

Testimony of Senator John F. Kennedy Defending the Electoral College

(Congressional Record, 84th Congress, 2nd Sess. March 20, 1956)

John F. Kennedy's plea: (see full testimony within):

“(Direct Election) would greatly increase the likelihood of a minority president...it would break down the federal system under which the states entered the union, which provides a system of checks and balances that insure that no AREA or GROUP shall obtain too much power....” (Emphasis added)

“(Quoting Madison): this government is not completely consolidated, nor is it entirely federal... Who are the parties to it? The people—not as the people comprising one great body, but the people comprising 13 sovereignties...”

“Today we have an electoral system which gives both large and small states certain advantages that offset each other...”

“(Direct election), while purporting to be more democratic would increase the power and encourage (extremist) splinter parties...”

[Every ten years or so, attempts are made to undermine democracy and federalism by proposing a Russian-style “direct election” that would abolish the both the U.S. Senate and the allocation of elector votes in the Electoral College *that is based on equal suffrage in the Senate*. These cynical attempts are made despite Article V of the U. S. Constitution which guarantees that “no state, without its consent, shall be deprived of its equal suffrage the Senate” (upon which every state’s weight in presidential elections is based).

Senator John f. Kennedy’s valiant defense of our federalist system for electing a president succinctly sets forth all the most important reasons to preserve our constitutional system that has provided this country with the democratic structure and stability that undergirds the United States of America, without which this nation would never have been created, must less have been preserved for our posterity. (Transcript of Congressional Record infra.)

For those truly desiring a Russian-style direct elect in pursuit of “Every Vote Equal”, the first step must be to abolish the U.S. Senate, in which decisions affecting American law and society are made on a daily basis, and upon which the weight of states in the presidential election are based. It would be putting the “cart before the horse” to attempt to eliminate the Electoral College first, since the Electoral College is based on equal suffrage in the Senate.]

by providing that each State shall have two Senators. We have had that system so long that there is nothing we can do about it today.

Mr. DOUGLAS. I do not wish to enter into a long colloquy with the Senator, but this part of no underrepresentation of the big States is the one provision in the Constitution which cannot be amended. What I am protesting against is adding still another disability to the big States and big cities. I hope to develop the fact that we are underrepresented in the House of Representatives and in the State legislatures and are frequently denied even the elementary right to govern our own affairs by home rule so far as cities are concerned. The only way we have is some part in the election of a President. If this is taken away it will operate in a much greater degree and the net result will be an additional underrepresentation of the big States and cities.

Mr. DANIEL. In comment on the Senator's statement, it seems to me that instead of taking away any advantage that a State or a city might have, we are simply equalizing the matter and giving the people of the entire Nation whether they live in small or in large States, an equal amount of say as individuals in the election of a President and Vice President through the system we have advocated in this substitute amendment.

Mr. President, I yield the floor.

During the delivery of Mr. DANIEL'S remarks.

Mr. KENNEDY. Mr. President—

Mr. GORE. Mr. President, will the Senator yield so that I may suggest the absence of a quorum?

Mr. KENNEDY. I yield, with the understanding I do not lose my right to the floor.

Mr. GORE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SCOTT in the chair). Without objection, it is so ordered.

INTRODUCTION

Mr. KENNEDY. Mr. President, Senate Joint Resolution 31 concerning which there has been little, if any, public interest or knowledge, constitutes one of the most far-reaching—and I believe mistaken—schemes ever proposed to alter the American constitutional system. No one knows with any certainty what will happen if our electoral system is totally revamped as proposed by Senate Joint Resolution 31, and the various amendments which will be offered to it. Today we have a clearly Federal system of electing our President, under which the States act as units. Today we have the two-party system, under which third parties and splinter parties are effectively discouraged from playing more than a negligible role. Today we have a system which, in all but one instance throughout our history—has given us Presidents

elect by a plurality of the popular vote. I refer to one instance, because the frequently mentioned situation in 1824, involving Andrew Jackson and John Quincy Adams, in which six States did not have popular votes, can be ignored, and the other frequently mentioned case, that of the Hayes-Tilden contest, involved outright corruption, and the decision of the electoral commission was responsible for the election of Hayes; so in the 175 years of our constitutional system, there is really only one valid example in which the present system produced the election of a candidate who did not receive the largest number of votes. And today we have an electoral

vote system which gives both large States and small States certain advantages and disadvantages that offset each other.

Now it is proposed that we change all this. What the effects of these various changes will be on the Federal system, the two-party system, the popular plurality system, and the large-State-small-State checks and balances system, no one knows. Nevertheless, it is proposed to exchange this system—under which we have, on the whole, obtained able Presidents capable of meeting the increased demands upon our Executive—for an unknown, untried, but obviously precarious system which was abandoned in this country long ago, which previous Congresses have rejected, and which has been thoroughly discredited in Europe. No State legislature, political party, or

major group of citizens has requested this change. Any State legislature which felt such a change to be more democratic or more logical has been free to adopt it for the past century. No statute or constitutional provision prevented the States from doing so. But, with the single exception of Michigan, which quickly abandoned the system proposed by Senate Joint Resolution 31 after a single trial more than half a century ago, not a single State has done so.

Why should we in Congress be in such a hurry to adopt a drastic constitutional amendment which most of the voters do not know we are considering, and which they certainly have not demanded? These are crucial times—and whatever defects may be claimed in the present Federalist two-party system, we at least have knowledge of and experience with its operation. We have no knowledge as to whether these proposed revisions would provide adequate machinery to serve a country in the midst of recurring foreign policy crises—or whether they would lead to a breakdown in this machinery, such as those we have witnessed in France and elsewhere, paralyzing the country before it could return to the old system. The world situation does not permit us to take the risk of experimenting with the constitutional system that is fundamental to our strength and leadership, particularly without full knowledge of the effects of such changes.

No urgent necessity for immediate change has been proven. No minority Presidents have been elected in the 20th century; no elections have been thrown into the House of Representatives; no breakdown in the electoral system, or even widespread lack of confidence in it,

can be shown. The evils of the present system alleged by the proponents of Senate Joint Resolution 31 are decisive; the benefits they claim for the future are at best speculative, and at worst statements exactly contrary to the results more likely to take place. There is obviously little to gain—but much to lose—by tampering with the Constitution at this time.

It seems to me that Falkland's definition of conservatism is quite appropriate. When it is not necessary to change it is necessary not to change.

The substantive arguments advanced by the proponents will be discussed subsequently—but it is revealing to note the political appeal made to various groups. Northern Democrats have been told that the Daniel amendment will assure their party of permanent control of the White House. Southern Democrats were told that the amendment would give them overwhelming control of their party. Liberals were told that the amendment would give them recognition by treating third-party movements more equitably. Conservatives were told that the influence of minority pressure groups in the Northern cities would be eliminated. And Republicans have been told that from the votes that will somehow appear in the South, under the Daniel amendment, or from gerrymandering of electoral districts by Republican-dominated State legislatures, under the Mundt amendment, their party will permanently possess the White House. It is difficult to believe that two-thirds of the Members of the Senate will accept such contradictory predictions.

Mr. President, under the previous agreement I shall yield the floor at this time to the Senator from Texas (Mr. DANIEL), who is the sponsor of the proposed amendment.

Mr. DANIEL. Mr. President, will the Senator yield to me for comment on his remarks?

Mr. KENNEDY. Yes. With the understanding that when the Senator has concluded it will be possible for me to regain the floor, I yield for a question.

Mr. DANIEL. I wish to make it clear that the Senator from Texas has not made all the representations of which the Senator from Massachusetts has spoken concerning the effect of the proposed amendment.

Mr. KENNEDY. I have read the hearings very carefully. One of the real reasons why I regret that I cannot support the proposed amendment is the fact that the distinguished Senator from Texas has given so much of his time and conscientious effort in behalf of his amendment. It seems to me that his amendment, as he introduced it, and as it was reported to the Senate, was infinitely preferable to the amendments to his amendment, which I believe he was obliged to accept somewhat reluctantly. Therefore I am completely sincere when I say that I appreciate the conscientious work the Senator has done. As he has just said, my discussion of the various arguments with respect to the different sections does not apply to him.

Mr. GORE. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. GORE. I concur in the observation which the distinguished junior Senator from Massachusetts has just made. Before going further, I wish to say that I have listened attentively to the very able and challenging remarks of the distinguished junior Senator from Massachusetts.

Like him, I believe that the amendment recommended by the junior Senator from Texas is preferable to the proposed amendment before the Senate, which combines the recommendation of the junior Senator from Texas and the recommendation of the junior Senator from South Dakota [Mr. MUNDT]. However, I ask the Senator this question: If he had to choose between continuation of the present system, which I regard as undemocratic and filled with potential danger of the usurpation of the will of the people, and accepting the proposed change, which would he prefer? Or does the Senator think we must choose between those alternatives?

Mr. KENNEDY. I will say to the Senator that I am opposed to the Daniel amendment, the Mundt amendment, and the combined Daniel-Mundt amendment. I am opposed to the Humphrey amendment, which provides for direct election. In this case, I am opposed to change. Therefore, though I believe the Daniel amendment to be preferable to the Mundt amendment, I should be compelled to vote against it, even if it were offered separately. However, in the combined form, the evils are compounded in my opinion, and I believe that the benefits which each might have are completely submerged in this strange union.

Mr. GORE. The Senator certainly has great ability to clarify his position. He has made it explicit. Does not the Senator recognize the apprehensions of a Senator who comes from a State which, as recently as 1948, was partially disfranchised through the action of an elector selected and placed on the ballot by the Democratic Party, but who finally, as a member of the electoral college, cast his ballot, not for the candidate whose electors had carried the State, not for the candidate whose electors had been second in the State, but rather for the candidate whose electors had been third in the State?

Mr. KENNEDY. Of course, the Senator has every right to be especially interested in that situation. Nevertheless, the fact is that of the 12,463 votes cast in the electoral college since 1820, only 5 have been cast contrary to instructions. In 1820 one New Hampshire delegate voted for Adams instead of Monroe. In 1824 three New York delegates voted for Henry Clay's opponent, though they were pledged to him.

Then in spite of the great provocation existing in the Hayes-Tilden contest, which, as the Senator knows, was decided by one vote, I believe one of the electors from Massachusetts uttered a more or less classic phrase when he said he was chosen by the people not because they had confidence in his judgment, but because they knew what his judgment would be. I believe that in every case since 1824, with the exception of the case which the Senator has described in

Tennessee in 1948, every elector has obeyed the instructions of his people.

Abuses are always possible. However, I believe that under our present system we have made quite a good record in a democratic society. Nevertheless, I would support that portion of the amendment of the Senator from Texas which would prevent any repetition of the incident to which there has been reference here today. I believe that portion of the Senator's amendment is most important. If the remaining portion of the Senator's amendment is defeated, I hope that this particular section will be pressed in order to avoid throwing an election into the House of Representatives, which almost occurred in 1948. There it should be decided upon the basis of Members voting as individuals, and not as State delegations, which might result in the election of a so-called minority President.

Regardless of what happens to the remainder of the Senator's amendment, I hope the Senator will press for action on this particular section.

Mr. GORE. Mr. President, I congratulate the Senator upon the further exposition of his views. In the opinion of the junior Senator from Tennessee the Senator from Massachusetts has just acknowledged that the present constitutional provision is not satisfactory. I join him heartily in expressing that view. I am not entirely satisfied with the proposed amendment now before the Senate. I believe the Senate will have an opportunity to work its will. The able and distinguished junior Senator from Massachusetts, for whom I have the greatest affection and the highest of esteem, and with whom I enjoy a warm personal friendship, is making a valuable contribution. However, I implore the Senator not to take an adamant position against any change, and not to remain satisfied with the present situation when he has now acknowledged that it is far from satisfactory.

Mr. KENNEDY. I agree; but the Senator should realize that what I am talking about is the method of selecting a President by the House of Representatives. That is a provision in the Constitution which the large States accepted in the Constitutional Convention for the same reason that they accepted the provision for two Senators from each State — to get the Constitution adopted. However, that is a far cry from the plan proposed by the Senator from Texas [Mr. DANIEL], which would divide the electoral vote of each State proportionately. That is an entirely different subject on which I must reluctantly disagree with the Senator from Texas, in spite of the very important work he has done on this subject.

Mr. CASE of New Jersey. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield to the Senator from New Jersey.

Mr. CASE of New Jersey. First, I wish to express my appreciation to the Senator from Massachusetts for his very fine statement and analysis of the pending joint resolution. I wish to emphasize the fact that the Senator from Tennessee has made it possible for us to point out that it is not necessary to

accept the provision in the joint resolution with regard to counting the electoral vote or even the provision with respect to casting it, in order to eliminate the defect which I agree with both Senators ought to be eliminated, namely, the existence of the electoral college and chance that a member of the electoral college may go haywire.

That provision, as well as the provision for counting the votes, in the event that the election should be thrown into the House of Representatives, can be corrected without in any way involving us in the dangers and difficulties and unknowns which the provisions to which I object would lead us.

Mr. KENNEDY. The Senator is absolutely correct. I believe that half of the States have already removed the danger of electoral college delegates not reflecting the views of the States. States can take care of that situation themselves.

Mr. GORE. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. GORE. In reply to the junior Senator from New Jersey, I should like to say that it is not a question of an elector going haywire, as he said, under the present system, because under the present system it is an elector's constitutional right to cast a ballot as he pleases. Legally he has the opportunity to do so. There is apparent the possibility that the electoral votes of an entire State could be cast, contrary to the wishes of the people, contrary to the first choice, to the second choice, and even to the third choice of the people of that State.

Mr. CASE of New Jersey. Mr. President, will the Senator yield further?

Mr. KENNEDY. I yield.

Mr. CASE of New Jersey. I must disagree with the statement that an elector, even though there may be no law in his State requiring him to do so, is free to cast his vote as he wishes. He is not free under our system. He is under the greatest obligation to conform with the

Mr. GORE. Which is a moral obligation?

Mr. CASE of New Jersey. Yes; a moral obligation, which is the greatest of all. Fortunately, it is not necessary to accept the provisions of the amendment which I regard to be dangerous in the extreme in order to accept other provisions.

Mr. KENNEDY. I am glad that we have been able to isolate that issue, and that people will not feel that they must support the entire amendment on the ground that their only choice is between that and nothing.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. DOUGLAS. Would the Senator from Massachusetts say that the Senator from Tennessee at the moment seems to be straining at a gnat and swallowing a camel? I hope during the course of the debate the proportions of the gnat which he rejects and the proportions of the camel which he accepts may become manifest and bring the Senator from

Tennessee back to his usual clear perception of the issues.

Mr. GORE. I should like to observe that the Senator from Illinois resembles neither. [Laughter.]

Mr. KENNEDY. Mr. President, the Senator from South Dakota [Mr. MUNDT] stated that the district plan is the plan advocated by the Founding Fathers. They did it at a time when they conceived the electoral college to be completely removed from the people and when they had no conception of the rise of large political parties. So the development of the Nation has been different from the way in which they conceived it.

The Senator from Texas stated that certain States had an undue influence in the election of a President. I would say to the Senator that the solid South has 127 electoral votes, based on an average of 5 million popular votes, which is a very strong position in connection with representing nearly 45 million people. Having a vote of one-eighth of the country at large and a fourth of the electoral votes, it would indicate that those States have a disproportionate influence.

In May of last year, Senate Joint Resolution 31 was reported by the Senate Judiciary Committee. This amendment, known as the Daniel-Kefauver—formerly Lodge-Gossett—amendment, provides for a system of proportional voting, whereby the electoral vote for each State is divided among the various candidates in the same proportion as the popular vote cast within that State. Recognizing that the present requirement of an electoral vote majority would be more difficult to achieve, inasmuch as splinter parties would also be receiving electoral votes, Senate Joint Resolution 31 lowered this requirement to 40 percent.

The committee rejected Senate Joint Resolution 3, the so-called Mundt-Coudert proposal, or district system, whereby the electoral vote for each State would be divided in the same manner as that State's Senators and Representatives were elected, namely, two electoral votes representing the State's two Senate seats being awarded to the candidate who carried the entire State, and the electoral vote representing each congressional district being awarded to the candidate who carried that district.

In March of this year the Senator from Minnesota [Mr. HUMPHREY] proposed still another substitute amendment for Senate Joint Resolution 31, under which each State would retain two electoral votes, to be awarded to the candidate carrying that State, but dividing the remainder of the 531 electoral votes cast for them without regard to State lines. The Senator from North Dakota [Mr. LANGER] and other Senators also introduced an amendment to provide for election of the President by direct popular vote, without regard to State lines.

On March 15, or less than 1 week ago, the sponsors of both Senate Joint Resolution 31 and Senate Joint Resolution 3 joined in offering a new compromise proposal as a substitute for Senate Joint Resolution 31.

This compromise amendment submits both plans to the States for ratification, and permits each State to take its choice. The Senator from Texas [Mr. DANIEL]

announced to the press that neither plan would have passed the Senate, inasmuch as the proponents of each opposed the other; so the sponsors combined both plans in an effort to satisfy everyone.

In short, the Congress of the United States is to say to the States, "We cannot agree on any single system for electoral reform, and in fact we do not approve of either one of them; therefore, we are giving you your choice."

There is a constitutional obligation to consider which proposal is best on its merits, and affirmatively to approve or disapprove of each for referral to the several States.

That, in my opinion, is a circumvention of the constitutional amendment procedure as proposed by the founding fathers.

Mr. DANIEL. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. DANIEL. Will not the Senator agree that today the States have the choice of any method of naming their electors which they might desire to use?

Mr. KENNEDY. After reading the hearings, after listening to the Senators discuss the deficiencies of the Mundt-Coudert plan, and after hearing the Senator from South Dakota discuss the deficiencies of the Daniel-Kefauver plan suddenly to find them linked together seems to be a strange combination, arrived at only in order to get two-thirds of the vote.

Mr. DANIEL. No. What I asked the Senator was if it was not true that today the States have a choice of any plan they might desire to use in order to name electors.

Mr. KENNEDY. And they have made that choice. Would the Senator from Texas object to this? Would he object to the present plan's being included among the choices to be given to the States?

Mr. DANIEL. Yes, I would. I feel the present plan is outmoded, works many handicaps, and should be abolished.

Mr. KENNEDY. Would the Senator from Texas deny to the States the opportunity, which they are using, to follow the present plan, and to force them to choose between two other plans, both of which could have been put into effect, if it had been desired to do so, but as to which, of course, there was no desire to do so?

Mr. DANIEL. One of them could not have been put into effect in Texas. The Lodge-Gossett plan could not have been put into effect in the present situation.

Mr. KENNEDY. That is true.

Mr. DANIEL. Mr. President, will the Senator yield for one observation concerning his remarks as to the differences between the Senator from South Dakota and the Senator from Texas?

Mr. KENNEDY. I yield.

Mr. DANIEL. True, each of us argued that his own plan would be better; on the other hand, I think it will be found that each of us acknowledged that the plan of either would be better than the method which is in existence today.

Mr. KENNEDY. I remember the Senator discussed Harris County, Texas, which, as I remember, has one-sixth of

the population of Texas, even though there are 22 Representatives from Texas. The Senator suggested that the Mundt-Coudert plan would be an invitation to that sort of procedure all over the country.

Mr. DANIEL. That is correct. That is one argument which I made against the Mundt-Coudert plan. Even though that be true, I feel it is a better system than is in existence today.

I have no idea that the State of Texas would ever adopt the alternative offered by the substitute amendment for the Mundt-Coudert plan, because our State has been very much in favor of the Gossett-Lodge plan of the substitute amendment.

Mr. KENNEDY. If I were from Texas, I would be in favor of it, as Representative Gossett was. The Senator has given us the 1948 figures. Under the Senator's proposal, there would have been 15.0 electoral votes for Truman, and 5.6 for Dewey. In other words, there would have been a margin of 9.4.

For the State of Illinois, which the Senator suggested had a disproportionate influence, there would have been 14.0 for Truman and 13.8 for Dewey, making a margin of .2 in the electoral vote balance, while for the State of Texas the margin would have been 9.4.

So it seems to me that there would be taken away all the influence Illinois would have with its population of 8 million or 9 million, while the slightly smaller population of Texas would have had a margin of 9.4 balancing the electoral scales. I think that would have been unfortunate for Illinois. It would have been repeated in New York.

New York is the largest State in the Union. It has only 2 Senators, but it has 43 Representatives. One of New York's great hopes of recapturing its relative loss of influence in the legislative branch is to have an effective influence on the presidency.

In 1948, 28.2 percent of the electoral votes were for Truman, and 21.6 percent were for Dewey, a difference of 6.6, compared with Texas margin of 9.4 electoral votes.

Mr. DANIEL. The Senator from Massachusetts is using percentages.

Mr. KENNEDY. I am using the distribution of the electoral vote.

Mr. DANIEL. On a percentage basis.

Mr. KENNEDY. Yes.

Mr. DANIEL. If the Senator will read the distribution of electoral votes, he will see that New York has an electoral vote in proportion to its population. The Senator is reading figures pertaining to an election in which the Lodge-Gossett plan was not in effect. If the Lodge-Gossett plan had been in effect, I imagine the figures would have been quite different. More people would have gone out to vote on both sides.

Mr. KENNEDY. I agree with the statement which the Senator made about the Lodge-Gossett plan. I agree that a prediction cannot be made for the future on the basis of what has happened in the past—at least, with certainty. But an indication is given. We know from what has happened in the past that what I have read would have happened. I also know from reading the Record that on

at least three occasions under the Lodge-Gossett plan there would have been a President who was a minority candidate in the election. I think on three occasions there would have been a President elected by one party, while the opposite party would have been in control of Congress.

Mr. DANIEL: Does the Senator from Massachusetts realize that under the present system there have been three Presidents elected who received less than a majority of the popular vote?

Mr. KENNEDY: There has been only one occasion, because the Tilden-Hayes election was fraught with corruption. It was won as a result of an electoral commission making a decision that caused Hayes to win the election.

In the 1824 case of Adams, Jackson, and Crawford, there is no indication that the votes that went for Crawford, Adams, and Clay would have gone for Jackson. Jackson was a minority candidate in any case. So that is not a good example.

Mr. DANIEL: In the record of the hearings, at page 331, there is a listing prepared, I believe, by the Library of Congress of Presidents who received less than a majority of the popular vote.

In 1824, John Q. Adams; in 1876, Rutherford B. Hayes; in 1888, Benjamin Harrison were the Presidents who received less than a plurality of the popular vote from 1824 to 1952.

The fraud which is continually referred to in the Hayes-Tilden case was a fraud that grew up under the present electoral system which is being followed today.

Mr. KENNEDY: Oh, no, the fraud was discovered as a result of the New York Times' refusal to accept the election of Tilden. On the night of the election, the Times sent telegrams to the various States to make certain that they held the line for Hayes, thus it was as the result of Senator Lamar and other influential members of the electoral commission making a deal that Hayes would withdraw Federal troops from the South that they agreed to accept the election of Hayes.

That was the reason for the result; it was not because of an unsatisfactory electoral voting system.

Mr. DANIEL: But the situation arose under the electoral system which is in operation today.

Mr. KENNEDY: That is correct, but it had nothing to do with it. There was no connection between the two. It occurred, of course; but it was not directly connected with it. There was no cause and effect relationship.

Mr. DANIEL: But there would not have been any electoral commission intervening in the matter if the votes had been counted either by congressional districts or in proportion to the popular vote and certified to the President of the Senate as provided in the proposed amendment.

Mr. KENNEDY: I shall quote briefly from a book on the Presidency:

Had it not been for four journalists, sitting up that night in the New York Times office, that would have been the official result. But these four men changed the course of history. As they watched the returns in

the early morning hours, a dispatch came in from Democratic State Chairman Magone: "Please give your estimate of electoral votes secured for Tilden. Answer at once." The four Republican editors guessed that the Democrats were uncertain of the electoral result in the South.

One of the four—John G. Reid, the managing editor of the Times—rushed to the Fifth Avenue hotel where Zachariah Chandler, chairman of the Republican congressional committee, was sleeping in sweet exhaustion, partly as a result of the election, partly from the drinks he had consumed during the night. The two men, one dead sober and the other in not quite the same condition, evolved a plan. Telegrams were sent out to the Republican Party heads in Louisiana, South Carolina, and Florida: "Hayes is elected if we have carried South Carolina, Florida and Louisiana. Can you hold your State? Answer at once."

The second edition of the Times—at 6:30—gave Tilden 184 and Hayes 181 votes (assuming Louisiana and South Carolina for Hayes). Tilden needed 1 more vote for his election, as 185 constituted the majority. But the newspapers stated that Florida with its four votes was doubtful. Therefore, "if the Republicans have carried that State, as they claim, they will have 185 votes—a majority of 1." Thus, the struggle to secure the 1-vote majority began, keeping the country in a state of wild excitement for weeks to come.

The next day the now-sober Chandler announced: "Hayes has 185 electoral votes and is elected." But Hayes was not so confident. He said in an interview in Cincinnati: "I think we are defeated in spite of recent good news. I am of the opinion that the Democrats have carried the country and elected Tilden."

In the 1824 case, the vote was not counted in six States.

Since the Senator from Texas stated there were three cases, I believe we should get this correct. There is no sense in dismissing the past, because the past is a pretty good indication for the future. As I have indicated, there is really only one case in the past, in which a minority President was elected.

Offsetting this 1 case are 3 elections in which Senate Joint Resolution 31 would have elected 3 minority Presidents. The proposal before us would have given the country 3 minority Presidents instead of the 3 majority Presidents who took office.

In 1880, under Senate Joint Resolution 31, Hancock would have defeated Garfield in the electoral vote, while losing the popular vote.

In both 1896 and 1900, Bryan would have become President by virtue of the electoral vote under Senate Joint Resolution 31, instead of McKinley, who won the popular vote.

When we talk about what the past has shown, it is easy to ascertain what the results were under the existing procedure. Under this proposal, there would have been 3 cases which would have given a bad result. There would have been 3 cases in which there would have been a President of 1 party at the beginning of his term and a Congress controlled by the other party. I do not think that has happened in any other case in our history.

The two schemes joined together by this shotgun wedding, moreover, are wholly incompatible, the sponsors of each having thoroughly and accurately

assailed the merits of the other over the years. The Mundt proposal multiplies the general ticket system; the Daniel proposal abolishes it. The Mundt proposal continues the importance of States as units for electoral purposes; the Daniel proposal reduced it. The Mundt plan keeps the electoral college; the Daniel plan abolishes it. And yet it is now proposed that the Senate, being unable to give its approval to either system, should lump them together and give each State its choice. No surer method of introducing confusion and loss of public confidence in our electoral system could be devised.

It should also be pointed out that two minor but worthwhile changes are included in these amendments. One, the office of presidential elector is either abolished or made specifically nondiscretionary, which would make impossible the never-realized fear of electors defeating the popular will by casting their vote for the losing candidate; and two, when a presidential election is thrown into the Congress, it would be decided by a majority vote of the Members of the House and Senate in joint meeting, a more democratic method than the present procedure whereby the Members of the House voting as State units, decide the presidential election.

If the amendment were confined to these two changes, which correct minor but obvious defects, the proposal would not be objectionable; but it should not be necessary to reconstitute our entire electoral system to accomplish these minor changes.

I am very strongly opposed to any change in the Constitution at this time. The present system has served us well. Its advantages are well known. But the consequences of the proposed amendment, however desirable they may appear to be, cannot be foretold.

Mr. Senator from Texas has said there is no use going back over the past figures. They show that in only one case the present system has not provided for the election of the candidate voted for by the majority. But to go back over past history and predict what would have happened if the proposal had been in effect, it is said, does not give a fair picture. The facts indicate it would have a most unfortunate effect.

I am sure the Tanager amendment, while purporting to be more democratic, would increase the power of and encourage splinter parties, and I believe it would break down the Federal system under which most States entered the Union, which provides a system of checks and balances to insure that no area or group shall obtain too much power.

The amendment proposed by the Senator from North Dakota would have the very beneficial effect of expanding the electorate and of encouraging people to vote in areas where they do not now vote. That would be a good thing, but I am afraid we would not get two-thirds of the necessary votes to approve such an amendment. In addition, the claim would be made that the States came into the Union with the understanding that electoral votes would be assigned to the States on the basis of their population, and not on the basis of the number of

people voting. Therefore, I would say it would be better to keep the present system, even though there are many advantages to the system proposed by the Senator.

Under the proportional voting system, the likelihood of a President who had a lesser number of popular votes being elected would be greatly decreased.

The Senator from Texas has now returned to the floor. I wanted to point out that under his proposal there would have been three Presidents elected who were minority candidates from the viewpoint of popularity: Bryan twice and Hancock once, as opposed to the one case involving Harrison.

Mr. DANIEL. Of course, the committee seems to feel that there are three cases in which Presidents were elected with less than a plurality of the votes. As to both of those examples, I will say that if there had been in effect a constitutional amendment which would let the voice of the people be heard in the electoral votes when they are counted here in Washington, we might have had a different result.

In my opinion, and in the opinion of the committee, also, it is impossible to try to relate the presently proposed system back to an election 20 or 30 or 50 years ago, and say the same thing would have happened had we had this system. I am convinced we would have had a different vote. We would have had so many more voters participating, if there had been either of the proposed systems in effect, that I just doubt that the comparisons as to what would have happened in the past under the proposed system are valid.

Mr. KENNEDY. I do not think there is any doubt that probably a greater number of people would have voted, but there is no indication that the proportion would have been any different. There is no indication that there is a great reservoir of Republicans in the Southern States, as the Senator has suggested. By examining the primary figures and the presidential figures, and by examining the registration figures, I do not think there is a great reservoir of Republican votes, and that people would come out and vote when they knew their votes were to be counted.

Mr. MUNDT. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MUNDT. I associate myself with what the Senator from Texas has said when he points out that by changing the rules of the game after the game has been completed, there is no way in the world to tell how the game would have been played under different rules, except by replaying the game. I do not think comparisons of figures under the proposed program and applying them to elections which took place 10, 20, or 50 years ago, have any significance whatsoever.

As to registration figures, I have talked with hundreds of northern Republicans who have moved into Dixie and who have told me—and I know they have told me correctly—that when they get down into the South they register as Democrats; but when there is an opportunity, as there was in the 1952 election, and the

possibility of sweeping a 1-party State to a 2-party State in the general elections, they vote Republican. But, because of the 1-party system, Republicans in Texas and in South Carolina may register as Democrats. When they move to South Dakota, Democrats register as Republicans to vote in the Republican primaries, but in the elections many of those Democrats vote for the candidates of their choice. So I do not think that comparing primary statistics is very effective.

Mr. KENNEDY. The breakdown for the registration figures for Louisiana are: Republicans, 2,221; Democrats, 999,370. I think Florida and Texas have the best hope for the Republicans of any Southern States. In the general election, there were in Florida, 136,376 Republicans and 1,215,775 Democrats. In the primary elections there were 131,264 Republicans versus 1,197,437 Democrats.

To be honest with the Senator, these amendments would insure that the Republican Party would be a permanent minority party in that section of the country. I do not think there is a larger potential Republican vote there, nor do I think there is a potential Democratic vote in Vermont. In the case of a major overturn, as happened in Maine, they do have an opportunity. But they have never done it over a period of 30 or 40 years.

Mr. MUNDT. Mr. President, will the Senator from Massachusetts agree with me that it is no more significant or meaningful to argue that there is no hope of building a Republican Party in Florida, for example, because the registration there is so overwhelmingly Democratic, than to say that in 1952 a great many more persons in Florida voted Republican than voted Democratic, and therefore Florida must be a Republican State?

Mr. KENNEDY. Will the Senator repeat his question, please?

Mr. MUNDT. Yes. In 1952 a great many more persons in Florida voted Republican than voted Democratic. Therefore, would the Senator from Massachusetts conclude that Florida is a Republican State?

Mr. KENNEDY. No.

Mr. MUNDT. Neither would I.

So my point is that primary elections statistics mean little or nothing in the case of a one-party State. I myself live in what is a one-party State, although perhaps not as much so as in the case of the Southern States. But over a quarter of a century, my State has been largely a one-party State. In many of the counties, a Democratic official has not been elected in a quarter of a century. In many, many cases the voters say when they reach the polls, "I guess I will vote Republican."

I repeat that the statistics on primary elections mean very little, if anything, in connection with this matter.

Mr. KENNEDY. I may point out that in the State of Maine, when the people were stirred up over the local situation, they elected a Democratic governor in 1954.

Mr. MUNDT. That proves my point.

Mr. KENNEDY. But when we examine the figures for the last 40 or 50 years, in the case of the Southern States, we

do not find that there has been a strong reservoir of Republican support there. If that were so, there would have been an increasing Republican vote.

The point is that if this amendment were to go into effect, and if the electoral votes were to be divided proportionately, there would be an increase in both the primary and the general vote, but the proportion would remain the same. That is my honest opinion.

Mr. MUNDT. Why does the Senator from Massachusetts believe there is so small a vote in the average fall election in the Southern States—for instance, in the State of Georgia?

Mr. KENNEDY. Because most of the people there are Democrats, and they know that the State will go Democratic.

Mr. MUNDT. Precisely. So if a two-party system were encouraged there would be greater participation in the voting.

Mr. KENNEDY. Yes; but in my opinion the relationship between the two figures would not thus be changed. I know the Senator from South Dakota feels that there would be a change, because he favors the amendment. But in my opinion, after examining the figures for the primaries and after examining the figures for the registrations, the Republican Party will not gain enough in the South, in proportion to what it will lose in the pivotal States. I do not think the Republican Party can win without carrying those States, because it suffers such a disadvantage in the Southern States. So if the amendment were adopted, the effect would be to neutralize the vote in the pivotal States. Unless there were a great Republican tide in the Southern States, as the Senator from South Dakota anticipates would be the case—although he does not have any statistical evidence to support his view—in my opinion if the amendment went into effect, the Republican Party would be permanently a minority party.

Mr. MUNDT. Let me point out that, as in the case of the Mundt-Coudert alternative, in a one-party State it does not matter what the system is; in a really one-party State, that party gets 100 percent of the votes for the governor, for instance.

Mr. DOUGLAS. Mr. President, will the Senator from Massachusetts yield to me?

Mr. KENNEDY. I yield.

Mr. DOUGLAS. Let me say that it makes a great deal of difference in the States which from time to time swing from one side to the other; it diminishes very much the importance of the votes in those States.

Mr. KENNEDY. The Senator has stated that even in closely contested elections, there is a much smaller vote in the South than there is in the North. In my opinion that is because of the habits and situations in particular areas.

The Senator from New Jersey has given a great deal of consideration to this matter. I think he will agree that there will not be such a tide of Republican votes in the Southern States. The point is that if the Republican Party is to elect a President, it must carry the pivotal States. The proposed change would weaken its position in the pivotal

States, and would not increase in proportion its position in the Southern States—certainly not enough to make up for the loss it would incur in the pivotal States. In my opinion, Mr. President, if the amendment were to go into effect, the Republican Party would never win a presidential election.

Mr. CASE of New Jersey. Mr. President, will the Senator from Massachusetts yield to me?

Mr. KENNEDY. I yield.

Mr. CASE of New Jersey. Let me say that I think the Senator from Massachusetts is quite correct. I think it was most impressive—although in a rather depressing way—to hear the statistics the Senator from Texas read a few minutes ago. It is quite true that the figures show a larger primary vote than a general election vote. But the primary vote of 15 or 20 percent, in the case of some of the Southern States, was amazingly lower than in the case of my State and, I think, in the case of other Northern States generally.

I think the Senator from Massachusetts is utterly correct when he says it would take a very long time, indeed, if we can anticipate that it would ever happen at any time in the future, before voting habits and restrictions on voting and repressive measures—in the South, particularly—would change; and that long before that could happen, the Republican Party's permanent minority status would have been irrevocably established.

Mr. KENNEDY. I think the Senator from New Jersey.

Mr. POTTER. Mr. President, will the Senator from Massachusetts yield to me?

Mr. KENNEDY. I yield to the Senator from Michigan.

Mr. POTTER. Is it not true that, under the proposed amendment, during a presidential election there would be a tendency or an incentive for the presidential candidates to concentrate on the States where the votes are one-sided—either the Southern States or the New Hampshire and the Vermonts; in other words, on the Republican voters in the New Hampshire and the Vermonts, or on the Democratic voters in the Southern States—and to completely ignore States such as New York and Ohio?

Mr. KENNEDY. Let me say that in the 1952 election, under the proportionate plan the situation would have been just as I have indicated, namely, that the theoretical advantage to be gained by the Republicans in the Southern States would have become a disadvantage in the case of the larger States. In other words, in that case the influence of the larger States would have been minor as compared with the influence of the Southern States; and of course that situation would not have been based on their relative populations.

Mr. CASE of New Jersey. Mr. President, will the Senator from Massachusetts yield further to me?

Mr. KENNEDY. I yield.

Mr. CASE of New Jersey. I was very much struck by the remark of the Senator from Michigan, because it was almost a paraphrase of a statement made

a few years ago by Carl Becker, an eminent historian of this country. I believe he is a teacher of history at Cornell University. He pointed out that one of the least understood, but actually one of the greatest, benefits of our Constitution is that it requires both major parties not to concentrate upon an area where they can get more than 51 percent of the votes. Instead, they are forced to appeal to the country as a whole, and not only to attempt to sell their merits, but also to meet the needs of the people throughout the country as a whole, thus keeping both parties national, as opposed to sectional.

Mr. KENNEDY. In regard to the prospects of Republican success, let me say that Dr. Ruth C. Silva, who I believe knows as much about this matter as does anyone, has made a study of the matter, based on a proportionate division of the votes; and she points out, in effect, that such a change would make the election closer in the years when the Republicans lost the Presidency, but it also would endanger the chances of Republican victory in the years when the Republicans won.

Mr. DANIEL. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. DANIEL. I should like to read into the Record what the committee had to say, after much study, about trying to relate the new proposed system back to elections held in the past. I read from page 23 of the committee report:

It cannot be too strongly emphasized that while it is, of course, easy to apply the amendment retroactively—by adjusting the new rules to the old figures—it is useful to do so only as a means of illustrating how it would have operated mechanically. One cannot assume—as some have, erroneously—that citizens would have voted identically or in the same volume under this new system as they actually did vote under the existing procedure.

The point, which the authors of the proposed amendment make, is that if we had an amendment under which the individual voters could have their votes actually show up in the total electoral count, they would come out in greater numbers. We would have a different voting population, and perhaps a different result in some sections, than would be the case as a result of applying the new proposal retroactively to the old case.

Mr. KENNEDY. There might be a different result in the pivotal States, in which there is a big turnout. We know what happened in those States in 1948. Although their voting habits probably would not change, there could conceivably be a more nearly even margin in some of the one-party States. However, we know enough not to risk a very sound system. I can understand why the Senator is reluctant to go back into history. The Senator's system would have resulted in the election of McKinley over Bryan by one-tenth of an electoral vote.

Mr. LANGER. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. LANGER. Is it not true that the country would be a great deal better off if the Democrats were to choose their

own candidate at a primary? Suppose the Democrats could have held a primary in June, and could have decided as between the senior Senator from Tennessee Mr. [KEFAUVER], Mr. Stevenson, and the Senator from Kentucky [Mr. BARKLEY], who at that time was a candidate; and suppose the Republicans had been able to hold a primary to decide as between Taft and Eisenhower in the last election.

Does not the fallacy of the entire argument of the Senator from South Dakota [Mr. MUNDT], the Senator from Massachusetts, and the Senator from Texas [Mr. DANIEL] lie in the fact that the people do not select the candidates? They are selected by a group of politicians, instead of by the people. Why should there not have been a primary? Why should not Mr. Taft and Mr. Eisenhower have submitted their candidacies by petition, just as is done in the case of a candidate for governor or Senator?

Why should not the people have the opportunity to decide as between Mr. Stevenson, Mr. Barkley, and Mr. Kefauver?

Mr. KENNEDY. I will say to the Senator that in theory his suggestion is good, but I think as a practical matter, it would be a mistake, because I do not think we could ask all the candidates to carry on campaigns over the entire country, in all 48 States, considering all the time and effort which would be required.

In any event, the winner would probably be a minority candidate. There would be 7, 8, or 9 candidates. There would not be a majority candidate. In my opinion the present system, which has produced many great Presidents, is preferable. So I cannot agree with the Senator.

Mr. LANGER. Is it not true that the same argument was made against George Norris when he advocated the direct election of Senators? It was argued that there would be a great many candidates, and a great deal of expense. No one compels a man to run for President. But if he can get a petition signed by 1 percent of the voters, why should he not have the privilege of having his name on the ballot?

Mr. KENNEDY. He can in a great many States; but even in those States where there is a campaign, there is still a very small turnout. The people are not as interested as they should be.

The point is that I do not agree with the Senator that we would get better candidates.

Mr. LANGER. They might not be better candidates, but the people would select them.

Mr. KENNEDY. I think we would do well not to abandon the present system. There is an old saying to the effect that one should not take down a fence until he knows why it was put up. In my case, I would be reluctant to take down a fence which has served us pretty well in the past.

Mr. LANGER. In Illinois, Massachusetts, and Ohio there is no provision for a third candidate. There might be a large group of people who wanted to run a man on a third ticket. They could not do so. They are specially prohibited from doing so.

Mr. KENNEDY. I think the Senator is mistaken. There have been prohibition candidates and Socialist candidates.

Mr. LANGER. They lose their rights in the State of Massachusetts.

Mr. KENNEDY. They had such rights in 1952.

Mr. LANGER. They did not get any votes. They lost their rights in Ohio and Illinois.

Mr. KENNEDY. That is a democratic decision.

Mr. LANGER. I agree with the Senator, provided the people select the candidates, instead of their being selected by politicians meeting in smoke-filled rooms.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. PASTORE. I am not too sure that I am convinced that the pending measure would be an improvement over our present system. I am not wholly satisfied that our present system is the proper one; but if we believe that this is a government of the people, by the people, and for the people, and that the President of the United States is President, not of the States, but of the people of the United States, why should we not adopt the principle that the President of the United States ought to be the popular selection of the people, and that the popular vote of the country should count? Why should not that be the system to adopt, rather than the other system? While it may be argued that such a system would be an improvement over the present system, I doubt very much that it would be. I still think there is a "gimmick" in it. The States could adopt one system or the other, as best suited their case. But why should one State be a pivotal State? Why should a group of States be pivotal States?

Mr. KENNEDY. Under the Senator's plan the pivotal States would be infinitely more important than they are today. Except in the Senate, Rhode Island would cease to be of any real importance.

Mr. PASTORE. What does the Senator mean by "any real importance"? Why should one citizen in Rhode Island resent the fact that a man who is elected President receives 51 percent of the entire vote of the country? Why is it of any importance to Rhode Island, if the man who is elected President is the selection of the majority of the people?

Mr. KENNEDY. Rhode Island is over-represented in the electoral college today, based upon its population.

Mr. PASTORE. I am not going into that question at all. I want to do away with the electoral college. I want to elect my President on election day. I say that when the people go to the polls the man who receives the greatest number of votes should be elected the President of the people. He is the President of the people of the United States, and not the President of the States. It makes no difference to me how many electoral votes the people of Rhode Island have. What difference does it make? Why do we seem to talk so much about the power of a State? There is reason for the States having equal representation in the Senate.

Mr. KENNEDY. When those States came into the Union, Madison, who, after all, was the guiding force of the Convention, informed the Virginia Convention:

This Government is not completely consolidated, nor is it entirely federal. Who are the parties to it? The people—not the people as composing one great body, but the people as composing 13 sovereignties.

That is the conception of the rights of States. The States have certain rights. Therefore I support that system.

I must say that I disagree with the proposal of the Senator. In fact, it would not have a chance to get by. It would require a two-thirds vote, and the smaller States would not accept it.

Mr. PASTORE. I have never worried about what gets by and what does not get by. I am concerned with the principle involved.

One Senator made the statement today that the reason why we have our electoral college is that the framers of the plan had the idea that the people of the United States did not have the intelligence to rule. I understand that it was that attitude which gave birth to this idea. I want to do away with the idea, because I think the American people have an abundance of intelligence. They have the right of franchise, and they want to select their President and Vice President. Most of the people in my State, when they go to the polls on election day, think they are voting for President and Vice President. They do not vote for President if they must elect electors or delegates who meet later in the governor's office and have a luncheon at 12 o'clock noon and then cast their ballot for President.

Mr. KENNEDY. Mr. President, is the Senator asking a question?

Mr. PASTORE. Yes; I should like to ask a question, and the question is this. If we believe in the principle and in the concept that this is a government of the people, for the people, and by the people, why do we not elect our President by popular vote?

Mr. KENNEDY. I should like to have the Senator.

Mr. PASTORE. That is my question. That is the question I should like to ask.

Mr. KENNEDY. I should like to call the Senator's attention to the fact that he talked about the concept of the electoral college, which was developed in the American Constitution. That has been done away with in practically all cases, with the exception of one case, during the last 120 years. What he fears has happened in only one case. Does the Senator understand what I have in mind?

Mr. PASTORE. I understand.

Mr. KENNEDY. If the point is how to distribute the vote for each State so far as the people's rights are concerned, I will say that the people now have the right of electing their President.

Mr. PASTORE. Does the Senator mean to tell me that under our present system of counting the votes it is not possible to have the situation in which the candidate who has received the largest number of votes will not be elected President?

Mr. KENNEDY. That has happened in one case only.

Mr. PASTORE. But it can happen. That is not the popular way of electing a President. Does the Senator from Massachusetts believe that that system carries out the concept of government of the people, for the people, and by the people, when the candidate who gets the largest number of votes loses the election? That is not my idea of a popular vote.

Mr. KENNEDY. Would the Senator do away with the 2 electors which his State has by virtue of the fact that it has 2 Senators in the Senate of the United States?

Mr. PASTORE. I would do away with the whole electoral college. I would do away with it completely. I would have the people elect the President of the United States on election day. I would not care where the candidates came from, whether they came from the North, the South, the West, or the East. They are all Americans. We are all one country. I say let us vote for the best man. Let the man that gets the most votes be our President. It is as simple as that. That is my idea of representative government. Everything else beyond that is a gimmick.

Mr. KENNEDY. Let me ask the Senator why he believes it to be fair for Rhode Island to have two Senators and for New York State, which is a much larger State, to have only two Senators?

Mr. PASTORE. That is an entirely different matter. We have the concept of the legislative branch of the Government, founded on the principle that every State shall have equal representation in the Senate of the United States.

Mr. KENNEDY. Mr. President.

Mr. PASTORE. In the State of Rhode Island, in the State senate, we have a representative from every city and town. The two systems should not be confused.

Mr. KENNEDY. At the time that Rhode Island came into the Union it came into the Union with the understanding that it would have an electoral vote for each of its Senators. That is why I am against the plan proposed by the Senator.

The State represented by the Senator from Rhode Island, which, by the way, I believe was the 13th State to ratify the Constitution—came into the Union with the understanding that it would have two electoral votes. However, that is not what we are talking about.

Mr. PASTORE. I merely wanted to ask a question of the Senator, and I was hopeful that the Senator would answer it. However, I am still as much in the dark as I was before.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. DOUGLAS. I hope the distinguished Senator from Rhode Island, who was governor of his State, does not intend to defend the system in his State senate under which there is an approximate equality of representation among the communities of the State. I can remember when there were 39 Senators in the State of Rhode Island, and the city of Providence, with half the population of

NO IT IS NOT