Address of Senator Strom Thurmond (D-SC) on Javits amendment for statutory abolition of poll tax on Senate floor, 1960 January

Strom Thurmond

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ADDRESS OF SENATOR STROM THURMOND (D-SC) ON JAVITS AMENDMENT FOR STATUTORY ABOLITION OF POLL TAX ON SENATE FLOOR, JANUARY , 1960.

Mr. President, the issue presented by the pending amendment is not whether the poll tax is an evil, is outmoded, or is a boon to good government. The issue presented is whether we shall uphold the Constitution and one of the few remaining rights of the states— that of prescribing the qualifications of electors. In the beginning, let me point out to you that I personally am no advocate of the poll tax as a qualification for voting. While I was Governor of South Carolina during the period of 1947-1951, I proposed that my State repeal the existing poll tax, which amounted to a $1 non-cumulative tax applicable only to male voters. I proposed that the State Legislature work toward repeal of the tax by constitutional means rather than by some more expedient manner. We followed the wise course of presenting the issue to the people in the form of a constitutional amendment, which the people approved in the general election of 1950. Of those voting on the amendment, 72.8 per cent were in favor of repeal of the tax. On February 13, 1951, the State Legislature, in accordance with the constitutional amendment process, ratified the repeal amendment vote of the people, and the action became final.

Thus I stand here today, Mr. President, not in defense of any poll tax qualification in South Carolina or because of any personal interest which I have in the poll tax as such. I am here defending the Constitution, the rights of the five States—Alabama, Arkansas, Mississippi, Texas, and Virginia—which still impose a poll tax, and the rights of all the States which exercise
their power to prescribe qualifications on the privilege of voting.

Mr. President, I am opposed to the pending amendment which would repeal the poll tax as an elector qualification by statutory action of the Congress for two reasons. First, it is clearly and palpably unconstitutional. If the five poll tax States are to be forced against their will to eliminate the poll tax qualification for voting, then the proper procedure to follow is to amend the Constitution of the United States in the manner provided for in Article V of the Constitution. Second, it is unwise. This is another attempt to force the views of some people from other sections of this country on a portion of an already persecuted section. Given time and spared the harrassment of agitation, the people of these five States will probably repeal their poll tax qualifications on their own volition. I feel confident that the State of South Carolina and other States would have repealed the poll tax qualification much earlier had the people in those States not been stirred up and aroused by congressional efforts to force on them an unconstitutional statutory repeal.

Mr. President, the subject of the qualifications of electors is one which has been exhaustively considered by the Congress on numerous occasions. The Congress, however, has seen fit to take affirmative action on placing restrictions on the States' discretionary power on voting qualifications on only two occasions. In both instances, the Congress acted to recommend to the States
and the people amendments to the Constitution rather than relying on the easier and more expedient method of mere statutory action. On February 27, 1869, the Congress proposed to the legislatures of the various States the Fifteenth Amendment to the Constitution providing that the ballot shall not be denied to anyone because of race or color. This amendment was declared to be ratified on March 30, 1870. On May 19, 1919, the Congress proposed another amendment relating to voter qualifications. This was the Nineteenth Amendment, which provides that the ballot shall not be denied or abridged on account of sex. This amendment was officially ratified by August 26, 1920.

In limiting the power of the States to fix or prescribe voter qualifications in these two instances, the Constitution was amended purportedly with the consent of a majority of the people in the requisite number of States required to delegate or give up some retained power of the States to the Federal Government. So long as we continue to follow this constitutional and orderly procedure in transferring more power from the States to the Federal Government, we can have no quarrel except with the wisdom of the action or any illegal method used to force the proposal or ratification of an amendment to the Constitution, as was done following the Ware Between the States.

The privilege of voting is not a right conferred on every citizen by the United States Government or the Constitution of the United States. This is the false premise on which this proposed
amendment is based. The privilege of voting is derived from and conferred by the States, and this power of the States can be limited or restricted only in as much as the States agree by constitutional amendment that this power be limited or restricted by the Constitution of the United States. Too many advocates of a strong central government have in their zeal or naivity overlooked the fact that the States existed before the Federal Government was created. There was State citizenship before there was Federal citizenship.

When delegates to the Constitutional Convention met in Philadelphia's Independence Hall in 1787, they, as representatives of the sovereign States agreed to delegate to the new central government certain powers which were enumerated in the new Constitution. It was their intention to retain and reserve all powers undelegated for the States so that we would have a federal government or system of dual sovereignty. Great patriots such as Patrick Henry, Colonel George Mason and many others were not satisfied, however, that the rights and powers of the States and the people were adequately protected by the Constitution as drafted at Philadelphia. In order to win ratification of the Constitution by the requisite number of States, the founding fathers agreed to draw up a Bill of Rights, constituting the first ten amendments to the Constitution, which would be proposed for ratification soon after the States approved the Constitution. Standing out among these first ten amendments, which by the way constitute the greatest set of civil rights known to man, is the Tenth Amendment. It makes crystal clear
the rights and powers of the States by providing:

"The powers not delegated to the United States by
the Constitution, nor prohibited by it to the States,
are reserved to the States respectively, or to the people."

The makers of the Constitution accepted and understood without
any doubt that they were offering to the States a document which
 guaranteed absolute protection of the pre-existing power of the
States to control suffrage. They further backed this up with the
adoption of the Tenth Amendment. In addition, they guaranteed to
the States absolute protection of their right to control suffrage
qualifications even as to the election of their representatives in
the new National Congress. This provision was made in Section 2
of Article I in the following words:

"The House of Representatives shall be composed of
Members chosen every second year by the people of the
several States, and the electors in each State shall have
the qualifications requisite for electors of the most numerous
branch of the State legislature."

That provision still exists, Mr. President, as included in the
original Constitution, and still provides, as then, that the House
of Representatives shall be chosen every second year in the States
by the people of those States, and that--

"the electors in each State shall have the qualifications
requisite for electors of the most numerous branch of the
State legislature."

It would seem on the very face of the matter that there would
be no argument possible as to what this means because it is so clear
that each State is specifically permitted to retain the power--
because the States already had the power--to prescribe the

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qualifications for the electors of the most numerous branch of its State legislature and that the United States Constitution simply prescribes the same qualifications as the qualifications which shall be applicable to those who are allowed to participate in the election of Federal officials.

The very same provision of Section 2, Article I which I just quoted with reference to the qualifications of electors can also be found in another part of the Constitution, the Seventeenth Amendment. It provides for the direct election of Members of the United States Senate. It was submitted by the Congress to the various States for ratification purposes on May 13, 1912. Prior to the ratification of the amendment, the Senators had been elected under the provision of the original Constitution providing that the legislatures of the several States were charged with the responsibility and authority to elect United States Senators. The first paragraph of the Seventeenth Amendment reads as follows:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 years; and each Senator shall have 1 vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

You will notice, Mr. President, that the words providing for the qualifications of Senatorial electors are the identical words which appear in Section 2 of Article 1 of the original Constitution under which the qualifications were prescribed for those who should be qualified to serve as electors for Members of the House of Representatives. This is logical since it was planned to have these elections as a single election in which Representatives and any
Senators who might be required to be elected at that time would be elected by the same electors and in the same election. It is therefore not at all strange that the Congress in 1912 used exactly the same formula and words as were employed by the founding fathers when they wrote Section 2, Article I in 1787.

In fact, Mr. President, this is the only provision contained in the Constitution of the United States which appears twice and is stated each time in the same identical words. The framers of the Constitution felt in 1787 that they had worked out a formula which was sound and acceptable as a basis for inclusion in our fundamental law in writing Section 2, Article I. In addition, the record will show that they realized the necessity for arriving at this amiable compromise if they were to win ratification of the Constitution, especially in view of the prevalent fear of the people that too many of the State powers would be delegated away to the new central government. The Members of the Congress in 1912, after many more States had been admitted into the Union, evidently felt that the formula worked out in 1787 was still sound for continued inclusion in the Constitution. Instead of changing a single word, they decided to follow the time-honored formula and to reincorporate it in the identical words I have just quoted.

In reading and studying the records available to us on the words and actions of the men who wrote the Constitution there is no question but that the drafters meant to preserve for the States the power of prescribing the qualifications of voters. And, they
acted with full knowledge of the vital importance of suffrage under the new government. Madison is quoted in Elliot's Debates as having said: "The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature," referring of course to the Congress.

It has been reported that no delegate at the convention spoke in favor of giving the power to Congress. Colonel George Mason has been quoted as having said: "A power to alter the qualifications would be a dangerous power in the hands of the legislature" (Congress).

In addition to the version of Section 2, Article I finally arrived at by the drafters, two other solutions were possible. First, they could adopt a uniform rule fixing qualifications of persons voting for Representatives. Second, they could provide for qualifications to be fixed by the States in their constitutions or by law.

Madison and many others preferred a definite statement of qualifications in the Constitution. He expressed the opinion that "the freeholders of the country (landowners) would be the safest depositories of republican liberty." Since ratification was necessary, the practical question facing him was the type reception such a change would meet with in the States at ratification time.

At that time every State had, for State purposes, qualifications based on property or tax payment, or both. A uniform rule would have caused many changes. Most of the delegates agreed with Madison that the necessity of ratification should turn the scale in favor of
allowing State law to control the qualifications of persons voting for Representatives of each State. This course was recommended by the committee of detail on August 6, 1787, but they added a restriction that in each State the qualifications in electing Representatives should be identical with those used in electing the larger branch of the State legislature. The verbiage used by the committee, which consisted of John Rutledge of South Carolina, Edmund Randolph of Virginia, Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, and James Wilson of Pennsylvania, was finally revised slightly by the Committee on Style and Arrangement.

The provision in Section 2, Article I of the Constitution was definitely understood by each State as an absolute assurance and a solemn pledge that the States would continue to set the voter qualifications, even for the new Federal Representatives. Every State ratified the Constitution upon that express condition, many times repeated during the period of ratification. In fact, Mr. President, Mr. Madison, one of the three brilliant writers of the Federalist Papers and who knew more about what went on in the convention than anyone else, made the following statement on the elector qualification provision in paper Number 52 of the Federalist:

"I shall begin with the House of Representatives. The first view to be taken of this part of the Government relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the Convention, therefore,
to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States would have been improper for the same reason; and for the additional reason, that it would have rendered too dependent on the State governments that branch of the Federal Government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule would probably have been as dissatisfactory to some of the States as it would have been difficult to the Convention. The provisions made by the Convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established or which may be established by the State itself. It will be safe to the United States; because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions, in such a manner as to abridge the rights secured to them by the Federal Constitution."
Mr. President, the intention of the founding fathers to make certain that the power to fix voter qualifications would continue to reside in the States, even for the new federal representatives, is obvious. Since they made the Constitution so clear on this point, the courts have not been able, even in this modern day when the philosophy of the Supreme Court seems to dictate that the Constitution must be interpreted to fit the times, to deny this power to the States. Not only have the courts upheld the power of the States to fix voter qualifications in federal elections, but they have specifically approved the poll tax as a valid State qualification for voting. The cases have been cited on the floor of the Senate in debate on this very question innumerable times.

Mr. President, I am opposed to federal action in any form that deals with voter qualifications, since federal interference is contrary to the basic precepts which inspired the form and substance of our governmental system. To prohibit the imposition of poll tax payments as a voting qualification, even by constitutional amendment would be, in my opinion, most unwise; and I shall oppose such legislation. If federal action in any form is to emanate from the Congress, it should certainly be in the form of a constitutional amendment, for our oath to uphold the Constitution demands no less.

There is nothing to lend urgency to the proposals for federal action against the poll tax; only five states still utilize such a qualification. In this time of inflation, there can be little merit to an argument that any substantial number of citizens are disenfranchised, even in the five remaining states. The trend for abolition of the poll tax as a prerequisite for voting is strong,
and the states will undoubtedly, in good time, eliminate this prerequisite of their own accord consistent with legal procedures prescribed under state law. Principles, and particularly constitutional provisions, are too dear to be sacrificed for any cause, however urgent, much less for so inconsequential a matter as this. I have every faith that the Senate will reject the pending amendment.