sewage, and the accompanying ecological problems, but by advancing an overall philosophy of conservation and recycle.

This philosophy, which I think is another example of the underlying new scientific spirit, has people thinking in terms of finding economic ways to process and reuse almost all of our natural resources, and where some waste disposal is necessary, never to do it in a way that abuses nature or man. Many such scientists and engineers see the eventual recycle of sewage into potable water and useful fertilizer. They see products designed and tagged for economic reprocessing back to basic materials after their initial lifetime. They see the millions of tons of automobiles junked every year as the "mother lodes" of the future. They see large, clean nuclear plants producing tremendous amounts of power for electric furnace operations and to provide process heat in order to accomplish some of these recycle tasks economically. And as a result of all this and more, they see a cleaner, healthier, more attractive environment for man.

Now again, all this is not going to happen overnight. We will have to move step-by-step—though at as quick a pace as possible—to accomplish this. We cannot turn off our power plants, or shut down whole industries, or ban certain modes of transportation. Nor can we indiscriminately legislate against pollution with total disregard for economic factors. But we can, and are beginning to, take certain steps to abate waste and pollution, to set reasonable new restrictions and regional and national standards. And through new technologies—based on sound research and development—we can solve our environmental problems even while our population and industry continue to grow. We have the scientific and technical resources in this country to do this if we can engender the scientific and social attitudes to support them. Basic to this is an idea that may be hard for some people to accept, since it runs contrary to the naive philosophy that "the best things in life are free." (Even the first line of the song of that title "The moon belongs to everyone . . ." may not be true for very long in this space age.) What we must realize now is that there is a price to pay these days for clean air, clean waterways, attractive living areas, open spaces and the flourishing of nature and wildlife. And for some time that price may be high and will have to be shared by all. But I think that most of us are beginning to recognize this and that it is part of the new maturity that will accompany our new scientific age.

The same underlying philosophy, I believe, must be applied to the way we deal with the problems of our man-made environment these days—with our cities, our transportation, communications and educational systems. Here again many have a right to be impatient, but reason must prevail. And if it does, I believe we can move forward a lot faster than many others think.

Of course, a major dilemma we face in this area is that it is a "people problem"—that the interfaces involved have human faces, reflecting human aspirations—and that our modern media have opened the floodgate of rising expectations. As a result we have a tremendous number of what Harrison Brown calls "combustible people."

Nevertheless, the problem is far from hopeless. For although we cannot rebuild—or build anew—overnight our cities or the lives of the people in them, we can greatly improve those lives as we go about the longer-term task of remolding our urban conditions to meet human needs. In doing this I believe that it will again be the new scientific spirit that will play the decisive role. However, it will take a massive effort by government, private industry and our universities, using every means of modern science and technology, to carry out such a remolding process. And as more and more experts in various disciplines seem to agree, it will be a challenge that can only be handled successfully by a systems approach—another outgrowth of our new scientific thinking. It will be one thing to build within the next 20 to 30 years

as much housing as has been required during the past 200 years—and that is just what we will need—and another to build not just houses but communities that provide employment, education, recreation and all the other necessities of the 21st Century living.

Moreover, we are not talking about communities and cities that are just separate entities, but vital parts of a nation that is viable whole—physically, economically, politically and socially. That is the kind of a country and world we will have to be living in by the year 2000. To do this will require an incredible amount of planning, hard work, resources and public and private participation. And I emphasize planning to avoid having the 21st Century become, as Michael Harrington calls the 20th Century, "The Accidental Century." The magnitude of change that can be produced by our Scientific Revolution of today so far overshadows the changes wrought by the Industrial Revolution that we can no longer afford to leave much to chance. (Someone once said, we tend to confuse destiny with bad management. In the future our destiny will be even more closely tied to management—so we had better place great emphasis on good management in the days ahead.)

Specifically, what are some of the developments in revamping our man-made environment that will most likely take place, and what role will science and technology play in them?

First of all, important advances in the development and use of new materials and construction technologies have been made, and are being refined, that can allow more efficient and economic renovation and reconstruction of many areas of our major cities. Such renewal and rehabilitation can go a long way in providing decent low-cost housing for the large number of people who will choose to remain in today's core cities. One of the major U.S. industrial firms in the construction material field has already successfully used a technique which literally rebuilds from the inside out an almost uninhabitable apartment building. The technique has rejuvenated entire city blocks—and what's more, the company that developed it believes that on a large scale it will provide financial as well as social profits.

Concurrent with the renewal of our major cities, I believe, like many others, that we are going to see a surge in the development of "New Cities" in this country. These "New Cities" and the even more imaginative "Experimental City," conceived by such men as Dr. Athelstan Spilhaus, Buckminister Fuller and many others, will blaze new frontiers in urban living. Housing anywhere from 50,000 to 250,000 or more people, they will be planned and constructed with the most scientific and systematic consideration of human needs—a clean environment, efficient transportation and communication, facilities for all types of education and recreation. Naturally, there will have to be a sound economic basis for building such cities and they will have to have continued economic viability. To establish this we may see programs whereby the government offers incentives to industry to expand and develop new facilities away from the current population centers, drawing people away from the congested areas to which they continue to flock. People will move to these new areas if we can create new opportunities and new hope—and fulfill them.

Eventually, as I have stated in many of my talks, I see the atom playing a major role in the development of these new areas possibly through the establishment of Nuplexes—large integrated industrial complexes constructed about huge nuclear energy centers. Located outside of the cities, but perhaps within short traveling distances, such complexes processing raw materials, reprocessing much solid waste and using these resources in all kinds of manufacturing, would separate heavy industry from the city. In essence, the Nuplex would be supplying the city (perhaps more than one) with employment, products, power, and possibly fresh water and food if a desalting plant and agricultural processing were involved. I must stress, however, that such developments still lie quite a ways in the future and that they depend on many scientific and technological advances—all the more reason why we must encourage the scientific spirit and the fullest application of science to the needs of man.

In discussing science and the man-made environment I could go on almost indefinitely—spelling out the details of far-ranging plans and ideas that have crossed my desk in one form or another. These ideas range from vast undertakings of geological engineering—such as the plan to create the "Great Lakes of South America," vastly increasing the power, water and transportation usefulness of the Amazon River, to a nationwide educational and communication plan in our own country that would tie together for instant retrieval the information available at all our major universities and national libraries. They might also include nuclear-powered agro-industrial centers in coastal desert areas—centers which could produce food for many millions of people on previously unproductive land. Such ambitious plans are not hairbrained schemes, but ideas based on much sound research and the application of new technologies, some of which are already in use and others that are quite feasible for use in the near future.

But since there is not time to dwell on these today, let me conclude with a few general thoughts by way of summary.

I have tried today to impress you with both the idea that science has brought us to a new level of challenge and response and the belief that we will have to use science to the fullest to respond to the challenge. This, in effect, is the essence of our creative evolution—which now seems almost to be taking place in quantum jumps.

From our activities today there also seems to be evolving an overall "scientific truth" that is more than the theory of any one discipline but which many great minds of our day seem to be expressing in one way or another. In its broadest sense it is a realization that if we are to survive as a species we must evolve to a new level of mankind in almost everything we do.

I believe that if we look at today's tensions and turmoil in terms of the larger changes they will create, we can see that a great new era of man is taking shape. Viewed in this respect, perhaps the current resurgence of nationalism is the last we will see of such a phenomenon. Perhaps most of the world will soon realize that we can no longer afford to act "tribally." It is true that people and nations have a need for identity and a sense of pride. But must this always be at the expense of others? We are rapidly becoming one world technologically—so we must become one in other ways—economically, socially and through reaching a new level of the human spirit.

All this does not mean, as some fear, the death of diversity or individualism. The view of the scientific world of the future as one only of homogenized human beings—cogs in a vast technological machine—is one advanced by those lacking in imagination. The unity that science and technology urge upon us is one that can provide greater freedom for the individual as it expands his environment, sparks his desire for more knowledge, stimulates his sense of wonder and gives him far broader challenges than the daily search for security.

It is because of this possibility—the possibility of more freedom, diversity and creative growth within the framework of a scientific world—that I have always urged an increased interest in the humanities and arts. To parallel and supplement our scientific progress we must have the guidance, the wisdom and the emotional energy—the spirit—that these endeavors provide. We need both the perspective of history and the vision of the arts to realize the full meaning of human progress.

The new scientific era that I urge then is really a scientific-humanistic era, one that could set the stage for the appearance of what may well be "the renaissance man of the 21st Century." But the role that such a man will play will be written today largely by our attitudes toward science and the way we apply it. And I should add that it will be written primarily in the halls of our great universities and in the minds and hearts of you who have gathered here to dedicate yourselves to the scientific spirit.

From my visits to universities around the country that are undertaking programs similar to what you are doing here at Duquesne, I can tell you that you are far from being alone in this endeavor. You are part of a quiet revolution. It is a revolution that garners few headlines. It does not feed on fear or violence. It crosses national boundaries without suspicion or distrust. It speaks in all languages to all men who are willing to work, to learn, to change. And I think it is the one revolution that will prevail—simply because it speaks a prevailing truth.

This is my case for a new scientific era. Let us work together to make it a new era of human progress—one that can be shared by all men who would walk this earth in peace yet continue to reach for the stars.

ROBERT M. MORGENTHAU

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. OTTINGER. Mr. Speaker, despite all the attention which has been focused on the problem of crime in the United States, too little has been said and written regarding the role of the U.S. attorneys.

Since 1961, the southern district of New York has had its U.S. attorney, Robert M. Morgenthau, a man of vision, dedication, and courage. History will record him as one of the great U.S. attorneys, but perhaps his highest tribute comes from the criminal community which has marked him as its No. 1 enemy.

Victor Navasky's recent article in the New York Times magazine gives an interesting look at Bob Morgenthau—as an individual and as a public servant. I commend it to the attention of my colleagues:

THE U.S. ATTORNEY FOR 'NEW YORK SOUTH'

(By Victor S. Navasky)

Given the national obsession with "law and order" it is surprising that more attention has not been paid to the men who define the law and enforce it, the nation's prosecutors. President-elect Richard M. Nixon has promised to get rid of our first civil-libertarian Attorney General, but he has yet to tell us what a good prosecutor ought to do, what qualities he should possess, what cases he should bring. This is a significant omission since, in addition to the Attorney General, Mr. Nixon will also appoint 93 United States Attorneys, whose mandate goes all the way back to the Judiciary Act of 1789, some 80 years before there even was a Department of Justice.

Traditionally, the job of U.S. Attorney is considered a patronage plum, a jumping-off

point for a political career, basic training for a judicial appointment. But, as S. M. Hobbs wrote in The Alabama Law Review 20 years ago, the job is more than that: "It is scarcely an exaggeration to say that in his untrammeled discretion in deciding when and whether to file an information or press for an indictment, when and whether to enter a nolle prosequi or to 'bargain' with an accused—or more broadly when and whether to prosecute—[the prosecutor] has 'the scope for tyranny of a Venetian doge.'"

Of today's 93 U.S. Attorneyships, none is more powerful, more autonomous, more respected or more coveted than the job of U.S. Attorney for the Southern District of New York. This is partly because of the size of the office (he has 73 Assistant U.S. Attorneys working for him as compared with one for the U.S. Attorney from Wyoming), partly because of case load (he handles about 10 per cent of all the criminal cases in the Federal courts), partly because of the independent tradition of "New York South," and partly because of the high-principled, belligerent incumbent, Robert M. Morgenthau, originally appointed from the Bronx by J.F.K. in 1961 over the late Congressman Charlie Buckley's initial objections (he relented when the Kennedys threatened to bring in William Gaud, now A.I.D. administrator, from Connecticut), reappointed in 1963 after his unsuccessful race for Governor, and reappointed again by L.B.J. in 1967, despite the widely rumored desire of the President to replace him with Ed Weisl Jr., an Assistant Attorney General who also happened to be the son of the President's old friend and Democratic National Committeeman from New York, Edwin L. Weisl. In 1965, when Attorney General Ramsey Clark asked for evaluations of U.S. Attorneys as part of a talent search, he recalls, "Bob Morgenthau was at or right near the top of everybody's list."

Unlike members of the Cabinet, U.S. Attorneys do not, explicitly serve at the President's pleasure. Normally this is irrelevant since a U.S. Attorney's four-year term is concurrent with that of the President who appointed him. But because of Morgenthau's gubernatorial adventure and consequent off-year appointments, the charter which hangs on the wall of his spacious office on the fourth floor of the U.S. Court House in Foley Square states in no uncertain terms that, having been confirmed by the Senate, his term of office runs till June 1971. When I asked if he had resignation plans, he said, "My current thinking is that if they didn't want me I probably wouldn't stay and I might not stay anyway, but I'm kind of a believer in not crossing bridges till you have to. What I'm concerned about now is that there are a lot of important cases and investigations pending."

The high probability is that Nixon will want to get his own man in the job. The outside possibility is that, consistent with Nixon's unity theme and the nonpartisan nature of Morgenthau's tenure, he will retain Democrat Morgenthau on a trial basis. The far-out possibility is that Morgenthau will refuse to step down, at least until he has cleaned up a number of big cases. They include the recent widely publicized indictment of the financier-lawyer Roy Cohn on 10 counts, the crackdown on American investors using secret Swiss bank accounts and cases expected momentarily to break in organized crime.

What would happen in the unlikely event of a showdown between Morganthau and Mr. Nixon is uncertain. The law reads: "Each United States Attorney is subject to removal by the President." When an Eisenhower appointee, Eliot L. Richardson, then U.S. Attorney and now Attoney General of Massachusetts, declined to resign after Kennedy's election, the Justice Department dug up a Supreme Court precedent which convinced Richardson that the President has the right to appoint his own man. Some jurists, however, believe that under case law the President can fire a U.S. Attorney only for cause.

It should not be forgotten that when L.B.J. became President, Morgenthau was one of the few U.S. Attorneys who did not turn in his resignation. And Attorney General Clark recalls what happened when he telephoned Morgenthau to sound him out on a Federal judgeship: "He told me he felt a deep obligation to his office and his people and he was in the middle of so many things so important to him that he didn't think he would want to be considered for the bench at that time."

The only time Morgenthau ever indicated a willingness to give up the job was when he did—to run for Governor against Rockefeller in 1962. He lost. Since few observers ever gave Morgenthau a chance, I asked why he ran in the first place. "You mean why was I such a damn fool?" he said. "I knew it was a long shot but I thought, 'How often in a lifetime do you—does anybody—get that kind of opportunity?' So I thought it was worth trying. I didn't count on the complete disarray of the Democratic party, the divisive fight we had in Syracuse, and I didn't count on the Cuban missile crisis. People just weren't listening to anything else. But I thought the weaknesses in Rockefeller's record ought to be brought to public attention and they'd be good issues to campaign on."

Regardless of how long he stays on the job, it is worth taking a look at Morgenthau's stewardship of New York South, for at a time when the Supreme Court is under attack as soft on defendants, and the law-enforcement establishment is under attack (less visibly, to be sure) as insufficiently sensitive to individual rights and liberties, here is a man who has managed to retain his image as a liberal without undermining his reputation as a prosecutor. Indeed, despite the air of absent-minded, preoccupied academic which hovers around his 49-year-old grayish hair, prominent nose and pursed lips (which often seem to be fighting off an incipient smile), the recurring adjective in descriptions by friend and foe alike is "tough."

An official from Justice recalls, "When I first met him I remember thinking, 'My God, we've made a mistake. How is this Casper Milquetoast going to withstand the pressure?' Then we had lunch, and I watched him destroy the carefully laid plans of an Assistant Attorney General who came down from Washington fully expecting to assume control over a category of cases that are handled from Washington everywhere but in New York South. He left with empty hands and I knew we had nothing to fear."

"Bob wouldn't hesitate to send his own mother up the river," says one of his admirers from the Kennedy Administration, "that is, if he thought she was guilty. Of course, he would disqualify himself as an 'interested party,' but he'd see that the processes of justice were carried through."

Shortly after he assumed office, Morgenthau was visited by a Congressman who announced "urgent" business. He had, he said, a "constituent" who was charged with violating the Trading with the Enemy Act (he had been importing hog bristles from Communist China), and would the new U.S. Attorney "kick it around" for a few months? "I'm not asking that he be let off, or anything like that, just that you kick it around for a while." The new U.S. Attorney kicked it around for about as long as it took the Congressman to get out the door, called Silvio Mollo (the career attorney he eventually promoted to Chief Assistant, normally a post reserved for party patronage), and three days later they brought an indictment. "You could at least have postponed it for 30 days so I could earn my fee," the Congressman fumed over the telephone. Looking back, Morgenthau thinks it was fortunate that this incident happened early: "Word gets around on what you can get away with."

"Bob has an instinctive hatred for the fixers, the wheeler-dealers, the promoters, the men with connections," recalls a friend and former Assistant U.S. Attorney. Indeed, this is one of the qualities which informs his liberalism, and complements his idea that the best way a prosecutor can reinforce respect for law among the poor is by keeping close tabs on the rich.

Morgenthau's liberal reputation comes not from any ultra-humanitarianism (although he seems the essence of decency, is an active president of the Police Athletic League, serves as an adviser to the New York School of Social Work, etc.), nor from any overt evidence that once he leaves office he will become a card-carrying member of the American Civil Liberties Union. To the contrary, the so-called hot issues of criminal law—confessions, right to counsel, search and seizure—are things with which he has not really concerned himself. "Frankly," he says, "they pose more problems for local law-enforcement agencies than for us."

In fact, he flunks almost all the standard libertarian litmus tests. Legalized wiretapping? "There are two things to be said about wiretapping," he replies. "One, it is some invasion of privacy. There is no doubt about that. But everything government does in a civilized society, from your birth certificate through the Wasserman test and the driver's license, involves some invasion of privacy, so it's a question of degree whether this is a greater invasion than society wants to tolerate. The other proposition is that it's certainly some help to law-enforcement people. You have to weigh these values—as to whether you want to help law enforcement or protect individual rights."

Sympathetic treatment of draft resisters? "When a kid in New York South refuses induction, they arrest him on the spot," says Henry di Suvero of the National Emergency Civil Liberties Committee. "At the request of the U.S. Attorney's office there's high bail set, so in reality a kid is given the choice—the Army or jail. In the Eastern District they proceed by indictment, which means that you don't go to jail—there is time between the act and the arrest, and then the court automatically assigns counsel."

When I asked Morgenthau about this practice he said he was not aware of it, but would investigate. And after he had talked with those responsible, this is what he told me: "This policy is consistent with the general principle that when you have a clear-cut crime—say an agent sees a truck about to be hijacked—you arrest on the spot. This is a case of a clear-cut crime in your presence. If a truck has already been hijacked, then you indict before a grand jury. On the draft card burning business, we don't arrest because it's not clear-cut. Is it his draft card? Is he draftable? Etc. But when a man doesn't take that step forward, he has committed a crime. Actually, something like 80 per cent end up reporting and the complaint is dismissed. It's good from the draftee's standpoint because if a man is indicted he has a criminal record and that's serious; but it's bad from the protest organization's standpoint."

Censorship? His office devotes hundreds of valuable man-hours to protecting the citizens of the judicial district from imported art movies like "I am Curious—Yellow." (The Appeals Court has reversed a finding of obscenity stating that "under standards established by the Supreme Court the showing of the picture cannot be prohibited.")

Sensitivity to free-speech problems? Helen Buttenwieser, Morgenthau's cousin, recalls that when she posted bail for convicted Soviet spy Robert Soblen (non of New York's bail bondsmen would accept the collateral his family had raised), "Bob's office tried to prevent me from putting up the $100,000 bail and the excuse they used was foolish. They suggested that my money came from Communist sources. Bob knew very well I had the

money to put up. Actually, I put up $30,000, another individual put up $30,000 and Soblen's family and friends put up $40,000. Anyway, at the hearing Vince Broderick, Bob's chief assistant, asked questions like: Had I represented Alger Hiss? Did I belong to the National Lawyers' Guild? As the Court pointed out, these questions were irrelevant. I never talked to Bob about it because I thought it would embarrass him. But now when I see Vince Broderick I say, "Why the hell didn't you win?'" (Soblen jumped bail and Mrs. Buttenwieser forfeited her money.)

On matters of concern to civil libertarians, then, Morgenthau seems an essentially conventional prosecutor, not initiating but tolerating occassional prosecutorial excess. After the latest Cohn case broke and Cohn charged Morgenthau with abuse of process, I asked Prof. Norman Dorsen, of the N.Y.U. Law School and vice chairman of the board of directors of the American Civil Liberties Union, whether he thought Cohn's charges were credible, and he replied: "While I have not studied them in detail, it is interesting to note that a grand jury composed of his fellow citizens indicted him. And Morgenthau generally represents the finest kind of prosecutor—sensitive to individual liberties and fair procedures as well as the responsibility of his office to secure conviction."

Morgenthau's unique contribution has been to go beyond those Siamese-twin enemies of all enlightened law enforcement—organized crime and labor racketeering—and engage in an almost quixotic crusade against the white-collar untouchables, the Wall Street wheelers and dealers, the corporate criminals. Traditionally, the U.S. Attorney takes cases as they are referred to him by Government agencies which are in effect his clients. Under this system, it is the clients—the Federal Bureau of Investigation, the Secret Service, the Postal Inspection Service, the Narcotics Bureau, the Immigration and Naturalization Service, the Selective Service—which make policy. "The referring agencies can make you or break you," says an Assistant U.S. Attorney, "because most of the big cases have concurrent jurisdiction. So if they don't like you, they'll give it to another office." But in the area of corporate crime, Morgenthau has reversed the conventional flow of business and has initiated cases rather than merely received them.

His quaint notion is that since the underprivileged tend to regard law as an enemy, going after the men at the top is a useful way to demonstrate that law can be an ally. "I feel," he says, "that the people who hold positions of power or trust and violate them are probably a more serious danger to a democratic society than organized crime or crime in the streets. I also think that the ability or inability of government to deal with this kind of crime has a substantial bearing on how the public, particularly the underprivileged public, regards law enforcement. If he knows that the big man in the community is in the policy racket, drives a Cadillac and pays off the cops, then a man is justified in concluding that law enforcement is only for suckers."

Among the institutions he has taken on in his almost naive determination to demonstate that nobody, no matter how well connected, rich or powerful, is above the law, are the president of the New York Stock Exchange (for alleged tax fraud); the Internal Revenue Service (for bribery and corruption; more than 170 employes were indicted); financier Louis Wolfson, a major Democratic campaign contributor ("You can't believe how many phone calls we had trying to pull us off," said an Assistant U.S. Attorney); the Post Office (the No. 2 man in the New York region was convicted of perjury), and the top officers of Local 32-E, the 10,000-man union which controls all of the building superintendents in the Bronx, and which was notorious for its terrorist tactics and its close ties to Buckley's Bronx Democratic machine. (After the indictment, union officials, who had always booked two or three tables at the county dinner told Buckley: "No more tables. If you can't control your own U.S. Attorney, why should we take tables?")

For knowingly certifying a fraudulent balance sheet he indicted the top officers of Lybrand, Ross Bros. & Montgomery, one of the eight largest accounting firms in the country. He made headlines when he indicted and convicted the high-flying Water Commissioner of the Lindsay Administration, James L. Marcus, despite the fact that District Attorney Frank S. Hogan, who was onto the case earlier, had not yet found enough evidence to prosecute. ("It takes guts to go after a Marcus," observes one member of the office. "Now everybody knows he's guilty. But then he was a pillar of the community. If one witness reneges, the whole case caves in and the Establishment has tagged you as an irresponsible headline hunter.")

The list seems endless, including the executive vice president of Manufacturers Hanover Trust, the treasurer of the Democratic State Committee, and, of course, most recently, Roy Cohn, who once served as an Assistant U.S. Attorney in New York South, prosecuting Julius and Ethel Rosenberg for passing atomic secrets to the Russians. Cohn is the kind of man who, it is said, receives a box of cigars each Christmas from J. Edgar Hoover, was thrown a 45th birthday party by Terence J. Cooke, now Archbishop of New York enjoys financial relationships with Senator Everett Dirksen's administrative assistant and Senator Edward Long's son-in-law, pals around with the heir to the Newhouse newspaper chain, and generally mingles with the high and the mighty. The powerful chairman of the Senate Judiciary Committee, Senator James Eastland, is a Cohn partisan.

When Morgenthau several years ago unsuccessfully brought charges against Cohn (who has been in and out of court ever since, most recently on charges of mail and wire fraud, false filing with the S.E.C. and conspiring to pay a state court official $75,000). Cohn told the press that Morgenthau was retaliating against him for his role in embarrassing Morgenthau's father, Henry Morgenthau Jr., F.D.R.'s Secretary of the Treasury. He said, "When I was first in the Justice Department and then chief counsel to the Senate subcommittee, it was my duty to investigate Soviet infiltration in the Treasury Department. It dealt with the delivery of United States occupation currency plates given to Russia at the direction of Mr. Morgenthau Sr. [sic] on the advice of Harry Dexter White.

"I have no personal malice toward Morgenthau Sr.," Mr. Cohn continued. "I never met him. But Morgenthau Jr. has harbored a feeling about this. I say somebody up there just doesn't like me."

A few weeks ago, on the occasion of his latest indictment, he repeated these charges of vendetta and supplemented them with a bill of particulars in which he alleged that Morgenthau had spent more than $1-million in taxpayers' money, interrogated more than 700 Cohn friends, enemies and employes, and issued more than 1,000 subpoenas requiring production of books and records.

Because Morgenthau has cases pending against Cohn, he is reluctant to respond to Cohn's charges of abuse of process other than to state that, "based on the information brought to our attention, we would have been derelict in our duty if we hadn't conducted the investigation of the Fifth Avenue Coach Lines, Inc. that led to the present indictment." He adds that bringing someone before a grand jury is not an abuse of process. "If we had misused the grand jury, we knew perfectly well he could have come in to quash the subpoena," says Morgenthau.

To the charge that he is out to get Cohn, he says: "I am not out to get anybody." He points out that Cohn was still in law school when Harry Dexter White died after testifying before Congress, and says: "My father was never called before the McCarthy subcommittee, was never interrogated by them, and if he was investigated by Roy Cohn, he never knew anything about it and, until Cohn's statements, neither did I. I might add I never felt it was necessary to vindicate my father's reputation." In any event, he goes on to note: "A man is not immune from prosecution merely because a United States Attorney happens not to like him."

In a way, the Cohn case raises again the old legal-ethics stickler: Is there anything wrong with prosecuting known public enemies on minor charges, going after an Al Capone for income-tax evasion? Morgenthau's answer is clear, although he insists it has nothing to do with the Government's prosecution of Cohn. "There's nothing wrong with making cases against people in positions of responsibility, people in the public eye. You have to be selective. We don't have enough personnel to investigate and bring cases against everybody who violates the law. When your criminal intelligence tells you that a man is a public menace you have an obligation to investigate him.

"Everyone knew Capone was a bootlegger and a major criminal, and so I see nothing wrong in prosecuting him.

"That doesn't mean bringing him up on charges of jaywalking and, of course, it doesn't give you the right to railroad anybody. And bear in mind: Under Federal practice, every safeguard is afforded a defendant, whether the prosecutor wants to put him away or not."

A man who has known Morgenthau for 10 years says: "The Harry Dexter White thing has nothing to do with Bob's prosecution of Cohn. To him Cohn is a hot-shot, *nouveau riche* parvenu. If anything, that has more to do with it.

"I never understood him until I read Felix Frankfurter's reminiscences about Bob's grandfather, who was Wilson's Ambassador to Turkey. He had a plan to win the First World War by detaching Turkey from Germany and Austria. Nothing was going to stop him. Bob has some of the same stubbornness. He doesn't look at a case like a normal prosecutor: "How will it look in court? What are our realistic chances of winning?" He's like a client in the sense that these fellows are crooks and he knows it and everybody knows it and he's not going to let them get away with it. Also, the fact that he's not a trial lawyer [he has not tried a single case as U.S. Attorney] makes him more rigid in terms of dealings with defense counsel. He tends to go by the book." Another associate observes: "Only a man with the security of his family background could operate the way he does."

Without generalizing from family background, it makes sense that, having watched his father (a gentleman farmer who published an agricultural paper before he became Secretary of the Treasury) move among the financial titans of the world, he would not find the specter of great wealth intimidating. And surely his exposure to the German-Jewish "Our Crowd" milieu cannot be entirely irrelevant, despite his marriage to a Midwesterner reared as a Unitarian, the former Martha Pattriden. The Morgenthaus bring up their four daughters (one a retarded child, is at the Lochland School in Geneva, N.Y.) and 11-year-old son, Robert P., as Jews and, when he was a student at Yale Law, his classmate, now Yale Law dean, Louis Pollak, remembers: "Bob and his friend Mitch Cooper 'infiltrated'—that's the only word for it—Corby Court [an exclusive eating club]. Not that they could have cared less about getting in for reasons of status. But once in, they changed it"—which is Dean Pollak's genteel way of saying they quietly but actively recruited other Jewish students and once and for all ended the gentiles only policy.

But it would be a mistake to equate the at-

mosphere evoked in Stephen Birmingham's best seller with Robert Morgenthau's world outlook. A better indication of his life style is provided by Steuart Pittman, a Morgenthau contemporary who was a fellow resident of Peter Cooper Village when they were both young attorneys in New York. Like so many other friends, Mr. Pittman, now a Washington lawyer, remarks on the contrast between Morgenthau's proper exterior and the free spirit it masks. He recalls late one night "walking along the tops of cars with Bob on lower Broadway, while our wives kept up on the sidewalk. Also, I have a vague recollection that he was the guy he used to rollerskate to work with. It took 46 minutes to fight the subway. This solution to the transportation problem was awkward only because of the reaction in the elevator at 15 Broad Street, where they had never seen two properly attired lawyers with roller skates slung over their backs, so as not to scratch at attaché cases."

Quasi-aristocratic family background may help account for Morgenthau's intolerance of fat cats and corporate arrivistes, but the equally distinguished background of his judicial district, New York South, helps account for his ability to do anything about it. Only an office with a tradition of independence from Washington would permit the freedom of maneuver Morgenthau's efforts require. According to a recent Yale doctoral dissertation by James Eisenstein, the over-all trend for U.S. Attorneys is "the progressive loss of autonomy to the Attorney General and the Department of Justice." New York South is the exception.

Its tradition of independence, while not unbroken, extends back at least to 1906, when a young Harvard lawyer who was earning $1,000 a year with a private firm was offered a chance to make $250 less. He later recalled: "I had a call from the U.S. Attorney's office that the U.S. Attorney wanted to see me. I use these words because that's what I was going to see—the U.S. Attorney. He had no name for me." The young man was Felix Frankfurter (he took the job), and the U.S. Attorney was Henry L. Stimson, who went on to become Secretary of State.

Stimson's contribution to the autonomy of the office was reflected in his reply to President Theodore Roosevelt's aide, who came to visit him to urge speedy indictment of a financial speculator whom the press was blaming for the bank panic of 1907. When asked how long it would be before the man went to trial, he replied (according to Frankfurter's "Reminiscences"): "I don't know how long that would take. I have no idea. . . . When the evidence is all in, if it warrants my so advising the grand jury, I shall advise them to find an indictment. Now that'll take I don't know how long. You tell the President that is the way I shall proceed and if that seems too dilatory to him and he wants some other action, then of course it's in his power to remove me and get some other United States Attorney."

The tradition did not establish itself without trouble. One old-timer recalls: "When Judge J. Edward Lumbard became U.S. Attorney [1953], the office was filled with political hacks, and so he announced: 'Gentlemen, to the victors belong the spoils.' and proceeded to can everybody but [one man]."

By the time Morgenthau arrived he found the caliber so high that he fired nobody, urged the best to stay on and further depoliticized the office and (antagonized some local clubhouses) by hiring without regard to party, which may help account for the *esprit*—rare in Government circles—which characterizes the office. For four recent openings there were 17 applicants, all of whom had clerked for Federal judges. Two of those hired had clerked for U.S. Supreme Court Justices. "They come for the public service," says Morgenthau, "for the experience and for the tremendous responsibility." "It looks better on a résumé to have worked in New York Southern than any other prosecutor's office in the country," says an assistant. Morgenthau is proud that he has lengthened the average assistant's stay from two and a half years to four years, and that he has raised the level of prior experience: Except for summer internes, he no longer hires men directly after law school.

Not that an office staffed with élite-on-the-make is an unmixed blessing. As an attorney with a civil-liberties organization observes: "In Morgenthau's office they wear their self-righteousness on their sleeves. We get along better with the Eastern District. Morgenthau's guys are arrogant. They're from the top of the class, with Wall Street ahead or behind. They think of themselves as high-caliber types, and that means they quickly develop disdain for criminal lawyers. It shows."

Part of Morgenthau's ability to attract top talent is the implicit promise that his men will be able to try big cases—cases which in other jurisdictions are handled in Washington. Last February, when Henry Peterson of the Justice Department's Organized Crime Section announced the formation of a special unit to crack down on Mafia infiltration of legitimate businesses, he said it would commence operations in New Jersey, Philadelphia, Miami and Boston. Asked about New York, he replied that Morgenthau already had a 10-member staff working on organized crime. It was this Special Prosecutions Unit, in fact, which uncovered (and convicted) Joseph Valachi. At last count, Morgenthau's office had convicted 52 members of the Luchese, Genovese, Gambino, Bonanno and Profaci families, and eight others were pending trial.

"It was through our interest in organized crime and Tony Corallo (of the Luchese family) that we stumbled onto the Marcus case," says Morgenthau of his office's most famous conviction—which has laterally involved him in collision with the office of District Attorney Hogan, a confrontation which could have considerable impact on the F.B.I.'s entire informant system, not to mention the two prosecutors' offices.

In brief, Morgenthau indicted and convicted Marcus on evidence provided by one Herbert Itin, a self-confessed F.B.I. informant. But Itkin is what might be characterized as a "method informant"—i.e., he participated in some of the transactions about which he informed. As a result, District Attorney Hogan's office is ready to prosecute Itkin.

If Itkin was telling the truth, he could probably make more cases for the Government (the number has been estimated as high as 50 to 100) against people as influential as Carmine DeSapio, the former Tammany Hall leader, whom he accused on the witness stand of bribing Marcus on behalf of Consolidated Edison. So, though nobody likes to talk about it, Morgenthau's office is opposed to Hogan's trying Itkin, whose price for making more cases is presumably immunity from prosecution. The F.B.I. is also opposed to prosecuting Itkin—since if it can't guarantee informants immunity (not to mention anonymity), why should any insider agree to inform?

Hogan's critics charge, among other things, that, by prosecuting Itkin, he would be spared the unpleasantness of prosecuting De Sapio, who engineered Hogan's 1958 senatorial nomination. But Hogan's supporters claim he has an obligation to try Itkin since he has evidence against him. If the F.B.I. informant system suffers along the way, so be it. In fact, they argue against the whole concept of an intelligence-gathering network which by implication involves the subsidy of criminal informants. They add that Morgenthau should have turned over the headline-making case to the D.A.

Morgenthau's people, in turn, point out that more than half the cases they bring involve concurrent jurisdiction with the D.A.'s office; that, especially in bribery cases, "you can't usually get the family doctor or the local clergyman as a witness—you have to deal with some pretty shady characters," and that, given the choice between prosecuting a valued informant or a highly visible public figure who may have abused the public trust, the ends of law enforcement are better served by undertaking the latter. As Morgenthau puts it, "These (bribery) cases have a real impact on what goes on in the ghetto."

Try to get Morgenthau to talk of future plans, and he will talk excitedly about his latest batch of cases, which the day I happened by, involved the work of the newly established Consumer Fraud Unit. He told me how they have made history by indicting process servers for discarding summonses instead of serving them, a practice known as "sewer service." "The victims," he says, "are most often Negroes and Puerto Ricans who have their wages garnisheed or their escrow deposits removed because they failed to show up in court to answer summonses which they have never received. It's been going on for years and nobody has ever done any thing about it before." As he talks quietly but passionately on the injustice of the situation, one notices on the top of his 2-inch in-box pile an announcement of the New York State Association of Process Serving Agencies, Inc. It reads:

"For years our association has been crying wolf! The wolf is now inside the house!

We are facing the worse crisis our industry has ever experienced! Five men have already been indited [sic] by a Federal grand jury and the continuing investigation may very well bring forth many more. . . ."

Richard Nixon and his new Attorney General may be forgiven if they are right now selecting Morgenthau's replacement. That's what elections are all about. But it is ironic that, if Mr. Nixon does the expected and puts his own man into New York South, the three happiest men in town could easily turn out to be three lifelong Democrats—Roy Cohn, who charges vendetta Louis Wolfson, whose counsel visited Washington unsuccessfully charging abuse of prosecutor's discretion, and Carmine DeSapio, who has not been indicted, but who cannot have heard Itkin's testimony in the Marcus case with equanimity.

TAX REFORM

HON. JOHN V. TUNNEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TUNNEY. Mr. Speaker, our tax system has a major impact upon our Nation's economic stability and growth and upon the daily life of every American. Some 76 million taxpayers, with an average income of $3,300, pay $53 billion a year in personal income taxes while corporate taxes total $26 billion.

Former U.S. Senator Paul Douglas said:

Our tax system is riddled with injustices that violate the simple principle, upon which I would think that all could agree, that people with equal incomes should pay equal or approximately equal taxes. Whether we believe in progressive, regressive or proportional taxation, can we not agree on this elementary principle of horizontal justice?

Tax reform is a very basic need if we

are to put our fiscal house in order. This must be one of the top priorities of the 91st Congress.

I am reintroducing a tax reform bill which would eliminate what I consider glaring inequities in the present tax laws and would bring in an additional $2 billion without taxing the average citizen, who is already too heavily taxed.

The bill which I have introduced outlines five specific areas in need of reform:

First. Lower the oil and gas depletion allowances from their present 27½ percent to 14 percent, and depletion allowances on 41 other minerals from 23 percent to 15 percent. The revenue to be obtained from this change could be anywhere from $500 million to $1.5 billion annually. The U.S. Treasury has recently disclosed that on an average, the cost of an oil well is recovered 19 times over by the depletion allowance.

Second. The tax-exempt interest provision of industrial development bonds would be completely repealed. At present this is an unintended Federal subsidy to private industry, some $50 million of revenue annually would be obtained by this change.

Cities throughout the country are today issuing municipal bonds bearing tax-free interest to finance industrial plants and commercial facilities for private profitmaking corporations.

The usual method by which cities pass their tax benefits to private corporations is to issue bonds to construct a plant in accordance with the corporation's specifications and then lease the structure to the corporation using the rental payments to retire the bond. Because the city's bonds are tax free, their interest rate is lower than the interest rates on bonds which the corporation could issue. The corporation reaps the advantage of the low tax-exempt interest rate.

These bonds are not the same as the worthwhile municipal bonds which assist cities in financing needed public facilities such as schools, roads, and sewer systems.

The Revenue and Expenditure Control Act made considerable modifications in the tax-exempt status of industrial bonds. However, there were major exceptions to this policy which have the effect of continuing the tax-exempt status of many industrial bonds. I question the wisdom of these exemptions when we voted for a general tax increase along with severe spending cuts last year.

Third. The avoidance of taxes by forming multiple corporations so each can take advantage of the present provision of only 22 percent tax up to the first $25,000 of corporate income would be eliminated. The bill would provide for only one surtax exemption where a single business enterprise is involved. This could yield up to $150 million annually.

Corporations divide income from one source among a number of largely frictional taxpaying entities that only are considered separate corporations for tax purposes but act on the day-to-day functions of the business as one corporation as a widely used method of tax avoidance.

Fourth. The practice of paying estate taxes with U.S. bonds and redeeming them at par value rather than their fair market value at the time, would be discontinued. The effect could yield $50 million per year.

It is presently the practice of the Government to accept Government bonds in payment for estate taxes at their redemption or par value. For the most part when bonds are issued they are purchased at a discount from their redemption value. They are discounted because the bonds pay interest over their lifetime, very commonly 20 years plus paying their par value at the end of whatever period for which they have been issued. For example a person might purchase 20-year Government bonds for $80,000 which have a par or redemption value of $100,000. If the person died before the end of the 20 years his estate could turn in the bonds to the Government for $100,000 rather than their value at the time of death.

Fifth. A minimum income tax of 10 percent would be imposed on all individual and corporate tax free income in excess of $10,000.

In 1964, the latest year the IRS has figures, 19 of the 482 taxpayers reporting an annual income of $1 million or more paid no income tax. The remaining 463 paid less than 30 percent of their incomes in taxes even though the tax rate for all taxable income in excess of $100,000 is 70 percent.

In 1964 the 20 largest oil companies earned close to $6 billion and paid only 6.3 percent on taxes. Some of these companies paid no taxes at all.

These changes would reduce the inequities in our present tax system by placing the burden of higher taxes on those who now escape paying their fair share.

There is a definite need to rid ourselves of methods of tax avoidance which do not serve the interests of the majority of taxpayers.

Every society must levy taxes to exist and to deliver the services which its citizens demand. Taxes are what we pay for a civilized society, but lets plug the loopholes and eliminate the inequities and make those most able carry the burden. There is a definite need to rid ourselves of methods of tax avoidance, which do not serve the broad interests of the majority of the taxpayers.

The changes which I have proposed would reduce the inequities in our present tax system by placing the burden of higher taxes on those who now escape paying their fair share. This measure is needed to help put our fiscal house in order.

THE LAW ENFORCEMENT CODE OF ETHICS

HON. RICHARD H. POFF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. POFF. Mr. Speaker, all thoughtful Americans are concerned about the role the policeman plays in American society. If the policeman is properly to serve society, he must have the respect of society. At a time when organized activists are consciously and deliberately and purposefully promoting disrespect, it is important to register commendation of police conduct where commendation is deserved.

The Policeman's Association of the District of Columbia deserves commendation. It makes a continuing effort to strive for excellence in character and performance of police personnel. It has set high standards. These standards are reflected in the "Law Enforcement Code of Ethics" which appeared in the display ad in a recent issue of a Washington newspaper. I commend its content to every American.

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, to protect the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feeling, prejudices, animosities or friendship to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these ojectives and ideals, dedicating myself before God to my chosen profession—law enforcement.

WILL PLANE DISASTERS CLAIM 2,400 LIVES A YEAR BY 1973?

HON. ROMAN C. PUCINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. PUCINSKI. Mr. Speaker, Mr. William N. Curry, Washington Post staff writer, has prepared an excellent article which shows that 1968 was the second worst year for airline passenger deaths in the history of U.S. aviation.

Ten airline crashes in 1968 took the lives of 303 passengers and 34 crewmen. This is second only to 1960, when 337 passengers lost their lives in air tragedies.

More disturbing, Mr. Curry's article, which appeared in Sunday's Washington Post, quotes a leading British insurance authority as predicting that on the basis of the present world wreck trend in jet

aircraft, we can expect to lose six jumbo jets a year by 1973.

Since jumbo jets will be carrying more than 400 passengers each, it is fair to ask if we will see some 2,400 airline passengers doomed to death each year within the next 60 months.

Mr. Speaker, I raise this question because of my intense desire to help the Federal Aviation Administration restore precision approach radar to mandatory use at Chicago's O'Hare Field and other major airfields throughout the United States.

David Thomas, the Acting Administrator of the FAA has done an exemplary job in trying to maintain the highest standards of aviation safety possible. But he needs a great deal of help. I hope Congress will appropriate the necessary funds to restore use of this important navigational aid during final landing approach as soon as possible.

Of the 10 major air crashes in 1968, five occured on the final approach for landing, taking the lives of 114 passengers and 14 crewmen.

It is more than significant that 50 percent of the crashes in 1968 occurred while landing. I am not suggesting that PAR would have avoided all of these tragedies, but it certainly could have gone a long way toward helping.

It occurs to me that as the big jumbo jets and air buses start operating with their bigger passenger loads, every device developed by man must be put into use to help keep air safety at a record high.

We are talking about an additional appropriation of $150,000 a year to make three PAR units available for mandatory use at O'Hare Field alone. This figure pales into insignificance when you consider the loss of lives in the North Central Airline crash alone at O'Hare on December 27, 1968.

Mr. Speaker, I am not impressed with arguments that pilots already have enough equipment to land planes safely. If their present cockpit equipment was sufficient, you would not have 50 percent of last year's crashes occurring in the final landing pattern.

It is interesting that military pilots swear by PAR and most general aviation pilots request its assistance in final approach. Why should commercial airplanes be different?

Mr. Curry's excellent article follows. I hope it will contribute toward restoring funds to make PAR possible at all major airports as a mandatory navigational aid to all landing aircraft:

1968 THE SECOND WORST YEAR FOR AIRLINE PASSENGER DEATHS

(By William N. Curry)

"Scheduled air carrier accident statistics show that aviation safety has not improved much over the past 17 years."

—A 1968 report by the Senate Committee on Aeronautical and Space Sciences.

Four airplane crashes in December raised the 1968 death toll of travelers on U.S. airlines to 303, a total in the history of aviation second only to 1960's 336 passenger deaths.

The year thus continued an upward trend in passenger fatalities that began in 1964 and was broken only by a reduction in 1966. In 1964, there were 200 passenger fatalities; in 1966, there were 59.

To be sure, the airlines estimate they carried more passengers more miles in 1968 than in any other year. In fact, the Air Transport Association—the trade and lobby group for the airlines—estimates the airlines will have flown some 114 billion passenger miles when all the 1968 figures are in. A passenger mile is one passenger flown one mile.

By this figuring, 1968 would have a passenger fatality rate of 0.25 death per hundred million passenger miles, or one passenger killed for each 400 million passenger miles, says the ATA. This fatality rate would make 1968 one of the five lowest in the past 12 years.

One catch: Many critics of aviation safety argue that passenger-mile fatality rates have been devalued by the speed and passenger loads of the jetliners. The practice of evaluating safety by passenger miles began with the railroads.

Hours of flight and number of departures, these critics say, are more accurate reflections of air safety. But estimates for 1968 for these factors are not available and guessing at them would be useless.

The 303 passengers killed in 1968 were victims of 10 accidents, which also took the lives of 34 crewmen.

1. On May 3, a Braniff Airlines Electra with 85 persons aboard exploded amid lightning and thunderstorms near Dawson, Texas. Everyone on board was killed, 80 passengers and five crewmen. It was the worst crash of the year for a United States airline.

2. A Los Angeles Airways helicopter flight from Anaheim Heliport to Disneyland apparently fell apart in the air and killed 20 passengers and three crewmen. The copter was a Sikorsky 61 L, and it crashed shortly after takeoff.

3. Five passengers and one crewman were killed June 13 when their Pan American Boeing 707 crashed while attempting to land at Calcutta, India. There were 57 survivors.

4. While approaching a runway at Charleston, W. Va., on Aug. 10, a Piedmont FH-227 crashed and killed 32 passengers and three crewmen. Two persons survived.

5. Another Sikorsky 61 L flown by Los Angeles Airways crashed Aug. 14 at Compton, Calif., as 18 passengers headed for a day of fun at Disneyland. Three crewmen also died.

6. Another FH-227, this one belonging to Northeast Airlines, crunched into the side of a wooded mountain near Hanover, N.H., on Oct. 25. All aboard—30 passengers and three crewmen—died.

7. On Dec. 2, an F-27 (the FH-227 is a "stretched" F-27) plunged into Pedro Bay, Alaska. The crash, the first fatal one for Wien Consolidated Airlines, killed 35 passengers and three crewmen.

8. Ten days after the Pedro Bay crash and just off the Venezuelan coast, a Pan American Boeing 707 exploded 1000 feet above the ocean and carried everyone on board to his death. The toll: 42 passengers and nine crewmen.

9. An Allegheny Airlines Convair 580 carrying Christmas Eve travelers crashed into a wooded mountain while approaching the Bradford Regional Airport at Bradford, Pa. Eighteen passengers and two crewmen died, and 27 persons survived.

10. Three days later, on Dec. 27, a North Central Airlines Convair 580 attempting to land at Chicago's O'Hara International Airport made a sharp left turn and plunged into a hangar. The dead: 23 passengers and three crewmen. The survivors totaled 26.

Without a good deal of luck, and skillful work by flight crews, 1968 would have been much worse. Two accidents last year, similar to accidents in 1967 that claimed 95 passenger lives, resulted in no deaths to commercial travelers:

On March 27, 1968, 44 persons aboard an Ozark Airlines DC-9 escaped injury when their plane collided with a light private plane at St. Louis. The airliner was damaged substantially but landed safely.

On June 12, 1968, a United Air Lines Boeing 727 brushed wings with a light plane some 9000 feet over Denver. Both planes landed safely, and 57 passengers walked away from the plane.

It is much too early to seek out common denominators among the 10 fatal crashes of 1968. Probable cause reports gestate in the National Transportation Safety Board for a year or longer. Thus, no reports on 1968 accident causes have been released.

But some things can be picked out from the information available:

Five of the accidents occurred during some phase of landing and the other five during the flights themselves, a quick considering that 90 per cent of air crashes take place in the course of take-offs and landings.

All of the planes involved were veterans of the airways. They entered service between 1958 and 1964.

Large jets were involved in only two of the crashes (the Pan American 707s)—evidence that the various jetliners in use have passed their critical break-in period.

In January 1968, the Senate Committee on Aeronautical and Space Sciences reported, "Scheduled air carrier accident statistics show that aviation safety has not improved much over the past 10 years." (The committee based its findings on fatalities and fatal accidents per million departures.)

But last year did bring minor advances in air safety: Grooving runways proved an effective deterrent to keep planes from skidding off wet runways; fog dispersal advanced, opening the way for better visability at air ports in marginal weather; the ATA let a contract for the development of a collision avoidance system that is due for service in several years.

And the FAA issued various new regulations designed to improve air safety—plus an advisory reminding pilots to use their airborne weather radar for the purpose of completely avoiding thunderstorms and not for picking a path through storm cells.

There is a certain urgency about air safety, for at the end of 1969 the Boeing 747 jumbo jet will begin flying for the airlines. And after that comes the air buses—high-passenger-load jets designed to land and take off at smaller airports.

Alan Hunter of the British Aviation Insurance Co. has made predictions on the coming jets.

Based on the accident rates of jetliners in use today, and projecting these figures to the 747 and air buses, Hunter concluded, "The worldwide wrecking rate on jets started at one (jet crashed) in 100,000 hours of operation and gradually improved over the years. It is now approaching one in 300,000 hours. A few are in the one in 500,000 bracket, but only a few.

"Assuming the jumbo jets could be used to this (higher) standard, the world would lose four by the end of 1973. But on the present world wreck trend, the figure would be six."

STATEMENT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES ON THE MIDDLE EAST

HON. WILLIAM E. MINSHALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. MINSHALL. Mr. Speaker, I wish to add my name to the list of 63 House

Members who on January 3 signed the following statement regarding the Middle East:

STATEMENT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES ON THE MIDDLE EAST, JANUARY 3, 1969

The United States must continue the pursuit of an honorable Arab peace in her highest national interest. Accordingly, we believe that the one-sided decision of the United Nations Security Council to censure Israel and to ignore Arab terrorism is prejudicial to the attainment of a genuine peace. It is difficult to understand why the international community remains mute when Arab terrorists commit murder and finds its voice only when Israel undertakes to put an end to such atrocities.

Since the cease-fire after the six-day war to last December 20, there were 1,002 incidents of guerrilla attacks against Israel; 259 Israelis were killed, one-fourth of them civilians; and 1,005 wounded, all of whom required hospitalization. Since the United Nations Security Council resolution, six more Israelis have been killed by terrorist attacks.

The recent unfortunate incidents at Athens and Beirut have been torn out of context. Since the establishment of Israel, the Arabs have, without cessation, tried to destroy her by daily acts of terror, sabotage and murder, which have cost the lives of hundreds of innocent men, women and children.

In a parallel war against Israel's economy, the Arab states have maintained their boycotts and blockades, have tried to deny Israel the use of international waterways and to divert her life-giving water supply. Arab terrorists hijacked an El Al plane and forced it to go to Algeria. Last week, Arab terrorists from Beirut attacked the same El Al plane in Athens with guns and Molotov cocktails, killing one of the passengers, wounding another, and endangering the lives of 49 others, including some American citizens.

Three days later, the Israel air force struck back at Arab airlines, destroying 13 planes at the international airport at Beirut. Great care was taken by the Israelis to protect human life. This has been described as a retaliation. In truth, this was a dramatic effort by Israel to inform the Arab governments, which have been supporting the terrorists, that Israel was prepared to defend her skylanes to the outside world, and that she would not allow her enemies to isolate and strangle her.

Both Israel and Lebanon complained to the UN Security Council. But the world body was silent and indifferent when the El Al plane was attacked. It was vociferously indignant when Israel replied. The Israelis have been unable to win UN Security Council support for their complaints because the Arabs are twice protected: the Soviet Union vetoes any resolutions directed against them and there are six members who do not have diplomatic relations with Israel.

In Jerusalem several weeks ago, 12 Israelis were killed and scores wounded, as a truckload of dynamite exploded in a crowded market street. We were astonished that this outrage evoked no echo from the world's civilized capitals—neither sympathy for the victims, nor condemnation for the criminals.

The Arab governments have taken pride publicly in aiding and abetting the guerrillas. Lebanese Premier Abdullah Yaffi has recently reaffirmed his country's support for terrorist activity against Israel, calling it "legitimate and sacred." By relocating in Lebanon, which enjoys the reputation of a pro-Western moderate, allegedly aloof from the Arab-Israel conflict, Arab terrorists—such as the Palestine Liberation Organization, which used to have its headquarters in Cairo—obviously felt that here they would be immune from Israeli counter-terrorist measures.

The UN resolution will encourage, we fear, the Arabs to intensify their terrorism, secure in the knowledge that a sympathetic Security Council will protect them by punishing anyone who tries to resist them. Since the UN Security Council decision, Israel has counted more civilian casualties, and has buried six more dead. Some of the dead lost their lives to terrorists whose weapons were aimed and fired from Lebanon, a few hours after the UN censure vote. This senseless terrorism has cost Israel the loss of hundreds of lives. The daily guerrilla warfare has created intolerable tensions.

So the threat to the peace will grow and there are ominous signs that the Soviet Union will exploit the censure of Israel to whip up international opinion against Israel and to intensify pressures for a Soviet-dictated settlement which would force Israel to withdraw from occupied territories, without requiring the Arab states to enter into a genuine peace with her.

We hope that our government will not participate in a dangerous collaboration with Israel's enemies which will prove subversive to the peace and inimical to the best interests of our own country. It is in America's interest to insure that the Soviet Union does not gain a dominant influence in the Middle East, and it is in America's interest that Israel be strong enough to insure her independence.

There must be no retreat from the struggle for a genuine Arab-Israel peace in the Middle East. Arab terrorism is gaining ground in Arab countries and if it continues to intimidate Arab rulers, then the Arab peoples themselves will be the worst victims. We owe it to the Arab peoples, as well as to the Israelis, to take strong measures to curb terrorism and to bring Arabs and Jews to the peace table.

We have not given up hope for an Arab-Israel peace. I believe that there are peace-loving Arabs who would welcome mutual cooperation. We must help the Arab peoples to strengthen the hand of those who will vote for Arab-Jewish cooperation and peace.

CRIME CONTROL BILL

HON. ODIN LANGEN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. LANGEN. Mr. Speaker, events of the past year tell us that Congress should act swiftly in probing all elements of criminal activity in the United States.

The joint resolution calling for a House-Senate Committee To Investigate Crime, which I have today cosponsored, is similar to one I also introduced in the last Congress. We were successful in getting it passed overwhelmingly in the House, but unfortunately, the resolution was not acted upon in the Senate before adjournment. Consideration of this resolution should be one of the first orders of business in the 91st Congress.

The joint committee called for in this resolution would be charged with conducting an in-depth investigation into all aspects of crime in the United States. Its purpose would be to offer concrete recommendations aimed at arresting an alarming trend that has seen a per capita crime rate increase of 48 percent since 1960.

May I emphasize that this committee, which would be composed of equal numbers of Representatives and Senators, would in no way interfere with the powers and prerogatives of existing committees that are considering various aspects of the rising crime problem. However, the joint committee would act as an intelligence center and clearinghouse for the currently fragmented legislation and investigative activities relating to crime control by Congress. Such a clearinghouse is badly needed if we are to coordinate the war on crime and come up with meaningful solutions, and I urge earnest and prompt consideration of this legislation.

FEDERAL MOTOR VEHICLE INSURANCE GUARANTY CORPORATION

HON. JOHN V. TUNNEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TUNNEY. Mr. Speaker, I am introducing legislation to establish a Federal Motor Vehicle Insurance Guaranty Corporation. This legislation would protect motorists who are left with a severe financial crisis when their insurance company goes bankrupt.

The Senate Antitrust Subcommittee has disclosed the fact that over 73 firms have become insolvent since 1961 leaving some 300,000 policyholders and accident victims in 22 States without protection. The claimants were forced to seek an estimated $600 million from companies whose collectable assets totaled only $25 million. I do not see how anyone can possibly point to a greater injustice in need of correction.

In my home State of California, the automobile has become a necessity and so has automobile insurance. Nationwide, 79 percent of all U.S. families own one or more automobiles and 25 percent own two or more cars.

All automobile owners can therefore easily envision the tragic consequences of having relied on an insurance company and then suddenly discovering after an auto accident that the company is insolvent.

I believe that the establishment of a Federal guaranty corporation is a logical solution to this problem.

A similar program has been very successful in the banking and savings and loan industries. Today, bank accounts and savings accounts are insured up to $15,000 by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Corporation. Since these Corporations have benefited the public as well as the banking and savings and loan industries, I see no reason why it could not be applied to the insurance industry as well.

The Federal Insurance Guaranty Corporation would guarantee the con-

tractual performance of insurers issuing policies of motor vehicle insurance in interstate commerce. It also provides coverage for insurers issuing policies only in the State in which they are chartered if they wish to apply for guarantee status.

This legislation requires interstate insurers to apply for guarantee status within 1 year after the enactment of the bill. The interstate insurer would be subject to a civil penalty if it continues to issue auto insurance policies without such guarantee status.

The bill further provides that any insurer whose policies are guaranteed by the Corporation must make a statement to that effect in each of its policies.

When an insurer is finally declared insolvent, the Federal Guaranty Corporation would assume the insurer's obligations and it, not the claimant, would wait for eventual distribution, averaging 7 to 8 years. The Federal Guaranty Corporation would eventually be self-supporting after an initial appropriation of $50 million.

This legislation is intended to supplement and not eliminate State insurance regulation while at the same time alleviating the public suffering resulting from over $250 millior in auto insurance failures since 1945. The auto insurance industry has written over $8.5 billion in annual premiums since 1961. This legislation would assist bona fide insurance companies and help to discourage fly-by-night firms.

CULVER COMMENDS BOY SCOUT TRIP

HON. JOHN C. CULVER

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. CULVER. Mr. Speaker, I have had the opportunity to speak in every one of the 79 public and parochial high schools in the second district and I have been continually impressed by the industriousness, the dedication, and sense of responsibility exhibited by the vast majority of our young people. Yet the constructive attitudes and activities of our young people receive little public attention and credit. I have always thought this most regrettable, and have, therefore, tried whenever possible to commend publicly young people who are engaged in such constructive efforts.

I was, therefore, most grateful when Mr. Eugene E. Garbee, president of Upper Iowa College in Fayette brought to my attention a report written by Dr. R. S. Jaggard, president of JAG, Inc. Dr. Jaggard describes his trip as adult leader for 13 Scouts who test their skill and endurance in the rugged mountain country of Philmont, the 137,221-acre ranch operated by the Boy Scouts of America in the Sangre de Christo mountains of northeastern New Mexico.

I would like to share with my colleagues, excerpts from Dr. Jaggard's report:

EXCERPTS FROM REPORT

Philmont is rugged, challenging wilderness, and the Scouts are keeping it that way. Over 18,000 Scouts hiked the trails of Philmont this summer, and each one will tell you that, man, it's rugged. But it is also a lot of fun. Philmont is high adventure, starting at 6,600 feet and going up to 12,441 feet on top of Baldy Mountain. Philmont is work, carrying a backpack with all your tents and gear for 10 days, hiking up the mountain trails on a sweaty August day and then getting into your winter sleeping bag during a frosty night. Philmont includes archeology, geology, gold panning, trout fishing, rifle and shotgun, paleontology, biology, riding horses, conservation, visiting with a cowboy about his horse and equipment, Dutch oven cooking and sourdough pancakes, visiting Kit Carson's home on the old Santa Fe Trail, and enjoying some of the finest mountain scenery in the world.

Philmont includes learning to cook and eat dehydrated foods, griping about the fact that there isn't enough, and finding out later that you gained 6 pounds. Philmont includes learning how to work together, to share duties, to fairly divide the load. Two Scouts were arguing over the division of their share of the group equipment load the first day out, but the problem was settled by simply letting one divide the load and the other have first choice. Another Scout complained that his pack was too heavy, so I offered to trade him, but he didn't accept my offer.

I am proud of the fact that I was leader for that group of 13 boys who tested themselves in a rugged situation. I am proud of the fact that I could keep up with them when we climbed from 9,700 feet to 10,500 in three-fourths of a mile in 44 minutes, I am proud of the Scout who led our mountain-top Sunday church service and, because, he couldn't find his "Devotions" book, gave an extemporaneous sermon, and it turned out to be one of the finest sermons I have ever heard. I am proud of the fact that we all made it, together, all the way, 62 miles and 10 days of fun and adventure. We did something constructive. We built something. We built men.

To give publicity to those who deserve it, this issue of JAG is dedicated to the 13 young men who went with me to Philmont, plus the 199 million other Americans who still want to be honest workers, building for the future, and dealing fairly with their neighbors. They are the builders who make America great. They are the workers who made it all worthwhile.

If you have lost faith in America and its youth, take a group to Philmont. If you want reassurance that American young men are rugged, that they are still building for the future, and that they are still faithful to the old moral values of trustworthy, loyal, helpful and reverent, take a group to Philmont. It's rugged duty, and a rewarding experience.

INVESTMENT IN INDONESIA

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. BROWN of California. Mr. Speaker, I enter into the CONGRESSIONAL RECORD the very important address on the occasion of the first anniversary of the establishment of the Pertamina office in New York, by Maj. Gen. Dr. Ibnu Sutowo, the president director of the National Oil Mining of the Republic of Indonesia.

Indonesia is one of the five largest nations in population in the world. Our Department of State has been doing a valiant job in assisting all developing countries of the world through AID, but substantially more should be done, in my opinion, in the private sector of our great economy.

The speech of Maj. Gen. Ibnu Sutowo is a valiant appeal for American private enterprise to cooperate with our Government by private investment in the great and historic nation of Indonesia.

The address follows:

ADDRESS BY MAJ. GEN. DR. IBNU SUTOWO, PRESIDENT DIRECTOR OF P. N. PERTAMINA, ON THE OCCASION OF THE FIRST ANNIVERSARY OF THE ESTABLISHMENT OF THE PERTAMINA OFFICE IN NEW YORK, NOVEMBER 25, 1968

Ladies and Gentlemen: It certainly gives me great pleasure to see so many distinguished representatives of American and international business gathered here to celebrate the first anniversary of the opening of our New York office. At the inaugural ceremony in November, last year, I expressed my belief that the new office would enable us to establish closer relations with business and financial circles throughout the United States and, by so doing, help to promote a deeper political and economic understanding between our two countries. Looking around me now, I may perhaps be forgiven if I allow myself to think that the splendid attendance at this reception is in itself a sign that we have successfully begun to lay the foundations of a sturdy bridge of goodwill linking Indonesia's state enterprise with international private enterprise, to the mutual advantage of both. Speaking in more practical terms, I can report that the goodwill has resulted in the conclusion of important exploration and production contracts with some 20 foreign oil companies, including major oil companies. We, in Indonesia, are very satisfied, and I would like to congratulate the small but hardworking staff installed in our office at the United Nations Plaza for their part in so ably helping to boost our expanding oil industry. But, of course, business contact is essentially a two-way process. All the efforts of our staff here would have been in vain if you, yourselves, had not shown such an imaginative and vigorous response, and a gratifying willingness to invest your time and money in developing Indonesian oil resources.

Some of the contracts I just mentioned have been in operation for more than two years and have already started to yield substantial dividends for my country. The export of Indonesian crude oil has become our leading earner of foreign exchange. During 1967 our oil earnings abroad amounted to approximately $130 million, surpassing the revenues from both rubber and tin, hitherto, traditionally regarded as Indonesia's most valuable exports. Production this year has risen to 600,000 b/d, compared with 520,000 in 1967. And we estimate that by 1970, when the newly concluded exploration contracts will have begun to show results, our total output should reach about one million b/d. Looking further into the coming decade, we confidently predict that this one million mark will have been far exceeded by the mid-seventies. To those of you who might consider this to be an overly optimistic estimate of our production potential, I would point out that as yet comparatively little oil exploration has been concluded in Indonesia in relation to the total area of suitable acreage. Prospecting, which was held up due

to difficulties associated with the period of the post-World War II Indonesian Revolution, can now surge ahead since our country has presently reached a new plateau of political stability. Additionally, the mining of the still untapped acreage will have the benefit of the recent advances in exploration and drilling techniques. These new techniques have turned areas that were formerly regarded as inaccessible into highly promising prospects. I particularly have in mind certain off-shore locations that seem to have excellent production possibilities, and it is no accident that a good many of the newer contracts have been precisely to develop these areas.

I would like now to tell you about an important step that we recently took to reorganize our oil industry. Some of you may have noticed on your invitation cards a change in the name of your hosts. Last year we invited you to celebrate the opening of the *Permina* New York office; this year we ask you to celebrate the first anniversary of the establishment of the *Pertamina* office. Like so many name changes, this one is also the result of a marriage. Naturally, there was a formal announcement at the time of the event, which occurred last month; but for those of you who may have missed that announcement, let me correct any impression you might have had that the change of name was due to a printer's error. The two state enterprises that were formerly responsible for Indonesia's oil production and distribution in different areas of the country, Permina and Pertamin, have now been merged into a single agency. The full name of the agency is P. N. Pertamina, or, in English, the Indonesian National Oil & Gas Mining State Enterprise.

Pertamina will control all aspects of Indonesia's oil business-exploration, development, production, refining and marketing, both domestic and foreign. We anticipate that the merger will have the beneficial effect of streamlining the administration of the entire oil industry, and enable us to make the optimum use of the mining work carried out by foreign companies, while, at the same time, simplifying the companies day-to-day relations with Indonesian management under our unique production-sharing scheme.

Perhaps this is an opportune moment to say a few words about the concept of production-sharing as it is practised today. The scheme eliminates the principle of concessions and seeks to provide a framework for combining foreign investment with Indonesian ownership and management of the oil.

When it was first initiated under the 1960 Oil Development Law, serious difficulties were encountered in trying to make it work to the mutual advantage of the Indonesian state enterprise and the foreign contractor. However, during the past eight years, the basic scheme has undergone several refinements and I am happy to say that production-sharing principle now seems to be functioning quite smoothly. At least I have received no complaints from any of the 20 or so foreign contractors currently working in our country.

Now, ladies and gentlemen, although most of you are connected with the oil industry and are, therefore, chiefly interested in that particular sector of the Indonesian economy, I think it would be valuable and relevant for me to tell you something about the progress we have made—as well as the progress we still need to make in the future—in other sectors. Of course, in the total economy of any nation, progress in each sector is closely related to and depends upon progress in every other sector. But in Indonesia, because the oil industry is our leading source of foreign earnings, it is fast becoming the pivotal factor of our entire development program. With the revenues gained from the sale of our crude oil, we hope to revitalize our other industries, especially agriculture. Wherein, the chief need is to make ourselves as self-sufficient as possible to this end, we are initiating a five-year plan, starting in 1969. By the end of that period, we hope to be in a position to supply enough rice to feed our own population and to increase our exports of other agricultural products.

I have already said enough to demonstrate why we expect to be able to augment our oil production to one million b/d and beyond by the early 1970's. Theoretically, the anticipated increase in production could bring our export earnings over the $200 million mark—an increase of some $70 million—over our present earnings—provided we can get the markets for our oil. However, as far as the United States, which is one of our biggest markets, is concerned, this proviso raises a serious element of doubt because your government imposes quotas on the quantity of oil it imports from any one country. Yet our oil has certain qualities that make it particularly desirable for use in your smog shrouded cities. I am referring, of course, to its low sulphur content. Convinced of the value of our low sulphur content oil and spurred on by the need to ensure that we continue to have the necessary markets, I shall be devoting a good deal of my energies in the next few years to trying to persuade the United States and other countries imposing quotas on imports of crudes to liberalize their policy.

However, even were we to be sure of a continuing market for our oil, our resulting earnings would not be sufficient in themselves to finance the development of our country. We desperately require more foreign investment, both governmental and private, in every area of our economy. It was in recognition of this desperate need that the Government of President Suharto launched, about a year and a half ago, a concerted long-range project to attract foreign investors. Having inherited from the previous regime, a chaotic lack of organization, affecting all economic sectors as well as a reputation for initiating grandiose state schemes that could never be implemented, we have started very modestly by taking measures to prepare our country to function as an "open economy," in which domestic and foreign private enterprise would be encouraged to play a key role in promoting development.

Since the government's resources remain extremely limited, we are concentrating them on the development of an adequate economic infrastructure—for example, on transportation and communication facilities, health and education. Our hope is that private enterprise, again, both domestic and foreign, will largely assume responsibility for developing our natural resources—not only oil, but also tin, logging, fisheries, etc.

Of course, one of our most valuable assets is our splendid landscape. In recent years, many travel writers have visited Indonesia and written eloquently about its beauty. Partly due to their writings, people all over the world—but especially in this country—are eager to see Indonesia for themselves. What was once a mere trickle of visitors each year, has now become a steady flow, and this flow should increase very substantially after the new airstrip at Bali is completed early in 1969 and can accommodate the big jets flying in on direct routes from Tokyo, Europe and America. The tourist industry is indeed one of Indonesia's biggest potential earners of foreign exchange. But as so often happens, a success achieved in one area creates problems in another. At present, we suffer from a severe shortage of hotel accommodations and other tourist facilities throughout the country. Development of these tourist facilities is now a major outlet for foreign investment and one which, moreover, promises quick returns.

Part of the government's campaign to stimulate foreign investment has consisted in important tidying up measures to simplify matters for the foreign investor. Currently, we are engaged in rationalizing the time-consuming procedures through which the investor usually has to wade before he can get going on his project. Then, too, we are in the process of looking into the problems associated with taxation of foreign investment—the lack of security in our tax rates has long been a cause of justifiable irritation to foreign businessmen. Lastly, we have recently enacted a new Foreign Investment Law, which, though it is primarily designed to protect the interests of Indonesia, nevertheless, it has the merit of furnishing the foreign investor with a clearly defined set of rules to guide him as to what he may or may not do. There is nothing the investor loathes more than confusion while he is conducting business abroad.

Already our initial efforts to straighten up and retool the administration of our economy are beginning to show encouraging results. In addition to three projects undertaken by the IFC and one by the World Bank, several private enterprises are making substantial investments in various industrial sectors. While the bulk of this investment comes from enterprises in the United States, Japan, the Netherlands and Australia, there is also considerable investment stemming from sources in other European and Asian countries.

All in all, we are not too displeased with the progress that has been made towards rehabilitating our country since the Government of President Suharto took over in 1966. But neither are we complacent. We realize that we are only at the threshold of what you might term the "long haul". How fast we get through that long haul depends to a very high degree on how rapidly we can attract further large-scale investment in every sector of our economy, including the oil industry. Like your own country, Indonesia is a land of opportunity for those with the will to make it so; the difference is that by reason of our history, the true scope of that opportunity has become obscured.

We, therefore, deeply appreciate the magnificent example set by the foreign oil companies. By investing so extensively in our country, you have shown a gratifying faith in the integrity of our government and in its dedication to the realistic development of our country. However, we also believe that your trust will be amply rewarded in returns on your investment. So, I would like to conclude by simultaneously thanking you for your heartwarming response this far and asking you for a still greater response in the future.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS AWARDS TO COMPOSERS

HON. EMANUEL CELLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. CELLER. Mr. Speaker, I am pleased to include in the RECORD an article from the music section of the New York Times of Sunday, October 27, 1968. The article by Harold C. Schonberg is entitled "Today's King Ludwig?" and calls attention to one of the important activities of the American Society of Composers, Authors, and Publishers in support of deserving American composers, who enrich all our lives with their music. The article follows:

TODAY'S KING LUDWIG?

(By Harold C. Schonberg)

A complete list of American organizations interested in giving money to deserving composers would take quite a few pages. Contrary to popular belief, the talented American composer does not always starve in a garret. Many Big Brothers are watching over him, anxious to smooth the way. If the State will no do it, private enterprise will. Or universities. Foundations dispense funds. If a composer is lucky, he can find a personal Maecenas. Not everybody can work it on the colossal scale of a Richard Wagner diddling Ludwig II of Bavaria, but it must be a comforting feeling for an American composer to feel that he is not entirely forgotten.

One of the less-publicized aids to composers are the annual awards of the American Society of Composers, Authors and Publishers (ASCAP). The announcement of the awards hits the papers every year, but the full extent of ASCAP's donations is little known. In 1961 the first ASCAP awards were made, and they have run pretty much in the same line ever since. Awards are made in two fields, popular and serious. It is the serious category with which this article will dwell. A panel of judges has over $300,000 to play with (the judges are non-ASCAP musicians). According to the rules, they can disburse no more than $2,000 to any composer (or author) who is an ASCAP member, though in 1962 there were several $2,500 awards. Awards are made on the basis of accomplishment, not need. At the same time, no ASCAP member earning more than $20,000 annually in royalties is entitled to an award. That eliminates a few composers, but not many.

I have been looking at this year's list of awards, and it makes interesting and even provocative reading. The composers who are receiving the top $2,000 awards constitute a list of many of the most prominent Americans in the field. Among them: Paul Creston, David Diamond, Ross Lee Finney, Carlisle Floyd, Lukas Foss, Benjamin Lees, Peter Mennin, Gian Carlo Menotti, Vincent Persichetti, Ned Rorem and Virgil Thomson. A little under, at $1,500 are such composers as Easley Blackwood, Ingolf Dahl, George Kleinsinger, Gail Kubik, Nikolai Lopatnikoff, Burrill Phillips, William Grant Still, Hugo Weisgall and Stefan Wolpe. And so down to the minimum $250 awards, received by such cmposers as David A. Wehr, Ramon Zupco and Alice Parker. Some day they may become famous and move into the $2,000 class. ASCAP freely admits that as the fame of the composer increases, so does his stipend.

Once a composer is on the list, the chances are that he will remain there. Diamond, Rorem and Persichetti, among others, have been on it from the beginning, at the top category. These awards are given with no strings attached, and it means that a composer can count on the ASCAP money. In some cases that money is not really needed. In others it may help provide a little item of luxury. In others it is desperately needed to keep the composer going. Many of these awards, especially those in the smaller sums, go to composers just starting out, and hence with little financial backlog. The sum of $500 or $750 may not sound like much these inflated days, but for a young composer it can be a godsend—offering the means of copying a score, perhaps, or paying a rent.

The ASCAP list provides a couple of eyebrow-raisers. Here is Eugene Ormandy, down for $500, and Leopold Stokowski for $1,000. Composers? Well, in a way. Both have made orchestral arrangements. Leopold Godowsky (Dec'd.) is down for $250. Godowsky died in 1938, but some of his music must still be collecting royalties for ASCAP (probably "Alt Wien," a favorite Muzak item). Several other deceased composers, including Percy Grainger and Arnold Schoenberg, are on the awards list, the money going to their estates.

The exact sum that ASCAP disbursed this year was $336,650, and it was shared by 592 composers and authors (among the authors were W. H. Auden, $500, and the late Carl Sandburg, $1,250). Deciding the awards was a panel consisting of Donald E. Brown (an expert in religious music), Donald Engle (Martha Baird Rockefeller Foundation), Frederick Fennell (the noted authority on wind instruments now at the University of Miami), Walter Hendl (head of the Eastman School of Music) and Louis G. Wersen (head of music in the Philadelphia Public Schools). These five men have access to the ASCAP files, of course; and in the files each member of ASCAP is represented by scores, tapes of performances and other pertinent data. ASCAP admits that when the awards are announced, there occasionally is some grumbling by recipients who feel that they have been short-changed. Even a complete outsider is tempted to get into the act. Why is Arthur Berger ($750) worth $250 less than, say, John Cacavas ($1,000)?

But the panel must have its reasons, and the fact remains that ASCAP is putting out a substantial amount every year as a gesture to the serious American composer. Indeed, ASCAP says, the annual sum is somewhat more than the organization takes in on royalties from serious music. That is not unusual. In many musical industries the lighter material consistently underwrites the more noble music. Take a look at the record or publishing industries.

My eye keeps wandering to the awards list. Here is Thurlow Lieurence (Dec'd.), $250. Lieurence died in 1963 at the age of 85, and lives by one work, "By the Waters of Minnetonka." Apparently it still brings in royalties. Here is Rudolph Ganz ($500), 91 years old and still going strong. Ganz was a wonderful pianist and, like so many pianists of a 19th-century orientation, composed a great deal of music. Some of it is pretty, but it seems to have disappeared from the active repertory. Here is Estelle Liebling ($500), now 84 years old, who was so active for so many years as a singer and then as a singing teacher. She was on the roster of the Metropolitan Opera during the 1903–04 season, the season that Caruso made his debut. What memories that woman must have! Alfred Hay Malotte (Dec'd), $500. "The Lord's Prayer," of course. Jaromir Weinberger (Dec'd), $750. The Polka and Fugue from "Schwanda" must still be a hot item. Here are several young composers who have received awards for the past three or four years and have suddenly been granted a substantial hike. Onwards and upwards. It means that the ASCAP judges have strong faith in their future. Indeed, the ASCAP awards can be used as a pretty reliable guide to those of its members who have made it, and to those who are in the process of making it.

BILINGUAL EDUCATION APPROPRIATIONS

HON. JOHN V. TUNNEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TUNNEY. Mr. Speaker, Congress has established a bilingual education program in the Office of Education. Last year Congress appropriated $7.5 million to carry out the program.

I consider this appropriation totally inadequate. The purpose of the program is to assist those students in elementary and secondary school level, who, because they come from environments where the dominant language is other than English, have limited English-speaking ability. While the act attempts to overcome the English language difficulties of many students, it is also designed to preserve and enhance the foreign language backgrounds and culture of such children.

Mr. Speaker, the plight of many Mexican-American students in their attempt to succeed and to excel academically, compels us to increase the appropriations for this program. The most promising method of insuring the economic and social progress of the Mexican-American community or any other group is adequate education. With education comes the hope of new and better opportunities for self-improvement. A properly financed bilingual education program would hasten the day when all Americans have an equal opportunity to help themselves.

Therefore, Mr. Speaker, I am introducing legislation requesting an appropriation of $40 million to the Office of Education to properly carry out the Bilingual Education Act. Adequate funding of this program will be helpful to Mexican-Americans in California, for example, who lag seriously behind in education, jobs, and income. Automation and technological change is having a particularly severe effect on our Mexican-American populations. Statistics show that over 50 percent have not gone beyond the eighth grade.

They have been displaced from their farming and laboring occupations of the past and are among the hard-core unemployed in many areas. They are not adequately prepared, usually through no fault of their own, to move into new employment occupations.

Our Nation has the responsibility to provide within its educational systems, opportunities for Mexican-American advancement. The bilingual education program, if it is adequately funded, will hopefully give children who speak a foreign language an equal opportunity for advancement.

I urge my colleagues to pass this appropriations legislation. To deny this minimal assistance to Mexican-American children would be a travesty of justice.

THE BEST FIRST LADY

HON. BENJAMIN S. ROSENTHAL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. ROSENTHAL. Mr. Speaker, Life magazine recently published an eloquent statement on the difficult role of the President's wife and the exquisite performance in it by Mrs. Johnson.

Of all the tasks, from the frivolous to the profound, which a First Lady may choose for her own as a public figure, Mrs. Johnson chose beauty. This was not a personal quest nor a decorative one but a concern for the natural beauty of a country which was, and will continue to be, threatened.

How well she devoted her energies to this strikingly human endeavor, Shana Alexander describes in this article:

[From Life magazine, Dec. 13, 1968]

THE FEMININE EYE: THE BEST FIRST LADY

(By Shana Alexander)

Roughly speaking, the President of the United States knows what his job is. Con-

stitution and custom spell it out, for him as well as for us. His wife has no such luck. The First Ladyship has no rules; rather, each new woman must make her own. It is as if we hand her hammer and nails, gold leaf and a bit of bunting and say, "Here. Build the thing yourself."

What was handed to Mrs. Lyndon Johnson was something even less: a wrecked and blasted Camelot haunted by our special vision of its dazzling, martyred queen. Now five difficult years have passed; it is time to go home.

Though Lady Bird is said to be privately delighted by her husband's decision to retire, it is scarcely an upbeat ending for either of the Johnsons. The First Lady has spent the past eight months as a kind of chatelaine, condemned to repair cracked cups, inventory furnishings and generally tidy things up for the new woman, whoever she might turn out to be. That is an eternity for anyone to have to spend cleaning house, and I was happy when I heard that Mrs. Johnson was going to be able to escape for one last beautification tour.

I caught up with the First Lady and her party on the last gasp of her Last Hurrah—a day of hiking and ceremony among the redwoods of northern California. To see Mrs. Johnson in the depths of that great, primeval, dripping forest is to understand immediately why she is called Lady Bird. Tiny, always a smaller woman than one had quite remembered, she is slimmer now than ever. She twitters. She is cheery, modest, persistent and alert, and her avian qualities are intensified by those looming, green-black and ultimately incomprehensible trees. Among them, dedicating the Redwood National Park, Lady Bird in her scarlet coat looked like a jaunty red cardinal.

As usual, some things about her beautification trip were unsettling. One had to fly and drive through miles of manmade pollution to find the natural beauty we had come here to honor, and even as we celebrated its preservation its destruction continued around us. Smoldering sawdust fouled the skies; papermill sludge clotted the bay. On our official bus, official botanists told us that the groves have stood here for two million years. *Sequoia sempervirens*, the largest and oldest living things on earth. The new park, they said, will save them from becoming extinct. but every few moments the bus window wiped black—another timber truck returning from the high hills with two or three giants chained across its back. Their bark stripped, they looked flayed and raw. All day the fat, wet, red logs rolled by.

And this last day was far too full. There was too much here to take in, and too much that was out of human scale, and too many opposites to be reconciled—somewhat like the Great Society itself. Magnificent prehistoric groves pressed against logged-over ridges that looked like a giant's jawbone with the teeth knocked out. There were beach and forest, elk and osprey, Indians and woodcutters, timber barons and conservationists, schoolgirl choirs and grinning politicians and everywhere, omnipresent, the mystery of the great trees.

Their backs to the sea, these redwoods seemed to be making their last stand. *Sempervirens*. Live forever. This place is really a tree cathedral, sacred to immortality. How strange to wind it all up here, among these prehistoric giants about to fall of their own weight. Though the forest is magnificent, there is something scary in this fern-bottomed, dripping gloom. These trees are really too big. Too old. Some have been dying for two thousand years. A fundamental law of proportion seems broken here, and in one's mind it becomes a magic wood where the most commonplace conversations take on strange overtones. A toppled giant is lying on the forest floor, the underside of its roots obscenely exposed. Nothing is deader than a dead redwood. "No tap root, you see," says a dry voice behind me. "When they tip, they go up like a plate."

"What kind of a wind would it take to turn one over?"

"Depends how exposed they are."

Certainly there is nothing supernatural about Lady Bird. When I caught up with her in another chilly forest amphitheater, it was lunch time; box lunches on damp benches, and an arc of rough-sawn seats opposing the arc of cameras to watch her chew. She appeared not to notice the photographers, nor the puddle underfoot. What was troubling her was the problem of response. Each time she visits a new place, she said, she catches herself wishing she could scout all her beautification trips beforehand, rather than have the advance work done by members of the White House staff. "Then when they stick that ugly black thing in your face five minutes after you arrive and ask what you think of the redwoods, you would really have something to say."

Who could possibly respond to a redwood, I wondered. And then I thought of all the ugly black things that must have been stuck in her face along the Maine coast, along the Rio Grande and all the other places. How many box lunches had there been? How many historical plaques? How many vistas? How many daffodils? Perhaps if anyone could respond to a redwood, it would be Lady Bird. She may be better equipped than anyone on earth. She has always dwelt among gigantica, in Texas, in the White House and in history. Few women can ever have been more loomed over.

Somewhere on that last, overcrowded day I saw a five-year diary of Mrs. Johnson's travel: September 1965: planted a tree to dedicate the county courthouse in Peoria. September 1966: 100,000 daffodil bulbs, Washington, D.C. April 1966: dedicated new esthetic lighting in San Antonio River. June 1967: National Historic Landmark plaque, home of Calvin Coolidge, Plymouth, Vt. Individually these achievements seemed modest and rather colorless acts, like Lady Bird herself. But it was a very thick notebook, covering over 40 trips, and in the aggregate a heroic achievement. When you add in all the other quiet, half-remembered things Mrs. Johnson had caused to happen, and caused not to happen—her instinctive rush of loyalty to the Walter Jenkins family, for example, or the time she got that dressed-up dog out of the photograph—this quiet, plain, tough little woman looks more and more remarkable. Somewhere in that strange forest on that last day I began to sense how much more Mrs. Johnson leaves behind her than daffodils coast-to-coast. Quite possibly she is the best First Lady we have ever had.

A PUBLIC OPINION SURVEY: ATTITUDE TOWARD THE GOVERNMENT SPACE AND MOON PROGRAM, THIOKOL CHEMICAL CORP.

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TEAGUE of Texas. Mr. Speaker, for the last several years the Thiokol Chemical Corp. has undertaken a national survey to determine the public's interest in their national space effort. Mr. Robert E. Davis, vice president of Thiokol Chemical Corp., has forwarded to me their most recent survey of October 1968, conducted by Trendex, Inc. Because of its significance, I am including excerpts of this survey in the RECORD for the information of the Members and the general public:

ATTITUDE TOWARD THE GOVERNMENT SPACE AND MOON PROGRAM

PREFACE

An assessment of the public's opinion of the government space and moon exploration program has been measured over a period of time. This report covers the tenth survey to be conducted since July, 1963.

The study consisted of telephoning 962 men and 321 women, a total of 1283 respondents, in six cities during the three days immediately after the splash-down of Apollo VII October 21 through 23, 1968: Cincinnati, Ohio; Pasadena, California; Des Moines, Iowa; St. Paul, Minnesota; Sandusky, Ohio; and Boston, Massachusetts. The first three of these cities were queried in all ten waves of the survey, and sampled again to discover if there have been any changes in attitude towards the program. The second three cities were added to see if cities and towns of different sizes had any different attitudes from those previously measured. The questionnaire has essentially remained consistent in order to be able to make comparisons. However, to make the results viable, additional questions have been added from time time to gain more incite into peoples' attitudes toward the space exploration program.

The study that follows has been analyzed in a manner similar to past studies. In comparisons with previous waves, only the first three cities have been used to keep the results directly comparable.

SUMMARY OF FINDINGS

Attitude toward space exploration is more favorable than a year ago.

Desire for government to spend more on space program at highest point in five years.

Space exploration second only to war on poverty as showing greatest increase in desire for government activity over a year ago.

Opposition to space program primarily economic with emphasis on using funds for other government programs.

Public inclined to prefer manned over instrumented space exploration.

Interest in exploring planets exists but other forms of space exploration should have priority.

TRENDS IN ATTITUDE TOWARD THE SPACE PROGRAM

The success of the Apollo VII mission appears to have raised public approval of space exploration from the unfavorable level experienced a year ago. Unfavorable attitude toward the program is at just about the lowest level since these measurements began over five years ago. (Table 1)

To further document this change in attitude, the percentage of respondents who feel the government is not spending enough on space exploration is at the highest point of this series of measurements. (Table 2)

Relative to other governmental programs, the increase in percentage of respondents who would like to see the government do more in Space Exploration is second only to the increase shown for the War on Poverty among programs previously measured. In terms of comparison to five additional government programs, respondents were more interested in space than in four of these five new areas including development of the Supersonic Transport. (Table 3)

The favorable change in attitude toward the program carried over into the benefits to be derived therefrom, with the largest increased benefit coming as the enhancement of U.S. prestige in the eyes of other nations. The only loss in benefits was in stimulating the National Economy by providing jobs. Respondents, however, did not appear to attribute the same increase in benefits to their own individual lives. (Tables 4 and 5)

TABLE 1.—ATTITUDE TOWARD MOON PROGRAM (BY YEAR)

Question: As you know, the United States is involved in a very competitive race to be first in space exploration, and the Government has a program to put a man on the moon by 1970. Are you in favor of this program?

[In percent]

	October 1968	September 1967	January 1967	November 1966	June 1966	September 1965	September 1964	February 1964	September 1963	July 1963
Yes	68	51	71	69	71	77	69	64	59	61
No	21	35	24	27	25	20	25	31	39	38
No opinion	11	14	5	4	4	3	6	5	2	1
Total	100	100	100	100	100	100	100	100	100	100
Total number of respondents	625	653	600	643	600	819	1,197	1,288	599	615

TABLE 2.—ATTITUDE TOWARD SPACE EXPENDITURES (BY YEAR)

[In percent]

	Total									
	October 1968	September 1967	January 1967	November 1966	June 1966	September 1965	September 1964	February 1964	September 1963	July 1963
Question: Do you think the Government is spending enough, spending too much, or not spending enough on the space exploration program?										
Spending enough	42	49	53	47	53	60	51	43	55	49
Spending too much	35	41	34	42	37	29	30	34	30	34
Not spending enough	18	7	6	6	5	7	11	14	11	14
No opinion	5	3	7	5	5	4	8	9	4	3
Total	100	100	100	100	100	100	100	100	100	100
Total number of respondents	625	653	600	643	600	819	1,197	1,288	599	615

TABLE 3.—ATTITUDE TOWARD INVOLVEMENT BY GOVERNMENT IN SPECIFIC PROGRAM

	Percent do more	
	September 1967	October 1968
Question: Would you like to see the Government do more, do less, or do about the same as they are now doing in each of the following areas:		
Number polled	1,306	1,283
Percent:		
Water and air pollution	83	90
Job training for the unskilled	68	71
Programs to keep America beautiful	51	51
War on poverty	45	56
Space exploration	26	31
National transportation development	(1)	46
Farm subsidies	(1)	28
Supersonic transport development	(1)	26
Rent subsidies	(1)	24
Foreign aid	(1)	8

[1] Not asked in September 1967.

TABLE 4.—BENEFITS OF THE SPACE PROGRAM TO SPECIFIC AREAS

	Percent very much benefited	
	September 1967	October 1968
Question: Consider the following areas as they are affected by the space program. As I read each one, plesae tell me if you think the area is very much benefited by the space program, somewhat benefited by the space program, or not particularly benefited by the space program:		
Number polled	1,306	1,283
Percent:		
The advancement of science and technology	70	72
Weather prediction through use of satellites	63	73
National and international communications	61	70
On-the-spot coverage of international events	60	65
Stimulating the national economy by providing jobs	49	40
Improving our ship and aircraft navigation through navigational satellites	47	49
National defense	47	54
Improvements in the field of medicine	38	37
Enhanced U.S. prestige in the eyes of other nations	33	43
Discovering and developing our planet's natural resources	29	31
Reducing world tensions [1]	28	18

[1] In 1967 asked as "increased international cooperation."

TABLE 5.—BENEFITS OF SPECIFIC AREAS TO INDIVIDUALS

	Percent very much benefited	
	September 1967	October 1968
Question: I will read you this list again. As I read each area, please tell me how much you feel you will be benefited as an individual citizen—very much benefited, somewhat benefited, or not particularly benefited:		
Number polled	1,306	1,283
Percent:		
The advancement of science and technology	47	42
Improvements in the field of medicine	42	38
On-the-spot coverage of international events	42	42
National defense	40	43
Weather prediction through the use of satellites	38	39
Stimulating the national economy by providing jobs	36	28
National and international communications	33	37
Improving our ship and aircraft navigation through navigational satellites	26	23
Planet's natural resources	25	25
Reducing world tensions [1]	23	22
Enhanced U.S. prestige in the eyes of other nations	21	27

[1] In 1967 asked as "increased international cooperation."

NEW AREAS OF MEASUREMENT ON THE SPACE EXPLORATION PROGRAM

Opposition to the space program is primarily economic, rather than reservation about its scientific value or feasibility. The economic opposition is more on the basis of wishing to see the money spent on some other government program rather than in not wanting to see it spent at all. (Table 6)

Half of all respondents expressed a preference for manned rather than instrumented space exploration. (Table 7)

Twice as many respondents thought the planets should be explored as thought they should not be, half of those who wanted them explored, thought it should be done by astronauts and almost half of these thought these astronauts would be doing the exploring within 10 years. (Table 8)

Most respondents, however, felt other space matters would have priority over the exploration of Mars. These were the development of a re-usable spacecraft because of greater economy and efficiency, extensive exploration of the moon, because we should finish what we have only just started, and sending out an orbiting manned space station to provide a good base for further explorations of space as well as for military and defense purposes. (Tables 9, 10, 11 and 12)

TABLE 6.—REASONS FOR OPPOSITION TO SPACE EXPLORATION PROGRAM

[In percent]

Question: Why are you not in favor of this program? [1]	
Prefer to see money spent differently	76
To solve problems on earth	35
On poverty programs	14
On medical research and care of sick	5
On urban problems	3
Improved food supplies	3
Ending war	3
Education	3
Other specific proposals	10
Not worth the money	51
Doubts about value or success of program	19

[1] Table adds to more than 100 percent multiple answers were given.

TABLE 7.—PREFERENCE FOR MANNED VERSUS INSTRUMENTED SPACE FLIGHTS

Question: When additional funds once again become available, on which one of the following would you prefer to see emphasis placed:	
Number polled	1,283
Percent:	
Manned space exploration	49
Instrumented space exploration (where a man is not involved)	25
No preference	23
No opinion	3

TABLE 8.—ATTITUDES TOWARD EXPLORING PLANETS BY WHOM AND WHEN

Question: Do you think we should explore the planets?	
Number polled	1,283
Percent:	
Yes	60
No	30
No opinion	10
Question: (If yes, above) would you prefer to see them explored by—	
Number polled	774
Percent:	
Astronauts; that is, manned flights	50
Unmanned, instrumented flights	38
No preference	11
No opinion	1
Question: (If prefer astronauts, above) in how many years from now do you think the United States should start exploration of Mars?	
Number pooled	384
Percent:	
Within 5 years	24
Within 10 years	21
Over 10 years	10
Whenever they are ready	19
After the moon	3
No opinion	23

TABLE 9.—PREFERENCE FOR SPACE ACTIVITIES FOLLOWING SUCCESSFUL MOON PROGRAM

Question: After the astronauts have landed and returned successfully from the moon, which should be our next major effort in our space program?	
Number polled	1,283
Percent:	
Concentrate on developing spacecraft which can be used over and over again	27
Extensively explore the moon	25
Send manned space stations into orbit around the earth	15
Start a program to send men to explore Mars	5
Like to see something else as next major effort	1
None of these	20
No opinion	7

TABLE 10.—REASONS FOR PREFERENCE FOR REUSABLE SPACECRAFT

[In percent]

Total	[1] 347
Greater economy	71
Greater efficiency	22
Contribution to scientific knowledge	17
Greater safety	2
Other reasons	2
No opinion	5

[1] Adds to more than 100 percent because of multiple responses.

TABLE 11.—REASONS FOR PREFERENCE FOR EXTENSIVELY EXPLORING THE MOON

[In percent]

Total	[1] 321
First things first	50
Now that we're there, what can be gained	25
Least expensive	13
Needs to be explored	7
Other reasons	12
No opinion	2

[1] Adds to more than 100 percent because of multiple responses.

TABLE 12.—REASONS FOR PREFERENCE FOR MANNED ORBITING SPACE STATIONS

[In percent]

Total	[1] 194
Would make a good base	44
Military or defense purposes	21
Observation, investigation, scientific, etc	21
Most economical	9
Other reasons	21
No opinion	4

[1] Adds to more than 100 percent because of multiple responses.

COST-OF-LIVING PAYMENTS

HON. J. HERBERT BURKE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. BURKE of Florida. Mr. Speaker, I have received a resolution which memorializes the Congress to award an additional cost-of-living payment to recipients of veterans' pensions and/or social security benefits. This resolution was adopted by the city council of North Miami Beach, Fla., and I would like to bring it to the attention of my colleagues in the House at this time:

RESOLUTION R68–174, AS AMENDED

Resolution memorializing Congress to award an additional cost-of-living payment to recipients of veterans' pensions and/or social security benefits

Whereas, in our changing world it appears that taxes are ever increasing and the cost of living likewise tends to increase; and

Whereas, those who suffer the most are people who can least afford to pay the increased cost of living, a large part of those being disabled veterans and elderly people, older citizens who depend upon Veterans Pensions or Social Security Benefits,

Now, therefore, be it resolved by the City Council of the City of North Miami Beach, Florida:

Section 1: That this Council does hereby go on record as being in favor of an additional cost of living payment to all people who are presently receiving Veterans Disability Pensions, Compensation, and/or Social Security Benefits from the United States Government.

Section 2: That copy of this Resolution be sent by the City Clerk to the Congressmen from Dade County, to the two United States Senators representing the State of Florida in the United States Congress, and to the President-elect.

Approved and adopted in regular meeting assembled this 17th day of December 1968.

WILLIAM M. MCDONALD,
Mayor.

Attest:

VIRGINIA H. MOORE,
City Clerk.

VIOLENCE IN TELEVISION PROGRAMS

HON. JOHN M. MURPHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. MURPHY of New York. Mr. Speaker, on January 15 of this year I will introduce a joint resolution directing the Federal Communications Commission to conduct a comprehensive study and investigation of the effects of violence in television programs on the viewing audience.

For the benefit of those Representatives who would like to cosponsor this legislation on the 15th, I am inserting the text of the resolution and a statement explaining its purpose:

Joint resolution to direct the Federal Communications Commission to conduct a comprehensive study and investigation of the effects of the display of violence in television programs, and for other purposes

Whereas Congress finds that the increase of violence in American society, and the increase in the acceptance of violence by the American people, are critical national problems; and

Whereas there is growing evidence that the display of violence on television has an unfavorable effect on the public's attitude toward, and acceptance of, violence; and

Whereas there is a need to redefine public policy with regard to the display of violence in television programs; and

Whereas in the course of redefining that policy it will be necessary to collect and evaluate data not presently available such as the extent of the display of violence on television, the effect that display has on the attitudes and behavior of the viewing audience, and the remedies available both from within the industry and from public sources: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Federal Communications Commission (hereafter in this joint resolution referred to as the "Commission"), in cooperation with those other Federal agencies which possess relevant competencies, shall conduct a comprehensive study and investigation of the effects on television viewers of the display of violence in television programs. Such study and investigation shall include consideration of—

(1) the connection between the display of violence in television programs and the attitudes of television viewers toward violence;

(2) the public policy objectives to be adopted with regard to the display of violence in television programs; and

(3) the most effective means for realizing such objectives.

(b) The Commission shall submit to the Congress interim annual reports and a final report not later than thirty months after the date of enactment of this joint resolution. Such final report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for legislation and such other action as the Commission deems necessary to carry out the objectives of this joint resolution.

[From the CONGRESSIONAL RECORD, July 2, 1968]

THE ALARMING INCREASE OF VIOLENCE IN OUR SOCIETY

Mr. MURPHY of New York. Mr. Speaker, we are experiencing an alarming increase of violence in our society; it may be seen in the increase in our crime rate, particularly the increase in crimes of violence, and it may be seen in the violence in our streets—the rioting and looting which has hit many of our cities.

Some seek to dismiss such violence as something that has been part of our culture since the days of the Old West, when violence and survival often went hand in hand. But we do not live in the Old West any more. While violence may have been necessary to those pioneers who crossed the Plains in covered wagons or to those who settled new and unknown areas of our Nation, it can no longer be justified in our modern society. The day of the gunfight has passed, although many seem to yearn for its simple solution and final judgment.

The increase in acts of violence in our society is not the only problem, however, even more alarming is the corresponding increase in the acceptance of violence by the American people—not acceptance in the sense of approval, but in the sense of being blunted or immune to its often tragic consequences.

This attitude may be seen in the faces of a crowd watching an assault in broad daylight without offering assistance to the victim or even calling the police; it may be heard in the voices of those who shout "jump, you coward, jump" to the sick person on a bridge who has been driven to suicide by some unknown impulse.

As a society we are justifiably concerned with preventing and punishing the physical acts of violence; we seek to understand and alleviate the causes of such violence, we seek to protect our people and our property from violence, and we punish those who are guilty of violent acts.

It is obvious, however, that we have followed too narrow a path in our concern for preventing violence. At the same time we condemn violence, we buy our children toy tanks and machineguns and grenades, we support—by buying tickets—movies which portray the most violent stories conceivable, and we allow ourselves to be bombarded by television programs saturated with every possible violent act, all in living color. Are we to believe that such constant exposure to violence in our personal lives is having no effect on our thinking, attitudes, and behavior, particularly that of our children? I think it is obvious that there is a distinct and growing relationship between the increase in cruelty and violence which we are exposed to every day and the alarming rise in acts and philosophies of violence throughout our society.

Television, as our most powerful communications medium, is particularly influential in this respect. During the prime viewing hours millions are watching their television sets, and a high percentage of them are under 18 years of age.

Television's ability to influence the viewer can hardly be disputed; the firms paying the extremely high costs of television advertising would not do so unless they believed they

could influence the public to buy their product. Are we to think that hours and hours of violence and crime, shown every night of the week, are not having a similar impact?

One argument, of course, is that television does not cause people to be violent, that violence is the product of many factors. This sounds like a similar argument advanced by the National Rifle Association in opposition to strong firearms legislation, that guns do not kill people, people kill people.

Televised violence may not cause people to commit a violent act, but it can arouse a lust for violence, it can reinforce it when it is present, it can show a way to carry it out, it can teach the best method to get away with it, or it can blunt the viewer's awareness of its wrongness. It can have a particularly strong influence on young people, who do not always make a clear distinction between fantasy and reality.

The Senate Juvenile Delinquency Subcommittee, chaired by Senator THOMAS DODD, has conducted a number of studies on this project and has held many days of hearings over a period of years. They monitored television programs in 1954 and 1961, and found in that 7-year period that televised crime and violence had increased significantly. A third survey, made in 1964, found no decrease in the level of televised violence and crime.

The subcommittee recessed its hearings in 1965 subject to recall by the chairman, and released an interim report which drew the following general conclusion:

"A relationship has been conclusively established between televised crime and violence and antisocial attitudes and behavior among juvenile viewers. Television programs which feature excessive violence can and do adversely influence children. Further, such adverse effects may be experienced by normal as well as by the emotionally disturbed viewers."

The subcommittee went on to make five recommendations: first, networks should work together to provide more prime viewing time for good children's programs of a cultural and educational nature; second, the FCC and the broadcasting industry should work on a revision of the FCC licensing application and renewal form to include realistic standards for programing in the public interest; third, the National Association of Broadcaster's television code should be made more effective, specifically in the area of providing sanctions for use against violators; fourth, a system should be worked out to enable community leaders and groups to express their views on the contents of television programs shown in their communities; fifth, a coordinated, large-scale research attack should be launched to develop more precise information as to the impact of television on juvenile attitudes and behavior and as to the interaction of television and other forces affecting such behavior.

The first three recommendations relate to voluntary efforts on the part of the broadcasting industry. It has been 3 years since those recommendations were made, however, and that should have been ample time for the industry to make whatever reforms it so desired to make.

Therefore, I have asked Senator DODD to reconvene his hearings with the expressed purpose of determining whether the industry has done an adequate job of self-regulation. If adequate self-regulation has not been accomplished by the industry after 3 years, it is up to the Congress to do the job through legislation.

I am aware of the sensitive nature of this issue, which involves the fundamental question of freedom of speech. At the same time, however, it must be recognized that the channels used by the television industry are owned by the public, and they must be utilized in the public interest. Certainly the nature and quality of television programs are relevant criteria of how well the broadcaster is serving the public interest. The courts have recognized the authority of the Federal Communications Commission to consider the program policies and performance of broadcast licensees in connection with the renewal of their licenses. Therefore, I see no reason why we should not be able to find a course of action which will safeguard both the rights of the public and our constitutional right of freedom of speech. The censorship of individual programs is not at issue here; we are concerned with the overall programing policy of the television broadcast industry.

In addition to calling on Senator DODD to reconvene his hearings, I will reintroduce a joint resolution to direct the Federal Communications Commission "to conduct a comprehensive study and investigation of the effects of the display of violence in television on the viewing audience."

As the 1965 interim report pointed out, research has already demonstrated conclusively that televised violence can inculcate antisocial attitudes and motivate delinquent behavior in young viewers. But much remains to be learned about the relationship between television and human behavior.

We need to know more about the process by which televised violence interacts with other environmental forces in producing antisocial attitudes and behavior. We need to know more about the specific process through which televised violence adversely affects our children. We need to define better standards for the development of children's programs.

These and other gaps in our research knowledge require further study. Much is being done today by private foundations, universities, and the industry itself, but much more needs to be done. The study authorized by my joint resolution would meet this need. It would provide a means of coordinating the existing research efforts and it would define new areas for research to be initiated. Most important of all, it would make the sum of all of our research knowledge open to the scrutiny of the general public and to the Congress.

Mr. Speaker, as is so often the case, our technology develops before we are able to give it proper direction, and before we fully understand the consequences of its contribution to our way of life. Certainly few inventions have had the impact on our lives that television has had. Generations of Americans are literally raised in front of a television set. Television can be either an educational force or a destructive one, and today it is certainly both. Given this fact, and the fact that television is so influential, I think it is of critical national importance that we take positive steps to define public policy in this area.

ELECTORAL COLLEGES OF THE UNITED STATES EXTENDS SYMPATHY

HON. WILLIAM H. HARSHA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. HARSHA. Mr. Speaker, on this day representatives of the electoral colleges of the United States met in a duly called meeting for the purposes of organization and election of officers and other business concerning the electoral colleges of the United States.

In this meeting a resolution was presented to the members of the electoral colleges duly assembled extending the sympathy of those members present to the widow and family of the Honorable Jacob L. Holtzman of New York City, a lifelong Republican who has served the electoral colleges of the United States as vice president and president.

In view of Mr. Holtzman's distinguished service to the Republican Party and the electoral colleges of the United States, I am including in my remarks a copy of this resolution.

The resolution follows:

RESOLUTION

Whereas, The Honorable Jacob L. Holtzman, of New York City, a life long Republican, has served as Vice-President and President of the Electoral Colleges of the United States, and

Whereas, the Almighty God, in his infinite wisdom, has seen fit to take Mr. Holtzman from among us, now therefore

Be it resolved, by the Electoral Colleges of the United States, in meeting assembled in the Capitol Building at Washington, D.C., that it does hereby extend its sympathy to the widow and family of Jacob L. Holtzman and does instruct that a copy of this resolution, properly executed, be submitted to the widow and spread upon the minutes of this organization.

Adopted, Washington, D.C., the sixth day of January, 1969.

HOMER M. EDWARDS,
President.

Mrs. ANNETTE MCCORD,
Attest for Secretary.

THE FUTURE OF OUR UNIVERSITIES

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. OTTINGER. Mr. Speaker, the American University has recently come under broad and penetrating appraisal, and rightly so. Our traditional concepts of higher education seem no longer to be appropriate to the times, and just as we in Government are searching for new directions, so are the leaders of the educational community.

An important contribution to the dialog concerning the role of the university is a recent article by Irving Kristol, senior editor and vice president of Basic Books, Inc., of New York and a coeditor of the quarterly, the Public Interest. It appeared in the New York Times magazine, and I present it herewith for inclusion in the RECORD so that it may have the broad consideration it so richly deserves:

A DIFFERENT WAY TO RESTRUCTURE THE UNIVERSITY

(By Irving Kristol)

I have the gravest doubts that, out of all the current agitation for a "restructuring" of the university, very much of substance will come. There are a great many reasons why this is so, among them the fact that practically no one any longer has a clear notion of what a "university" is supposed to be, or do, or mean. We are, all of us, equally vague as to what the term "higher education" signifies, or what functions and purposes are properly included in the categories of "student" or "professor." But in addition to such basic problems, there is a simple and proximate obstacle: all of the groups—professors, administrators and students—now engaged in this enterprise of restructuring" are deficient in the will to do anything, or the power

to do anything, or ideas about what might be done.

Let us begin with the faculty, since they are indeed, as they claim ("Sir, the faculty is the university"), the preponderant estate of this realm. In most universities, it is the faculty that controls the educational functions and defines the educational purposes of the institution. It is the faculty that usually arranges the curriculum, makes staff appointments, etc. It is the faculty that has the moral authority, the mental capacity, and a sufficiently intimate knowledge of the realities of the educational system to operate upon it. Unfortunately, these virtues are far outweighed by an all too human defect—a limited imagination which leads to a lack of objective insight into its own position. What faculty members of our universities fail to see is that any meaningful restructuring will not only have to be done by the faculty, but will also have to be done to the faculty. And to ask the American professoriat to restructure itself is as sensible as if one had asked Marie Antoinette to establish a republican government in France. Whether or not it coincided with her long-term interests was immaterial; the poor woman couldn't even conceive of the possibility.

Now, I don't mean to suggest that there is anything especially shortsighted or selfish about the American professor. Some of my best friends are professors, and I can testify that they are every bit as broadminded, every bit as capable of disinterested action, as the average business executive or higher civil servant. Nor are they particularly smug and complacent. On the contrary, they are all keenly aware of the crisis that has befallen them, while many have long been discontented with their lot and full of haunting insecurities. Nevertheless, they do have one peculiar and notable flaw: being generally liberal and reformist in their political predisposition, they believe themselves able to have a truly liberal and reformist perspective on themselves. This is, of course, an idle fancy. No social group really possesses the imaginative capacity to have a liberal and reformist perspective on itself; individual members of the group may and do—but the group as a whole cannot. Otherwise the history of human society would be what it is not: an amiable progression of thoughtful self-reformation by classes and institutions.

So the beginning of wisdom, in thinking about our universities, is to assume that the professors are a class with a vested interest in, and an implicit ideological commitment to, the *status quo* broadly defined, and that reform will have to be imposed upon them as upon everyone else. If any empirical proof were required of the validity of these assumptions, one need only cast a glance over the various proposals for university reform that have been made by faculty committees at Berkeley and elsewhere.

These proposals have one distinguishing characteristic: at no point, and in no way, do they cost the faculty anything—not money, not time, not power over their conditions of employment. They liberally impose inconveniences upon the administration, upon the taxpayers, upon the secondary schools, upon the community. But they never inconvenience the faculty. They never, for instance, increase its teaching load. (On the contrary: after four years of "lecturing" at Berkeley, professors there now spend less time in the classroom than they used to.) They never suggest anything that would intrude on those four months' vacations; they never interfere with such off-campus activities as consultancies, the writing of textbooks, traveling fellowships, etc.; they never discourage the expensive—but convenient—proliferation of courses in their specialized areas; they never even make attendance at committee meetings compulsory. This is precisely what one would expect when one asks a privileged class to reform the institution which is its very *raison d'être*. It is rather like asking corporation executives or trade union leaders or officials of a government agency, all of whom have been given lifelong tenure in their present positions, to "restructure" the institutions and redefine their positions.

I have touched upon this question of tenure because of its symbolic significance. Few professors, in conversation, will defend the present tenure system, whereby senior- and middle-level faculty are given a personal, lifelong monopoly on their positions. They will accept the criticisms of it by Robert Nisbet and others as largely valid. They will concede that it could be substantially modified—via long-term contracts, generous severance agreements, etc.—without any danger to academic freedom and with obvious benefits to everyone. They will agree that the "controversial" professor, whom tenure was supposed to protect, is today in great demand and short supply, whereas the mediocre professor is its prime beneficiary. They may even admit that the presence of a tenured faculty is one of the reasons that the university has been—with the possible exception of the post office—the least inventive (or even adaptive) of our social institutions since the end of World War II. They will allow that tenure in the university, like seniority in a craft union, makes for all sorts of counterproductive rigidities. But they will then go on to dismiss the whole issue as utterly "academic."

To tamper with tenure, they argue, would produce fits and convulsions throughout their well-ordered universe. Nothing can or will be done, and they themselves could not be counted on to try. Even those economists who argue in favor of a free market for labor everywhere else somehow never think of applying this doctrine to themselves.

So when these same people announce that, to cope with the crisis in the university, they are going to "restructure" the institution, one has the right to be skeptical. To suppose that they actually will do any such thing is probably the most "academic" idea of all.

Nor is the administration going to "restructure" the university. It couldn't do it if it tried; and it is not going to try because it doesn't regard itself as competent even to think about the problem. University administration in the United States today combines relative powerlessness with near-absolute mindlessness on the subject of education.

That statement about powerlessness needs to be qualified in one respect. Though a great many people are under the impression that the boards of trustees are the "real" power structure of the university, this is in fact the one group over which the administration does wield considerable influence. The trustees of a modern university are rather like the boards of directors of a modern corporation. They represent a kind of "stand-by" authority, ready to take over if the executive officers lead the organization into a scandalous mess. (Having little first-hand knowledge of educational institutions, they will then usually make the mess even worse than it was; but that's another story.)

They also may—repeat: *may*—intervene in certain broad economic decisions, such as the construction of a new campus, the launching of a major fund-raising drive, etc. But on the whole, and in the ordinary course of events, they solemnly rubber-stamp whatever the administration has done or proposes to do.

And that's about the sum and substance of "administrative power." True, a determined administration can badger and bribe and blackmail the faculty into marginal revisions of the curriculum, just as a determined administration can have some influence over senior appointments. But most administrations are not all that determined—like everyone else, university administrators prefer an untroubled life. And even where they are determined, it doesn't make all that much difference, from an outsider's point of view. Within the institution, of course, even small differences can cause great anguish and excitement.

As for the administration's power over students, that hardly seems worth discussing at a time when the issue being debated is the students' power over the administration. Suffice it to say that, where disciplinary power does exist on paper, it is rarely used; and it is now in the process of ceasing to exist even on paper. In this respect, university administrators are ironically very much in *loco parentis*. They have about as much control over their 19- and 20-year-old charges as the parents do.

There might be something to deplore in this situation if one had reason to think that university administrators could wisely use power, did they have it. But there is no such reason, if what we are interested in is higher education. Universtiy administrators have long since ceased to have anything to say about education. By general consent, their job is administration, not education.

When was the last time a university president came forth with a new idea about education? When was the last time a university president wrote a significant book about the education of—as distinct from the government of—"his" students? Robert M. Hutchins was the last of that breed; he has had no noteworthy successors. Indeed, the surest way for an ambitious man never to become a university president is to let it be known that he actually has a philosophy of education. The faculty, suspicious of possible interference, will rise up in rebellion.

The university president today is primarily the chief executive of a corporate institution, not an educator. Unfortunately, he usually is also a poor executive, for various reasons. To begin with, he is almost invariably a professor, with no demonstrated managerial experience. More important, there are few meaningful standards against which to judge his performance, as distinct from his popularity. Since most university administrators have no clear idea of what they are supposed to be doing, they end up furiously imitating one another, on the assumption—doubtless correct—that to be immune from invidious comparisons is to be largely exempt from criticism.

Thus, at the moment, all administrations are proudly expanding the size of their plant, their facilities and their student bodies. An outsider might wonder: Why should any single institution feel that it has to train scholars in all disciplines? Why can't there be a division of labor among the graduate schools? Aren't our universities perhaps too big already? Such questions are occasionally raised at conferences of educators—but, since every administrator has no other criterion for "success" than the quantitative increase in students, faculty, campus grounds, etc., these questions spark no debate at all.

As a matter of fact, university administrators never get much criticism—though, of course, they are convenient scapegoats who are instantly *blamed* for anything that goes wrong. The professors are just too busy and self-preoccupied, and in the ordinary course of events are perfectly content to leave the government of the university to the administration—even when they have a low opinion of the administration. (This has been the story at Columbia these past 10 years.)

It is interesting to note that, despite the fact that our best economists are all professors, there has been little public criticism from them on the grotesquely conservative way in which universities invest their endowment funds. It was not until the Ford Foundation's McGeorge Bundy made an issue of it, that the universities began to bestir themselves. Similarly, it was an off-campus man, Beardsley Ruml, who, some 15 years ago, pointed out that it was wasteful to leave campus facilities unused for months

at a time, because of the vacation schedule. One would have thought that this idea could have passed through the minds of professors of management, or city planning, or something.

An interesting instance of the charmed life of university administrators is a recent report of the Carnegie Commission on the Future of Higher Education. Written by an economist, it delicately refuses to raise any interesting questions and limits itself to arguing for the need of ever greater government subsidies. After pointing out that the deficit in university budgets is largely incurred by the graduate divisions—a graduate student costs about three or four times as much as an undergraduate—the Carnegie report offers by way of explanation of the costliness of graduate education the following: "The conscientious supervision of a student's independent work is the essence of high-level graduate education. . . ."

What this means in practice, as everyone knows, is that the only way a university can attract big faculty names away from other places is by offering them minimal teaching loads in the graduate division, and the only way it can attract the brightest graduate students away from other schools is by offering them attractive (i.e., expensive) fellowships. Whether or not it makes sense for each institution of higher learning to adopt such a competitive policy would seem to be an important problem; but the Carnegie Commission loyally refrained from exploring it. Nor did it show any interest in whether in fact there is "conscientious supervision" in graduate schools, and if so how extensive or effective it is. From casual conversation with graduate students, one gets the impression that such supervision is not all that common, to put it mildly.

In short and in sum: university administrations have neither the power, nor the inclination, nor the stimulus of informed criticism which would result in any serious efforts at "restructuring" their institutions.

And the students? They, alas, are indeed for the most part rebels without a cause—and without a hope of accomplishing anything except mischief and ruin.

In our society and in our culture, with its pathetic belief in progress and its grotesque accent on youth, it is almost impossible to speak candidly about the students. Thus, though most thoughtful people will condemn the "excesses" committed by rebellious students, they will in the same breath pay tribute to their "idealism" and their sense of "commitment." I find this sort of cant to be preposterous and disgusting. It seems to me that a professor whose students have spat at him and called a "mother————" (it happened at Columbia) ought to be moved to more serious and more manly reflection on what his students are really like, as against what popular mythology says they are supposed to be like.

My own view is that a significant minority of today's student body obviously consists of a mob who have no real interest in higher education or in the life of the mind, and whose passions are inflamed by a debased popular culture that prevails unchallenged on the campus. We are reluctant to believe this because so many of the young people who constitute this mob have high I.Q.'s, received good academic grades in high school, and because their popular culture is chic rather than philistine in an old-fashioned way. Which is to say: we are reluctant to believe that youngsters of a certain social class, assembled on the grounds of an educational institution, can be a "mob," in the authentic sociological sense of that term. (We are also reluctant to believe it because many of these students are our children, and we love them regardless of what they do. Such love is, of course, natural and proper. On the other hand, it is worth reminding oneself that members of lower-class lynch mobs have loving fathers and mothers too.)

The really interesting question is: How did they get that way? After all, we do assume that young people of a certain intelligence, provided with a decent education, will be more rational—and therefore more immune to mob instincts—as they near the end of their education than they were at the beginning. The assumption is plausible; but it also patently fails to hold in many instances, and this can only represent a terrible judgment on our system of education.

How is it possible for a Columbia or Berkeley sophomore, junior or even graduate student to believe in the kinds of absurd simplicities they mouth at their rallies—especially when, before entering college, many of these youngsters would have been quick to recognize them as nothing but absurd simplicities? How is it possible for a radical university student—and there is no reason why a university student shouldn't be radical—to take Che Guevara or Chairman Mao seriously when, in his various courses, he is supposed to have read Marx, Max Weber, Tocqueville, has been examined on them, and has passed the examination?

When I discuss this problem with my professor friends, I am informed that I display a naive faith in the power of formal instruction as against the force of the *Zeitgeist*. And there is a measure of justice in this rejoinder. There can be no doubt that we are witnessing, all over the world, a kind of generational spasm—a sociological convulsion whose roots must go deep and far back and must involve the totality of our culture rather than merely the educational parts of it. It is fairly clear, for example, that many of the students are actually revolting against the bourgeois social and moral order as a whole, and are merely using the university as a convenient point of departure. Whether their contempt for this order is justified is a topic worthy of serious discussion—which, curiously enough, it hardly ever receives in the university. But, in any case, this question ought not to distract us from the fact that those radical students who are most vociferous about the inequities of the university are the least interested in any productive "restructuring."

On the other hand, not all of the rebellious students are all that radical politically; and it does seem to me that, in these cases, it ought to be possible for a university education to countervail against the mish-mash of half-baked and semiliterate ideologies that so many students so effortlessly absorb within a few months of arriving on campus. My own opinion, for what it's worth, is that the college and the university fail to educate their students because they have long since ceased trying to do so.

The university has become very good at training its students for the various professions; and it is noteworthy that, within the university, the professional schools and divisions have been the least turbulent. But for the ordinary college student—majoring in the humanities or in the social sciences—the university has become little more than an elegant "pad," with bull sessions that have course numbers or with mass lectures that mumble into one ear and ramble out the other.

The entire conception of a liberal education—of the most serious ideas of our civilization being taught by professors who took them seriously—has disappeared, under pressure of one kind or another. The graduate divisions, with their insistence on preprofessional training, have done their part; but so has the whole temper of our educational system over the past decades, with its skepticism toward "great ideas" in general and toward great ideas of the past in particular.

I believe that, when students demand that their studies be "relevant," this is what they are unwittingly demanding. After all, what could be more "relevant" today than the idea of "political obligation"—a central theme in the history of Western political philosophy—or the meaning of "justice"? And, in fact, on the few campuses where such teaching still exists, the students do find it "relevant," and exciting, and illuminating.

But, whether I am right or wrong in this appraisal, the whole issue is, like so many others, "academic." The students think they are rebelling against the university as a "bureaucratic" institution, and they think it so powerfully that they are not likely to listen to anyone who informs them that they are really rebelling against a souless institution—one that has been emptied of its ideal content. So those who are not set upon destroying the university will be permitted to tinker at "restructuring" it. They will serve on committees that define the curriculum; they will help enforce a dwindling minimum of student discipline; they will be solemnly listened to instead of being solemnly preached at.

But you can't reform an institution unless you know what you want; and though our university students have always been encouraged to want the true, the good, and the beautiful, they have never been taught how to think about the conditions and consequences of such desires. To date, most of the reforms sponsored by students have been in the direction of removing their obligation to get any kind of education at all. It is not surprising that harassed administrators and preoccupied professors are quick to find such proposals perfectly "reasonable."

So where are we? In an impasse, it would appear. Here we have a major social institution in a flagrant condition of crisis, and not one of the natural social forces involved with this institution can be relied upon to do any of the necessary work of reformation. In situations of this kind, the tradition is for the governmental authorities to step in and fill the power vacuum. And such, I think, will again have to be the case this time.

That last sentence made even me, its author, shudder as it was written. The spectacle of state or Federal legislators invading the campus en masse for solemn investigation or deliberation is the kind of tragic farce we can do without. And the idea of state legislators or Congressmen trying to impose educational reforms by legislation is as fantastic as it is horrifying. Still, the fact remains that there is a genuine "public interest" at issue here, and there is no one except government who can be asked to defend it. Fortunately, I believe that for once we are in luck, in that the particular circumstances of the moment permit government to act in an indirect, noncoercive, prudent, yet possibly effective way.

The first such particular circumstance is the fact that the very idea of "higher education" has become so devoid of specific meaning that there is little danger of government, or anyone else, imposing some kind of orthodox straitjacket on the prevailing chaos. There just aren't any such orthodoxies available. Indeed, the very reason we have a crisis in the universities is because all such traditional notions about the function and ends of higher education have, during these past three decades, become otiose.

The real problem at the moment is that no one—not the faculty, not the administration, not the students—has any kind of clear idea of what any "institution of higher learning" is supposed to be accomplishing. It is even beginning to be suspected by many that such phrases as "the university" or "higher education" have acquired different and contradictory meanings, that the vast number of young people now moving onto the campuses are too diverse in their interests and talents to be contained within the old category of "university students," and that the root cause of our distemper is our failure to sort out all these meanings and people, and to make suitable institutional adjustments.

In other words, the situation seems to be such that what we need is a huge injection

of pluralism into an educational system that has, through the working out of natural forces, become homogeneous and meaningless at the same time. No one can presume to say what the future pattern of higher education in America should look like. Not until we have far more experimentation—not until we have tried out different kinds of "universities" for different kinds of "students"—can we even hope to know what the real options are. In the ordinary course of events the prospects for this kind of pluralism would be so dim to be utopian: none of the existing institutions can be counted on to cooperate except in a ritualistic and rather hypocritical way. But this leads me to the second particular "circumstance," which gives the prospect an honest dimension of reality.

This second particular circumstance is the fact that government—especially the Federal Government—is going to be pouring more and more money into the universities. This is inevitable, and I am willing to persuade myself that it is desirable. But it is neither inevitable nor desirable that the money should flow through the conventional channels—i.e., directly from the public treasury to the bursar's office. Understandably enough, college presidents cannot imagine it proceeding otherwise—higher education is "their" province, and they feel strongly that the money should be "theirs" to expend as administrative discretion and wisdom prescribe.

But the citizens of this republic have a claim to assert that higher education is "their" province, too; and they have a right to insist that public monies be expended in such a manner as might overcome the crisis in our universities, instead of deepening it.

What I would therefore like to see—and the idea is one that is slowly gaining favor with many observers; it is not original with me—is something along these lines: (a) State expenditures for higher public education should be frozen at the present level, and all increases in this budget should take the form of loans to qualifying students—these loans being valid for out-of-state institutions as well as in-state ones; (b) Federal grants to institutions of higher learning (excepting research grants) should be slowly phased out entirely, and this money—together with new appropriations, which are to be expected—should also be replaced by loans to the qualifying student. This means, in brief, that our universities should have a minimum of direct access to public funds to spend as they see fit, since their vision in this matter has turned out to be too imperfect. It also means that students will have more of the only kind of "student power" that counts: the freedom to purchase the kind of education they want, on terms acceptable to them.

There are potential benefits and risks attendant on this proposal, and they merit a listing. But, first, one must face the frequently heard objection to student loans—that their repayment may place too great a burden on a student, especially the student from a poor family, after his graduation. This objection can be surmounted. To begin with, not all students would need loans, and many would need only small ones. There are plenty of well-to-do parents who would still want to pay for their children's education. In addition, repayment plans can be—have been—calculated so as to be proportionate to the student's average income during his working life, and to exempt those whose average income would be below a fixed level; and the burden on both student and taxpayer (for a subsidy would still be necessary, especially for women) could be made perfectly tolerable.

If one wished to be more legaritarian, one could augment a loan program with a part-scholarship program for those from low-income families. When all is said and done, however, the university graduate is the prime beneficiary, in dollars and cents, of his education; he ought to be the prime taxpayer for it. There is no such thing as "free" higher education. Someone is paying for it and, as things now stand, it is the working class of this country that is paying taxes to send the sons and daughters of the middle class—and of the wealthy, too—through state colleges. (Some 60 per cent of the students at Berkeley come from families with incomes of over $12,000.) It is not an easily defensible state of affairs, though we are now so accustomed to it that it seems the only "natural" one.

Now, as to benefits and risks:

[1] A possible benefit that might realistically be expected is that college students would take a more serious and responsible view of their reasons for being on the campus. To the extent that they would disrupt their own education, they would be paying for this out of their own pockets. As a consequence, there would certainly be less casual or playful or faddish disruption. One does get the impression that for many students the university is now, like the elementary and high schools, a place of compulsory attendance, and that the occupation of a campus building is a welcome lark and frolic. If these students were called upon to pay for their frolics, some of them at least might go back to swallowing goldfish. This would be bad for the goldfish but good for the rest of us.

[2] Another potential benefit is that the large state universities, denied the subsidy which permits them to set very low tuition rates for state residents, would find it difficult to grow larger than they are; the college population would probably become more widely distributed, with the smaller and medium-sized institutions in a position to attract more students. This would be a good thing. It is clearly foolish to assemble huge and potentially riotous mobs in one place—and to provide them with room, board, a newspaper, and perhaps a radio station to boot. This violates the basic principles of riot control. We should aim at the "scatteration" of the student population, so as to decrease their capacity to cause significant trouble. I would also argue there are likely to be some educational gains from this process.

[3] An obvious risk is that a great many of the radical and dissenting students would use their money to attend newly founded "anti-universities." And many of the black students would veer off into black nationalist institutions of higher learning. Something like this is bound to happen, I suppose, though to what extent is unpredictable. It would, beyond question, create bad publicity for the whole student loan program. On the other hand, it would take the pressure off existing institutions to be both universities and "anti-universities"—as well as "integrated" and "black nationalist" universities—at the same time. The degree to which such pressure has already been effective would shock parents, state legislators, and public opinion generally, were the facts more widely known.

Quite a few of our universities have already decided that the only way to avoid on-campus riots is to give students academic credit for off-campus rioting ("field work" in the ghettos, among migrant workers, etc.). And at Harvard—of all places!—there is now a course (Social Relations 148), which enrolls several hundred students and is given for credit, whose curriculum is devised by the S.D.S., whose classes are taught by S.D.S. sympathizers, and whose avowed aim is "radicalization" of the students.

[4] As a corollary to this last risk, there is the possibility that more new, "good" (in my sense of that term) colleges would also be founded. I'm not too sanguine about this—a fair portion of the academic community would surely look more benevolently on a new college whose curriculum made ample provision for instruction in the theory of guerrilla warfare than one that made a knowledge of classical political philosophy compulsory. Besides, it would be much easier to find "qualified" faculty for the first type than the second. Nevertheless, it is conceivable that the "traditionalists," as well as the academic hipsters, could take advantage of the new state of affairs. And among the students they attract there might be quite a few blacks who are not really interested in studying Swahili or Afro-American culture or "black economics," but who—as things are now moving on the campus—are pretty much forced to do so by their black nationalist fellow students.

[5] The greatest benefit of all, however, is that the new mode of financing higher education will "shake things up." Both university administrators and faculty will have to think seriously about the education of the students—and about their own professional integrity as teachers. This shake-up is bound to have both bad and good consequences. Some universities, for instance, will simply try to reckon how they can best pander to what they take to be student sentiment, and many professors will doubtless pay undue attention to their "popularity" among students. On the other hand, it is reasonable to assume that you can't fool all the students—and their parents—all of the time; and if students are paying for their education, most of them will want to be getting their money's worth.

So, at long last, the academic community, and the rest of us as well, will have to engage in sober self-examination, and address ourselves to such questions as: What is this "college" of ours, or this "university" of ours? What is the "higher education" we offer? What do we parents expect from a particular "institution of higher learning" when we send our children there? The answers will certainly be too various to be pleasing to everyone. But at least they will be authentic answers, representing authentic choices.

It would be ridiculous to expect that, during this period of "shake-up," calm will descend upon our campuses. As I have already said, the roots of the student rebellion go very deep, and very far back. I recall Leo Rosten observing long before Columbia that, so far as he could see, what the dissatisfied students were looking for were: adults—adults to confront, to oppose, to emulate.

It is not going to be easy to satisfy this quest, since our culture for many decades now has been ploughing under its adults. But I agree with Mr. Rosten that this is what is wanted, and I am certain it will not be achieved until our institutions of higher education reach some kind of common understanding on what kind of adult a young man is ideally supposed to become. This understanding—involving a scrutiny of the values of our civilization—will not come soon or easily, if it ever comes at all. But we must begin to move toward it—and the first step, paradoxically, is to allow a variety of meanings to emerge from our existing, petrified institutions of higher learning.

NORMAN THOMAS

HON. WILLIAM F. RYAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. RYAN. Mr. Speaker, during the period when Congress was in adjourn-

ment a great American, whom we should all hold in the deepest respect, died at the age of 84. Norman Thomas, who devoted his entire adult life to the cause of enlarging our notions of social justice and governmental responsibility, died at his home in Huntington, Long Island, on December 19, 1968.

Ridiculed at the start of his career as a radical visionary, Norman Thomas lived to see many of his proposals enacted into law. Throughout his long career he was frequently exposed to the scorn of politicians less insightful than himself and was even, on occassion, the target of hecklers and eggthrowers. However, he never diminished his determination to speak the truth as he saw it, and at the age of 82 was still making dozens of speeches each month on hundreds of college campuses. In his last years he was a particularly forceful opponent of the war in Vietnam which he termed "an immoral war ethically and a stupid war politically." At a time when it was said that students did not trust anyone over 30, he remained a popular campus figure who spent hours of his time debating with college students more than 60 years his junior. His integrity and moral passion were qualities that bridged countless "generation gaps."

As one who believes in the necessity of a progressive social program, I am particularly mindful of his great contribution to our notions of governmental and personal responsibility. When others were counseling accommodation and compromise, he persisted in his belief that we could settle for no less than that which was required.

He once said:

Vote your hopes, not your fears. Don't vote for what you won't want and get it.

Norman Thomas' compassion for the forgotten American began when he was a social worker at the Spring Street Presbyterian Church and Settlement House in New York City, and continued throughout his life. With his keen intelligence and powerful platform style, there is little doubt that he could have risen to great heights as a conventional politician in a more conventional political party. But he sacrificed his own ambitions to his concern for transforming the American economic and social order into a more benevolent and responsible system. Even in his final years he continued to travel throughout the United States making speeches on the need for expanding social welfare legislation, often traveling long distances by train and living out of a well-worn suitcase. His character has been an example for countless individuals who were privileged to come in contact with him.

A keen student of foreign affairs, throughout the years he was identified with almost every major effort to promote world peace. He strongly denounced the bombing of Nagasaki and Hiroshima and constantly advanced proposals for restricting and prohibiting the use of thermonuclear weapons. He was a firm anti-Communist who believed the Soviet Union's ambitions posed real threats to peace but he also spoke out critically on U.S. foreign policy when he believed it was ill conceived or too rigidly administered. He supported the aid provisions of the Marshall plan, when it was proposed in 1948, but opposed the military support the Truman administration gave to Greece and Turkey. Throughout his long career he continually espoused the advantages of nonmilitary assistance over military involvement. In almost every case this emphasis was vindicated by later events.

Never a doctrinaire thinker, Norman Thomas was ever mindful of the need to place human needs ahead of preordained theory, always looking to the larger vision. His keen and agile mind was constantly abreast of the current issues even when his failing eyesight forced him to read with a magnifying glass.

Perhaps the most remarkable facet of the man was the longevity of his influence. His career spanned many decades; and in each decade he spoke with the authority of a man attuned with the times. While others lost their relevance as time passed them by, Norman Thomas remained a vital force until his death.

His energy and compassion were seemingly unlimited, and his lifelong commitment to securing a better world never wavered. In 1964 he was honored by his friends on his 80th birthday. After the celebration, someone asked what he would do now that he was 80 years old. He replied: "The same thing I've always done."

His passing deprives us of his magnetic presence and compassionate wisdom. But the example of his life remains as an inspiration to those who shared his vision of a better world.

I include at this point in the RECORD the obituary of Norman Thomas by Alden Whitman which was published in the New York Times of December 20, 1968, the New York Times editorial of December 20, 1968, the New York Post editorial of December 20, 1968, and an article from the AFL–CIO News of January 4, 1968:

[From the New York Times, Dec. 20, 1968]

NORMAN THOMAS, SOCIALIST, DIES—HE RAN SIX TIMES FOR PRESIDENCY

(By Alden Whitman)

Norman Thomas, six-time Socialist party candidate for President, died in his sleep yesterday at the Hilaire Farm Nursing Home in Huntington, L. I., where he had been a patient for the last year. He was 84 years old. He lived at 106 Goose Hill Road, Cold Spring Harbor.

President Johnson, leading the nation in tribute, issued this statement in Washington:

"With the passing of Norman Thomas America loses one of its most eloquent speakers, finest writers and most creative thinkers.

"Mr. Thomas was once asked what he considered to be his greatest achievements. With characteristic modesty he replied, 'To live to be my age and feel that one has kept the faith or tried to . . . to be able to sleep at night with reasonable satisfaction.'

"Norman Thomas kept the faith. He was a humane and courageous man who lived to see many of the causes he championed become the law of the land."

Vice President Humphrey said:

"Norman Thomas, in his 84 years, never won an election and he was hardly ever popular. He was always ahead of his time. He was called a radical when he talked of unemployment insurance, minimum wages, old age pensions, and health insurance. But his honesty and compassion and sense of justice left their mark on America and many of his crusades are now the law of the land. We are a better people because this gentleman lived."

Mr. Thomas was also extolled by Governor Rockefeller, Mayor Lindsay, Arthur J. Goldberg, the former Supreme Court Justice, and a host of organizations he had championed.

With Mr. Thomas when he died were a daughter, Mrs. Herbert Miller of Overland Park, Kans., and Timothy Sullivan, his secretary for the last three years.

In addition to Mrs. Miller, Mr. Thomas is survived by two other daughters, Mrs. John Friebely of Plainfield, N. J., and Mrs. John W. Gates of St. Thomas, V. I.; two sons, Evan W. 2d of New York, vice president and editor in chief of W. W. Norton, the book publishers; and William S. Thomas of Newport, R. I.; a brother, Dr. Evan W. Thomas of Philadelphia; two sisters, Emma and Agnes Thomas of Towson, Md.; 15 grandchildren and 10 great-grandchildren. Mr. Thomas's wife, Violet, died in 1947.

A memorial service will be held Monday at 1 P.M. at Community Church, 40 East 35th Street. The Rev. Donald Harrington, the pastor, and the Rev. Sidney Lovett, chaplain emeritus of Yale University, will conduct the services.

In 1964, when Norman Thomas was 80 years old, bent and hobbled by arthritis, hard of hearing and unable to read without the aid of a magnifying glass, several thousand friends gave him a birthday reception at the Astor Hotel. When it was over a young reporter asked the gaunt, dignified, white-haired guest, "What will you do now, sir?"

The reply was unhesitating: "The same thing I've always done."

For Mr. Thomas "the same thing" was to serve as the Isaiah of his times, the zealous and eloquent prophet who for a half-century warned his countrymen of "the evils of capitalism" while pointing out to them what he considered the pathways of social, economic and political justice.

Once scorned as a visionary, he lived to be venerated as an institution, a patrician rebel, an idealist who refused to despair, a moral man who declined to permit age to mellow him.

Times changed, but Norman Thomas appeared steadfast. He spoke to the mind; he appealed to ethical sensibilities; he thundered at malefactors; he counseled with doubters; he goaded the lethargic and chided the faint of heart; he rallied the committed.

If his moralism was stern, his manner was gentle and his words were good-humored. But the message—and Mr. Thomas always had a message—was the need for reformation of American society.

The general toleration, even acceptance and respectability, that Mr. Thomas achieved in his long career had a number of explanations. Passionate critic though he was, he lived within the accepted social order and conformed to most of its standards of propriety: he used perfect English, had excellent table manners, lived in or near fashionable Gramercy Park, had a family life that was a model of decorum and possessed a captivating personality. Esteem for him was personal to the point where he conferred a certain cachet on dissent.

SHUNNED CLASS CONFLICT

A further explanation for Mr. Thomas's position was that, although he was the voice of the mute and the tribune of the disenfranchised, his brand of Socialism was mild. It shunned class conflict, the dictatorship of the proletariat and the violence of revolution. It was to doctrinal Marxism what Muzak is to Mozart. In Leon Trotsky's celebrated gibe, "Norman Thomas called himself a Socialist as a result of misunderstanding."

Mr. Thomas, who was anti-Communist and anti-Soviet to a marked degree, wrote extensively on what he regarded as the shortcomings of Marxism. One of his favorite arguments was expressed in question form: "Can

a generation which has had to go far beyond Newtonian physics or atomic chemistry or Darwinian biology be expected to find Marx, who was also the child of his time, infallible?"

In his own philosophy, Mr. Thomas seemed ultimately to lean to democracy, albeit a radical one by some standards.

"For the believer in the dignity of the individual," he once declared, "there is only one standard by which to judge a given society and that is the degree to which it approaches the ideal of a fellowship of free men. Unless one can believe in the practicability of some sort of anarchy, or find evidence there exists a superior and recognizable governing caste to which men should by nature cheerfully submit, there is no approach to a good society save by democracy. The alternative is tyranny."

There was irony in the fact that Mr. Thomas lived to see many of his specific prescriptions for social ills filled by other parties. Running for President in 1932, in one of six such races, Mr. Thomas had a platform calling for such Depression remedies as public works, low-cost housing, slum clearance, the five-day week, public employment agencies, unemployment insurance, old-age pensions, health insurance for the aged, minimum-wage laws and the abolition of child labor.

Each of these then-radical proposals is now a generally accepted part of the fabric of American life. Mr. Thomas once acknowledged this state of affairs. "It was often said by his enemies that [Franklin D.] Roosevelt was carrying out the Socialist party platform," he said in a bitter moment. "Well, in a way it was true—he carried it out on a stretcher."

Mr. Thomas later explained what he had in mind. "You know, despite the fact that the New Deal took over many of the ideas we Socialists campaigned for, I have been profoundly disappointed," he said. "Some of our major concepts have not been accepted, but time has not changed my advocacy of them.

"I still heartily yearn for the nationalization of the steel industry, for example. In fact, I'm for public ownership of all natural resources. They belong to all the people and should not be for the private enrichment of the few."

Mr. Thomas summed up his alternative to capitalism as "the cooperative commonwealth." Its main features were public ownership and democratic control of the basic means of production as well as long-range economic planning.

Because he campaigned for both his long-term and his short-term reforms so assiduously and yet with so little likelihood of winning office, critics accused him of lack of realism. To these he said, "Vote your hopes, not your fears," or "Don't vote for what you won't want and get it."

Mr. Thomas was also criticized for being too professorial. According to a sketch of him in 1932, he "looks like a cultivated aristocrat, with his high-domed head, his thin gray hair, his narrow nose, firm lips and thoughtful blue-gray eyes.

"He belongs to the Woodrow Wilson type, depending more upon logic than upon emotions, and his manner is faintly academic."

That appraisal appeared in the old New York Sun, an impeccably Republican newspaper.

WRY WITH CRITICS

Mr. Thomas tended to be wry with his critics, one of whom was President Roosevelt. Twitting the Socialist leader at a White House tête-à-tête in 1935, Mr. Roosevelt said, "Norman, I'm a damned sight better politician than you."

"Certainly, Mr. President," Mr. Thomas shot back, "you're on that side of the desk and I'm on this."

It was not for want of trying that Mr. Thomas was always on the visitor's side of the desk. He campaigned for the Presidency at four-year intervals from 1928 through 1948; he ran for Governor of New York, for Mayor twice, for State Senator, for Alderman and for Congress.

He also lectured two or three times a week and wrote innumerable articles. His subjects were world peace, anti-Communism, civil liberties, Negro rights and all manner of specific causes that he believed had a place under the umbrella of social justice.

Mr. Thomas had an awesome capacity for work. "Some of my friends and members of my family wanted me to go slow during the recent Presidential campaign," he said at 80, in 1964. "How could I? Oh, I wasn't all the way with L. B. J.—only most of the way—but I was all the way against Barry Goldwater, a dangerous man, the prophet of war. So I made speeches from Massachusetts to Hawaii."

Almost two years later he was still going about the country, living out of a battered duffel bag, lecturing to campus groups, talking at sit-ins, voicing moral indignation over United States military involvement in Vietnam and Southeast Asia. Young people ordinarily skeptical of anyone over 30 flocked to hear Mr. Thomas, to watch his years fall away as he denounced the Vietnam conflict as "an immoral war ethically and a stupid war politically."

"We are ruining a country and ourselves in the process," he said; but he declined to incriminate President Johnson, whom he described as a "sincere" man "caught in the meshes of an inherited system."

Arguing against militarism and war in the nineteen-sixties, Mr. Thomas even softened somewhat his anti-Communism. "If you cannot learn to live with Communists," he told his audiences, "then you might begin to think about dying with them."

Mr. Thomas was probably one of the finest platform orators of his day. Having learned the art before electronics altered the nature of speaking to large masses of people, he strongly resembled, in his style, such virtuoso spellbinders as William Jennings Bryan, Eugene Victor Debs, Woodrow Wilson, the Rev. Billy Sunday and Franklin D. Roosevelt.

Mr. Thomas possessed a booming, virile, organ-roll voice that he could modulate from a roar to a whisper. Part of the magic of his eloquence resided in his gestures—the pointing finger, the outflung arm, the shaking of the head.

H. L. Mencken heard Mr. Thomas in the campaign of 1948. "It was extempore throughout, and swell stuff indeed," he wrote. "It ran on for more than an hour, but it seemed far shorter than an ordinary political speech of 20 minutes.

"His voice is loud, clear and a trifle metallic. He never starts a sentence that doesn't stop, and he never accents the wrong syllable in a word or the wrong word in a sentence."

In his battles Mr. Thomas frequently had the support of many men of intellectual substance—John Dewey, John Haynes Holmes, Rabbi Stephen S. Wise, Reinhold Niebuhr, to mention but a few—but he lacked quantity. Congratulated on the lofty caliber of his campaigns, he replied, "I appreciate the flowers; only I wish the funeral weren't so complete."

On another occasion he said, "While I'd rather be right than be President, at any time I'm ready to be both."

But his Presidential vote was always slender. In 1928, in his first White House bid, he was credited with 267,420 votes. In 1932 the votes counted for him soared to 884,781—his record. Four years later the tally slipped to 187,342. In 1940 it was 116,796; and in 1944 a total of 80,518 votes was recorded for him. In his final race, in 1948, his total was 140,260. He never came close to winning on electoral vote.

When the results were in that year, showing President Harry S. Truman returned to office over Gov. Thomas E. Dewey of New York, a prominent New York Democrat remarked:

"The best man lost."

"You mean Dewey?" a listener asked.

"No, Thomas."

The feeling that Mr. Thomas was "the best man" was widely shared, and many who were not Socialists voted for him because of disenchantment with what he called "the Tweedledum and Tweedledee" choice offered by the two major parties. On the other hand, there were many who believed that such a protest vote was wasted because Mr. Thomas's chance at the polls were obviously so slim.

Mr. Thomas himself was very aware of this situation. In 1932, with the Depression searing the nation, many supporters predicted a vote of perhaps two million; but he knew better. Sitting with his associates on election eve, he said:

"I want to tell all of you that I'm not going to get a big vote tomorrow. It's going to be a lot smaller than anybody thinks.

"For instance, at my wonderful meeting in Milwaukee last Saturday, hundreds came to shake my hand. One young man came up to me with tears in his eyes and said, 'I believe in everything you say and I agree entirely with your principles, but my wife and I can't vote for you. The country can't stand another four years of Hoover.'

"You can multiply that couple by thousands, if not millions. I can't help but sympathize with the feelings of that young man but our vote will be small."

In the race of 1932, as in every other, Mr. Thomas campaigned earnestly. He toured the country by auto and train (sleeping in an upper berth to save money), and he spoke to whatever crowds could be drummed up.

BORN IN OHIO

Apart from the needle-trades workers in New York, however, Mr. Thomas did not get the labor vote, a painful anomaly for a professed Socialist. But the truth was that Mr. Thomas was not a trade union figure.

Unlike Eugene Debs, his predecessor as a party leader, Mr. Thomas did not have a working class or trade union background. His natural idiom and style, moreover, were those of the sack suit, not overalls. His intellectualism and his moralism were part of his heritage and of his own early life. Both his grandfathers had been Presbyterian ministers, as was his father; and he himself remained a clergyman until 1931.

He was born Nov. 20, 1884, in Marion, Ohio, where his father, Welling Evan Thomas, had a pastorate. His mother was the former Miss Emma Mattoon, whose surname became her son's middle name. Norman, the eldest of six children, attended the local schools and earned pocket money by delivering Warren G. Harding's The Morning Star.

In 1901 the Thomas family moved to a new pastorate in Lewisburg, Pa., where Norman entered Bucknell. After a year he transferred to Princeton when an uncle offered to pay $400 of his yearly expenses. He was graduated in 1905 as class valedictorian.

Still basically conservative in his outlook, Mr. Thomas was jolted by the urban blight he saw in his first job—that of a social worker at the Spring Street Presbyterian Church and Settlement House in New York. After a world trip he continued his social service as a pastoral assistant at Christ Church. Then, while serving as an associate at the Brick Presbyterian Church, he attended Union Theological Seminary, receiving his divinity degree in 1911.

At the seminary he was influenced by the writings of Dr. Walter Rauschenbusch, who taught a theology that accented the Protes-

tant churches' social responsibility. This helped to prepare Mr. Thomas for pastoral work among Italian immigrants in East Harlem, where he lived and worked for several years.

Meantime, in 1910, he had married Frances Violet Stewart, who came from an aristocratic banking family and who shared his social service work. Their union was extremely happy. Until her death in 1947, Mrs. Thomas devoted her life to her husband and to the rearing of their children. The Thomases were the parents of six: Norman Jr., who died in childhood; William, Polly, Frances, Becky and Evan.

The family lived on a basic income of about $10,000 a year that was provided to Mrs. Thomas through a legacy. This was supplemented by sums she earned by breeding cocker spaniels at the family summer home in Cold Spring Harbor, L.I., and by Mr. Thomas's fees from lectures and writings.

A number of developments helped to bring Mr. Thomas to Socialism. In his book "A Socialist's Faith," published in 1951," he wrote:

"I had come to Socialism, or more accurately to the Socialist party, slowly and reluctantly. From my college days until World War I my position could have been described, in the vocabulary of the times, as 'progressive.'

"Life and work in a wretchedly poor district in New York City drove me steadily toward Socialism, and the coming of the war completed the process. In it there was a large element of ethical compulsion."

His initial overt step was taken toward the end of 1916, when he joined the Fellowship of Reconciliation, a Christian pacifist group. Shortly afterward he became a member also of the American Union Against Militarism, in which social workers and intellectuals were active.

"War and Christianity are incompatible," he said at the time, and this was the theme of scores of his speeches. In his activities he met Socialists, read their books and articles and was impressed by the party's opposition to American entry into the war.

TIME TO "BE COUNTED"

In October, 1918, he joined the Socialist party with this statement:

"I am sending you an application for membership in the Socialist party. I am doing this because I think these are the days when radicals ought to stand up and be counted. I believe in the necessity of establishing a cooperative commonwealth and the abolition of our present unjust economic institutions and class distinctions based thereon."

Meanwhile, Mr. Thomas had resigned his church post to work full time for the Fellowship of Reconciliation and to edit The World Tomorrow, its monthly magazine.

He was also active, with Roger Baldwin, in the National Civil Liberties Bureau, which became the American Civil Liberties Union in 1920. Mr. Thomas was a leading figure in that organization for the rest of his life and a tireless advocate of individual rights. To this end he joined or helped to organize over the years hundreds of committees that sought justice for persons of all political views. Some were futile, some were frivolous, but many were effective.

Although Mr. Thomas was primarily an evangelist, he never hesitated to join a picket line in a good cause no matter what the personal risk. He was active, for example, in the famous textile workers' strike in Passaic, N.J., in 1919 and again in 1926. In the latter strike he was arrested and jailed until bail could be raised, but he was never prosecuted.

In 1922 he became co-director, with Harry W. Laidler, of the League for Industrial Democracy, a post he held until 1937. The L.I.D., the educational arm of the Socialist party, sponsored thousands of Mr. Thomas's speeches. Through them he preached Socialism across the country, becoming in the process the recognized leader of the party, the successor to Eugene Debs after his death in 1926.

PARTY SPOKESMAN

In this capacity Mr. Thomas was the presence and spokesman for the party rather than an organizer or administrator. Nonetheless, he undoubtedly drew into it thousands of native-born Americans and helped it to outgrow its ethnic and European origins.

Mr. Thomas made his first bid for public office in 1924 as the Socialist candidate for Governor of New York. Running against Gov. Alfred E. Smith, a popular liberal who was also a friend of labor, he polled 99,854 votes to Mr. Smith's 1,627,111.

A year later he was campaigning for Mayor of New York against James J. Walker, the Democrat, and Frank Waterman, Republican. The Socialist platform called for city-owned housing and public ownership of the transit system. Mr. Thomas trailed the field with only 39,083 votes.

He ran again in 1929 with endorsement of the Citizens Union and amassed 175,000 votes.

A major issue was corruption, but Mayor Walker won easily.

In the early nineteen-thirties Mr. Thomas turned his tremendous energies to causes growing out of the Depression. He spoke in behalf of the unemployed; he helped set up the Workers Defense League; he was an active sponsor of the Southern Tenant Farmers Union, a sharecropper organization; and he marched in countless picket lines and signed countless petitions.

Mr. Thomas was a critic of the New Deal, although he conceded in later years that "we would have had very bad times" if Mr. Roosevelt had not been elected in 1932.

"In retrospect, I wouldn't change many of the criticisms I then made," he said. "Yet the net result was certainly the salvation of America, and it produced peacefully, after some fashion not calculated by Roosevelt, the welfare state and almost a revolution."

Chiefly, the Socialist leader regarded the New Deal as a device to bail out capitalism; he considered President Roosevelt too facile; and he liked to note that full employment was not achieved until the nation entered World War II.

Many Socialists, especially labor union officials, disagreed with their leader's assessment. The result was a party split, in which such unionists as David Dubinsky and Sidney Hillman broke away to support the New Deal on the ground that labor could bargain with Mr. Roosevelt to its advantage.

At the same time Mr. Thomas was beset by the Communists. Prior to 1936 he was denounced as "a social fascist" for reputedly being too soft on the New Deal. Then, during a united-front period, he was wooed in the name of workers' unity against Fascism. Next, he was assailed as anti-Soviet; but in the final period of his life when he was opposing the Vietnam war, he was viewed more leniently.

Mr. Thomas was stoutly anti-Communist. "The differences between us preclude organic unity," he said in 1936 of the Communist party. "We do not accept control from Moscow, the old Communist accent on inevitable violence and party dictatorship, or the new accent on the possible good war against Fascism and the new Communist political opportunism."

And after a disillusioning visit to the Soviet Union in the late thirties, he said:

"More and more it becomes necessary for Socialists to insist to the whole world that the thing which is happening in Russia is not Socialism and it is not the thing which we hope to bring about in America or in any other land."

JERSEY CITY INCIDENT

Mr. Thomas was involved in several free-speech incidents, perhaps none more dramatic than that in Jersey City in 1938 against Mayor Frank Hague. Mr. Hague, who once boasted that "I am the law," declined to sanction a Socialist May Day rally in his city the evening of April 30. Mr. Thomas showed up anyway to the cheers of a crowd in Journal Square. The police roughed him up, shoved him in a car and "deported" him to New York with a warning never to return. He returned later that evening and was again ejected.

Mr. Thomas went to nearby Newark a few weeks later to thunder at "Hagueism" from that quarter. He also initiated court action and instigated a Federal Bureau of Investigation inquiry into Mr. Hague's affairs.

The result of these actions, and complementary ones by the Congress of Industrial Organizations, was a Federal Court ruling against Jersey City. Mr. Thomas immediately returned to Journal Square and made a speech to a big throng.

With the gathering of war clouds in Europe in 1938–39, Mr. Thomas acted to stem the trend to United States involvement. With his most passionate feelings aroused, he helped to set up the Keep America Out of War Congress. "We who insisted that Americans must keep out of war," he said, "do not do it because we condone Fascism, but because American participation in war will bring new horrors and sure Fascism to America without curing Fascism abroad."

To the dismay of many of his friends Mr. Thomas, in 1940–41, also spoke to audiences of the America First Committee, an isolationist group.

When the United States entered the war Mr. Thomas felt a personal setback. "Pearl Harbor meant for me the defeat of the dearest single ambition of my life: that I might have been of some service in keeping my country out of a second world war," he said.

During the war he led his party in a program of what he termed "critical support" of American actions. He was afraid that whichever side triumphed democracy would suffer, but he ultimately decided that the "lowest circle of hell" would be a Fascist victory. On the home front he protested the internment of Japanese-Americans in 1942 and, in the Presidential campaign of 1944, he argued against the Roosevelt policy of unconditional surrender, calling instead for a statement of democratic peace terms.

Mr. Thomas denounced in the strongest terms the atomic bombing of Hiroshima and Nagasaki in 1945. "Proof of the power of atomic energy did not require the slaughter of hundreds of thousands of human guinea pigs," he said. "We shall pay for this in a horrified hatred of millions of people which goes deeper and farther than we think."

To the end of his life he spoke out boldly for proposals to restrict or outlaw thermonuclear war. He also pleaded for world disarmament "down to the police level" and called for an end to conscription.

In his final campaign, in 1948, he hit hard at the threat of war, which he saw "in the aggression of the Soviet empire" as "encouraged by the blunders of American policy." He favored the Marshall Plan for European recovery while dissenting from the military emphasis in the Truman Doctrine of aid to Greece and Turkey.

Two years after that race he counseled his party to drop its election activity in favor of an educational approach, but the party overruled him and ran national candidates in 1952 and 1956. In the latter year they received 2,044 votes. There was no ticket in 1960, 1964 or 1968. Mr. Thomas resigned his party posts in 1955, but remained as a member.

Although he stopped running for office, Mr. Thomas did not relinquish his basic role as a social philosopher, nor did his zest diminish. "I enjoy sitting on the sidelines and Monday-morning quarterbacking other people's performances," he said.

VIEW ON ACHIEVEMENTS

Mr. Thomas was a prolific writer. He was the author of 20 books, scores of pamphlets and almost numberless newspaper and magazine articles. He also served as editor of a variety of Socialist publications.

Toward the end of his life, he was asked what he thought he had achieved. He replied:

"I suppose it is an achievement to live to my age and feel that one has kept the faith, or tried to. It is an achievement to be able to sleep at night with reasonable satisfaction.

"It is an achievement to have had a part, even if it was a minor one, in some of the things that have been accomplished in the field of civil liberty, in the field of better race relations, and the rest of it.

"It is something of an achievement, I think, to keep the idea of Socialism before a rather indifferent or even hostile American public. That's the kind of achievement I have to my credit, if any. As the world counts achievement, I have not got much."

Reminded at another time that he was known as America's greatest dissenter, he said that he had never espoused dissent for its own sake.

"The secret of a good life," he declared, "is to have the right loyalties and to hold them in the right scale of values. The value of dissent and dissenters is to make us reappraise those values with supreme concern for truth.

"Rebellion per se is not a virtue. If it were, we would have some heroes on very low levels."

[From the New York Times, Dec. 20, 1968]

NORMAN THOMAS

For a half-century Norman Thomas was an eloquent and impassioned voice of his country's social conscience. In a hundred causes (or was it a thousand?) he articulated the cry for justice of those he saw deprived of it. Whether it was freedom for Tom Mooney, or the plight of the sharecroppers in the South, or work relief for the unemployed, or free speech in Mayor Hague's Jersey City, or the noxious conduct of Senator Joseph McCarthy, or the evil of the Vietnam war, Mr. Thomas spoke rousingly to America's moral sensibilities. His ardent views, often unpopular at the time, became a standard of decency in a remarkable number of instances.

An undoctrinaire Socialist, who put freedom ahead of any dogma, he lived to see much of his social philosophy become part of the fabric of American life. As a six-time Socialist candidate for President, he campaigned vigorously for the right of labor to organize and bargain collectively, for a statutory minimum wage, old-age insurance, a national health plan, public housing, conservation of natural resources and control of stock market speculation.

When Mr. Thomas began enunciating those proposals in the prosperous nineteen-twenties, he was hounded as a dangerous radical and his political following was more distinguished for ardor than numbers. But many of his ideas, in one form or another, were adopted over the years in New Deal and Fair Deal legislation. He was a rebel who achieved both respect and respectability without sacrificing dedication.

His is a legacy of substantial public achievement. As a social reformer he contributed mightily to shaping the present welfare state. As a matchless mover and shaker, his moral fervor for social justice has contributed to a more just America.

[From the New York Post, Dec. 20, 1968]

NORMAN THOMAS

He never ceased to care; he never abandoned the battle for peace, justice and freedom. Crippled too long by arthritis and a failing heart, almost sightless, Norman Thomas was still very much in this world and trying to do something about it until the final moment of his long, memorable journey.

No conventional obituary can span the full range of his humane, dedicated works. He spoke and fought eloquently on great issues, but much of his life was devoted to the quiet, often unheralded defense of lonely men and women who had been subjected to harsh indignities.

For many years he was known as America's leading Socialist. Yet he was never a deeply ideological man, and his bitterest moments occurred when he was caught in the crossfire of doctrinaire leftwing feuds. He always seemed taller than the other combatants—not because of any special infallibility but because he kept his eyes fixed on large visions.

He hated war, oppression and every manifestation of cruelty; during the period preceding World War II his instinctive pacifism dismayed many of his earlier adherents. But no one ever disputed the depth and solemnity of his convictions. Indeed, he sometimes wryly remarked that he wished that so many who paid tribute to his sincerity were more disposed to hear what he was saying.

He lived to see many of the early reforms he espoused accepted as laws of the land. But he never acquired a complacent view of things as man continued to play with atomic fire. Almost from the start he saw the Vietnam conflict as a deadly blunder and, with his last remaining resources of strength and spirit, he cried out against it. On this as on so many matters, he was tragically vindicated by events.

Perhaps his final triumph was his ability to communicate with young rebels in this era when those "over 30" are deemed suspect in so many places. He remained an ageless, revered figure from whom thousands of men and women—most of whom never carried a Socialist card—have derived inspiration, and whose better deeds on earth have been in some way traceable to his presence. Their continued involvement in the search for reason and decency in human affairs was the only immortality he sought and this he nobly achieved.

[From the AFL–CIO News, Jan. 4, 1969]

PROPHET ON SOCIAL REFORM: ZEALOUS NORMAN THOMAS LIVED TO SEE HIS CONCEPTS EMBRACED

In 1964 when Norman Thomas was 80 years old, bent and hobbled by arthritis, hard of hearing and unable to read without the aid of a magnifying glass, several thousand friends gave him a birthday reception at the Astor Hotel. When it was over a young reporter asked the gaunt, dignified, white-haired guest, "What will you do now, sir?"

The reply was unhesitating: "The same thing I've always done."

For Mr. Thomas "the same thing" was to serve as the Isaiah of his times, the zealous and eloquent prophet who for a half-century warned his countrymen of "the evils of capitalism" while pointing out to them what he considered the pathways of social, economic and political justice.

Once scorned as a visionary, he lived to be venerated as an institution, a patrician rebel, an idealist who refused to despair, a moral man who declined to permit age to mellow him.

Times changed, but Norman Thomas appeared steadfast. He spoke to the mind; he appealed to ethical sensibilities; he thundered at malefactors; he counseled with doubters; he goaded the lethargic and chided the faint of heart; he rallied the committed.

If his moralism was stern, his manner was gentle and his words were good-humored. But the message—and Mr. Thomas always had a message—was the need for reformation of American society.

The general toleration, even acceptance and respectability, that Mr. Thomas achieved in his long career had a number of explanations. Passionate critic though he was, he lived within the accepted social order and conformed to most of its standards of propriety: he used perfect English, had excellent table manners, lived in or near fashionable Gramercy Park, had a family life that was a model of decorum and possessed a captivating personality. Esteem for him was personal to the point where he conferred a certain cachet on dissent.

Mr. Thomas, who was anti-Communist and anti-Soviet to a marked degree, wrote extensively on what he regarded as the shortcomings of Marxism. One of his favorite arguments was expressed in question form: "Can a generation which has had to go far beyond Newtonian physics or atomic chemistry or Darwinian biology be expected to find Marx, who was also the child of his time, infallible?"

In his own philosophy, Mr. Thomas seemed ultimately to lean to democracy, albeit a radical one by some standards.

"For the believer in the dignity of the individual," he once declared, "there is only one standard by which to judge a given society and that is the degree to which it approaches the ideal of a fellowship of free men. Unless one can believe in the practicability of some sort of anarchy, or find evidence there exists a superior and recognizable governing caste to which men should by nature cheerfully submit, there is no approach to a good society save by democracy. The alternative is tyranny."

There was irony in the fact that Mr. Thomas lived to see many of his specific prescriptions for social ills filled by other parties. Running for President in 1932, in one of six such races, Mr. Thomas had a platform calling for such Depression remedies as public works, low-cost housing, slum clearance, the five-day week, public employment agencies, unemployment insurance, old-age pensions, health insurance for the aged, minimum-wage laws and the abolition of child labor.

Each of these then-radical proposals is now a generally accepted part of the fabric of American life. Mr. Thomas once acknowledged this state of affairs. "It was often said by his enemies that [Franklin D.] Roosevelt was carrying out the Socialist party platform," he said in a bitter moment. "Well, in a way it was true—he carried it out on a stretcher."

Mr. Thomas later explained what he had in mind. "You know, despite the fact that the New Deal took over many of the ideas we Socialists campaigned for, I have been profoundly disappointed," he said. "Some of our major concepts have not been accepted, but time has not changed my advocacy of them.

"I still heartily yearn for the nationalization of the steel industry, for example. In fact, I'm for public ownership of all natural resources. They belong to all the people and should not be for the private enrichment of the few."

Mr. Thomas summed up his alternative to capitalism as "the cooperative commonwealth." Its main features were public ownership and democratic control of the basic means of production as well as long-range economic planning.

Toward the end of his life, he was asked what he thought he had achieved. He replied:

"I suppose it is an achievement to live to my age and feel that one has kept the faith, or tried to. It is an achievement to be able to sleep at night with reasonable satisfaction.

"It is an achievement to have had a part, even if it was a minor one, in some of the things that have been accomplished in the field of civil liberty, in the field of better race relations, and the rest of it.

"It is something of an achievement, I think, to keep the idea of Socialism before a rather indifferent or even hostile American public. That's the kind of achievement I have to my credit, if any. As the world counts achievement, I have not got much."—*New York Times, Dec. 20, 1968.*

CALENDAR OF EVENTS, NATIONAL GALLERY OF ART, JANUARY 1969

HON. JAMES G. FULTON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. FULTON of Pennsylvania. Mr. Speaker, on this first day of legislative business in the House of Representatives it is a pleasure for me to call the attention of my colleagues and the American people to the outstanding calendar of artistic and musical events taking place in the National Gallery of Art during the month of January.

We in Congress are proud of the progress and the success of the National Gallery of Art, and recognize its continuing contribution to culture and the arts in our National Capital. We are grateful as well for the dedication and the fine work of Mr. John Walker, Director of the National Gallery, and his capable staff. We wish them well in the new year of 1969.

CALENDAR OF EVENTS, NATIONAL GALLERY OF ART, JANUARY 1969

RECENT ACQUISITION

On view this month in Gallery 37 is *Interior of Saint Peter's, Rome* by the Italian master Giovanni Paolo Panini (1691/92–1765). It enters the collection through the Ailsa Mellon Bruce Fund.

This view of Saint Peter's was one of Panini's favorite subjects, for he painted the scene a number of times. It shows the arrival of Cardinal Melchior de Polignac, who was French Ambassador at the Vatican from 1724 to 1732. However, this large canvas (60¾ x 77½ in.) must have been painted later, at some time between 1746 and 1754, for Panini's view keeps abreast of additions made to Saint Peter's between those years. In this version the artist included, above the second door in the right aisle of Saint Peter's, the sarcophagus of Innocent XII, showing figures of Charity and Justice added in 1746, but he did not show statues placed in the nave by Pope Benedict XIV in 1754.

Panini was exceptionally skilled in solving problems of complex perspective views such as this. As in his *Interior of the Pantheon*, which is also in the National Gallery, he utilizes a vast interior as a stage set for diminutive, elegantly dressed people, who heighten the sense of monumental space.

WILLIAM SIDNEY MOUNT

Continuing in the Central Gallery through January 5 is the centennial exhibition *Painter of Rural America: William Sidney Mount, 1807–1868.* A catalogue by Alfred V. Frankenstein includes many of the Long Island artist's observations and notes. 10½" x 8", 72 pages, 8 color plates, 55 black-and-white illustrations. $2.75 postpaid.

J. M. W. TURNER

On the Main Floor is an exhibition of 16 paintings by Joseph Mallord William Turner from the extensive British collection of Mr. and Mrs. Paul Mellon. A catalogue is available with introduction by John Walker and text by Ross Watson, 10" x 7½", 32 pages, 16 black-and-white illustrations. $2.75 postpaid.

INAUGURAL WEEK CONCERT

In honor of the inauguration of the President and Vice President of the United States, the National Gallery Orchestra with The Festival Chorus and soloists, conducted by Richard Bales, will perform Mr. Bales' composition *The Republic* on Sunday, January 19 at 8 p.m. in the East Garden Court.

NEW REPRODUCTIONS

Color Postcards: Altdorfer, *The Fall of Man;* Fra Angelico and Fra Filippo Lippi, *The Adoration of the Magi;* Botticelli, *The Adoration of the Magi;* Lucas Cranach the Elder, *Portrait of a Man;* Ghirlandaio, *Madonna and Child;* Giovanni di Paolo, *The Adoration of the Magi.* 5¢ each postpaid.

FILM SHOWINGS

The recent NBC-Television film *American Profile: The National Gallery of Art* is shown in the auditorium each Saturday at 2:00 p.m.

RECORDED TOURS

The Director's Tour. A 45-minute tour of 20 National Gallery masterpieces selected and described by John Walker, Director. The portable tape units rent for 25¢ for one person, 35¢ for two. Available in English, French, Spanish, and German.

Tour of Selected Galleries. A discussion of works of art in 28 galleries. Talks in each room, which may be taken in any order, last approximately 15 minutes. The small radio receiving sets rent for 25¢.

GALLERY HOURS

Weekdays 10 a.m. to 5 p.m. Sundays 12 noon to 10 p.m. Admission is free to the building and to all scheduled programs. The Gallery is closed New Year's Day. There will be no educational services Inauguration Day, Monday, January 20.

CAFETERIA HOURS

Weekdays, Luncheon Service 11 a.m. to 2 p.m.; Snack Service 2 p.m. to 4 p.m. Sundays, Dinner Service 2 p.m. to 7 p.m.

MONDAY, DECEMBER 30, THROUGH SUNDAY, JANUARY 5

*Painting of the week: El Greco. *Christ Cleansing the Temple* (Samuel H. Kress Collection). Gallery 30. Tues. and Thurs. through Sat. 12:00 & 2:00. Sun. 3:30 & 6:00.

Tour of the week: *The William Sidney Mount Exhibition.* Central Gallery (repeated from Dec. 3–8, 1968). Tues., and Thurs. through Sat. 1:00; Sun. 2:30.

Tour: Introduction to the Collection. *Rotunda.* Mon., Tues., and Thurs. through Sat. 11:00 & 3:00 Sun. 5:00.

Sunday lecture: *Degas and History Painting. Guest Speaker:* Theodore Reff, Professor of Art History, Columbia University, New York City. Lecture Hall 4:00.

Sunday concert: National Gallery Orchestra, Richard Bales, *Conductor.* East Garden Court 8:00.

MONDAY, JANUARY 6, THROUGH SUNDAY, JANUARY 12

*Painting of the week: Master of the Saint Lucy Legend. *Mary, Queen of Heaven* (Samuel H. Kress Collection). Gallery 35. Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

Tour of the week: *Decorative Arts: Medieval and Renaissance.* Rotunda. Tues. through Sat. 1:00; Sun. 2:30.

Tour: Introduction to the Collection. *Rotunda.* Mon. through Sat. 11:00 & 3:00; Sun. 5:00.

Sunday lecture: *The Image of Christ in the Middle Ages. Guest Speaker:* James D. Breckenridge, Chairman, Department of Art, Northwestern University, Evanston, Lecture Hall 4:00

Sunday concert: Sanford Allen, *Violinist.* Paul Jacobs, *Pianist.* East Garden Court 8:00.

MONDAY, JANUARY 13, THROUGH SUNDAY JANUARY 19

*Painting of the week: Raphael. *The Niccolini-Cowper Madonna* (Andrew Mellon Collection), Gallery 8. Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

Tour of the week: *Decorative Arts: Louis XV and Louis XVI.* Rotunda, Tues. through Sat. 1:00; Sun. 2:30.

Tour: Introduction to the Collection. *Rotunda.* Mon. through Sat. 11:00 & 3:00; Sun. 5:00.

Sunday lecture: *Carl Gustaf as a Collector of Drawings. Guest Speaker:* Per Bjurström, Curator of Prints and Drawings, National-museum, Stockholm, Lecture Hall 4:00.

Sunday concert: National Gallery Orchestra, Richard Bales, *Conductor* with Soloists and Chorus, East Garden Court 8:00.

MONDAY, JANUARY 20, THROUGH SUNDAY, JANUARY 26

*Painting of the week: Van Gogh. *La Mousmé* (Chester Dale Collection), Gallery 86. Tues. through Sat. 12:00 & 2:00; Sun. 3:30 & 6:00.

Tour of the week: *The J. M. W. Turner Exhibition.* Rotunda (repeated from Nov. 12–17, 1968). Tues. through Sat. 1:00; Sun. 2:30.

Tour: Introduction to the Collection. *Rotunda.* Tues. through Sat: 11:00 & 3:00; Sun. 5:00.

Sunday lecture: *Romatic Elements in Late Impressionism—Monet and Guillaumin. Guest Speaker:* Christopher Gray, Professor of Fine Arts, The Johns Hopkins University, Baltimore, Lecture Hall 4:00.

Sunday concert: Francis Brancaleone, *Pianist,* East Garden Court, 8:00.

Inquiries concerning the Gallery's educational services should be addressed to the Educational Office or telephoned to 737–4215, ext. 272.

*11" x 14" reproductions with texts for sale this week—15c each. (If mailed, 25c each.)

WHAT'S NEW ON THE TELLY?

HON. BERTRAM L. PODELL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. PODELL. Mr. Speaker, there was a remarkable program on television the night of Wednesday, December 11, 1968, entitled "Mr. Nixon Presents." Normally, the American people prefer to take their television reviews with their morning cereal, and by that standard it may be rather late in the game to review a performance put on several weeks ago. On the other hand, "Mr. Nixon Presents" was a showing of such transcendental significance that it fully merits further review, at least from the perspective of passing days.

From the standpoint of the usual, objective criteria, which are the sine qua non of the television industry, "Mr. Nixon Presents" was a smash hit. Audience surveys made by the National Arbitron cross-country phone poll indicate that the program attracted somewhere between 50 and 60 million American viewers. The Nielsen ratings report that "Mr. Nixon Presents" did far better than a basketball game and a replay of a boxing tournament shown on competitive channels.

Regrettably, the artistic qualities of the production did not measure up to the success it achieved in the ratings. Its artistic imperfections stem in part from the inability of the producer to resolve a schizophrenic ambivalence as to whether to exploit the television medium's commercial or entertainment potential. The inevitable consequence of this bifurcated approach was an overly long commercial and entertainment flatter than yesterday's champagne. In fact, the program fell just short of creating a crisis at the Federal Communications Commission over the pre-emption of prime television

time for commercial purposes. Part of the problem faced by the producer was that the program was oversold. It was very much as if Ed Sullivan announced a forthcoming telecast featuring the world's 12 greatest performers, and then proceeded to verbalize their skills and virtuosities.

Under the circumstances, the illustrious 12 did remarkably well. Clearly they are all solid graduates of the Stanislavsky School of Method Acting. Their characterization of imperturbability and inscrutability was exemplary and must have roused the envy of Dean Rusk. The excellence of that characterization was marred only by the weight watchers among the group, who noticeably winced when Mr. Nixon pointedly pointed to their extra dimensions.

It is also regrettable that Mr. Nixon leaned more heavily on the modalities of Cabinet making rather than on the somatic qualities of the end product. In announcing the appointment of Gov. Walter Joseph Hickel of Alaska as our new Secretary of the Interior, President-elect Nixon referred to the hoary tradition of appointing a westener to that office and pointed out that Alaska is even wester than Hawaii. I suggest, Mr. Speaker, that this is stretching extremism to its outermost limit. Indeed, had Mr. Nixon searched just a few leagues wester our Secretary of the Interior might have turned out to be a citizen of Kichighinsk. Nor is there anything in the history of the United States that validates the presupposition that anyone who is wester than anybody is simultaneously and necessarily more interior than anybody.

The new line of Cabinet offered to the public by Mr. Nixon features the "extra dimension," whose principal point of departure from traditional Cabinet making seems to be the interchangeability of parts. As explained by Mr. Nixon, that means that his Secretary of State, for example, could fill the office of the Attorney General with equal dimentional extraneousness. Only time will tell whether a Cabinet so designed and so constructed can long endure.

And only time will tell whether "Mr. Nixon Presents" will have the enduring qualities of "Bewitched" or "Petticoat Junction." That in turn will depend upon whether Mr. Nixon can make Washington as exciting a town as Hooterville.

VITAMIN AND FOOD SUPPLEMENT AMENDMENT OF 1969

HON. JOHN V. TUNNEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TUNNEY. Mr. Speaker, I am pleased to join in the sponsorship of legislation designed to curb a proposed ruling by the Food and Drug Administration on vitamins.

The regulations proposed by FDA would impose excessive restraints on consumers by forcing them to get prescriptions for vitamins and would make it difficult for millions to obtain food supplements. This would hit hardest at senior citizens with fixed or limited incomes and many small businesmen. All manufacturers would be required to make practically the same product with the same limited selections of ingredients, with the same label. Thus, competition would be eliminated, and producers prohibited from improving their products based on results of their own research.

This legislation seeks to amend the Federal Food, Drug, and Cosmetic Act to limit the authority of the Secretary of Health, Education, and Welfare in administering the act as it relates to the potency, number, combination, amount or variety of any synthetic or natural vitamin, mineral, substance or ingredient of any food supplement which is not shown to be injurious to health. FDA orders for warning labels also would be barred under such circumstances.

Unnecessary governmental controls should be avoided when possible. I have not yet been convinced that freedom of choice should be curtailed in this area.

ARRIVAL OF AIRPORTER TRAIN HAILED

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. MOORHEAD. Mr. Speaker, all of us concerned with rapid transit must salute Cleveland for taking the lead in solving the airport access problem which plagues all of our major airports.

On November 15 she became the first city to have a rapid transit line linking the airport with the city's downtown area—thus providing her commuters with the essentials of fast travel, all-weather reliability, and freedom from traffic congestion.

All eyes will be on Cleveland to see how the system works, and I am hopeful other cities will follow her example in solving commuter clogging—but one of the many problems we must meet in connection with today's airport crisis.

The Newsletter for the Institute for Rapid Transit, December 1968, discusses the Cleveland system, which I include for the attention of my colleagues at this point in the RECORD:

CLEVELAND OPENS FIRST AIRPORT RAPID TRANSIT

The nation's first rapid transit line linking a major airport directly with a city's downtown area was dedicated November 15 when more than 500 governmental officials, civic leaders and transportation experts took the inaugural ride on a four-car Airporter train from Hopkins International Airport to downtown Cleveland.

The dedication ceremonies, which also included a large civic luncheon, marked the completion of a two-year, $18,600,000 construction project that is expected to set a pattern for the application of rapid transit as the ground-travel answer in major cities to the jet age.

Cleveland's new rapid transit service to the airport was placed into effect for the public on November 21. The start of regular service was delayed for about a week while storm damage to electrical cables was being repaired.

For the first three weekdays, the Cleveland Transit system reported that passengers boarding at the new Airport rapid transit station ranged from 1,760 to 2,211. The count of passengers boarding at the new Puritas station on the airport extension ranged from 1,742 to 2,313. These figures were for the inbound direction and did not include riders arriving at these two locations. On Saturday, November 23, the number of passengers boarding at the Airport station was 2,848, and on Sunday, November 24, this total was 3,590. It was estimated that about half of the Sunday passengers boarding at the airport were sightseers.

The new service was made possible by the construction of a four-mile rapid transit extension at a cost of $18,600,000. Of the total cost, $12,334,000, or two-thirds, was provided by the federal government under the Urban Mass Transportation Act. The one-third local matching fund consisted of $5,041,000 provided by Cuyahoga county and $1,250,000 by the City of Cleveland.

For the new airport service, the Cleveland Transit System purchased 20 air-conditioned, stainless steel Airporter rapid transit cars from the Pullman-Standard Division of Pullman, Inc. Involved in the building by Pullman-Standard of the cars were 18 major suppliers of equipment in the rapid transit industry.

SECRETARY BOYD ADDRESSES LUNCHEON

The historic significance of Cleveland's pioneering rapid transit service to the airport was pointed up by Secretary Alan S. Boyd of the Department of Transportation, who was the principal speaker at the dedication luncheon in the Sheraton-Cleveland Hotel.

Secretary Boyd said in part:

"We are celebrating—in its simplest terms—the mating of the subway with the airplane. I am sure there will be—as there is in every venture of this sort, whether technological or human—certain mating problems. I am equally sure, however, the union will be lasting and fruitful.

"The problem of sufficient airport access capacity is plaguing every major airport in the world. The line of cars waiting to get to Chicago's O'Hare Airport stretched five miles in last year's pre-Thanksgiving rush. Los Angeles' International Airport had to go on the air every hour prior to last Christmas to warn of the parking space shortage. Air traffic controllers trying to get to work at Miami International were stalled in line for two and one-half hours trying to get from the entrance to the terminal.

"And yet, Cleveland is the first—and to date the only—city to provide a direct rapid transit line for its airport travelers. I congratulate you for your wisdom and foresight.

"The dividends from this joining of the airport to the rapid transit system will be obvious and immediate. And these benefits will not be limited to air travelers. Certainly, the commuters living along the new line will benefit, but everybody in Cleveland will aso benefit.

"The fact is today's metropolitan airport is a major generator of surface traffic. Airport traffic is not an isolated phenomenon. It is part of the urban transportation system. This was dramatically demonstrated in some recent studies of ground traffic arriving at Kennedy International. The results of these studies are of pertinence to us here today. We learned, for example, that less than one-third of those traveling to Kennedy are air travelers. Visitors constitute a larger number. But the single largest category of daily surface travelers to Kennedy are airport employes. I have no doubt that roughly the same proportions prevail here. The moving of some of this traffic to the rapid transit will ease the jam on many of your highways.

"The value of the new (rapid transit) extension will grow with the increased use of

Hopkins Airport," Secretary Boyd emphasized. "I cannot but think—looking ahead—that rapid transit is probably the only sound answer to the problem that will be coming with the arrival in service of the giant Boeing 747. This airliner with a capacity of upwards of 350 passengers will move into commercial service at the end of next year. Two of these giant passenger planes arriving at Hopkins about the same time would, without transit, require some combination of 250 taxis and/or 700 private cars. Add these to the normal 5:30 p.m. airport traffic jam, and then add both to the normal evening commuter traffic and you will quickly see the advantages of this new transit line."

FAST SERVICE AT 10-MINUTE INTERVALS

E. C. Krueger, General Manager of the Cleveland Transit System, explained that the new Airporter rapid transit trains are scheduled to operate at 10-minute intervals and to make the run of 11 miles between the airport and the Union Terminal in the city's downtown in 20 minutes. In addition, the Airporter trains, along with other rapid transit trains, also operate for eight miles east from the downtown area to serve several major suburbs in that area.

In addition to the advantages of fast travel, all-weather reliability and freedom from street traffic congestion, the new rapid transit extension to the airport also provides riders with a substantial saving in travel costs. A ride on the Airporter rapid transit trains costs 35 cents, as compared with $6 for a taxi or $1.60 for an airport limousine.

The four-mile extension to the airport includes five bridges, two on-line stations, a 1,600-foot subway into the airport, and the airport station, the latter of which is adjacent to the main entrance of the airport terminal building. A pedestrian tunnel, 110 feet long, connects the airport station to the terminal building.

EXTENSION ALSO IMPORTANT TO COMMUTERS

In addition to serving the air traveler, the new extension is designed to provide suburban commuters living along the new line the same fast, safe and convenient rapid transit service that has been available to the east and near-west suburbs for several years. Of significance to these commuters is the large number of free parking spaces being provided by the Cleveland Transit System at the two new stations—Puritas and Brookpark. One of the two new on-line stations, Puritas, has opened with the start of the airport service, and has provided an additional 1,250 free parking spaces. The other new station, Brookpark, is to be opened early in the new year, with also 1,250 additional free parking spaces. The two new stations will bring the total of parking spaces along the CTS rapid transit route to 7,500. Both stations also are being provided with extensive "kiss-'n'-ride" and "bus-'n'-ride" facilities.

THE AIRPORTER RAPID TRANSIT CARS

The Airporter rapid transit cars, which cost $175,000 each, are 70 feet long, and seat 80 persons. They have fluorescent lighting, special luggage racks at the doors near the ends of the car, wide seats, tinted windows, and an unusual concept of heating and cooling through window sill vents. Each of the Airporter cars is powered by four 100-horsepower traction motors made by General Electric Company.

Other major suppliers of equipment used in the construction by Pullman-Standard of the cars were: stainless steel—Republic Steel Corporation and United States Steel Corporation; trucks—LFM-Atchison, division of Rockwell Manufacturing Company; braking control—Westinghouse Air Brake Company; brake units—American Steel Foundaries; lighting fixtures—Luminator, Inc.; air-conditioning—Safety Electric Equipment Corporation; door engine and control system—Vapor Corporation; couplers—Westinghouse Air Brake Company; batteries—Exide-E.S.B., Inc., passenger seats—Flexible Company; temperature controls—Vapor Corporation; pantograph—August Stemmann, OHG; glass—Corning Glass Works; public address system—Hamilton Electronics; wheels—Griffin Wheel Company; journal bearings—Timken Roller Bearing Company, and cab signal system—General Railway Signal Company.

AIRPORTER CARS HAVE CAB SIGNALS

The new cab signals basically represent an automatic block system which brings the signal into the cab of each train rather than having it along the right-of-way. It also continuously informs the motorman of the speed to which he is restricted by the train operating ahead. The cab signaling is operated by the use of audio frequency signals transmitted from trackside equipment and picked up by equipment on the train. These signals are translated into audible and visual signals seen by the motorman on the cab signal or speedometer indicators.

A beeping alarm is sounded whenever a signal indicator changes to a more restrictive indication or whenever the speed of the train exceeds the maximum allowed speed. When the alarm sounds, the motorman has 2½ seconds to respond or the train will be stopped automatically.

At present, the new signal control system is in use over the new extension west of West Park station, on track 9 in the Union Terminal, and on tracks 1 and 2 at the Windermere station. Eventually, the entire CTS rapid transit line will be equipped with the new cab signal system.

INTRODUCES FIRST POST-WAR RAPID TRANSIT

Cleveland introduced the country's first post-war rapid transit service March 15, 1955, when it opened a 7.84-mile route from Windermere station at Doan and Euclid Avenue in East Cleveland to the downtown Union Terminal. Five months later a 5.24-mile West Side route was opened to W. 117th Street and Madison Avenue N.W. Rapid transit was extended to W. 143rd Street and Loraine Avenue, 1.84 miles, on November 15, 1958. The new extension to the airport is to the southwest from 143rd and Loraine.

The rapid transit route of the Cleveland Transit System now is a single line stretching 19 miles along private right-of-way from East Cleveland to the airport in an S-shaped curve that takes it through downtown. Seventeen stations, about a mile apart, dot the route. Half have special adjacent off-street bus terminals for sheltered connections, plus the free parking for CTS riders.

Since 1960, the CTS has been making engineering and feasibility studies for rapid transit extensions south to Parma, southeast to Maple Heights, east to Cleveland Heights, and northeast to Euclid. Combined with a proposed downtown subway, these proposals are expected to cost more than $200 million.

SAFETY AT PROCTER & GAMBLE

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. WINN. Mr. Speaker, last September I was pleased to attend a celebration by the employees of Procter & Gamble's Kansas City, Kans., soap and detergent plant on their surpassing a 12-year safety record in the industry.

The October issue of Moonbeams, Procter & Gamble's employee magazine, contains a description of the event, which I include at this point in the RECORD:

There was joy in Kansas City, Kans., on Friday, Sept. 27.

It was the day when hundreds of Kansas City employees gleefully celebrated reaching a new milestone in industrial safety, having worked 4,000,000 consecutive manhours without a lost-time accident. Kansas City employees haven't had a disabling injury on the job since Jan. 17, 1966.

The achievement surpassed the old world's record in the soap and glycerine industry of 3,979,469 manhours, set by P&G's Long Beach plant in 1956.

A celebration was held at our Kansas City plant Sept. 27, commemorating the event. It was attended by some 500 employees, officials and guests, including National Safety Council President Howard C. Pyle, who presented NSC's highest award—the Award of Honor—to Kansas City Plant Manager V. M. Husty; Kansas City, Kans., Mayor Joseph H. McDowell; U.S. Representative from Kansas Larry Winn; and C. C. J. Forge, Manager of Manufacturing for P&G's Packaged Soap and Detergent Division.

For the plant's outstanding safety achievement, the Company presented each Kansas City employee with a Pendleton Stadium Robe. Plant safety committeemen Charles Colby and W. E. Fowlkes accepted the gift robes at the ceremony in behalf of the Kansas City employees.

Back in 1961 Kansas City made another serious "run" at Long Beach's world's record, only to see its effort fall short at 3,177,000 manhours. Their previous highs were 2,351,213 manhours, set in 1952, and 2,094,189 manhours, set in 1963.

Kansas City employees take great pride in their new safety achievement, not only because it is a record-shattering performance, but more importantly, because it means that not a single employee has suffered any kind of a serious lost-time injury at work during this period. It is a feat which every P&G employee and plant can look up to in the years ahead.

ROGERS CALLS FOR HEARINGS ON AIR HIJACKS, SUGGESTS CUBAN AIR EMBARGO

HON. PAUL G. ROGERS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. ROGERS of Florida. Mr. Speaker, during the past year there have been more than 20 hijackings or attempted hijackings of American planes to Cuba. This problem has continued to grow although the FAA and airlines have tried various means of halting this air piracy.

To date, we have tried to develop various detection devices which will catch potential hijackers. But as long as there is sanctuary in Cuba, a determined hijacker will find a way.

I have asked the Honorable HARLEY STAGGERS, chairman of the House Interstate and Foreign Commerce Committee, to open hearings on the problem of hijacking in order to air all possible solutions, including the possibility of establishing an air embargo of Cuba.

If air carriers and their governments could reach an agreement not to service Cuba or allow Cuban planes to use air facilities of their countries when there are hijackers being given sanctuary in Cuba, I think it might have an effect on the Cuban Government to return hijackers.

We have seen nearly 40 planes pirated to Cuba. I feel that hearings will allow us to examine all forms of preventive

and punitive measures which could result in a solution to the problem.

REFORMING THE INTERNATIONAL MONETARY SYSTEM

HON. HENRY S. REUSS

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. REUSS. Mr. Speaker, the events of recent months have once again demonstrated the vulnerability of the international monetary system and the need for reform.

Last September, the Joint Economic Committee's Subcommittee on International Exchange and Payments published a report "Next Steps in International Monetary Reform." The recommendations contained therein received the unanimous support of the subcommittee members:

First. In order to expand the supply of internationally acceptable reserve-assets, we urged early ratification of the Special Drawing Rights Amendment to the IMF Articles of Agreement and the distribution of SDR's as soon as possible.

Second. We endorsed the March 1968, Washington agreement that established the two-tier gold price system and insisted that the official price of gold remain unchanged. To guarantee the reserve-asset value of existing official gold stocks, we recommended that gold reserves be deposited or earmarked with the IMF.

Third. To guarantee the value of outstanding currency reserves, we suggested that these also be deposited or earmarked with the IMF.

Fourth. To help prevent continuing payments surpluses or deficits, we proposed a modest relaxation of the legal constraints that limit variations in exchange rates.

Since the publication of our report, support for its recommendations has grown. Perhaps much of this support is in reaction to the franc-mark crisis that occurred subsequently. I call attention to an editorial that appeared in the December 28 issue of Business Week. Point by point, it is in conformity with the recommendations of our subcommittee. Specifically, it advocates the expansion of international liquidity through distribution of SDRs; opposes any change in the price of gold; supports pooling of both gold and dollar reserves; and, urges study of greater exchange rate variability, either through widening of the band within which rates are allowed to fluctuate or through small, gradual changes in par values.

The text of the Business Week editorial follows:

[From the Business Week, December 28, 1968]

A CURE FOR THE WORLD'S MONETARY ILLS

Treasury Secretary-designate David M. Kennedy has put the world on notice that the Nixon Administration will give the highest priority to improving the international monetary system, in order to ward off the dangers of future crises, chaos, and a splitting up of the existing structure of liberal trade into protectionist nations or blocs of nations.

As though to prove how dangerous the present situation is, Kennedy's own remarks that the new Administration wanted to "keep every option open" when it comes to the international monetary system set off a brief burst of speculation and a quick runup in the price of gold. The fact is that the state of international monetary markets today can be compared to that in a gassy coal mine, where anything—a spark from a digging machine or a carelessly lighted cigarette—can touch off an explosion.

It is impossible to know exactly what will cause the next monetary explosion, or how serious it will be. But what we do know is that we have had crisis after crisis—involving the pound, the dollar, the franc, and the mark in just the past year—and that the system is ripe for another crisis at any time. The spark that touches it off can come from anywhere—demonstrations by French students, strikes by British workers, or too frank a remark by a U.S. official. Since it is impossible to eliminate the possibility of shocks or accidents, it is urgent to strengthen the system's ability to absorb them.

The trouble with the world monetary system is basically threefold:

All of the major industrial nations are inflation-prone—but in varying degrees. This means that, as one nation inflates or grows faster than others, the fixed exchange rates between currencies are constantly getting out of whack. With their political commitment to full employment, most nations are unwilling to take the deflationary steps that will put their prices and costs back in line, and thus validate the existing exchange rate.

The alterantive to deflationary moves to correct balance-of-payments deficits would be for nations to change their exchange rates. But the Bretton Woods system, with fixed rates, makes this impossible—until a nation is in "fundamental disequilibrium." In fact, major nations fight like tigers, as a matter of both national honor and in response to pressure groups, not to devalue or upvalue their currencies. Hence, maladjustments among currencies grow worse over time—until a real crisis is in the making, because speculators sense that a huge revaluation must lie ahead.

With all its faults, the system worked well for many years following World War II—because the U.S. was able to cushion the adjustment problem, both by feeding huge reserves of gold and foreign exchange to the rest of the world and by permitting other countries to devalue against the dollar. But that period came to an end with depletion of U.S. gold stocks and the worsening of the U.S. trade and payments position.

THE CHANGES NEEDED

The future growth of the world economy demands a reconciliation of domestic and international economic aims. This is the critical task to which the new Administration must direct its efforts. The chief measures that must be taken must be designed to attack each of the three problems that afflict the existing system:

The U.S., which is the center of the world monetary system, must curb its own inflation and get its balance of payments under better control. Given the risks of causing a deep recession, which would be seriously destabilizing, and given U.S. world responsibilities, this cannot be an overnight achievement. But it is one we must steadily pursue.

The present exchange rate mechanism needs change. A floating exchange rate system would only aggravate instability, but there might be some widening of the band around existing exchange rate parties; for instance, the band might be widened from 1% to 2%. In addition, serious study should be given to small, year-by-year changes in the rate at which a nation's currency is pegged. For instance, if a currency stays at the bottom of its band for most of a year, the peg might be moved down to that level—say by 2%—at the end of the year. This would give no reward to speculators, but, over time, would avoid serious imbalance among nations.

The reserves in the monetary system should be increased. But this should not be done by changing the price of gold; that would not only reward speculators but, more seriously, it would make the system more unstable and inflationary, and it would give a crushing blow to confidence in the dollar and all currencies. Instead, the new Administration should press hard for the addition of special drawing rights and the pooling of national reserves, including both gold and dollars.

Secretary-designate Kennedy has discovered that, where the Johnson Administration suffered from a credibility gap, he may be hurt by a veracity glut. He should now reaffirm his long-held determination to keep gold at its present price; he will be believed as soon as he can disclose a well-conceived plan that will make a gold price change the least likely option.

UNDERSTANDING: THE KEY TO BUSINESS-GOVERNMENT COOPERATION

HON. MICHAEL A. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. FEIGHAN. Mr. Speaker, on December 12, 1968, Mr. James M. Roche, chairman of General Motors Corp., addressed the annual meeting of the Illinois Manufacturers Association. The keynote of his remarks is the need for better understanding that will lead to a more constructive relationship between Government and business. In my opinion Mr. Roche's comments are timely and interesting.

Under leave granted, I herewith insert in the RECORD the address of Mr. Roche:

UNDERSTANDING: THE KEY TO BUSINESS-GOVERNMENT COOPERATION

I count it as a distinct honor to meet with you tonight, to congratulate the Illinois Manufacturers Association upon your 75th Anniversary.

I am always glad to come to your State because it is my State as well. I was born in Elgin, Illinois, and began my business career in this city. Another reason I am glad to come to Illinois is because General Motors' share of passenger car sales is higher here than in any other State. I like to be among people with that kind of discernment.

Organizations such as yours render important service to both the business community and the nation. You provide an effective means for thousands of businessmen to make themselves heard and help shape the patterns of our national life. I am sure all who value the voice of responsible businessmen join me in wishing you many happy returns.

THE TIME OF TRANSITION

We meet today at the midpoint of transition in the American government—halfway between Election Day and Inauguration Day. In Washington and around our country, it is a time of new thinking, of reassessment, of mustering and reviewing the forces of a free society for the challenges of the coming years.

One item on the agenda of reassessment concerns us most directly: the attitude of the new administration and the new Congress toward business. At the same time it would be well for us in the business community to examine *our* attitude toward government. We can explore what we can do to achieve better understanding that will lead

to a more constructive relationship between business and government.

These two important segments of our society—perhaps more than any others—will determine the future of the United States. What they do will surely affect the economic well-being of our people, and our country's position as a leader and stabilizer of the world economy.

ALLIES NOT ADVERSARIES

Business and government can ill afford to be adversaries. So mutual are our interests, so formidable are our challenges, that our times demand our strengthened alliance. The success of each largely depends upon the other.

Today, business and government are each becoming more involved in the affairs of the other.

No businessman today—neither the manager of a large corporation nor the corner druggist—can operate without consideration of government restrictions and regulations. A bill passed in a distant capitol can affect his business as much as a drop in sales or a decision made in his front office. S.E.C., F.T.C., H.E.W. are more than letters of the alphabet to the businessman. Their policies and directives, along with the problems of interlocking directorships, taxes, inspections, government standards and guidelines, and legislative hearings are all part of his business. Moreover, the businessman is now encountering new interest—at all levels of government—in the rights of the consumer, in how much the businessman asks for his products and how much he pays his employes.

It is understandable that the businessman should long for a return to simpler days, to the uncomplicated world of buy and sell we used to know. But the clock of history does not turn back. Government involvement in business today is a fact of life and in appropriate amount it is necessary to the nation's progress.

It is important, therefore, that business begin with an understanding of this fact, and cooperate in all areas where cooperation can help further the nation's interest.

There are many areas, however, in which the responsibilities of government and business are better left separate. We both have an obligation to recognize those areas and to respect them.

It is worth noting that business and government are already working together toward national goals. Business is taking a hand in affairs which were once the exclusive province of local, State, or Federal government.

Talk about effective cooperation between business and government is giving way to action. Only recently we have begun to join in efforts to alleviate urban and social ills which bedevil our society and contradict our prosperity. Business is training and hiring the hard-core unemployed, helping to give minorities a better economic break. Business, with government, is helping to restore, renew, and rebuild our cities and our countryside. We work together to shape our national policy, and to fulfill our public purpose. And there is much, much more for us to do together.

As the challenges to our nation intensify and multiply, we can expect—and should encourage—business and government to draw even closer together. Both the business community and our country stand to gain if we work together—if we come together, not as adversaries, but as allies.

After all, we share many common objectives. We both want a flourishing economy and a prosperous citizenry. We both want a better America with more equal justice and broader opportunities. We both want to maintain honesty in the marketplace: government wants it because it is in the best interest of the consumer, and business because its success depends on satisfied customers.

Business and government have an obligation to communicate and exchange views. We must build an atmosphere of mutual trust and confidence, with each respecting the rights and opinions of the other, so that we may make our free competitive system satisfy the legitimate needs of our people. We should not expect that we will always agree. But we can hope to achieve better understanding.

America's high standard of living is in large part a tribute to American business, and we must maintain public confidence in the practices and products of business. We must strike a proper balance between business activities and constructive government programs.

BUILDING FREE ENTERPRISE

There is much business and government can do together. We can build upon three essentials of free enterprise: incentive, a free market, and management efficiency.

Opportunity for profit is the basic incentive of business—and businessmen need make no apology for seeking it. When we earn a profit, we need not be defensive about it. The reward of profit is the prime reason for being in business.

But every businessman knows there are other incentives. We have all felt, for example, the pride of accomplishment, the satisfaction of helping community and country, of providing opportunities for young people and watching them develop, and the continuing excitement of growing, of doing more, of contributing more. Our incentives are to contribute as well as to earn. These incentives of free enterprise—profit and the less tangible rewards—have achieved the best utilization of man's energy and brains. The government can make a great contribution by keeping these incentives as free as possible from cumbersome restrictions.

If such incentives are the carrot of free enterprise, competition in a free market is the stick. A free market is one where goods can be produced and sold competitively, where success is earned on the basis of customer choice—on merit not presumption—and where the ultimate test of a product is that its value to the customer be greater than its cost.

Government can both increase incentive and improve market conditions if it will simplify regulations, eliminate unnecessary restrictions, develop sensible tax laws, and free industry from political harassment. Government must provide a climate of minimum restraint and maximum freedom consistent with the national interest.

Operating in a free market, with incentives business must provide the third essential of free enterprise, management efficiency. Competition for profits in a free market demands a high degree of management skill and efficiency. Management efficiency, in turn, assures more and better products, lower prices, higher wages, and greater profits and dividends—all fundamentals of a healthy, growing economy.

Conversely, no economy nor society can long afford management inefficiency, whether it stems from ineptness, lack of incentive, or unnecessary government interference.

GROWTH IN FREEDOM

The United States was born free, wholly new, a young energetic force in the world. For almost two centuries, we have affirmed the value of freedom. We have grown, in freedom, to international greatness. Our manpower, resources, and technology—combined with a reasonable political climate and a free competitive economic system—have made us the envy of every other country.

Yet, the American concept of free enterprise is sometimes questioned at home and often challenged abroad.

Here at home, some men question if this "old-fashioned" system is still what the better-educated, more sophisticated, more financially sufficient society of today really wants. Or can some other system do a better job?

At the same time, throughout the world, other nations, with other systems, aspire to our affluence. Dreaming of a better world, they seek to raise their standards of living. Some are making substantial economic progress. In the markets of the world, America is aggressively challenged by new, vigorous, determined, and capable competition.

This developing challenge is seen the great growth of imports into the United States. These are in fields where our country was long impregnable, such as steel, automobiles, electronics and electrical equipment. The challenge is also evident in the increasing competition our exports are meeting in world markets. These competitive developments have seriously reduced our favorable balance of trade.

THE VITAL QUESTION

The question upon which depends so much of America's future is this: Can free government and free business—each faithful to its purpose—work together to serve our nation's greater interest. Can we make free enterprise equal to these new challenges?

We can, if we as a people have the will, the unity of purpose, and the determination that has carried our nation through other great challenges.

We must retain what is good in our system, and improve it where possible. We must be ready to throw out what may be bad, but we must take care that we not sacrifice the achievements of almost two centuries of free enterprise. We must not trade proven values for mythical goals—some of which could destroy our system and frustrate the national objectives toward which we aspire.

We businessmen must be prepared to do our part. We start with the firm conviction that free enterprise, not a controlled economy, is our best answer to economic challenge.

We must give freely of our energies, experience, and management skills. We must develop the social awareness and flexibility needed to meet fast-changing situations. Shifting social values and pressures should stimulate—not reduce—our response and summon the finest leadership of which we are capable.

We must bring to the task the same qualities that spell business success—integrity, experience, precision, knowledge, responsibility, honesty, and dedication. There is no short-cut; no slap-dash way. The challenges are not short-term. The stakes are no less than the continued improvement of our standard of living and the preservation of American leadership in the world.

As we approach these tasks, perhaps our greatest need is for understanding. We must develop more effective communication among all segments of our society between labor and management, teachers and parents, business and the consumer, and—in the area that concerns us tonight—between government and business.

UNDERSTANDING—THE KEY TO COOPERATION

The key to cooperation is understanding—of business by government and government by business. In some respects, the two come together as virtual strangers. And not without reason. American businessmen have grown up in a tradition of non-interference, a tradition now undergoing scrutiny and change.

Once it was not unusual for a government official to take office with a good knowledge of business, often drawn from his own experience. Today young men select their fields early in life and pursue increasingly narrow, more specialized careers in government or in business. With different standards of success, those in one field tend to grow more apart from those in the other.

Misunderstanding is an inevitable consequence of separateness. And many areas of misunderstanding stand between government and business. Tonight, I would mention two examples. One is the imperfect understanding and consequent distrust of bigness in business. The other is the assumption that productivity advance is automatic and a sure-

fire corrective for policies which produce inflation.

THE BUGABOO OF BIGNESS

Bigness—per se—is not bad, as some would have us think. On the contrary, it is constructive and has made possible much of our national economic progress.

We are a big country. We live in a big world. We have big government, big unions, and big business. But some people seem to talk most about—and worry most about—the bigness of business.

Many who deplore the bigness of business mistake economic competition for the predatory life of the jungle, where the big grow bigger as the small grow fewer. This is not the case. The growth of big business has not occurred at the expense of small businesses. As the head of the Small Business Administration has pointed out, a century ago about 300,000 businesses—nearly all small by today's standards—served a population of 29 million. Today 4.8 million serve a population of 200 million. So, while population has grown sevenfold, the number of businesses has multiplied 16 times.

Big and small businesses are mutually dependent. The critics of bigness forget this, overlooking that the big company is also a big customer. General Motors, for example, spends nearly half of its income for the goods and services of more than 37,000 smaller businesses—over three-quarters of whom employ fewer than 100 people. Then, to sell its products, General Motors depends on tens of thousands of additional small businesses—on 14,000 vehicle dealerships and 128,000 other retail outlets.

Big and small business aid and support each other to the benefit of the nation's economy and the individual customer. Small business is frequently the source of new products and new methods. Small business offers imaginative entrepreneurs a range of opportunity for individual initiative. And small business is well able to offer the personal service, special attention, and flexible operation required to meet the increasingly varied demands of the consumer.

BIGNESS AND COMPETITION

Moreover, bigness is often misunderstood as prima facie evidence of monopoly power. But the proof of monopoly is not the size of firms, nor the fewness of firms in an industry. Rather, it is the absence of competition that identifies monopoly.

In the automobile business, for example, competition is the central fact of life. Auto manufacturers compete in product innovations, price, and marketing techniques. The four major domestic companies offer 382 models, and foreign companies offer scores more in the American market.

Yet even the smallest automobile manufacturer is a big company. Automobiles, because of their sheer size and complexity need large capital investments if they are to be produced in the volume essential to low cost. Their design demands large research and development organizations. Their manufacture calls for extensive facilities and large and skilled labor forces. Their sale and servicing requires a nationwide network of showrooms, service centers, and parts warehouses.

Big companies also exist in many other fields that are highly competitive. In Illinois alone are headquartered 57 of the 500 largest industrial corporations in America. You can be proud of the important contributions they have made to our nation's economic growth.

Those who decry the bigness of private industry fail to consider the unwelcome alternatives.

When government takes over an industry, responsibility only shifts to other hands, to managers bound by political strings and slow to respond to consumer needs. Or when a number of smaller companies are artificially sustained in business, prices tend to rise and value to the consumer drops.

The glum prophets of doom have always predicted—and some still do—that the growth of corporate business must inevitably lead to a massive takeover of power. They envision our country transformed into a corporate state, where the private corporation is dominant. Nothing could be further from the truth. If you question this, just ask some of us who are asked to "visit Washington" regularly.

Both the bigness in American business and the progress of our economy result from our historic freedom to compete. The company that does the best job gives progress to our country. And the people, in turn, by buying its products, give the company its size. America must always have a place for big business if our country is to compete successfully in the widening markets of the world.

PRODUCTIVITY, WAGES AND PRICES

In addition to the myth of dangerous bigness, there is also serious misunderstanding of the concept of productivity and how it applies to wages and prices.

Productivity is a popular word at the bargaining table. And it has a place there. In fact, twenty years ago, General Motors helped give historic recognition to the truth that continuing technological improvement is essential to the progress of all. In 1948, for the first time, our union agreements had a provision for relating wage improvement to the increasing productivity of the country as a whole.

Expanding markets, efficient management, and technological innovation have helped American industry achieve a startling increase in productivity.

But, unfortunately, many people have come to take annual productivity increases for granted, to accept them with the certainty of Christmas coming every December. Surely, the popular logic goes, since productivity never fails to go up every year, a company can afford to lower its prices, or increase its wages, or both.

But popular logic fails to remember that the much-discussed annual gain in productivity is only an average. In some years, there is a higher productivity gain throughout the economy; in other years productivity falls short. Some industries achieve more, but others less.

In any case, a fixed increase—whether 3.2% or 2.8% or whatever figure you want to use—is only an average. Much like the size of the average family, 3.7 persons, it is a figure so exact that no parent has ever been able to achieve it. The three is easy. It is that seven-tenths of a person that is hard.

THE ELUSIVE OBJECTIVE

An annual increase in productivity is not automatic, but must be earned, and re-earned, every year. Management each year must take off from a higher base. Each year we must work as hard as we can to be as efficient as we can. Then we must be even more efficient the next year. It is never easy to improve on your best—and do it every year.

Productivity can be adversely affected by many factors: unnecessary work stoppages, resistance to improved technology, low-quality workmanship, absenteeism and poor employe morale—just to mention a few.

Moreover, increased productivity is predicated, not on speed-up, but upon the expectation of a fair day's work from every employe. The objective of technological improvement is to increase the output of the labor force while still maintaining the principle of a fair day's work from every employe.

The illusion that the annual increase in productivity is automatic underlies many hasty and hostile reactions to wage and price decisions.

We cannot have balanced economic growth if inflation is allowed to continue at its current rate. Price stability, equitable wages, and technological innovation are essential to continued economic progress. Our nation enjoyed remarkable growth from 1961 through 1964, with good balance between wages and productivity. But imbalance since then, combined with excessive growth in demand, have produced the inflationary tendencies which now imperil our economy. We have seen our world balance of trade deteriorate in the past few years as we have priced ourselves out of competition in many different lines. We cannot eliminate our balance-of-payments problem, nor long preserve the value of the dollar, unless we balance wages with productivity.

We must find ways to draw the public's attention to excessive wage demands and their implications on prices as vigorously as price changes are emphasized. And we must do so before the fact—not after the wage contract is signed, and its impact on prices becomes inevitable.

These two myths—of increased productivity that is automatic and bigness that is dangerous—are typical of the misunderstandings that better communication can clear up as government and business work more closely together.

THE TASK WE FACE TOGETHER

The constant objective of our concerted efforts should be to protect and preserve the system of free enterprise that is the distinctive hallmark of our national economic life.

Our American system—the profit system, or free enterprise, or capitalism, call it what you will—has produced a far better social product than any other system the world has ever known. It has not achieved a perfect social order, but our constant mission as Americans is to improve it, not to weaken it. History has cast us as builders and not destroyers.

Management's obligation to its stockholders is, of course, clear and primary. Those who own a business expect to earn a profit on their investment. But profits and progress do not compete. Rather, each produces the other.

Mismanaged industry can neither make a profit nor build a nation. Profit provides the funds for growth and progress; growth that in America has underwritten our unmatched system of individual security, opportunity and dignity.

So governments' concern with social progress finds an ally, not an adversary, in business. The job of business is to provide the consumer with goods and services at the lowest economic cost. To do this, business innovates, it grows, it creates more economic opportunities. In short, it gives progress to the nation.

Government can and should promote a better business climate—not for the sake of the businessman, not for the sake of the stockholder, nor the worker, nor even the consumer—but for the sake of the nation as a whole. Business wants a better understanding with government, and will continue to work cooperatively to assure our continued progress as a nation.

Americans must always be free to criticize. Criticize, yes, that is our right. But serve also, that is our duty.

A PART FOR EACH, A PART FOR ALL

The better America we must help build summons from each of us a dedication, a compassion, an effort, and a sacrifice. Every American must try to serve by involving himself in the daily work of our society. We must make sure that the legacy of our America is not lost or diminished by our inaction, our indifference, our intolerance, or our indolence.

We must be willing to face the hard facts of what we must do. America grew great because its people were characterized by energy and industry. We had a willingness to work—and a determination to earn.

We live in a challenging age where much can be accomplished—and quickly. We must make the most of our opportunities for creative change. Material progress has given us more leisure time, more time to think, to concern ourselves with things outside our own jobs, our own communities.

Perhaps, to some extent, this has stimulated the discontent that is so evident in our world today. More people want to participate, to involve themselves, to shape events with their own hands.

If we are to be creators of constructive change, we need not only to be involved ourselves, but must be aware of what others are doing. We must see for ourselves, come out of isolation.

The means of communication have never been more available. Never have we had more ways and opportunities to assure the continued confidence of our customers, suppliers, employes, stockholders, the public, and government.

IN SERVICE TO FREEDOM

Tonight, we consider what we can do, with government, to preserve free enterprise. We might keep in mind what Edward Gibbon wrote of the people of ancient Athens:

"In the end, more than they wanted freedom, they wanted security. They wanted a comfortable life and they lost it all—security, comfort and freedom. When the Athenians finally wanted not to give to society, but for society to give to them, when the freedom they wished for most was freedom from responsibility, then Athens ceased to be free. . . ."

Let us, by our service to our society, assure that no future historian shall ever write that of America. Rather, let him say that America remained free, free because its people so valued their freedom that they gave themselves fully to its service.

U.S.A. LAND OF OPPORTUNITY

HON. LOUIS C. WYMAN

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. WYMAN. Mr. Speaker, amidst all the criticism of affairs domestic it is well to remember that the United States of America to the rest of the world is still the golden land of opportunity. While we strive to preserve equal justice under law in better fashion than in some areas prevails in an atmosphere prejudiced by bigotry, and although some among our society seem to prefer anarchy to law and order with justice, the overwhelming majority of American citizens live in freedom with opportunity to improve themselves, their families and their society at every hand.

In this connection I commend the reading of a recent advertisement by the Warner & Swasey Co. appearing in U.S. News & World Report, as follows:

WHAT'S SO WRONG ABOUT AMERICA THAT WE'RE SO FRANTIC TO CHANGE IT?

We have by far the most of the highest paid jobs in the world.

We take better care of our orphans, old people, sick and poor—*far* better care—than almost any other nation on earth.

American housewives, factory and farm workers, have more and better labor-saving devices than workers anywhere else—and as a result live longer and better, and stay younger and healthier.

United States and Canada are among the few places left where anyone who wants can launch any lawful business, and if he is willing to work hard enough, succeed.

Free education through high school and often through college, free elections, unlimited opportunity. What's wrong with all that? Who are these people who scorn it and want to change it—*and to what?*

FIFTY GOVERNORS ARE WRONG

HON. WILLIAM F. RYAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, January 3, 1969

Mr. RYAN. Mr. Speaker, on December 16, 1968, the Federal Highway Administration held hearings on the regulations which it has proposed for establishing a two-hearing system on location and design of federally financed highways. I strongly supported those regulations at that hearing. As a matter of fact, I have introduced legislation in past Congresses as well as the 91st Congress which would similarly require public hearings.

The need for hearings on highway projects has become increasingly clear during the past few years. Too often the residents of a community in which a highway is to be constructed have been excluded from the decisions affecting its location and design with a resulting adverse effect upon the economic, social, and environmental interests of affected residents.

The Governors of all 50 States of the United States have recorded their opposition to the proposed regulations. Governor after Governor objected to "interference by the Federal Government in 'State highway programs.'" All 50 Governors ignored the fact that the Federal Government presently finances 90 percent of the cost of "State highway programs" in the United States.

I am especially concerned that the Governor of New York State, Nelson Rockefeller, and his commissioner of transportation, John B. McMorran, not only opposed the proposed regulations but urged that New York State Congressmen do so. The Governor's position represents a shocking capitulation to the highway lobby which has been notable for its disregard of human and social values.

I again urge the Secretary of Transportation and the Federal Highway Administration to issue the long overdue regulations, refusing to yield to the combination of State highway officials, highway builders, and the 50 Governors who are wrong as the New York Times expressed it in the following editorial on December 23, 1968.

I also enclose the text of my testimony before the Federal Highway Administration on December 16, 1968.

The material follows:

[From the New York Times, Dec. 23, 1968]

FIFTY GOVERNORS ARE WRONG

Fifty million Frenchmen, as the old adage goes, can't be wrong. But all fifty Governors of these United States can be, especially when their judgment is clouded by greediness to latch onto Federal highway funds.

The National Governors' Conference—a conclave of mansion dwellers whose tenancies are not threatened by bulldozers—voted unanimously to oppose new Federal regulations that would permit local residents to make more effective appeals against proposed highway routes. Governor Godwin of Virginia complained that the new rules would place the "decision-making responsibility" in "the Federal bureaucracy and ultimately in the Federal courts." But the dust from that states' rights rhetoric won't cover up the real issues.

While rail transport facilities have been permitted to decay, Congress has voted billions each year for superhighways between the cities, with the result that the bulldozer has become the juggernaut of the modern age. Highways are necessary—yes; but the ruthlessness with which highways have cut through city and country without consideration for the people who live there has become a national scandal. Areas of historic interest and scenic beauty have been destroyed by the indiscriminate carpeting of the countryside with concrete.

The new Federal regulations are a slight step toward redressing the balance of power in highway location. They will give ordinary people a little more voice against the machine. As a means of protecting homes and preventing the defilement of the countryside, they should be embraced, not opposed, by the fifty governors, including the Governor of New York.

TESTIMONY OF CONGRESSMAN WILLIAM F. RYAN BEFORE THE FEDERAL HIGHWAY ADMINISTRATION HEARING ON PROPOSED REGULATIONS REGARDING PUBLIC HEARINGS ON LOCATION AND DESIGN OF FEDERALLY FINANCED HIGHWAYS, DECEMBER 16, 1968

I am very glad to have this opportunity to comment on the regulations proposed by the Federal Highway Administration to require public hearings on location and design of federally financed highways. The importance of this issue has long been recognized by numerous public officials, including several of my colleagues in the House and myself. On December 12, eight Members of Congress joined me in urging that the new rules be adopted by the Federal Highway Administration as rapidly as possible. Those Members of Congress included: Rep. Jonathan Bingham (D-NY), Rep. Frank Brasco (D-NY), Rep. George Brown, Jr. (D-Calif), Rep. John Conyers, Jr. (D-Mich), Rep. Charles Diggs, Jr. (D-Mich), Rep. Lee Hamilton (D-Ind), Rep. Patsy Mink (D-Hawaii), and Rep. Ogden Reid (R-NY).

The thrust of our comments in that letter pertained to the clearly demonstrated need for requiring full public hearings prior to the time that final commitments are made by State highway officials for construction of highway projects. In addition, we believe that the complete report called for in the new rules detailing the economic, social and environmental effects of a project on the adjacent locality should be a prerequisite to any decision to commit public monies to construction of highways. Let me briefly summarize why I think these regulations are necessary.

First, it is necessary that public hearings be mandatory if those individuals most affected by the location and design of highway projects—the residents of the surrounding community—are to be guaranteed an opportunity to express their views on the propriety of projects while plans are still subject to modification or cancellation. Far too often, residents in an affected locality learn of impending construction after contractual commitments for implementation have already been made by State and City highway officials. If the rule currently under consideration is adopted, the mandatory hearings on both location and design provided for in that regulation will insure local residents the op-

portunity to which they are entitled to make their views known.

The requirements outlined in Section 3.17 of the regulations constitute a second important feature of new rules. That Section would allow "interested persons" to appeal the decision of the division engineer responsible for the location and design of a highway to the Federal Highway Administration. This right to appeal is important for two reasons. First, it would give citizens dissatisfied with the decision of State or City highway officials a chance to make their case before an impartial agency that could more extensively balance the need for the project against the resulting economic, social, and environmental consequences on the adjacent locality. The additional opportunity for discussion and debate provided for in Section 3.17 would be well worth any delay in construction necessitated by this second review process.

Secondly, the requirements of Section 3.17 would enable the Federal Highway Administration to ascertain whether State or City officials had given full consideration to social, economic, and environmental effects, and, significantly, whether these officials had utilized information presented by "interested persons and groups" as specified in the language of that Section. The requirements of that Section would not mean that local and State decisions would be automatically over-ruled. On the contrary, the burden of proof in most cases would rest with those individuals dissatisfied with the decision of State highway experts. However, in cases where decisions clearly contradicted the economic, social, and environmental interests of significant numbers of community residents, those citizens would be provided with institutionalized appeal procedures. Community reaction to even an unpopular project would surely be improved if those most dissatisfied with the decision to undertake it had at least enjoyed adequate opportunity to express their views.

Section 3.13 outlines procedures which meet another of my concerns. That Section would require State highway departments to give consideration to the social, economic, and environmental consequences of a planned highway before requests were made for location and design approval. It further specifies that "consideration . . . shall include analysis of information submitted to State highway departments in connection with public hearings or in response to the notice of the location or design for which a State highway department intends to request approval." The incentive this requirement would give to State officials to give full consideration to all of the effects of a project—and not simply the improvements in traffic movement—would result in a more rounded analysis of the various interests involved. An additional consequence would be a diminution in the number of projects that have to be abandoned, after expensive research and planning, because of adverse community reaction. These, then are some of the advantages that would accrue if the proposed regulations were adopted. What objections have been raised to their enactment?

Some State highways officials, including the Commissioner of Transportation from my own State of New York, have suggested that the procedures and appeal system proposed would shift the emphasis away from an area-wide view that looks to the benefit of a wide community to a more provincial and narrow analysis of the interests involved. However, it seems more likely that the Federal Highway Administration, which has extensive experience in area-wide planning, would give full consideration to the larger spectrum of interests which State highway officials believe to be at stake. Again, the existence of Federal review procedures does not mean that the Federal Highway Administration would necessarily uphold local sentiments when they conflict with planned highway problems. What it does mean is that additional consideration would be given to the issues involved when there appears to be substantial disagreement on the necessity or specific plans for location and design of the project.

The second principal criticism of the new rules is that they infringe upon State's rights and the administrative responsibilities assigned to State agencies by their respective legislatures. It must be granted that some States already provide regulations analogous to those proposed. But the vast majority do not. Moreover, the issues involved in this question are simply too important to allow each State to adopt regulations over a period of time deemed appropriate by State officials. This is why the promulgation of "guidelines and standards by the Federal Highway Administration" would not be an adequate response to the problem. Citizens whose economic, social and environmental interests are threatened by a planned highway project should not have to wait until State highway officials decide that the "guidelines" of the Federal Highway Administration are appropriate standards for their State. We must have national standards that give concerned citizens an opportunity to fully express their opinions.

The "states rights" argument additionally ignores the fact that approximately 90% of the total cost of highway construction is paid for by the Federal Government. It is hardly unreasonable that a program of that magnitude should have regulations pertaining to its implementation. State highway programs have been more than willing to accept the assistance provided by the Federal highway program. It is time the States accepted the reasonable rules which have been proposed as well. It seems to me that the Federal Government has a clear responsibility to provide those regulations when such enormous amounts of money are at issue. To fail to do so would constitute a dereliction in the Government's duty to ensure that the highway program is administered in a fair and equitable manner.

The citizens who live in a community that stands to be affected by highway construction have a legitimate right to have their opinions heard by those responsible for the project. For it is they who will have to live with the project's effects. I believe that the rules proposed by the FHWA are a necessity if local residents are to have any say in the planning of their environment. As you may know, I introduced a bill, H.R. 1250, to the 90th Congress that contained provisions similar to those under consideration today. The rules proposed by the FHWA should achieve the purposes I set forth in that legislation.

The need for greater participation in the planning of citizen-financed highways is clear. The regulations proposed by the Federal Highway Administration are an important step toward the implementation of that participation. I urge the Federal Highway Administration to adopt the new rules as speedily as possible.

GILBERT QUESTIONNAIRE TO CONSTITUENTS OF 22D DISTRICT, BRONX, N.Y.

HON. JACOB H. GILBERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. GILBERT. Mr. Speaker, it is customary for me at the beginning of each new Congress to send a questionnaire to the residents of my 22d Congressional District, Bronx, N.Y. I find it is extremely helpful to me in representing my district to have the views and thinking of my constituents on important issues facing the Congress.

With permission, I wish to insert in the RECORD the questionnaire, and my letter which is a part of the questionnaire, to be sent to my constituents in a few days:

CONGRESSIONAL QUESTIONNAIRE FROM CONGRESSMAN JACOB H. GILBERT

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., January 1969.

DEAR FRIEND: I want to thank you, as a constituent of the 22nd Congressional District, for the mandate you gave me in the recent election. It was very gratifying to me.

As your Representative in Congress, I have the responsibility of bringing your viewpoint to Washington, whatever your political persuasion. I am sending you this questionnaire because I am anxious to hear your views on the major questions before the country.

Please fill out this questionnaire, refold it tightly with my address on the outside, and mail it with a 6-cent stamp.

Remember that my staff and I always stand ready to assist you in any problems you may have with the Federal Government. As I begin my ninth year in Congress—thanks to the confidence you have shown in me—I look forward to hearing from you, not only in this questionnaire but whenever you care to contact me.

Sincerely yours,

JACOB H. GILBERT,
Member of Congress.

FOREIGN POLICY

1. What kind of settlement would you favor for ending the war in Vietnam?

☐ (a) A coalition government in Saigon, to include the National Liberation Front.

☐ (b) An agreement between our government and Hanoi to withdraw all outside troops, so the South Vietnamese can fight it out among themselves.

☐ (c) Withdrawal on our part, whether or not we reach agreement with the other interested parties.

☐ (d) No negotiation until we have won military victory.

2. What policy should the United States adopt for assuring stability in the Middle East?

☐ (a) A formal alliance with Israel, possibly including its admission to NATO, that would assure our intervention in the event of an Arab attack.

☐ (b) A public declaration that we would intervene on Israel's side in the event that the Soviet Union openly intervened for the Arabs.

☐ (c) Press for a negotiated settlement through the United Nations.

☐ (d) Join with the Soviet Union to guarantee formally the terms of a peace settlement.

DOMESTIC POLICY

3. What should the Federal Government do about inflation?

☐ (a) Legally control prices and wages.

☐ (b) Maintain high interest rates and taxes, including the Surtax, in an effort to reduce consumption and slow business expansion.

☐ (c) Tie Federal salaries, Social Security benefits, welfare payments, Medicare and other outlays to the cost-of-living index.

☐ (d) Nothing on the grounds that inflation is better than unemployment and business recession.

4. What should the Federal Government do about crime?

☐ (a) Increase anti-poverty expenditures.

☐ (b) Increase assistance to local police forces, for higher salaries, improved training and better equipment.

☐ (c) Revoke the constitutional guarantees recently affirmed by the Supreme Court to assure representation by counsel, avoid coercion in the extraction of confessions and end illegal wiretaps, searches and seizures.

☐ (d) Enact more stringent laws to reduce the careless trafficing in firearms.

NATIONAL PRIORITIES

5. What is the order of importance that you ascribe to the following budgetary items? Please number one to ten.

——— (a) Aid to public schools and higher education.

——— (b) Anti-poverty programs, including job training.

——— (c) The Vietnam war.

——— (d) Mass transit, including intercity rail transit.

——— (e) Space exploration.

——— (f) The elimination of slums and low-income housing.

——— (g) National defense (apart from Vietnam).

——— (h) Health care and health research.

——— (i) Increased Social Security benefits.

——— (j) Highway construction.

SPECIAL ISSUE

6. Would you approve of a Constitutional amendment which would substitute Popular Election of the Presidency for the present Electoral College? ☐ Yes. ☐ No.

ABANDON RHODESIAN INTERVENTION—ACHESON

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. RARICK. Mr. Speaker, Mr. Dean Acheson, former Secretary of State and an authority in international affairs has recently delivered soul-searching advice to our leadership on correcting our transgressive intervention in Rhodesian affairs.

I ask unanimous consent to here insert in the RECORD the full text of Mr. Acheson's statement from the Washington Sunday Star for December 22, 1968, followed by Prime Minister Ian Smith's speech from the Rhodesian Viewpoint of December 5, 1968, and the Rhodesian Commentary for November 1968.

The material follows:

[From the Washington (D.C.) Sunday Star, Dec. 22, 1968]

DROP "REFORMIST INTERVENTION" IN RHODESIA, ACHESON ADVISES

(By Dean Acheson)

(NOTE.—Mr. Acheson, former Secretary of State, has written many books on international affairs. Also, he is a frequent contributor to magazines.)

The Johnson Administration, like a tidy and conscientious housewife, will want to clean out rubbish, failures, and broken-down contraptions rather than leave them to embarrass the new tenant. There is no better place to start than with the Rhodesian policy, bought by the present occupant in an absentminded moment from a smart salesman. It never did work; the salesman is trying desperately to escape from all connections with it; and to leave the old non-starter to clutter up the garage would be a scurvy trick. Putting this advice in the more sonorous phrases of statesmanship, the President would do well to recall Lord Roseberry's warning not to hover over the bones of dead policies.

Prime Minister Harold Wilson invented this policy in aid of Britain's retreat from empire in southern Africa. The Federation with Northern Rhodesia and Nyasaland, which the British had induced Southern Rhodesia to join in 1953, having proved a failure, the British Parliament dissolved it. Northern Rhodesia was set up as the independent state of Zambia and Nyasaland as Malawi. Rhodesia, which had long been self-governing and a participant at Commonwealth Conferences on a parity with self-governing dominions, expected to have its independence recognized, as had been done with other self-governing units. This seemed a purely formal step, since the country had never been governed, subsidized, taxed, or protected by Whitehall and had its own consular service abroad.

The British Government, however, balked, seeking to get from Rhodesia a guarantee of universal suffrage within the country. Rhodesian suffrage was, and is now, as ours had been throughout our early history, based on literacy and property qualifications, arising out of local conditions. There are no racial qualifications or discriminations for voting or civil rights. The population of Rhodesia, consisting of two hundred thousand whites and four million blacks, is nearly all made up of immigrants or their immediate descendants. Many of the blacks are still in a state of primitive neolithic culture. The condition of domestic tranquility prevailing in Rhodesia may be judged by the fact that the municipal police, as in Britain, perform their duties unarmed and the mandatory death penalty for armed insurrection has been abolished.

UNILATERAL ACTION

The Rhodesian Government, unable to agree with the Labour Government in London on a form for severing their political connection, accomplished it by unilateral declaration in 1965. At this point Mr. Wilson, finding that he had leverage for pressure on Rhodesia and no support at home for armed intervention, sought foreign help in coercing the country. For some time the Afro-Asian-Communist delegations at the United Nations had been nosing into Rhodesian affairs, as they had into South African, Portuguese-Angolan, and French African. British Conservative governments had repulsed their interest in Rhodesia as an intrusion into internal affairs, forbidden by the Charter. Now, however, Mr. Wilson reversed course and sought from the United Nations voluntary economic sanctions—the United Nations term for economic warfare—against Rhodesia to end its independence. The United States followed along in this Children's Crusade to universalize one-man-one-vote.

Voluntary sanctions proving ineffective, Mr. Wilson pressed to have them made mandatory. Here, however, a problem arose. Under the Charter of the United Nations mandatory sanctions could be invoked only when the Security Council should find that the offending state had committed or threatened to commit a breach of international peace and security. Rhodesia, of course, had done neither. In fact, it had done nothing except to announce that political ties between it and Britain had been ended. Britain could have decided to make war upon this rebel, as it had on the American Colonies when they took similar action; but the British people would not do so and the British government declined the opportunity. International peace and security remained unruffled.

Not, however, to the United Nations Security Council. In its view Rhodesia constituted a threat to the peace if the Security Council said that it did. The Council in attaching its own meaning to the words of the Charter takes Humpty-Dumpty's position toward words: "The question is, which is to be the master—that's all." So it pronounced Rhodesia a threat to the peace. If a theory was needed it was that Rhodesia's independence under its existing electoral system would so outrage the black dictatorships of Africa that they might attack her. This theory has the authority of the wolf in Aesop's fable who declared that his prospective dinner, the lamb drinking downstream from him, was polluting his water.

MATTER OF SANCTIONS

Mandatory sanctions proved no more effective than voluntary ones in bringing Rhodesia to heel; nor has a later attempt to add to them. White Rhodesians have been brought together rather than divided by external pressure and have proved most ingenious in using great resources and industrial capacity to meet the needs of their beset economy. The blacks within Rhodesia have proved preponderantly cooperative rather than recalcitrant toward the regime. The countries around Rhodesia, black and white, furnish copious leaks through the blockade; practical operators like the French are not deterred from a profitable bargain by so bogus an international obligation as U.N. sanctions. They are a failure; and yet they are harmful, more than a nuisance. No one knows this better than Mr. Wilson, who now wants desperately to get out of the mess he has created.

The sanctions, like many ill-considered policies, are hurting unintended victims and bringing about unintended results. The chief economic victims now appear to be black people—within Rhodesia through underemployment and a slowdown in growth; in Zambia (formerly Northern Rhodesia), which since independence, as during the Federation, is economically dependent upon the Rhodesian market, by decrease in its market for labor and materials. Zambia is already asking Britain for large subsidies to compensate for the harm done to her—a development which partly explains Mr. Wilson's change of heart and mind about sanctions.

Perhaps the greatest damage is the political and psychological estrangement and distraction from constructive purposes caused by this UN-created isolation of southern Africa, both black and white. The Rhodesians, already remote from western civilization, feel at bay, conspired against by declared enemies, the target of foreign trained and equipped terrorists, pushed toward a racial attitude they do not share and do not want. This view is thoroughly shared by Dr. Hastings Banda, the president of Malawi, who has seen that his country's future welfare lies in closer cooperation with his highly developed white neighbors to the south and speaks as hostilely of U.N. sanctions as does Mr. Smith.

AFRICA STALEMATE

Mr. Wilson is rightly—though only lately—aware of the ugly consequences of a stalemate in southern Africa. At home Conservatives, Liberals, and moderate Labour are sick of the situation and want to get out of it. The extreme left joins the Afro-Asian and Communist blocs in calling for majority rule before independence in Rhodesia and some of them, for force—by someone else—to achieve it. South Africa has announced a policy of support for its neighbors against terrorism or attack by or through adjoining states. The United Nations policy is thus, ironically, the chief threat to the peace and security of southern and central Africa.

Mr. Wilson not only wants to get out of the trouble he has made but also has gone a good way to do so. The trouble is that he has not gone far enough. The scheme which, in various versions, he offers involves the fatal flaw of contradiction. Let us see how this is so.

In Mr. Wilson's last talks with Mr. Smith on HMS Fearless a few weeks ago, the British

Prime Minister was apparently ready to acknowledge Rhodesian independence if Mr. Smith's Government would take two steps designed to save some face for Mr. Wilson and appease the more reasonable of the black Commonwealth states. These steps were meant to safeguard the "entrenched clauses" of the Rhodesian constitution that permit persons of certain cultural and economic qualifications to vote and all persons to have other civil rights without racial discrimination. The first of these safeguards is called the "blocking quarter." It would require in the constitution that a quarter plus one of each legislative chamber should be composed of black members elected by black voters and that no alteration of the entrenched clauses could be made over the adverse vote of one quarter of the votes of both houses voting together.

The blocking quarter would thus keep open the increasing political power of black citizens as they attained cultural and economic qualification.

The second requirement put forward was to include in the constitution a right of appeal to the Judicial Committee of the Privy Council in London in a number of ways, against any change in the entrenched clauses, even though approved by all racial groups, "on the ground that it discriminates unjustly, or has the effect of discriminating unjustly, between the races; or on the ground that it derogates from the principles of the Declaration of Rights contained in the Constitution." The Judicial Committee of the Privy Council is an agency of the British government composed of the members of Britain's highest court, the Judicial Committee of the House of Lords plus the Lord President of the Council and a few others. At one time appeals lay to it from colonial and dominion courts. The provision for appeals has now been abolished by the independent members of the Commonwealth as inconsistent with an independent status.

The British requirement for an appeal to its judicial agency for dependent areas is the chief block to settlement between Rhodesia and the United Kingdom. It would give the British Privy Council the same power over Rhodesian legislation claimed to violate the entrenched clauses as our Supreme Court has over state legislation claimed to violate the Fourteenth Amendment.

Rhodesia's objections to this double-locking device have been stated clearly and—at least in my judgment—persuasively by Ian Smith. He stresses that the principle of the blocking quarter is acceptable. What is not acceptable is the provision for appeal to the Judicial Committee of the Privy Council. In his words, "the British Government wish to assume additional powers which are a derogation from the sovereignty of our Rhodesian Parliament." He embellishes the point: "For example, if a certain entrenched clause amendment, which requires a three-quarter majority . . . in its favor, complied with this necessary requirement, indeed even if such an amendment received the approval of every single member . . ., in other words 100 percent support, the Privy Council would still be in a position to turn this down and proclaim that in their opinion the Rhodesian Parliament had not made the correct political decision . . . and therefore had no right to pass the amendment." Mr. Smith concludes: "In other words, the British Government are insisting that the Privy Council shall be the highest parliament in Rhodesia as far as amendments to entrenched clauses are concerned, and that they shall take on the role of deciding what laws are in the interest of Rhodesia." Thus the British terms for acknowledging Rhodesian independence would include a denial of that independence—a basic contradiction.

Following the Fearless talks, Mr. Wilson sent an able minister, Mr. George Thomson, to negotiate further at Salisbury in what was touted to be an effort to try for agreement with Rhodesia, Mr. Thomson tried out numerous variations on the same theme: to wit, some device whereby the British Government would be enabled to withhold independence even while appearing to acquiesce in it. Mr. Smith, sensibly and understandably, has persistently rejected the contradiction. Thus, not surprisingly, the issue is stalled, while the Rhodesians go on exercising in practice the independence that the British Government seems so loath to admit candidly. This stalement opens up a prospect for more fumbling along a demonstrably futile course—months upon months of sanctions that miss their purpose and serve only mischief.

What can the United States do to help in the situation? First of all, our government might take heed—and call on the British likewise to take heed—of Shakespeare's advice that

"To persist
"In doing wrong extenuates not wrong,
"But makes it much more heavy."

It is fallacious and fanatic to believe that any good can be achieved by turning the screw of sanctions.

In a similar spirit, we can take note of the good sense in Ian Smith's position—reavowed on November 19—which subscribes to the blocking quarter but rejects, as an "impossible and indeed ridiculous obstacle," the notion of putting his country in leading strings to Britain by making the Judicial Committee of the Privy Council the constitutional censor.

ROOM FOR SETTLEMENT

Within this position there is surely room for a fair settlement: for Mr. Wilson, opportunity to escape from a quandary of his own making without leaving too many of his tail feathers in the door jamb; for Mr. Smith, an end of the enervating struggle over independence at the price of a fair guarantee in the constitution for the continuance of the rights it provides.

We can help Mr. Wilson where he needs it most—with his extremists at home and with the United Nations—by supporting a settlement in which Mr. Smith grants the blocking quarter and Mr. Wilson drops the demand for an appeal to a foreign court. Our method could be to let Mr. Wilson know of the desire of the present administration to end its domestic enforcement of restrictions on trade with Rhodesia, preferably in conjunction with similar action by the United Kingdom, rather than to leave the mess to be cleaned up by the incoming administration. Though such action might be unpopular with a majority in the United Nations and a minority in the United States, they could not harm an outgoing government.

This action would also have the incidental advantage of being right. In both the broad and the narrow sense of the word the United States will bear the responsibility for a continuance of this mistaken quarrel with Rhodesia—and secondarily with South Africa and Portugal—by continuing encouragement of measures taken in the United Nations. Although sanctions against Rhodesia have failed, they would have amounted to nothing had we not cut off our trade with that country. For us and, hopefully, the British to resume it would, as a practical matter, end the policy.

In a broader sense, however, we will bear responsibility for the growing political isolation of southern Africa which these emotional and ill-considered measures are bringing about. We are the only power of general, as distinguished from parochial, responsibility in the free world. At a time when Arab nationalism has brought on the closing of the Suez Canal perhaps permanently—and the Soviet navy has penetrated the eastern Mediterranean and the Indian Ocean, the good will of southern Africa, the use of its ports, the cooperation of its governments—including their participation with immense resources and advanced technology in aiding the development of adjoining black states—would be of immense importance to the free world. The mere existence of stability in so vast and important an area of an otherwise turbulent continent is an asset of the greatest value. As the principal responsible power in the free world, it is our duty and responsibility to encourage good will, cooperation, and stability in southern Africa. It is the height of folly to sacrifice these desirable ends to an aggressive reformist intervention in the internal affairs of these states, an intervention designed to force upon them electoral practices that none of black African or Communist states and few of the Asian accept.

If the President would commune with the spirits of his predecessors, Messrs. Washington, or John Quincy Adams, or that wise adviser of presidents, Ben Franklin, he could in the next 60 days do as great a service to his successor, his country, and the free world in Salisbury and London as he is striving to do in Paris.

[From the Rhodesian Viewpoint, Dec. 5, 1968]

ANYTHING OTHER THAN GENUINE INDEPENDENCE UNACCEPTABLE

(Prime Minister Ian Smith Broadcasting to Rhodesians, November 19, 1968]

"We Rhodesians believe that there is both a place and a future for all Rhodesians—both black and white. Any other suggestion is unacceptable to us, as is anything other than genuine independence." In a broadcast to the Rhodesian people on November 19, Prime Minister Ian Smith reported on his meetings in Salisbury with British Minister without portfolio, George Thomson.

DEROGATION OF SOVEREIGNTY

Referring to the British Government's requirement that, in addition to braking mechanisms which would be enshrined in any agreed independence constitution, the Judicial Committee of the Privy Council should provide a second and external guarantee against retrogressive amendments to the Constitution, the Prime Minister said:

"The British Government wish to assume additional powers which are a derogation from the sovereignty of our Rhodesian Parliament. For example, if a certain entrenched clause amendment which requires a three-quarters majority of Parliament voting in its favour, complied with this necessary requirement; indeed, even if such an amendment received the approval of every single member of Parliament, in other words, 100 per cent support, this Privy Council would still be in a position to turn this down and proclaim that in their opinion the Rhodesian Parliament had not made the correct political decision."

OBJECTIONABLE FEATURE

"It must be quite clear in everybody's mind," said the Prime Minister, "that what they are trying to do is to accede to our independence with one hand, while at the same time trying to take it away with the other. They are trying to insert into our Constitution something quite unique, which has never been incorporated in any other known independence constitution in this world."

ALTERNATIVES

"Subsequently, it was made abundantly clear that the British Government were giving this question serious consideration when Mr. Wilson spoke in the House of Commons on October 24th, and stated that 'We were and are willing to consider other alternatives'. Moreover, it is true that the British team in Salisbury last week did produce an alternative, on the Friday prior to their departure, after keeping us waiting in suspense for more than a week.

"In the first place, it did not meet our fundamental objection that it would not derogate from the sovereignty of Parliament, in spite of the fact that I had been assured by Mr. Thomson that it would not do so. Secondly, and into the bargain, it contained conditions which made it even more unac-

ceptable than their first proposal, incredible though this may seem."

DIFFERENCES WILL BE RECONCILED

"Personally, I have never believed any safeguard to be necessary, and the British knew this. However, in spite of the fact that I have met them on this point, they now wish to bring in the second safeguard which, to add insult to injury, unlike the first, derogates from the sovereignty of the Rhodesian Parliament. This is anathema to us and so it is ridiculous to expect us to assist them—we oppose the whole concept most emphatically.

"Time and time again I have impressed on the British that because of the fact that we Rhodesians have to go on living with the decisions we make, this is the finest guarantee or safeguard that anyone in this world could wish for.

"The position is still exactly as I outlined it after my return from Gibraltar; that there is one major stumbling block and if the British will meet us on this point, I am convinced that the other remaining differences will be reconciled."

[From the Rhodesian Commentary, Nov. 25, 1968]

FLAG OF INDEPENDENCE IS RAISED

The introduction of the new Rhodesian Flag was one method of showing beyond all doubt that Rhodesia was a free and independent country. His Excellency the Officer Administering the Government, Mr. Clifford Dupont, said at the flag-raising ceremony in Salisbury on the third anniversary of Independence on November 11.

Rhodesia's Declaration of Independence three years ago was a logical step in view of her conduct of her affairs since she obtained self-government in 1923.

"It was bitterly opposed by those abroad who undoubtedly wished to impose their own political ideas and theories upon Rhodesia without regard to the consequences for the people of Rhodesia as a whole", he said.

REAFFIRMATION

"Today, when we fly our new flag for the first time, we reaffirm our determination to maintain our sovereign independence and to be responsible for our own affairs.

"These affairs are the practical concern of everyone who lives in Rhodesia. We have to live with them and we alone either reap the benefit or suffer the consequences of our actions."

Mr. Dupont said the flag embodied, in the coat-of-arms on its centre panel, three emblems significant in Rhodesian history.

The Zimbabwe bird, a relic of a previous occupation, was unique and essentially Rhodesian, while the lion and thistles were from Rhode's armorial bearings and the golden pick-axe on a green ground represented the country's pioneering prospectors and farmers.

Throughout history, men had realized that they could best express their feelings, their love, their loyalty and their patriotism for their country by showing respect to an emblem such as a national flag.

"May our new flag not only inspire such feelings but also become a symbol of the unity of Rhodesians of all races", he concluded.

TAXES: REFORM

HON. DOMINICK V. DANIELS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. DANIELS of New Jersey. Mr. Speaker, on the opening day of the 91st Congress, January 4, 1969, I reintroduced my tax reform measure which is designed to provide tax relief for middle-income taxpayers by plugging tax loopholes.

Mr. Speaker, on December 29, 1968, the Boston Herald-Traveler editorially endorsed the view which I have been espousing for the past 3 years.

The editorial is worthy of the attention of all Members of this House and for this reason I include it following my remarks, in the RECORD.

The editorial follows:

TAXES: REFORM

The House Ways and Means Committee of the 91st Congress ought to schedule, as soon as practicable, hearings on the revision of the Internal Revenue Code, a 1,000-page collection of complexities and inequities that has accrued from years of amendments, rulings, regulations and court cases.

Congress must take the initiative on tax reform because the public is simply too baffled by existing regulations to figure out what should be done to correct them. The average taxpayer might be satisfied if the Internal Revenue Service could simplify his income tax return, but every now and then he reads about some of the flagrant loopholes in the Internal Revenue Code and he feels somehow cheated by his own government.

The middle-income and low-income taxpayer bear the brunt of the tax burden. The higher an individual's income is, the less likely is he to pay the established rate of taxation, especially if he can afford the services of an accountant and tax lawyer. As the American Bar Association has noted: "The table of income tax rates in the Internal Revenue Code is a mask for a host of special provisions with which the tax adviser can shield substantial income from the excessive rates."

It is not the intricate provisions but the egregious exemptions that command the most most publicity, however. The most notorious is the 27½ per cent depletion allowance for oil—although more than 100 minerals are given less generous depletion allowances. Another is the failure to tax the appreciation of property passed on to heirs; still another is the creation of many tax-exempt charitable foundations that are actually tax shelters.

The exemption that provides the most dramatic example of how some persons can go scot-free of taxes is the exemption of state and municipal bonds from federal taxation. There are reasons to entice investment in low-yield public bond issues, but some of the results are preposterous.

The National Observer reports the case of one extremely wealthy widow who invested her inheritance in municipal and state bonds. Her annual interest is more than $1,500,000 a year, but since the bonds are tax exempt, she does not even have to file a tax return. Her gardener, who makes $5000 a year, pays $350 in federal taxes.

By this and other special provisions, 18 Americans who made $1 million or more in 1966 did not pay a dime in federal income taxes. Their cases provide the argument for a minimum tax, a percentage of income taxes above a certain amount so the very rich would not, through tax-exempt bonds, depreciation schemes and special deductions, escape a just assessment for the cost of government.

IN MEMORY OF DOR W. BROWN, SR.

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. PICKLE. Mr. Speaker, during the adjournment period, Dor W. Brown, Sr., of Georgetown, Tex., a pioneer worker in county agricultural services died on November 16, following a long illness.

Mr. Brown worked hard for the causes he believed in—agricultural, civic development, and good government. He and Mrs. Brown raised one of the most exciting and delightful families in all of Texas—four daughters and one son, all of whom have distinguished themselves in many ways.

He served Williamson County, Tex., for more than 28 years as an agricultural agent, helping and assisting the farmers in that area cheerfully and effectively.

When he retired in 1946, he was not content with inactivity and held the post of county surveyor until ill health forced him to retire a second time during the mid-1950's.

He was an ardent Democrat and worked hard for the election of President Lyndon B. Johnson as a Representative, Senator, Vice President, and President.

Mr. Dor Brown pulled more than his share of responsibility during his long and active life, and he shall be missed greatly.

Under leave to extend my remarks, I include the following news article on Mr. Brown. It was published in the Williamson County Sun shortly after his death:

Funeral services for Dor W. Brown, Sr. were held Monday morning in the First Methodist Church with Dr. Durwood Fleming officiating, assisted by Mr. Brown's pastor, Rev. Wallace Chappell. Burial was in the Capital Memorial Gardens under the direction of Davis Funeral Home.

He died Saturday at noon in a Kerrville Hospital following a long illness. He would have been 87 years old on Monday.

Dor W. Brown, Sr. of Georgetown, longtime county agricultural agent, was born at Cherokee, San Saba County, Nov. 18, 1881. His father, the late Joe Fraser Brown, was a surveyor-journalist and represented San Saba County in the Texas Legislature during the sessions of 1874, 1893 and 1895.

Mr. Brown graduated from old West Texas Normal and Business College at Cherokee with a B.A. degree in 1902.

He married Alice Mayes, school teacher and native of Valley Springs, Llano County, Oct. 18, 1909. Their children honored them with a Golden Wedding anniversary reception at Georgetown in 1959.

The Browns have five children, ten grandchildren and five great grandchildren. Their children are: Mrs. S. E. (Dorothy) Wilcox of Rockport, Mrs. John W. (Frances) Burcham and Mrs. Harvey O. (Mary) Payne, both of Austin; Mrs. I. J. (Jane) McCook, Jr. of Georgetown, and Dr. Dor W. Brown, Jr., physician of Fredericksburg.

A sister, Mrs. Frances Cearnal, lives at Georgetown. Two brothers are J. J. Brown of Austin, retired State Director of Vocational Rehabilitation, and Paul Brown, rancher of Spicewood.

Mr. Brown is a lifelong member of the Methodist Church and has been a member of the Masonic Lodge nearly 60 years (1909).

He was a member of Georgetown Chapter No. 90, Royal Arch Masons, Georgetown Council No. 54, Royal and Select Masters and San Gabriel Lodge No. 89, A.F. & A.M.

He received a 50-Year Service Award from the Masonic Grand Lodge of Texas in 1962 for his long time service in the Order.

As a young man, Mr. Brown taught school at Chapel and Locker in San Saba County, He later was elected county school superintendent of San Saba County. He entered county agricultural agent work in 1918. His first assignment was county agent for Mason County. In 1921, he became the first county agent assigned by the Texas A & M Agricul-

tural Extension Service to Tom Green County. He remained at San Angelo until 1929 when he left to manage farm properties for a San Antonio mortgage banking firm.

He returned to the Extension Service in 1932 as county agent for Williamson County at Georgetown, a post he retained until his retirement in 1946.

Not content with the inactivity of retirement, Mr. Brown decided he would like to return to a profession he learned from his father as a boy. On the night before the Democratic primary in 1947, he told a Georgetown political rally that since there were no candidates for county surveyor he would seek the office. He asked his friends to write in his name. They responded generously the next day. He received more than 800 write-in votes and thus, was elected surveyor. He held the position until ill health forced his retirement in the mid-1950's.

Mr. Brown left many landmarks as a county agent. In Tom Green County he introduced and developed: Jersey Bull circles, turkey cooperative pooling for marketing purposes, one variety cotton, contour farming and crop diversification

An oldtimer recalled that one year while Mr. Brown was county agent at San Angelo 29 cars of live and dressed turkeys were sent out as a result of cooperative pooling. The market had started with a dealer offer of 15 cents. Upon advice of the county agent, producers came into the pool in an effort to get better offers. The result: a booming market which finally reached 45 cents for dressed turkeys.

In Williamson County Mr. Brown's work was highlighted with development of outstanding cotton and livestock programs. He was a strong advocate of one variety cotton and was accorded national recognition for his work in that field.

In the 1930's, he joined other Texas agricultural leaders on an historic trip to the nation's capital. Mission of the delegation was to thank the Congress and President Franklin D. Roosevelt for instituting federal livestock and crop control programs which helped lift the nation's farm and ranch economy from the devastating level of the depression years.

Mr. Brown for many years was judge of the Sears Foundation's annual swine show at Austin.

TIME FOR MONETARY REFORM

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. MOORHEAD. Mr. Speaker, our recent fiscal dilemmas—first with the pound and then with the franc—have pointed up the fact that our once reliable Bretton Woods agreement is no longer trustworthy.

Writing in the Pittsburgh Post-Gazette during our congressional recess, financial writer Sylvia Porter sums up the arguments for updating Bretton Woods rather well, I think, and I submit her proposals, to be considered at a new international monetary conference, for the attention of my colleagues at this point in the RECORD:

FRANC CRISIS' MEANING

(By Sylvia Porter)

The fate of General de Gaulle's monumental gamble to save the 20-cent French franc with currency controls and economic curbs is dwarfed by four vital points.

The latest international currency crisis is on unmistakable warning that the monetary system we created at Bretton Woods almost a quarter century ago is coming apart at the hinges.

The crisis of the French franc is the third dreadful emergency in only twelve months. We will take risks with world prosperity if we continue to duck the evidence that the monetary system is no longer stabilizing currencies and fueling the orderly expansion of trade.

The U.S. dollar could come under renewed attack by currency speculators at any time.

Right now the dollar is comparatively safe because we have just reported the first black ink in our balance of payments since early 1965. The improvement, though, is not solid. It reflects a huge inflow of foreign money to buy U.S. stocks; tough restrictions on the outflow of U.S. dollars for investment abroad; some obvious gimmicks.

Actually, our trade surplus is dwindling dangerously.

NEW CONFAB NEEDED

A great new international monetary conference of the leading free world nations is becoming increasingly urgent. We will be lucky if the French franc and other currencies can be held until President-elect Nixon can assume office.

President Johnson and Treasury Secretary Fowler enthusiastically welcomed de Gaulle's decision not to devalue the franc because this helps buy additional time for the monetary system and the U.S. dollar. But the French franc crisis is not an isolated misfortune.

It was precisely one year ago this month that the British at last lost their fight to maintain the pound's value in the face of massive dumping of pounds.

For years Britain has been spending far more abroad than she has been earning abroad. As a result there has been a relentless drain on her reserves of gold and dollars. Last November Britain was compelled to cut the value of the pound from $2.80 to $2.40.

Despite this move to help increase exports and cut imports, the pound remains suspect. The crisis of the franc could all too easily move to the pound once more.

In March of 1968 the crisis hit the U.S. dollar. Again the fundamental cause was the fact that we too have for years been spending far more abroad than we have been earning abroad. As a result, our creditors have been draining away our gold reserves.

The run on our gold reached a climax in March; we countered by a decision to continue selling our gold at $35 an ounce only to qualify central banks and to let the gold speculators trade in the metal on their own in a free market.

This plugged an intolerable leak, but doubts persist and are growing about how long we will maintain the price of gold at $35 an ounce.

FRENCH PACKAGE WEAK

Then a few weeks ago it became the franc's turn.

In just a few months frightened Frenchmen transferred $2.5 billion of francs into other currencies—notably the West German mark, which has been strong because West Germany is running a fat surplus in her balance of payments.

The package of "solutions" this time includes: a $2 billion credit by the leading financial powers to France; a tax on German imports and exports designed to cut Germany's trade surplus; no devaluation of the franc but a long list of austerity moves to combat France's inflation and bring back confidence in the franc.

So now what? No matter what happens in the world's markets, whichever ones are open this week, the makings of a crisis remain. Currency controls are not an advance; they are an admission of defeat, a retreat.

The speculators will not fold up and slink home. They smell a killing and they will be guided by none of your rules of good conduct.

PROPOSALS ADVANCED

Thus the importance of updating the Bretton Woods agreement.

One proposal will permit currency rates to fluctuate within wider limits than now allowed by the International Monetary Fund—say by 5 per cent up or down. This would, in effect, permit automatic devaluations or upward revaluation whenever a country's accounts got out of whack.

Another would involve the realignment of all currency values, including that of the U.S. dollar—along with an increase in the price of gold above the $35 price fixed back in 1934.

The key point is that we are being warned that we cannot go on this way patching up monetary crisis after monetary crisis with the old glue of 1944. The glue is coming unstuck.

RURAL-URBAN BALANCE

HON. JOHN V. TUNNEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 6, 1969

Mr. TUNNEY. Mr. Speaker, the National Advisory Commission on Rural Poverty has stated:

It is a shocking fact that in the United States today, in what is the richest nation in history, close to 14 million rural Americans are poor, and a high proportion of them are destitute.

When our country was founded, 90 percent of the people lived in rural areas. Today 70 percent of all Americans live on less than 2 percent of the land. Over 600,000 people a year are leaving rural areas for overcrowded urban metropolitan areas. In the next 25 years, 100 million more people will be added to the 140 million in our cities and suburbs.

Most of the rural exodus is generated by the deterioration of opportunities in rural America—and the resulting hope for better opportunities in the cities. However, hopes and dreams are being submerged beneath a concrete morass. Instead of a better life what is encountered is a different type of poverty in overcrowded depersonalized cities with housing, pollution, high crime rates, congested highways, rundown schools, with resulting discontent and frustration. People arriving in urban areas searching for a better life usually find their hopes shattered, their frustrations and discontent heightened. We have seen the fruits of this discontent last summer and this spring.

The answer commonly given is to improve our urban areas. There is no doubt that they must be renovated.

Author J. P. Lyford, in his book on the New York slums, "The Airtight Cage," articulates this new awareness by asking:

Why for instance, must huge concentrations of unemployed and untrained human beings continue to pile up in financially unstable cities that no longer have the jobs, the housing, the educational opportunities, or any of the other prerequisites for a healthy and productive life? Why do we treat the consequences and ignore the causes of massive and purposeless migration to the city? Why are we not developing new uses for those rural areas that are rapidly becoming depopulated? Why do we still instinctively

deal with urban and rural America as if they were separate, conflicting interests when in fact neither interest can be served independently of the other?

It is time for us to question whether urban areas can ever catch up when thousands of people every year are arriving, adding to already critical problems. In view of this, plus the increasing birth rate in the cities, it appears unlikely that public and private efforts can ever be sufficient to adequately deal with urban problems.

Secretary of Agriculture Orville Freeman said:

Many ghetto dwellers came from rural areas, or their parents came from rural areas. Back on the farm they also were poor, and they also were without power, but they did experience a sense of community and a solidarity of family that in too many cases the faceless city has shattered.

The Secretary went on to say:

The crisis of our cities, perhaps the most serious ever to face us as a people, has its roots in our failure to plan for change, our failure to develop public and private institutions and directions that would shape and control the unprecedented technological and productive forces that have been unleashed in the U.S. since the end of World War II.

In this period, our population has grown by 55 million—37%.

Our gross national product went from $280 billion to more than $800 billion.

Nearly 3 million farms disappeared in the technological revolution that swept—and is still sweeping—through agriculture.

More than 20 million people left the countryside for the city.

A third of our total population left the city and settled in suburbia.

All of this—and more—occurred without any real national recognition of what it meant.

What is needed is a reversal of this population trend. Rural America offers a viable alternative to further urban crowding. We must begin to establish a rural-urban balance. It is time to literally give our urban areas breathing room. In order to accomplish this, there must be a concerted effort to develop our rural communities—in our rural areas. Rural America must no longer be forgotten land—a land to be from; a land of declining economies, a low level of limited job opportunities, and dwindling local tax bases.

First, we must improve agricultural and nonagricultural job opportunities. There must be increased public and private investment. People must be given encouragement and incentive to remain in rural areas. Industry must be encouraged to locate in rural areas.

I am reintroducing legislation designed to develop business and employment opportunities in rural areas, smaller cities and areas of unemployment and underdevelopment. The first provides certain preferences for prospective Government contractors in such cities and areas.

This legislation proposes that in the awarding of a government contract, credit be given for the size of the city as well as the degree of emigration.

First. If the bid received is from a city of 250,000 or less, a 1-percent credit is given.

Second. If the city is under 100,000 a 2-percent credit is given.

Third. If the city is under 50,000 population a 3-percent credit is given.

Fourth. If the area bidding is one where unemployment and underemployment exceeds the national average or where serious emigration problems exist, a 2-percent credit would be given.

The Secretary of Labor would determine at least quarterly, those areas of serious emigration.

The second bill provides incentives for the establishment of new or expanded job-producing industrial and commercial establishments in rural areas. The Secretary of Agriculture will designate economically deficient rural areas. Business desiring to locate in these areas will be able to receive increased tax credit for plant investment, accelerated depreciation schedules, and additional wage deductions for low-income workers and training assistance for new employees. To qualify the firm must show that it will create new jobs and be able to employ low-income labor from the area. If a firm meets this criteria it will receive the following tax incentives:

A 14-percent investment credit on machinery instead of the regular 7-percent credit.

A 7-percent investment credit on the cost of the building, an accelerated depreciation of two-thirds for the normal life of the machinery, equipment, and building.

A 125-percent deduction for wages paid to low-income employees for a 3-year period.

These bills would discourage further concentration of population in large crowded metropolitan areas and the intensification of presently existing urban problems.

I feel that the passage of these bills would help to encourage a national policy of urban-rural balance.

Rural emigration to urban areas has created a crisis for each. The only permanent solution lies in a reversal of our emigration trend—a trend that is illogical and dangerous under present conditions. I hope that the Congress will act to encourage rural residence, and strike at the heart of the emigration problem—the lack of opportunity for employment in nonfarm production and services. I feel that the incentives proposed in these bills are in the best interest of our rural community, our urban areas, and on the Nation as a whole and its future.

HOUSE OF REPRESENTATIVES—*Tuesday, January 7, 1969*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Lead me in Thy truth and teach me, for Thou art the God of my salvation.—Psalm 25: 5.

O Lord, our God, grant unto the Members of this body, and all who work with them and for them, a fresh sense of Thy presence as we take up the duties of this day. May we learn to think Thy thoughts after Thee and to keep our hearts open to our people that to us will come wisdom as we make decisions, good will as we relate ourselves to one another, and courage as we endeavor to do what is right and good for all.

In this moment of prayer do Thou—

Breathe on us, breath of God,
Fill us with life anew,
That we may love what Thou dost love,
And do what Thou wouldst do.

In the Master's name we pray. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Geisler, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 1. Concurrent resolution making the necessary arrangements for the inauguration of the President-elect and Vice-President-elect of the United States.

SWEARING IN OF MEMBER-ELECT

The SPEAKER. Will any Member-elect who has not been sworn come to the well of the House and take the oath of office?

Mr. TAFT appeared at the bar of the House and took the oath of office.

THE LATE HONORABLE A. LEONARD ALLEN

(Mr. LONG of Louisiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LONG of Louisiana. Mr. Speaker, I find it my sad duty today to advise the House officially of the passing of one of Congress most distinguished former Members, the Honorable A. Leonard Allen, of Winnfield, La. Mr. Allen died quietly early Sunday morning, January