POPULAR ELECTION OF SENATORS

SEVENTEENTH AMENDMENT

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

Clause 2. When vacancies happen in the representation of any State in the Senate, the executive authority of each State shall issue writs of election to fill such vacancies: Provided That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

Clause 3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

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The ratification of this Amendment was the outcome of increasing popular dissatisfaction with the operation of the originally established method of electing Senators. As the franchise became exercisable by greater numbers of people, the belief became widespread that Senators ought to be popularly elected in the same manner as Representatives. Acceptance of this idea was fostered by the mounting accumulation of evidence of the practical disadvantages and malpractices attendant upon legislative selection, such as deadlocks within legislatures resulting in vacancies remaining unfilled for substantial intervals, the influencing of legislative selection by corrupt political organizations and special interest groups through purchase of legislative seats, and the neglect of duties by legislators as a consequence of protracted electoral contests. Prior to ratification, however, many States had perfected arrangements

calculated to afford the voters more effective control over the selection of Senators. State laws were amended so as to enable voters participating in primary elections to designate their preference for one of several party candidates for a senatorial seat, and nominations unofficially effected thereby were transmitted to the legislature. Although their action rested upon no stronger foundation that common understanding, the legislatures generally elected the winning candidate of the majority, and, indeed, in two States, candidates for legislative seats were required to promise to support, without regard to party ties, the senatorial candidate polling the most votes. As a result of such developments, at least 29 States by 1912, one year before ratification, were nominating Senators on a popular basis, and, as a consequence, the constitutional discretion of the legislatures had been reduced to little more than that retained by presidential electors. [1]

Very shortly after ratification it was established that if a person possessed the qualifications requisite for voting for a Senator, his right to vote for such an officer was not derived merely from the constitution and laws of the State in which they are chosen but had its foundation in the Constitution of the United States. [2] Consistent with this view, federal courts declared that when local party authorities, acting pursuant to regulations prescribed by a party's state executive committee, refused to permit an African American, on account of his race, to vote in a primary to select candidates for the office of U.S. Senator, they deprived him of a right secured to him by the Constitution and laws, in violation of this Amendment. [3] An Illinois statute, on the other hand, which required that a petition to form, and to nominate candidates for, a new political party be signed by at least 25,000 voters from at least 50 counties was held not to impair any right under the Seventeenth Amendment, notwithstanding that 52 percent of the State's voters were residents of one county, 87 percent were residents of 49 counties, and only 13 percent resided in the 53 least populous counties. [4]

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[1] 1 G. HAYNES, THE SENATE OF THE UNITED STATES 79–117 (1938).

[2] United States v. Aczel, 219 F. 917 (D. Ind. 1915) (citing Ex parte Yarbrough, 110 U.S. 651 (1884)).

[3] Chapman v. King, 154 F.2d 460 (5th Cir. 1946), cert. denied, 327 U.S. 800 (1946).

[4] MacDougall v. Green, 355 U.S. 281 (1948), overruled on equal protection grounds in Moore v. Ogilvie, 394 U.S. 814 (1969). *See* Forssenius v. Harman, 235 F. Supp. 66 (E.D.Va. 1964) aff'd on other grounds, 380 U.S. 529 (1965), where a three-judge District Court held that the certificate of residence requirement established by the Virginia legislature as an alternative to payment of a poll tax in federal elections was an additional qualification to voting in violation of the Seventeenth Amendment and Art. I, § 2.