WOMAN SUFFRAGE

HEARINGS

BEFORE

THE COMMITTEE ON ELECTION OF PRESIDENT, VICE PRESIDENT, AND REPRESENTATIVES IN CONGRESS

HOUSE OF REPRESENTATIVES

SIXTY-THIRD CONGRESS

THIRD SESSION

ON

H. R. 9393

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COMMITTEE ON ELECTION OF PRESIDENT, VICE PRESIDENT, AND REPRESENTATIVES IN CONGRESS.

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WOMAN SUFFRAGE.

COMMITTEE ON ELECTION OF PRESIDENT,
VICE PRESIDENT, AND REPRESENTATIVES IN CONGRESS,
Thursday, December 17, 1914.—10 o'clock a. m.

The committee met, pursuant to the call of the chairman.

Present: Representatives Rucker (chairman) presiding, Crisp, Helvering, Brockson, Mapes, and Winslow.

The CHAIRMAN. Mrs. Colby, the entire committee is not present, but others will be present in a few moments, and I think we may as well proceed.

Mrs. CLARA BEWICK COLBY. Mr. Chairman, Rev. Olympia Brown, president of the Federal Suffrage Association, will address you first.

STATEMENT OF REV. OLYMPIA BROWN, PRESIDENT OF THE FEDERAL SUFFRAGE ASSOCIATION.

Rev. BROWN. Mr. Chairman and gentlemen of the committee, we appear before you in behalf of House bill 9393, a bill to enable women to vote for Members of Congress.

Such a law does not require submission to legislative bodies or to voters. It is something which Congress can enact by a simple majority vote. It is also something which Congress can revoke by law should it prove unsatisfactory. It is therefore a safe kind of legislation. Aside from the effect of such a law upon women it would be most valuable in emphasizing the neglected and, in many minds, obscure distinction between the election of National and that of State or local officers.

It is clear that different conditions existing in different States might require differing qualifications for State suffrage, but in the choice of our national legislators uniformity is absolutely necessary. Diversity, as pointed out at the time of the adoption of the Constitution, would be most unfair and injurious, and this is what we have to-day in the choice of National Representatives on entirely different bases in the different States, thus placing at a disadvantage those chosen from States where women do not vote.

That all citizens are entitled to vote for Members of the House of Representatives is made plain by the unqualified statement of the Constitution, Article I, section 2: "The House of Representatives shall be composed of Members chosen every second year by the people of the several States." That this clause was intended to be far-reaching and inclusive is shown by discussions on its adoption in the committee that framed the Constitution. Week after week went by during that long session and still the members of that committee were discussing this question of the right of the "people" to vote for those who were to make the laws for the Nation. It is often claimed

that men vote by divine right, but this seems not to have been true when the Constitution was formed. I have heard even educated men assert that men have always voted, and that nature plainly intended it to be so, and yet at the time of the framing of the Constitution it was argued by some that the mass of men were not fit to vote, that they were ignorant, and that to allow them to vote would endanger the safety of the State; but Jefferson, Wilson, and other radical advocates of popular government, and even Alexander Hamilton, the most conservative aristocrat of them all, advocated the right of the whole people to vote for Members of the House of Representatives.

Hamilton believed in a general government and a united nation, and he sought to protect it against possible assumption of superior power on the part of the States, by securing for it the support of the whole people. He sought to emphasize the difference between the National and State Governments, and to draw a dividing line between them, by providing in the National Constitution for the right of all the people to vote for the Members of the most numerous branch of the National Legislature. It was largely due to his influence that this clause was at last adopted, and our Government thus became a democracy, recognizing the rights of all the people, instead of an aristocratic government like those of the old world, based upon class and caste. All honor to the noble and far-seeing men who in that crucial moment stood firmly for a recognition of the rights of the people and the dignity of the Nation.

You will observe that there are no exceptions here; the whole people were to vote. Women were "people" when the Constitution was framed. They were then voting in New Jersey on the same terms as men and to some extent in other States, since few of the original constitutions of the States discriminated against them or had the word "male" in the qualifications for voting. Women's votes helped to elect the committee that framed the Constitution and by their vote ratified and established it after it was framed.

It may be asked why, if women had these rights in those early days, they did not more largely assert their rights and make their influence felt. The reason is plain when we consider that in that new country there were fewer women than men and that the property qualifications which generally prevailed made it impossible for most women to meet that requirement for voters.

It was a convenience that the national officers should be elected at the regular State elections, hence the regulation of time, place, and other details was left with the States, with the reserved right of Congress to control these. But this by no means changed the relation of Members of Congress to the National Legislature, nor lessened the obligation of Congress to protect its Members in the security of their election. State and local offices are created by the State constitutions and city charters, and their occupants derive their authority from State and local governments. But national offices are created by the Constitution itself, and those chosen to fill such positions derive their authority from the Constitution which created the office and which has provided for the election of the officers. Mr. Wilson, in his oft-repeated statement that the "question of woman's suffrage is one for the States" overlooks this distinction, and places the Mem-

bers of Congress on a par with governors of States, mayors of cities, or the aldermen of a ward.

The fact that the officers, State and national, are generally elected at the same time has led to a confusion of thought among many people, but President Wilson, with his knowledge of history and discriminating mind, must have noted this difference had he not been misled by the party cry of States' rights, a cry which has no bearing on this discussion. But the framers of the Constitution were not so confused; they recognized the difference, and provided for the election of Members of Congress, and carefully guarded such election by providing that each House should be the judge of the election of its own Members; whatever the States might do, Congress should take care of its own Members, maintaining fairness and equality in their election. And this is no interference with the rights of the States.

The right of Congress to be the judge of the election of its Members has been confirmed by the most eminent authorities and by many decisions of the Supreme Court. To protect all citizens in the use of the ballot by national authority does not deprive the States of self-government. If individuals, or if one-half of the people, call upon the Nation for protection, they are doing no more than the States do themselves. National aid is often asked to preserve peace or to secure protection found impossible under the mere local or State authority. In ratifying amendments to the Constitution of the United States the States become factors in the Nation in making the change the same as they do by the acts of their Senators and Representatives in Congress. A law created by themselves can not be interference with their rights of self-government. Self-government is the corner stone upon which this Nation is founded, and it is therefore strictly a national right to be guarded by the Nation itself. It does not matter by what instrumentality, whether by State constitutions or statute law, anyone has been deprived of the national right of self-government, it is the duty of Congress to restore it. The right of women citizens to share in the Government is surely more important than the protection of property, the quelling of riots, the establishing of banks, or securing self-government for the Filipinos. But in all these cases our Government is ready to interfere in order to help those who need its protection.

Our wise forefathers did well in giving to Congress the power to protect itself by making it the judge of its own selections. Not only so, but it is provided in Article IV, section 1, that Congress should have power "to make or alter the regulations made by the States," and when the question was raised at the time of the adoption of the Constitution why such great power was given to Congress, the answer made by those most active in framing the Constitution was that it was given in order if any of the States should disfranchise any of its citizens it was deemed proper that Congress should rectify the wrong. This remark is particularly significant since it shows conclusively that in giving the States power to regulate the election, it was not intended to give them power to disfranchise any of the people as to the election of Members of Congress. This statement is particularly important just now when we are calling attention to the disfranchisement of one part of the people in many of the States, and when we are asking Congress to assert its authority by confirming the right of the people to vote for Members of Congress.

It is no excuse to urge that these people are women; they are human beings, they are people, they are taxpayers, and they are citizens of the United States whose disfranchisement is generally acknowledged to be undemocratic and unfair.

Further argument on the right of women to vote would be an insult to your intelligence. The claims of women to vote have been presented before congressional committees again and again. They are reiterated in the daily press, in the newspapers, and in the magazines of the day. It has been fully demonstrated that women are as capable of voting wisely as men. Since they are the representatives and guardians of the home upon which all government must ultimately rest, and since they are largely responsible for the character and training of children—thus laying the foundation for coming generations—their stake in government is far larger than that of men can possibly be. It has been shown again and again that women need the recognition, education, and opportunity which the ballot alone can give, and the actual experience of 10 States for years has demonstrated beyond question that the voting of women contributes to the promotion of good government, wholesome laws, humanitarian enterprises, and a nobler type of men and women. Thus it has been shown that expediency, as well as justice, demands the enfranchisement of women.

In view of all these things we ask you to make a report on this bill that the House of Representatives may have an opportunity to consider and act upon this subject. I am aware that in this short session there is much to be done. I have read the long list of bills, pork barrel and all, which it is said must be put through at this session, but I am mindful of the suggestion made by our honored President in his Decoration Day address that human rights are preeminent above all claims. And this is true. There is, there can be, no bill so important as one which contemplates the protection of human rights. Laws are made, government exists, for the protection and development of the human race. Our Constitution was framed and adopted to establish justice and secure liberty, and you, gentlemen, are asked to do what in you lies for the accomplishment of this object. Our President, in his recent message, while discussing war and trade, rural credits, and national defense, did not fail to request that even in this short session time should be taken to pass the bill providing for partial independence of the Philippines, even while many of the Filipinos do not desire it and some object to its being forced upon them. If there is time to consider the far-away Philippines, there is surely time to take action in behalf of the women of this country, who have, during the whole period of our history, borne their part as pioneers in founding the Republic, as loyal citizens in maintaining and defending it in time of war, and in developing and improving it in time of peace.

Women pay large taxes in support of the Government; they are active in every civic and educational reform; they guard the home and watch over the interests of family and social life; they are prominent in most of the great industries of the age. Why, then, are they put on a par with imbeciles and convicts? No, not convicts, these may be pardoned and their rights restored, but for the crime of being a woman there is no pardon, and the restoration of her rights is made to depend upon the vote of all the men, including the

prejudiced, the ignorant, the vicious, the beggars, the pardoned convicts, and the most prejudiced men.

But we are not asking to-day that you give us universal suffrage for women. We are not now opposing Mr. Wilson's ultimatum that the women of the country should submit the question of their liberty to the uncertain result of the vote of all classes of men. We do not here question the right of the men of the States to keep their wives and daughters in a condition of political subjection while power over their destinies is held by many of the most unworthy of men. To-day we are asking, not for the right but only for the opportunity, to vote for Members of Congress. We are defending the Constitution and upholding the dignity of the General Government, and especially advocating the rights of Members of Congress and yourselves among them, to be elected by an intelligent constituency representing the whole people.

Therefore we urge you, for your own sakes, for the sake of the House of Representatives, for the sake of the Government itself, to make a report, favorable or unfavorable on this bill; favorable if you can; adverse if you must; but please do not strangle it in the committee.

The CHAIRMAN. Mrs. Colby, I should advise you now that Mr. Sherley, a Member of Congress, desires to be heard in opposition to the passage of this bill or a report on the bill, and there may be others, but I am not advised as to that, and the committee has determined to give Mr. Sherley a part of the time this morning. We will arrange that so that you will have the closing argument, if you desire. I understand most of your argument has been reduced to writing, and that will not deprive you of putting in the record any argument that you may desire.

Mrs. COLBY. May we proceed now with our argument?

The CHAIRMAN. Yes.

STATEMENT OF MRS. CLARA BEWICK COLBY, CORRESPONDING SECRETARY OF THE FEDERAL SUFFRAGE ASSOCIATION.

Mrs. COLBY. The plan was that our president should open the discussion, and I should follow with the status of women under the old common law of England and a statement with reference to the Constitution of the United States, and that the introducer of the bill should follow with a statement as to the constitutionality of this measure, showing that what ought to be done can be done by Congress.

At previous hearings we have touched upon the merits of the question itself, and I am very much afraid our arguments will seem very tame to you when presented in the place of the ordinary eloquence with which this subject is discussed; but we thought we would spare the committee's time by limiting ourselves to argument upon the historical and constitutional phases of this bill.

In January, 1913, your predecessors gave us a hearing, and at the hearing we heard from Members from the States where women vote, presenting the general argument in favor of woman suffrage, and at the close of that hearing there appears an official statement from States where women vote for governors, legislators, and other official persons. This would seem to cover the ground, but if there is any-

thing else needed on the general merits of the question let it be remembered that it is always the States contiguous to those where women vote which certainly must know the most about it, who are readiest to adopt it for themselves.

The subject of Federal suffrage for women was first brought to the attention of the American public by the publication in the Forum of December, 1886, of an argument by Francis Minor, a distinguished lawyer of St. Louis, entitled "Woman's legal right to the ballot."

I may say here that Mr. Minor was the husband of Virginia L. Minor, who brought suit before the Supreme Court asking her right to vote under the fourteenth and fifteenth amendments. This case went against Mrs. Minor, because, as the Supreme Court said, she had not been made a citizen by the fourteenth amendment, since women were always citizens. Arguments were produced at that time as they have been on various occasions, to the effect that the fourteenth and fifteenth amendments should apply to women and would establish their enfranchisement. Mr. Minor, finding that this was not conceded, proceeded to investigate the subject from another standpoint, namely, from the standpoint of the Constitution itself, and this article in the Forum of December, 1886, is the result.

In the Arena of December, 1891, he went more fully into the subject and this enlisted the interest of the leaders of the National Woman Suffrage Association, and at the next convention, February, 1892, the idea was adopted, and I was made chairman of this work with instructions to form a committee to cooperate with me. At about this time the United States Federal Suffrage Association was formed with the same end in view. As chairman for the national association I had bills introduced, had a hearing before the House committee, and secured as members of my committee the presidents of 39 State suffrage associations, with promise of their active cooperation in presenting the subject to organizations within their States. Every Southern State had an organization except Florida and North Carolina, and all their presidents had consented to serve on the Federal suffrage committee.

I have here my report dated January, 1893, which contains the names of the committee which include some of the strongest and ablest women who have ever taken part in the movement for woman suffrage. Although there was a very short time in which to inaugurate this line of work memorials came in from many places in 20 States, also enumerated in this report. Georgia, South Carolina, and Virginia were among the States that sent up memorials, and I name these because some have thought this idea interferes with State rights, and would not be acceptable to the South. Whenever the idea of Federal suffrage for women is properly explained and understood it is seen that it does not touch State rights at all, or interfere with the qualifications or regulations by which the State governs the State franchise. But the South, equally with the North, recognizes a national as well as a State citizenship, and acts upon this principle every day on all kinds of personal and political questions. Members of Congress are not primarily expected to legislate for any particular State or section, but for the whole country. Removal from one State to another destroys the former State citizenship, and the new one has to be acquired, but the person is still a citizen of the United States. If an American goes to a foreign

country he is recognized as a citizen of America, and not of any particular State, and if he gets into trouble it is to the United States and not to any particular State that he appeals for aid and protection, if necessary.

In 1902 the Federal Suffrage Association was formed to resume the effort along this distinct line, and since that time bills have been introduced in every Congress asking for Federal suffrage for women citizens of the United States.

Our claim is based on two propositions. First, that women have the right to vote inherent in their citizenship. Second, that Congress has the power under the Constitution of the United States to bring this right into activity as far as it relates to the election of its own members.

Our claim is not based at all on the fourteenth and fifteenth amendments, save as decisions on these have recognized, in one case that women are citizens, and always have been, and in other cases that citizenship and the right of suffrage are inseparable. It may be agreeable to men to have women beg them for the right or privilege of voting; and it is doubtless educative to both beseecher and besought. But it is far more in accord with the dignity of a citizen of the United States to claim the rights of a citizen under the original Constitution. Charles Sumner could feel what an indignity was laid upon woman in making her beg for what was her own, and he wrote once to Miss Anthony: "There is not a doubt but women have the constitutional right to vote; and I will never vote for an amendment to give it to them."

Albert G. Riddle, a well-known lawyer of the District of Columbia, said in an argument before the Supreme Court of the District, October, 1871, "By the old common law of our English ancestors, the old storehouse of our rights and liberties, as well as the arsenal where we find weapons for their defense, women always possessed the right of suffrage." Let us peep into this storehouse and see what it has to say about the status of women with regard to the suffrage. Whatever liberties men of the Colonies had obtained in England they brought to this new world. Surely women did not leave theirs behind them.

While rights are inherent, the recognition of them and making them a factor in government is an evolution. The right of men to vote was not recognized, save for the favored class, but the germ of full liberty, of consent to government as its only just basis, was there, destined to be applied to all, even to women, in time.

Women have been in the struggle for human freedom all the way. They helped to achieve and establish all the rights that men have secured anywhere or at any time. If Alfred the Great laid the foundations of common law, he is said to have got his ideas and inspiration from Marcia. It was due to "Bloody Mary," who had no such claim to that adjective as her father had, that accused persons had the right of having witnesses testify in their behalf.

"Sir," said she to her chief justice, "I charge you to minister the law and justice indifferently, without respect of person, and, notwithstanding the old error among you, which will not permit any witness to speak or other matter to be heard in favor of the adversary, the Crown being a party, it is my pleasure that whatever can be brought in favor of the subject may be admitted and heard. You

are to sit there, not as advocates for me, but as indifferent judges between me and my people."—Lingard.

As long as the right to vote and sit in Parliament depended on rank or property, women possessed both. You will find in the argument of Judge Loughridge before the Judiciary Committee in 1871 the statement that authorities are clear that women have the right to vote by the common law of England. It can not be questioned, he says, "That from time the memory of man runneth not to the contrary, unmarried women have been by the laws of England competent voters subject to the freehold qualification which applied alike to men and women." The reason married women were disqualified was because when a woman married her freehold became the property of her husband. But we have advanced in this particular.

In the English Law Review for 1868, page 121, in the case of Jane Allen, the ancient records are thus referred to:

> The rolls of Parliament, which end with Queen Mary, certainly contain no notice of the right of women to vote at common law, because they contain no entries relating to the right of suffrage at all. But I make this observation upon them that they do contain not unfrequent notices of the presence of women in Parliament itself.

Perhaps the earliest recorded decisions on the right of women to vote were given in 1612 where in each of the three cases brought before the judges it was ruled that "a femme sole shall vote if she hath a freehold, but if a woman be a femme covert having freehold, during her coverture her husband shall vote in her right." In the case of Olive *v.* Ingraham, these cases were repeatedly cited by the Lord Chief Justice of the King's Bench. In this case Justice Probyn said:

> The case of Holt *v.* Lyle (A. D. 1612), lately mentioned by our Lord Chief Justice, is a very strong case: "They who pay ought to choose whom they shall pay. And the Lord Chief Justice seemed to have assented to that general proposition as authority for the correlative proposition, that women when sole had a right to vote. At all events there is here the strongest possible evidence that in the reign of James I the femme sole being a freeholder of a county, city, town, or borough had the right to vote; and not only had, but exercised, the parliamentary franchise. I am bound to consider that the question as to what weight is due to the dictum of my Lord Coke [who had said women were not entitled to vote] is entirely disposed of by those three cases from the reign of James I, and others from the reign of George II, and that the authority of the latter is unimpeached by any later authority, as the cases of Rex *v.* Stubles and Regina *v.* Alberavon abundantly show."

In Anstey's notes on the new reform act of 1867, the authorities and precedents upon the right of women in England to vote are thus summed up:

> It is submitted that the weight of authority is very greatly in favor of the female right of suffrage. Indeed, the authority against it is contained in the short and hasty dictum of Lord Coke [referred to above]. It was set down by him in his last and least authoritative institute, and it is certain that he has been followed neither by the great lawyers of his time nor by the judicature.

Chief Justice Pratt, of England, said:

> My position is this: Taxation and representation are inseparable. The position is founded in the law of nature. It is more. It is itself an eternal law of nature.

Blackstone said that the lawfulness of punishing persons offending against the laws of society is founded upon the principle that the law by which they suffer was made by their own consent. The common law of England is still authority in this country where it has not been abrogated by statute and it is quoted in all legal cases. There has never been a statute or amendment of organic law which has annulled

this principle laid down by the great exponent of common law. Is it not rather the glory of our people that this theory of consent lies at the very root of our institutions?

Then since women brought over to the Colonies these common-law rights have they lost them by failure to do their share in establishing this Nation and achieving its liberties?

The first person to set foot upon Plymouth Rock was a woman. Women bore equally the hardships incident to building this Nation. They, too, fought wild beasts and defended their homes against the savage. When the time came for rebellion against taxation without representation they organized and made the protest effective by refusing to use importations from the mother country. Mercy Otis Warren urged upon her brother, James Otis, that the struggle must be based on "inherent rights," which she asserted had been conferred on every individual by the God of nations, and which no organization of men could grant or in justice withhold. Her home was the headquarters of the Revolution. Abigail Adams supported her in her arguments and went a step further, for she wanted these principles applied directly to women. She wrote to her husband when he was helping to frame the Constitution that the women would foment a rebellion and would not hold themselves bound to obey laws in which they had no voice nor representation. Did her husband think these protests were out of place or unwomanly? On the contrary, he wrote to James Warren how inevitable it was that politics should be influenced by women but, he said, "If I were of the opinion that it was best for a general rule that women should be excused from the arduous cares of war and state, I should certainly think that Marcia and Portia (the rebellious Abigail and Mercy) ought to be excepted because I have ever ascribed to those ladies a share and no small share either, in the conduct of our American affairs." John Adams wrote to his wife: "I believe the two Howes have not very great women for wives. If they had we should suffer more from their exertions than we do. This is our good fortune. A smart wife would have put Howe in possession of Philadelphia long ago."

I have here quite a number of quotations from those colonial letters which are very interesting, and I just say that to show you that I have authority for what I am saying.

The framers of the Constitution may not have thought the time ripe for specifically enacting that women should have the franchise, any more than for the majority of men at that time; but they never denied it, and no word can be found in their letters and records against it. After the Government was formed, Hannah Lee Corbin, of North Carolina, complained to her brother, Gen. Lee, that women were taxed without having the right to vote. He replied, "They have that right."

In the articles of confederation adopted November 15, 1777, there was one which secured to all the free inhabitants of each of the States all privileges and immunities of free citizens in the several States. This pledged the suffrage to all women, for the women of New Jersey were voting at that time, and therefore the Articles of Confederation virtually gave it to all women. A decision by Mr. Justice Washington expressed the opinion that the right to vote and hold office was included in the phrase "privileges and immunities."

From the Legislature of South Carolina the articles were returned to Congress with the recommendation that intercitizenship should be confined to the white man; but although slavery then existed in each of the 13 States, Congress refused to put a limitation in the Constitution itself. Hence there was no sex barrier placed at the threshold of our Government.

At last the Constitution was adopted, and it was "We, the people" and not "We, the States." Patrick Henry, who opposed this phrase, saw its significance. He said: "It is a revolution as radical as that which separates us from England. It is the relinquishment of the sovereignty of the State."

Section 2, Article IV, Justice Story declared, conferred a general citizenship on the citizens of each State.

J. C. Wells, a noted legal writer, says:

> The Constitution, unlike the Articles of Confederation, operated upon individuals directly and not through the cumbrous machinery of the State governments; and more than this it is to be construed liberally as to individuals in their favor, and strictly as against the States.

The right to vote is not given by the Constitution to anybody. Article XIV defines citizenship. Article XV prohibits the denial of the power to vote for certain specified reasons. This does not imply that it may be denied for some reasons not specified. And a right can not be denied in particulars unless it exists in generals, and what is given in absolute terms can not be taken away by implication. The preamble to the Constitution says it was to establish justice and to secure the blessings of liberty. To secure, not to give. It was intended to defend the individual in the blessings of liberty.

The Declaration of Independence was issued, as it said, "In the name and by the authority of the good people of these colonies." Therefore unless women, who had been included in the term people, were not good, their authority was represented in that document.

Under the constitution of New Jersey women voted for the members of the Constitutional Convention of 1787, therefore they had a part in the ratification of the Constitution of the United States. What a farce it would be to construe the Constitution, which women had helped to establish for the Nation which they had helped to build, in such a way as to prevent women taking part in the liberty which it was framed to secure.

James Madison said: "Let it be remembered that it has ever been the pride and the boast of America that the rights for which she contended were the rights of human nature."

In the case of Chisholm *v.* Georgia Chief Justice Jay said (2 Dallas, 470):

> At the Revolution the sovereignty devolved on the people, and they are truly the sovereigns of the country, but they are sovereigns without subjects.

Then, since there are no subjects, women must be joint tenants of the sovereignty.

In the case of Corfield *v.* Correll, Justice Washington ruled that among the privileges which are fundamental and belong of right to the citizens of all free governments is that of the exercise of the elective franchise as regulated and established by the State in which it is to be exercised. Of course this applies to the general franchise and not to the limited Federal franchise which we are now asking for.

But in any case a right can not be regulated and established if it is altogether denied. This bill (H. R. 9393) contemplates that the States regulate and establish by applying to women voters all the qualifications which they require in the case of men voters. It only provides that in elections for Federal officers the State shall not make sex a distinction.

Thaddeus Stevens in 1866 said, "I have made up my mind that the elective franchise is one of the inalienable rights meant to be secured by the Declaration of Independence."

B. Gratz Brown, of Missouri, said, in 1866, "I say here on the floor of the American Senate I do not recognize the right of society to limit the suffrage on any ground of race or sex. I will go further and say that I recognize the right of franchise as being intrinsically a natural right."

Chief Justice Marshall said: "When education and public opinion demand the enfranchisement of women the Constitution will not require any change to grant it."

"The Constitution of the United States," said Justice Matthews, in Hurtado *v.* California (U. S. 110, 516), "was made for an expanding future."

Has not the time come for the application of its principles to be expanded so as to apply to women? Although women have been long in coming into their own, it is the law of inheritance that one generation can not forfeit another generation's rights. In Story on the Constitution it is said "Contemporary construction * * * can never abrogate the text; it can never fritter away its obvious sense."

Women are voting now for 40 Members of the House and for 22 United States Senators. This makes the question of representation in Congress of women in all the States a matter of vital and national importance. Federal suffrage for women is necessary to secure a balanced representation in Congress. Every Member who has women among his constituents will say that he feels behind him their moral support as well as their voting support, and this is true even if they have voted for some one representing another political party. It is not fair to other sections of the country that their representatives should be deprived of this support and the incentive it gives to take the home side of all ethical questions.

It is also necessary as a protection of their national rights for those women who now enjoy full franchise in their States. It has been recognized in Colorado that the exercise of the right to vote made it a vested right which women could not lose by marrying aliens. In California and Arizona the decisions do not so regard it. So you see the rights, even vested rights, the right to vote, in default of national law protecting those rights, are held variously in the different States. It should be regarded as an important reason for the passage of this bill that it will protect the vested right of women who have voted for Members of Congress and who now lose that right if they cross the line into a State where women have not yet obtained the general franchise. A woman may have voted 45 years in Wyoming but if she crosses the line into Nebraska she loses not only her rights of Wyoming citizenship but her rights of United States citizenship as if she had become an alien. We need the protection of Federal suffrage as much for women who have the vote in their States

as for the others, especially as a married woman's domicile is dependent wholly upon the will or whim of her husband.

The anomaly which now presents itself in Illinois, where women may vote for President of the United States, for municipal, and many other officers but not for their representatives in Congress, is likely to occur in other States which more and more will give by legislative enactment all they can under their State constitutions to relieve women of the indignity of having to beg their freedom of every man in the State. For the anomaly of women possessing in eleven States rights as United States citizens which are denied to the women of the other States the Congress must give us the remedy of Federal suffrage for all women.

A quotation from Alexander Hamilton's Federalist, twelfth volume, page 47, presents the ideal which actuates the woman suffrage movement: "Justice is the end of Government. Justice is the end of civil society. It ever has been and will be pursued until it be obtained or liberty be lost in the pursuit."

The CHAIRMAN. Mrs. Colby, at this point if there is any one present who desires to speak in opposition to the bill the committee will hear them.

Mrs. COLBY. I will speak very briefly to those points that have been brought up.

It seems to me that all these Supreme Court decisions, the legal matters, the constitutional matters, should be left until we can bring the act before the Supreme Court of the United States to decide upon its constitutionality. We know that courts are, like other bodies, not infallible; it has been known that the Supreme Court of the United States has reversed its own decisions, and we confidently believe that more than 30 years having elapsed since its decision in the Minor *v.* Happersett case, that only its truth and justice will survive, which is its declaration that woman always was a citizen; that truth and justice, though they may not be immediately able to make their way into the hearts and minds of the people, are bound to be permanent, and those other limiting and undemocratic constructions will be forgotten.

There was an old saying in history that we appeal from Philip drunk to Philip sober; and if there is anything in that decision against us, we appeal from the Supreme Court itself to itself, better informed.

The CHAIRMAN. You appeal from the Supreme Court to this committee?

Mrs. COLBY. Yes, sir; I certainly do. This committee has before it matters that we could not get before the Supreme Court; and we have 30 years of progress since that decision.

Mr. MAPES. Do you admit, then, that under that Supreme Court decision, as rendered, this bill would not be constitutional?

Mrs. COLBY. This bill is not touched by that former decision. It stands on the Constitution itself and not on the Fourteenth and Fifteenth amendments. I am not contradicting that court, but I will show that it contradicts itself.

There are three decisions of the Supreme Court of the United States which say that citizenship and suffrage are inseparable. With your permission I will read very brief extracts from an argument I made before.

In the Dred Scott case (19 Howard's Reports) Chief Justice Taney, already quoted, said:

> There is not to be found in the theories of writers on Government or any actual experiments heretofore tried an exposition of the term citizen which has not been understood as conferring the actual possession of an entire equality of privileges, civil and political.

In the Slaughter House case (16 Wallace), defining the scope of citizenship, this passage occurs:

> The negro, having by the Fourteenth amendment been declared to be a citizen of the United States, is thus made a voter in every State in the Union.

In the Yarbrough case it is said:

> It is not true that the electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively upon the law of the State. The principle that the protection of the exercise of the right is within the power of Congress is as necessary to the rights of other citizens to vote as to the colored citizens, and to the right to vote in general as to be protected from discrimination.

I want to say a word on the subject of "qualifications." Let us concede that the Congress can make the qualifications for the States. If the Constitution does put that power in the Congress of the United States to specify the qualifications, then we maintain that sex is not a qualification. You can not qualify, if you are a man, and become a woman, or, if a woman, become a man. Sex is not a qualification. You can qualify by attaining residence, age, education, property, religion, or anything else you like, but you can not qualify on the question of sex. It is not a qualification; it is an attribute. We accept for women any qualifications the State prescribes for men.

Quoting again from my previous remarks:

> It is quite evident that Mr. Madison did not consider the word "qualifications," used in section 2, as preventing section 4 from giving Congress the ultimate control over the franchise, for, as I have before quoted, he said: "Should the people of any State by any means be deprived of the right of suffrage, it was judged proper it should be remedied by the General Government."

Mr. BROCKSON. Do you assume that sex is not a qualification, but an attribute?

Mrs. COLBY. Certainly.

Mr. BROCKSON. Do you consider that race is a qualification or an attribute?

Mrs. COLBY. Certainly, it is an attribute.

Mr. BROCKSON. Has it been determined by the States what races shall be entitled to vote?

Mrs. COLBY. Not for Members of Congress.

Mr. BROCKSON. No? Then the negroes of the South vote for Members of Congress?

Mrs. COLBY. Mr. Chairman, it is too big a question for us to go into. We have already helped men to achieve all the liberties they have, and now we are trying to achieve our own, and without standing for any particular people that may yet be disfranchised, including the Filipinos, we want now to have the women have first consideration.

The CHAIRMAN. Is there any other question anybody would like to ask?

Mr. SHERLEY. Have you considered the number of cases that explained and qualified the Yarbrough case? I have a list of them here, about 10 or 15.

Mrs. COLBY. I am afraid that would be rather tedious to the committee, but I will say that I have not. I have no doubt that those various kinds of men in the different States that the gentleman read to you that were disfranchised at the time the Constitution was adopted had the right inherent in their citizenship, awaiting circumstances and time for them to be brought into activity. That is what we are asking here to-day. We will never go back on the rights of our citizenship, but we do ask you to bring those rights into activity, as it is plainly within your power to regulate those things that refer to the Congress and do not touch the States. And we ask you to give us the benefit of the doubt.

Our Constitution, as I quoted, is made for an expanding future, and we believe we have expanded considerably beyond the time when even that decision was rendered, and we ask you to bring this question before the Congress for its consideration, and then, if an act shall be passed by Congress, it will be time enough to find out whether it is constitutional or not. I believe, and many of us believe, that it will be declared to be constitutional and that the Supreme Court will, in time to come, take an advance ground in its consideration of such a statute. There will come a time when in some of the States which hesitate to recognize this right of the States' citizens to vote some citizen will claim the right and will take a case to the Supreme Court of the United States for the general suffrage. There is no doubt in my mind, if we wait long enough, we shall get a decision in our favor from the Supreme Court of the United States on the general suffrage question. But I believe it is worth while trying now, at any rate, to get first an act of Congress; then, if necessary, to get a decision on this particular point, which is not so broad and universal as the general suffrage.

Mr. CRISP. The qualifications in Georgia to-day are exactly the same as Mr. Sherley read in the Minor *v.* Happersett decision. We have exactly the same qualifications there now that we had then.

Mr. SHERLEY. May I ask one question?

The courts have laid down the rule usually that a court should always resolve any doubt in favor of the constitutionality of an act, and because the court does that the legislative body should always resolve any doubt against its own power. You do not agree with that theory of the courts?

Mrs. COLBY. Mr. Chairman, I have no doubt that the Congress of the United States, or the House of Representatives, if it can get this question before it, will attack it from every angle. I ask you to give it the opportunity to discuss this matter and not make yourselves the final arbiters of our destiny by pigeonholing this bill. We asked a report upon it in order that the question may come up for discussion.

Mr. MAPES. Have you considered the practicability of it? Some of us are in sympathy with a constitutional amendment, but suppose this bill was passed without a constitutional amendment; how would the States separate the women from the men, and how would they prepare the ballots, and how could they be cast in such a way that it would be practicable?

Mrs. COLBY. Mr. Chairman, people can always find a way to do what they want to do, and I have had the opportunity of having school suffrage for many years, where I had no other form of suffrage, and I would go right in along side of a man who had the full suffrage, and

the machinery was so arranged that I could not have the full suffrage, but could only have the school suffrage—could only vote for school officers. In Illinois to-day the women are voting for many kinds of officers.

Mr. MAPES. They have a separate ballot, do they not?

Mrs. COLBY. Well, that will all be arranged. If you men can not adjust yourselves to the advanced and changed conditions, when we women are voters we will help you out on those matters of detail. [Laughter.]

Mr. MAPES. We want to see how it is going to be done when we are asked to do it, if we can.

The CHAIRMAN. Let me make this announcement especially to the ladies present. This is the last time that this committee will have a hearing on this bill or any kindred bill. We are therefore disposed to give you ladies all the latitude we can. We do not want to consume too much time, but if there are others present who want to discuss this bill from either side, briefly, the committee will hear them.

Mrs. COLBY. As I read something earlier about the action of the National Suffrage Association with regard to this same subject, I wish to say that they recently, in their convention at Nashville, indorsed this measure. It is enlisting the attention of the women of the country. For the full suffrage in the States we shall have to ask the voters to amend their constitutions, but we will have a great impetus in that direction if we can get the right to vote for Members of Congress. We can then, with more patience, wait for the other.

It has been said here: Why should we ask for a bill if we now have the right? Certainly many rights have to be held in abeyance until we can have some action to bring them into activity. I may have the right to breathe the fresh air, but if somebody else controls the windows I may be deprived of the exercise of that right until I can get somebody to open the windows. That is a simple illustration that illustrates this point. We have the right to vote. We will never concede that we have not. We ask the people to give it to us in every way possible. We ask the States to give it to us in their constitutions. We ask the State legislatures to give us what form of suffrage they can. We come to Congress and ask Congress to submit a proposition to amend the Constitution to give us full suffrage, and besides all that we must stand on the right we have, and ask you to give us what we believe you can give us under the Constitution of the United States, through the Congress.

The CHAIRMAN. Now, if no one else desires to be heard, let me say, Mrs. Colby, you referred to a lot of data and memoranda, etc. In my opinion, the committee will not want to print all that.

Mrs. COLBY. We do not want any of it printed.

The CHAIRMAN. You can make up such briefs as you want, so long as they are confined to the matters and questions raised in this bill, and the committee, I am sure, will take pleasure in ordering an argument prepared by Mr. French printed along with the argument of yourself, Mr. Sherley, and Mrs. Brown.

The CHAIRMAN. The committee will stand adjourned now.

(At 12.30 o'clock p. m. the committee adjourned.)

79089—15——2

STATEMENT OF HON. BURTON L. FRENCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO.

Mr. FRENCH. Mr. Chairman, I probably ought to say, in justice to myself, that I am just out of the hospital and not in shape to make an argument. Last spring, however, I outlined very fully the arguments that I would advance now why this bill should be reported. I think I have met the points that have been so ably presented by my colleague. I would call the attention of the committee to the last authority that the gentleman cited with respect to what the Congress of the United States has undertaken to do or did undertake to do in the heat of passion during the Civil War days, etc. The particular act to which I referred was never declared unconstitutional. It was repealed some 30 years later by an act of Congress, and that act was passed by the Congress, the Congress relying upon the very provision of the Constitution that we rely upon in urging this bill, namely, that the Congress has the right to determine the manner, and in determining the manner, to go into the question even of those who shall vote for the Members of the Senate and House of Representatives. The Congress at that time did pass a law limiting the rights of voting for Members of the House of Representatives far beyond the limitation that was placed upon those eligible to vote by the Kentucky Legislature. The State of Kentucky was not a secessional State; the State of Kentucky was never out of the Union. Those who were in that State and who undertook to vote at the election after this law was passed, and whose votes it was declared should not be counted, were citizens of the United States and citizens of the State of Kentucky and eligible to vote for the members of the most numerous branch of the State of Kentucky Legislature, but yet, notwithstanding that fact, the Congress, in exercising its power, relying upon the statute that had been passed, said that the Member must be elected by those eligible to vote under that statute.

Then I call attention to the case of Minor *v.* Happersett. The case is most interesting, but was decided not upon a case parallel with a case that would arise if this bill were passed. There was no law even purporting to give women the right of suffrage. The case was decided upon an appeal being carried to the Supreme Court of the United States on the question whether or not, wholly in the absence of any legislation upon the part either of the State or the Federal Government, women had the right to vote.

I think I shall not take the time of the committee further. I have met, as I think, the various suggestions that have been made in the statement that I made to the committee some months ago, and I would like to have the members of the committee consider what I urged in connection with the hearing we have had to-day.

The CHAIRMAN. The committee appreciates the fact that you have been recently ill and we will be glad to consider any manuscript you desire to hand in.

Mr. BROCKSON. Do you consider the right or privilege to vote a right under the laws of the States or under the laws of the United States?

Mr. FRENCH. I think that the States have certain powers. States have the power, in the absence of Federal legislation, to prescribe

certain qualifications touching the subject, but I think if the Federal Government chooses to do so it has the power of prescribing what we might say are the major qualifications for suffrage.

Mr. SHERLEY. Do you think the Federal Government would have the power, by an act of Congress, to define all of the qualifications that the voter should have in Federal elections, without regard to State law? And if you do not, where is the line to be drawn as to what they can and what they can not define?

Mr. FRENCH. That question is very interesting, but I believe it is not at all pertinent here. I do not need to answer it affirmatively in order to contend for the passage or support of this bill, and I in fact doubt very much whether the Congress could do it; but, on the other hand, let me ask the gentleman a question: Suppose the State should pass a law requiring that no one should be eligible to vote for Members of Congress excepting presidents of universities, professors, ministers of the gospel of the various churches, doctors, and members of the legal profession; where would the rights of the citizens of the State rest; upon what part of the Constitution would they rely in asking the courts to set aside such a law as that? Now, that is not an unreasonable supposition. Go to Japan, and there the legislature is made up in part of those who represent learned bodies. They believe it is a wise thing. We could do that same thing here if we chose to, and I say that the people of this country would rely upon the very clause of the Constitution which gives to the Federal Congress the power to determine the manner, to assert their rights, and to regain their rights to vote for the Members of the House of Representatives and the Senate.

Mr. SHERLEY. The gentleman has asked me a question, so I take it that he wants an answer.

The States have done not the concrete things you speak of, but similar things are repeated every day. I have read from Supreme Court decisions what the States did at the beginning. We find there restrictions that we to-day would think very much less reasonable than those restrictions of intelligence, such as the gentleman suggests, such as restrictions in regard to property rights, and some of the peculiar restrictions in the South. If those restrictions related to the election of the members of their legislature I know of no power now in the Constitution whereby we could say that that law was wrong. It is conceivable that you might get such a condition that the court might hold that a republican form of government, which is guaranteed under the Constitution, was not being preserved, and it was thereby guaranteed, but to say, as you say, that the Federal Government can exercise its judgment as to the desirability of a qualification, for instance, as to the desirability of male as against male and female qualifications is, in practice, to say that the provision in the Constitution saying that the qualifications shall be such as the State determines for its legislature is of no avail and no effect, and is simply there for the——

Mr. FRENCH (interposing). Then the gentleman does concede that there could be cases so extreme that the citizenship would actually look to the Constitution to restore its rights?

Mr. SHERLEY. I can conceive of conditions so extreme that we would not have any Government, but it would not prove for an

instant that your contention is right and reductio ad absurdum is mighty poor argument in favor of any proposition, because if you go on that theory something might happen which means the denial of all rights of suffrage.

Mr. FRENCH. That sustains again my point that Congress could define the general qualifications.

Mr. BROCKSON. Suppose such a condition did exist as you suggested—that some State restricted the right of suffrage to college presidents and the other persons enumerated by you—is there any power now in the United States Government to come in and specify what people might vote in that State and give them the right to vote?

Mr. FRENCH. My idea is that the citizenship of that State would be mighty prompt to arise and assert its rights under the Constitution, and, in part, under the very clause of the Constitution that we are relying upon in asking your consideration of this bill, namely, that Congress has the right to determine the manner of the election.

Mr. BROCKSON. Well, but you have not answered my question.

Mr. FRENCH. I have tried to answer it.

Mr. BROCKSON. Is there any power in the United States Government, in Congress or otherwise, to go into that State and name the people and specify the qualifications of those people and give them the right to vote?

Mr. FRENCH. I think that the Congress could do it for the Members who sit in the House.

Mr. BROCKSON. Then, why do you want this bill?

Mr. FRENCH. Congress would do it by a definite act.

Mr. BROCKSON. It can not do it now without a special act?

Mr. FRENCH. In the absence of legislation we have left it to the States, but when the Congress shall choose to assert its power, as we propose in this bill, then the States' powers would be superseded.

Mr. BROCKSON. Then, you admit now that the right to specify and define the qualifications of voters is now in the States?

Mr. FRENCH. That is the Minor-Happersett decision, and I admit that.

Mrs. COLBY. May I have a few moments, Mr. Chairman?

The CHAIRMAN. I might say to you it is now past 12 o'clock, but one of the members of the committee who is sitting close to me is so intent and so much pleased to have you ladies here that we are disposed to give you further time.

COMMITTEE ON ELECTION OF PRESIDENT,
VICE PRESIDENT, AND REPRESENTATIVES IN CONGRESS,
HOUSE OF REPRESENTATIVES,
Tuesday, March 24, 1914.

The committee met at 10 o'clock a. m., Hon. William W. Rucker (chairman) presiding.

The CHAIRMAN. The committee has met this morning for the purpose of having a hearing on the bill H. R. 9393, which was introduced by Mr. French, of Idaho. Mrs. Colby, can you give us some idea of about how many speakers will appear on your side?

Mrs. COLBY. We have several present who desire to be heard. Mr. French will address the committee and we are also expecting Senator Owen.

The CHAIRMAN. Miss Bronson, how many speeches will be made on your side?

Miss BRONSON. We will have three and perhaps four.

The CHAIRMAN. The committee has determined that the speeches must alternate. The first speech, of course, will be by some one who favors the legislation, and the next speech by some one who opposes it, and so on. I will state to you frankly that it is the purpose in granting this hearing to take no partisan stand on either side for or against, but to hear your arguments both pro and con, and divide the time equally. Mrs. Colby, who will address the committee now?

Mrs. COLBY. Mr. French will be our first speaker.

STATEMENT OF HON. BURTON L. FRENCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO.

The CHAIRMAN. Mr. French, we have two hours' time to devote to this hearing, one hour in behalf of the bill and one hour against it; how much time do you desire?

Mr. FRENCH. I would like to have about 30 minutes, if I may ask for that.

The CHAIRMAN. Mrs. Colby has control of the time in favor of the bill.

Mrs. COLBY. He can have what time he desires.

Mr. FRENCH. Then I would like to speak for half an hour.

The CHAIRMAN. We will call you at the end of that time.

Mr. FRENCH. First of all, Mr. Chairman and gentlemen of the committee, I would like to have inserted in the hearings a copy of the bill, and then I would like also at this time to ask permission to insert several citations that, on account of the short space of time I have, I probably will not read. They will not be voluminous, and I would like to insert them to save reading.

Mr. AINEY. You will refer to them, will you not?

Mr. FRENCH. Yes, sir; I will try to refer to all the citations that I insert.

(The bill referred to by Mr. French is as follows:)

Mr. FRENCH. Mr. Chairman and gentlemen of the committee, as I understand it, the committee at this time desires to hear some statement with regard to the constitutional features of the bill, and not so much with regard to the general question of the advisability of extending the franchise to women throughout the United States. The bill itself is very similar to one introduced by myself in the last Congress, and at the time the hearings were held upon it I spoke somewhat with regard to the operation of woman's suffrage in the State that I represent, and in other committee meetings I have spoken with regard to the advisability of extending woman's suffrage, from the broad standpoint, and not from the technical constitutional standpoint of this particular bill. That being the case, I want at this time to call attention to a few features of the Constitution and to a few decisions that it seems to me have a bearing upon this particular measure. Mr. Chairman, whether or not this bill is consti-

tutional must be determined by the express or implied powers and limitations placed upon the Congress of the United States and upon the States themselves by the Constitution. There is no line in that great instrument that says that women of the States shall not have the right of suffrage; there is none that says they shall have that right; there is none that says that men shall have the right of suffrage, and there is none that says that men shall not have that right. It is important in considering this question to outline what the Constitution really does say on this question. Section 2 of article 1 of the Constitution provides: "The House of Representatives shall be composed of members chosen every second year by the people of the several States."

It further says in section 2, article 1, that "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." The Constitution further says in section 4 of the same article that "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof." Further, it says, "But the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators." Beyond that is the general power conferred upon each Congress to be the judge of the qualifications and elections of its own members. These, gentlemen, are the essential parts of the Constitution upon which you must base your decision as to the validity of the proposed measure. The Constitution declares, first, that Members of Congress shall be chosen by the people; second, that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature; third, that Congress may determine by law the manner of their election; and fourth, that each House is made the judge of the qualifications and election of its members.

Now, let us turn to the first guaranty, that "Members of Congress shall be chosen by the people." The important point to be determined here is who are the people. If women are not included as a part of the people, then manifestly we need go no further. Who, then, are the people? At the time of the adoption of the Constitution, slaves were not included apparently as a part of the people and Indians who were not taxed were not included apparently. With regard to slaves, the Dred Scott decision clearly points that out. In section 2, article 1, of the Constitution, it is provided that the representatives and direct taxes shall be apportioned among the several States upon the basis of the number of free persons excluding Indians who are not taxed, and three-fifths of all other persons—that is, slaves. More than that, Congress immediately, from the beginning, in the enactment of naturalization laws recognized women of the white race as a part of the people. Congress from the very beginning recognized women as a part of the people and as citizens.

The United States guarantees to citizens of one State the right to bring suit against citizens of another State, and the courts have uniformly held that that same guaranty pertains to women just as much as it pertains to men. Who then were included? Why, men were included and women were included, and men were included no more than women. Both free men and free women were people within the meaning of the Constitution when it was framed. Both were citizens. The Fourteenth amendment to the Constitution of

the United States declared that, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." That amendment did not seek to modify the status of women. Women are already citizens. That amendment applies and was intended to apply to negroes, although it is broad enough to include not only negroes but people of the yellow or brown races, people of the white race, and men and women of all races. The fact is that it was not necessary to pass the amendment so far as the white race was concerned. Both men and women of that race were citizens, and both were people within the meaning of the Constitution. (See Dred Soctt decision.)

In the well-known case of Minor *v.* Happersett (21 Wallace), this very question was considered. In 1874 Mrs. Virginia M. Minor, a citizen of Missouri, attempted to vote, but was denied the privilege. She brought an action in the courts of the State and finally, on appeal, carried the question to the Supreme Court of the United States. In that case the Supreme Court, after discoursing on how the Congress has recognized women as citizens, says:

> Other proof of like character might be found, but certainly more can not be necessary to establish the fact that sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship. The amendment prohibited the State of which she is a citizen from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her. That she had before its adoption.

Of course the members of the committee know that the court decided that the contention of Mrs. Minor could not be sustained, but it was not because of the fact of anything within the Constitution, and it was not upon her raising her claim to vote under any law enacted by Congress similar to this granting to women generally the right to vote. The proponents of this measure urge that the authorization was in the Constitution at that time if Congress had seen fit to enact a law, but Congress had not done so, and it was in the absence of a statute upon the subject that the court made that decision.

The CHAIRMAN. Did the court base its decision upon that ground?

Mr. FRENCH. No, sir; the court did not go into that particular question. The court, as I recall it, let its decision turn more especially on what it contended was the fact that suffrage was not necessarily a component part of citizenship.

The CHAIRMAN. That is what I thought.

Mr. FRENCH. However, there are decisions that are counter to that and that suggest a different view.

I submit that one of the basic elements of political conditions in any country such as ours is the right to have a part in the government of that country, or, in other words, the right of suffrage.

What then do we have? First, that all persons born or naturalized in the United States and subject to its jurisdiction are citizens.

Second. That sex is not an element of citizenship.

It follows, then, that without the necessity of any further constitutional amendment the pending measure is constitutional, unless within the Constitution itself there may be some limitations upon the Congress.

I have already called attention to the chief provisions upon which those rely who insist that this measure is not constitutional. They insist that since the States may fix the qualifications of electors for the most numerous branch of the State legislatures, these qualifications become at once the qualifications of those who may vote for Members of Congress. This would be true, if there were not another limitation placed upon the States in the form of a power conferred upon the Congress. That limitation, in part, lies in the words, "The Congress may at any time, by law, make or alter" the regulations of States touching the "manner of holding elections for Senators and Representatives." Gentlemen of the committee, when that particular clause was considered in the course of framing the Constitution in the Constitutional Convention, the first draft of it simply gave the Congress the power to "make" the laws. After it had been referred to the committee for final revision, the committee seemed to be controlled by the idea that that power was not broad enough as conferred upon Congress, and feared that after the States had themselves passed laws Congress would not be permitted to modify or amend those laws. I think that contention or fear was not sound. Nevertheless, in the abundance of caution which was in their minds, the committee rewrote the clause and inserted in it the privilege of "altering" the regulations of the States touching the manner of holding the elections of senators and representatives.

The CHAIRMAN. What does the word "manner" there mean?

Mr. FRENCH. I will come to that. I would say right now that right in that word there is wrapped up all there is involved in this particular question. The question involved is not one that has been passed upon fully by the Supreme Court. Unfortunately, under this provision of the Constitution the Federal Congress has not enacted much legislation that has brought cases to the Supreme Court that would to a very voluminous extent outline or define more particularly the meaning of the framers of the Constitution. I think the very first act of Congress that was passed under this clause of the Constitution was in 1842, when it was provided that Members of Congress should be elected from districts and not from the States themselves in mass. Another important law under this provision of the Constitution was passed in 1872, when the time was fixed for the election of Members of Congress. Other important acts of Congress under this provision probably include the one that the chairman of this committee reported within a recent Congress providing for the purification of elections in the United States, so far as those elections concern Members of Congress.

Aside from those laws, my judgment is that the only other important laws ever passed by Congress under this particular clause of the Constitution were laws that were passed during and following the Civil War and that had to do with the rights of persons who participated in the Civil War in opposition to the Union. It must also be said that all of those laws that were passed by the Congress, as urged in the forum of public opinion throughout the country and as urged before the Supreme Court by counsel, undoubtedly were modified by prejudice upon the part of people in the North and by prejudice upon the part of just as earnest people in the South. Here is a question, however, that need not involve that question. It is true

that in part there is involved the same authority that Congress relied upon when it enacted the legislation that was considered then, but it is a question that need not involve the North or the South, but we may, all untrammeled by prejudices on account of former positions, consider candidly the constitutionality of this measure. What then is the meaning of the language of the Constitution? How broad is the language and what is meant by it? The relative power of the Government and the States has been the subject of much consideration. It was a subject of discussion when the question of ratifying the Constitution was debated in the conventions of the several States convened for the consideration of the question.

I think, from an examination of the debates that occurred in the different conventions of the States convened for the purpose of ratifying the Constitution, that in nearly every one of them that particular paragraph was debated most earnestly, the paragraph that gave to Congress the power to make or alter, etc. I have examined the opinions of the prominent men who were instrumental in urging the ratification of the Constitution with that particular amendment included in it, and there is no doubt that there was jealousy upon the part of the States of the power of the Federal Government. But, on the other hand, there is no doubt that among profound thinkers there was a strong feeling that the Government itself ought to be given the power to control the general manner of conducting elections in this country. That question was debated in the Virginia convention. In that convention James Madison, who was one of the framers of the Constitution, declared that the manner of holding elections was properly reserved to the Federal Government. He said:

> Should the people of any State by any means be deprived of the right of suffrage, it was judged proper it should be remedied by the Federal Government. It was found to be impossible to fix the time, place, and manner of election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State governments, as being best acquainted with the true situation of the people, subject to the control of the General Government, in order to enable it to produce uniformity and prevent its own dissolution. And considering the State governments and the General Government as distinct bodies, acting in different and independent capacities for the people, it was thought that the particular regulations should be submitted to the former (that is, to the States) and the general regulations to the latter—

That is, to the General Government. For further consideration of this feature, I call attention in this connection to Elliott's Debates, pages 366 and 367.

Now, that is what Madison thought. He declared that should the people of any State by any means be "deprived of the right of suffrage" it was judged proper that it should be "remedied by the Federal Government"; and he pointed out the place where this power to remedy was lodged in the Constitution. He pointed it out as the paragraph conferring upon Congress the power to regulate the manner of electing Senators and Representatives. He was quite willing that minor regulations, "particular regulations," to use his exact words, should be left to the States. This might include age; it might include property qualifications; it might include length of residence in a voting precinct; and it might include a multitude of minor matters that the States thought important. But he thought that the general regulations should be left to the Federal Government. He thought that if the people of any State by any means were to be deprived of

the right of suffrage it was judged proper it should be remedied by the Federal Government. This he included under the heading "General regulations."

Suppose a State were to pass a law denying suffrage generally to the citizens of the State, in so far as it concerns the election of Members of Congress, and conferring it upon, say, members of certain professions, such as lawyers, professors in universities, and members of the ministry. Would it not be under this clause of the Constitution that the citizens of our country would rely in seeking relief, in connection with that other clause in section 2 of Article I, which declares that the House of Representatives shall be chosen by the people? Or, rather, would it not have been so prior to the adoption of the fourteenth and fifteenth amendments? The fact is that the suggestion or illustration I have made is not an unreasonable one. Go, if you please, to Japan, a country that has a splendid Government and that recognizes suffrage in a very extensive manner, but at the same time provides that in the Parliament there shall sit members who are the representatives of learned bodies, universities, etc. The Japanese people believe that these people have superior qualifications for the administration of governmental affairs.

Now, suppose, I say, that in one of the States of this Union this idea should so impress itself upon the people of the State or the legislative body that in that State they should limit suffrage as it pertains to the election of the legislature and so to the election of Members of Congress—that is, to the Senate and the House—to lawyers and to professors in universities and to the ministry. Under what clause of the Constitution would the people of that State ask that their rights be protected? We do not have a parallel to that in the actual experience of this country, but I submit that it is within the reasonable bounds of possibility that it might occur, and I submit, further, that it was to prevent just such an occurrence as that that Madison and the other framers of the Constitution felt that the Federal Government should be clothed with the general power of regulating the manner of holding elections.

But the court has said in the case of Minor *v*, Happersett, heretofore referred to, that the fourteenth amendment did not affect the citizenship of women any more than it did the citizenship of men. So would it not be possible for the citizens of our country to claim their rights through the constitutional guarantee alone that Members of the House of Representatives shall be chosen by the people? And would the Congress not invoke the authority of Article I, section 4, conferring upon it power to determine the manner of holding elections, to say that the rights of the people shall be protected? If so, would that be carrying the definition of the word "manner" further than is proposed in the pending bill? Absolutely not.

I do not rely upon my own reasoning. A few cases have been considered by the Supreme Court of the United States that involve in some degree the question of the extent to which the Congress may go in determining the meaning of the word "manner" and the inherent right that exists in the Federal Government to deal broadly with the question of suffrage as it concerns those who may participate in the election of Members of Congress. Likewise the Congress itself in election cases has given some attention to this matter and

in the passage of bills bearing upon the rights of people within the United States touching suffrage.

In the case entitled "ex parte Yarbrough" (110 U. S., 651) there is much in the opinion of the court that is highly interesting. In that case Yarbrough and certain associates were charged in the indictment with conspiracy to intimidate a Negro in the exercise of his right to vote for a Member of Congress and in the execution of their conspiracy they wounded and otherwise maltreated him.

It is true that this case arose out of the amendment to the Constitution conferring suffrage upon the Negro race, but much that was said by the court is pertinent to this question. In that case counsel had insisted upon express authority in the Constitution, and the court restated the contention and then answered it.

> Because there is no express power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted. It destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing; that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers—a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted and all other powers vested in the Government or any branch of it by the Constitution. (Art. I, sec. 8, clause 18.)
>
> We know of no express authority to pass laws to punish theft or burglary of the Treasury of the United States. Is there, therefore, no power in the Congress to protect the Treasury by punishing such theft and burglary?

Further on in the decision the court said:

> It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.
>
> Counsel for petitioners, seizing upon the expression found in the opinion of the court in the case of Minor *v.* Happersett (21 Wall., 162) that "the Constitution of the United States does not confer the right of suffrage upon anyone," without reference to the connection in which it is used, insists that the voters in this case do not owe their right to vote in any sense to that instrument.
>
> But the court was combating the argument that this right was conferred on all citizens, and therefore upon women as well as men.
>
> In opposition to that idea it was said the Constitution adopts as the qualification for voters of Members of Congress that which prevails in the State where the voting is to be done; therefore, said the opinion, the right is not definitely conferred on any person or class of persons by the Constitution alone, because you have to look to the law of the State for the description of the class. But the court did not intend to say that when the class or the person is thus ascertained his right to vote for a Member of Congress was not fundamentally based upon the Constitution, which created the office of Member of Congress and declared it should be elective, and pointed to the means of ascertaining who should be electors.

Again in that opinion the court said in reference to the right conferred upon the negro by the fifteenth amendment to the Constitution:

> This new constitutional right was mainly designed for citizens of African descent. The principle, however, that the protection of the exercise of this right is within the power of Congress is as necessary to the right of other citizens to vote as to the colored citizen, and to the right to vote in general as to the right to be protected against discrimination.
>
> The exercise of the right in both instances is guaranteed by the Constitution and should be kept free and pure by congressional enactments whenever that is necessary.

And again:

But it is a waste of time to seek for specific sources of the power to pass these laws Chancellor Kent, in the opening words of that part of his Commentaries which treats of the Government and constitutional jurisprudence of the United States, says:

"The Government of the United States was created by the free voice and joint will of the people of America for their common defense and general welfare. Its powers apply to those great interests which relate to this country in its national capacity, and which depend for their protection on the consolidation of the Union. It is clothed with the principal attributes of political sovereignty, and it is justly deemed the guardian of our best rights, the source of our higest civil and political duties, and the sure means of national greatness." (1 Kent's Com., 201.)

It is as essential to the successful working of this Government that the great organisms of its executive and legislative branches should be the free choice of the people as that the original form of it should be so. In absolute governments, where the monarch is the source of all power, it is still held to be important that the exercise of that power shall be free from the influence of extraneous violence and internal corruption.

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.

Such has been the history of all republics, and, though ours has been comparatively free from both of these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources.

If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.

If the Government of the United States had within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other.

Bearing upon the power of Congress to enact legislation that has to do with the exercise of the right of suffrage and the right of citizens to be protected, I call the committee's attention to the case of "Ex parte Clarke" (100 U. S., 103), and to the case of Wiley *v.* Sinkler (179 U. S., 62). In the latter case the court said:

The right to vote for Members of the Congress of the United States is not derived merely from the constitution and laws of the State in which they are chosen, but has its foundation in the Constitution of the United States.

I also call the committee's attention to "Ex parte Siebold" (100 U. S., 383), in which the court, in discussing this general question, gave expression to its view of the power of Congress in the following language:

So in the case of laws for regulating the elections of Representatives to Congress. The State may make regulations on the subject; Congress may make regulations on the same subject or may alter or add to those already made. The paramount character of those made by Congress has the effect to supersede those made by the State, so far as the two are inconsistent, and no further. There is no such conflict between them as to prevent their forming a harmonious system perfectly capable of being administered and carried out as such.

And again:

If Congress does not interfere, of course they may be made wholly by the State; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially. On the contrary, their necessary implication is that it may do either. It may either make the regulations or it may alter them. If it only alters, leaving, as manifest convenience requires, the general organization of the polls to the State, there results a necessary cooperation of the two Governments in regulating the subject. But no repugnance in the system of regulations can arise thence,

for the power of Congress over the subject is paramount. It may be exercised as and when Congress sees fit to exercise it. When exercised, the action of Congress, so far as it extends and conflicts with the regulations of the States, necessarily supersedes them. This is implied in the power to "make or alter."

And again:

It is the duty of the States to elect Representatives to Congress. The due and fair election of these representatives is of vital importance to the United States. The Government of the United States is no less concerned in the transaction than the State government is.

And further:

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other, except where both can not be executed at the same time. In that case, the words of the Constitution itself show which is to yield. "This Constitution, and all laws which shall be made in pursuance thereof, * * * shall be the supreme law of the land."

But let us see how Congress has construed the power conferred upon it of directing the manner of holding elections. The House of Representatives in the Twenty-eighth Congress, in the election case of Botts *v.* Jones, from Virginia (Hinds' Precedents, Vol. I, p. 811) considered this question. Votes were cast for the contestant, Botts, and they were thrown out upon the ground that they were votes cast by persons of foreign birth, who while they had taken the oath of fidelity to the Commonwealth of Virginia, and consequently were eligible to vote for the members of the most numerous branch of the State legislature, were not citizens of the United States. The Congress evidently felt that they were not "people of one of the several States," even though they were citizens of Virginia and eligible to vote. The committee making the report was not unanimous. The majority, however, contended that the power of the Federal Government to enact naturalization laws was a limitation upon the provision of the Constitution defining electors of Members of Congress as those who were eligible to vote for the members of the most numerous branch of the State legislature. The minority report earnestly contended that the Constitution gave to the States the power to confer the right to vote—just as people have urged since, that it has—notwithstanding the naturalization provision of the Constitution. The majority report was sustained. And I would say further that until the constitutional amendment No. 14 was passed there never was in the Constitution or amendments a definition of "citizens" within the United States, and yet the House of Representatives, following the election, refused to recognize as controlling that guaranty to the States, that they had the right to fix the qualifications of those who could vote for Members of Congress as those who were eligible to vote for members of the most numerous branch of the State legislature of Virginia.

Oh, but it is urged Congress took this position because of that other clause of the Constitution which confers upon each House the right to be the judge of the qualifications and elections of its own Members. The Constitution says, article 1, section 5, "Each House shall be the judge of the elections, returns, and qualifications of its own Members." Those who take this position that the House acted upon its authority contained in that paragraph will hardly contend that the language used is any broader than the language used in

article 1, section 4, that confers upon the Congress the power at any time to "make or alter such regulations" touching the "manner" of holding elections.

If the language is not broader, and it strikes me that it is not, then it means either that Congress does have the right in a large sense to determine who shall be eligible to vote for Members of Congress, the same as many believe section 4 of article 1 means, or else the House arbitrarily refused to seat the Member and relied upon no higher authority than its "will" or "decree" in a matter from which there was no appeal.

Another case that is most interesting as involving the question of how far the Congress may go in passing laws abridging the suffrage of people as regards voting for Members of Congress who are eligible to vote in the several States for the members of the most numerous branch of the State legislature is the Kentucky election case of McKee *v.* Young in the Fortieth Congress. (Hinds, Vol. 1, 451.) Upon the face of the returns Young received the majority of the votes cast. In the contest against him it was established to the satisfaction of the committee that Young was not himself entitled to membership in the House of Representatives because of his having been under the disqualification of aiding those who were in arms against the United States. It was urged, however, that the votes that were cast for Young were in large part the votes of soldiers who had participated in the rebellion, and that these votes ought not to be counted, and if not counted that McKee be seated.

Congress some two years before this case was considered, or on March 3, 1865, had passed an act which decitizenized by their own voluntary act certain persons who had deserted from the military or naval service of the United States. Of the votes that were cast for Young and which were rejected were 625 votes of former Confederate soldiers and 8 votes of deserters from the Union forces. Kentucky had not been the subject of reconstruction legislation; Kentucky had not seceded from the Union and the persons that I have referred to, including those who had served in the Confederate Army, and those who had deserted from the Union Army, were eligible to vote for the members of the most numerous branch of the Kentucky State Legislature. It was vehemently urged that the constitutional guaranty touching the eligibility of those who might be permitted to vote for Members of Congress was being violated. It was urged most strongly that the Constitution gave to the States the power to determine who should vote for the members of the most numerous branch of the State legislature. In the minority report from the Committee on Elections, Messrs. Kerr and Chanler, in referring to these voters, declared, "They were still, under the constitution and laws of Kentucky, qualified electors of the most numerous branch of the State legislature, and had as much right to vote for a Member of Congress under the Constitution of the United States as the candidates themselves."

In spite of this the Congress of the United States upheld the act of Congress of March 3, 1865. In spite of this the House rejected all of these votes, 633 in number, of persons who were eligible to vote for members of the most numerous branch of the State Legislature of Kentucky. Mr. McKee was awarded his seat in Congress.

Here is a case in which the Congress by law did limit the right of suffrage notwithstanding the guarantee to the several States and to those eligible to vote for members of the most numerous branch of the State legislature. Here is a case in which the House affirmed, in spite of bitter contentions, the power of Congress so to act, and the right of the House to inquire, not only into the qualifications and elections of persons presenting themselves to membership in the House, but to inquire, in the broad sense, into the qualifications of those who voted for the candidates for Congress under an act that the Congress had passed.

The bill that I have introduced involves the same principle of whether or not the Congress may assume under the Constitution to define in a general way those who may be entitled to vote for Members of the Senate and House of Representatives.

Would not the act of Congress of March 3, 1865, be regarded as the result of the exercise by Congress of what Madison termed the power of "general regulation" conferred upon Congress and would not the present bill fall in the same class?

If this Congress is clothed with the power to determine the manner of election of members of the Senate and the House, if each body is clothed with the power to be the sole judge of the qualifications and election of members that may constitute each body, and if, as I have shown, one or the other of these great bodies has absolutely refused to recognize as entitled to membership in the Congress men elected by persons who were qualified to vote in the States in which their votes were cast, for the members of the most numerous branch of the State legislature, may we not conclude that Congress has already passed upon this question so far as the broad principle may be concerned and has determined that it has far more authority than those who are urging against this measure are willing to concede.

Indeed, if the Congress has the power, each body acting by itself, to reject the credentials of men who claim to be elected by the votes of people who are eligible to vote for members of the most numerous branch of the State legislature of the State in which their vote has been cast, may we not suppose that in the interest of orderly system alone the Congress would have the power prior to the casting of the votes to declare what votes would be regarded in the election of a member of either House or Senate. Surely this would be in the interest of orderly procedure, and such a course as this would mean that every State would understand what votes would and what would not be regarded as satisfactory in supporting the credentials of a member elected to either body.

Touching the opinion of Congress as indicated by later expressions of opinion found in committee reports, I beg to call the attention of the committee to the majority and minority report in the Fifty-third Congress on H. R. 2331, a bill for the repeal of Federal election laws. The report is No. 18 and Mr. Tucker in presenting the majority report strongly contends for the greatest latitude touching the right and conditions of suffrage as resting in the States.

Mr. Johnson of North Dakota who presented the minority report reviews the other side of the question very fully, and points out some of the views entertained by those who had to do with the writing of the Constitution and some of the views that have been entertained by the courts since that time.

The report of Senator Lodge when a member of the House in the Fifty-first Congress, first session, upon H. R. 11045, report No. 2493, likewise reviews the question with great care. The report does not pretend to touch upon the question of the right of women to vote under the Constitution. It deals with the power of Congress under the clause conferring upon Congress the right to make or alter laws touching the manner of elections.

Let me quote briefly a few excerpts from the report:

This necessary power is found in section 4, Article I of the Constitution of the United States, which is as follows:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

The language employed in this section is so plain that it would seem almost superfluous to enter into argument or discussion as to its meaning. If words mean anything those just quoted mean that the power of Congress over the conduct of elections of members of this body is absolute and complete. The Constitution says that Congress may make all regulations in regard to the election of Representatives, and the power to "make regulations" thus conferred is in terms exclusive and paramount. But out of abundance of caution the framers of the Constitution went further and added to the word "make" the words "to alter"; that is, under the Constitution, Congress has power to assume complete control of elections of its members and conduct them at such times and places and through such officers and under such rules as it may see fit. On the other hand, Congress may under this clause leave the entire regulation of the election of Representatives to the States, or it may take a partial control of a part of the necessary procedure and leave what remains to the State, or it may alter and amend the State regulations and supervise and enforce their execution.

* * * * * * *

and again,

On the contrary, as already said, we think it clear that the clause of the Constitution relating to the regulation of such elections contemplates such cooperation whenever Congress deems it expedient to interfere merely to alter or add to existing regulations of the State. If the two governments had an entire equality of jurisdiction there might be an intrinsic difficulty in such cooperation. Then the adoption by the State government of a system of regulations might exclude the action of Congress. By first taking jurisdiction of the subject the State would acquire exclusive jurisdiction in virtue of a well-known principle applicable to courts having coordinate jurisdiction over the same matter. But no such equality exists in the present case. The power of Congress, as we have seen, is paramount, and may be exercised at any time and to any extent which it deems expedient; and so far as it is exercised, and no further, the regulations effected supersede those of the State which are inconsistent therewith.

And again:

On a matter of such importance, however, it will not be amiss to cite a few controlling authorities and to show that the power of Congress in regard to the election of Representatives is not only paramount but that it can be exercised to any degree. from total control downward, which Congress may deem wise. In the convention of 1787, on the 9th of August, Mr. Pinckney and Mr. Rutledge moved to strike out the words which in the draft then before the convention conferred this power upon Congress. The motion was lost, apparently without a division, and, if we may judge from Mr. Madison's notes, had no serious support in the convention. The remarks made, however, in opposition to the motion of Mr. Pinckney show clearly the view taken of this clause by the framers of the Constitution and the paramount character of the power conveyed by it, although in the draft then under consideration the clause was much less sweeping than it afterwards became in the instrument as adopted.

I want to call attention briefly to some of the objections to this bill.

Mr. MAPES. May I ask you a concrete question?

Mr. FRENCH. Yes.

Mr. MAPES. Whether the gist of your argument is that the fourteenth amendment was not necessary to authorize Congress to pass a law to the same effect as the fourteenth amendment?

Mr. FRENCH. Oh, I think not; the fifteenth amendment, not the fourteenth.

Mr. MAPES. The race, color, or previous condition of servitude amendment?

Mr. FRENCH. The fifteenth amendment, not the fourteenth. I think the fourteenth was necessary, but I think that the fifteenth amendment can very properly be classed as surplusage, and that it was passed as an overabundance of assurance to the negro race at that particular time.

Mr. MAPES. In your opinion, Congress could have passed a law to the same effect and it would have been constitutional?

Mr. FRENCH. That is my judgment of it. That is a question that is not necessarily original with me; at the same time, it is a view of the question that I have concurred in. The constitutionality of this bill does not necessarily rest upon the fourteenth amendment. It rests upon the other provisions of the Constitution to which I have referred.

It is urged that this bill is not constitutional because of the fourteenth amendment granting to slaves the right of citizenship. The fact is that that is not a parallel case. At the time the Constitution was framed slaves were not permitted to vote in any State of the Union, they were not citizens, while on the other hand women were citizens of all States and were permitted to vote in at least one State—I am reminded that it was in two States—but at least in the State of New Jersey they were permitted to vote until 1807, whereas negroes, who were slaves, were not permitted to vote in any State.

I want in this connection to insert, in brief, the qualifications of suffrage in all the States.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power. Thus, in New Hampshire, "every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of 21 years of age and upward, excepting paupers and persons excused from paying taxes at their own request," were its voters. In Massachusetts "every male inhabitant of 21 years of age and upward, having a freehold estate within the Commonwealth of the annual income of 3 pounds, or any estate of the value of 60 pounds." In Rhode Island "such as are admitted free of the company and society" of the colony. In Connecticut such persons as had "maturity in years, quiet and peaceable behavior, a civil conversation, and 40 shillings freehold or 40 pounds personal estate," if so certified by the selectmen.

In New York "every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election * * * if, during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of £20 within the county, or have rented a tenement therein of the yearly value of 40 shillings, and been rated and actually paid taxes to the State." In New Jersey "all inhabitants * * * of full age who are worth £50, proclamation money, clear estate in the same, and have resided in the county in which they claim a vote for 12 months immediately preceding the election." In Pennsylvania "every freeman of the age of 21 years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election." In Delaware and Virginia "as exercised by law at present." In

Maryland "all freemen above 21 years of age having a freehold of 50 acres of land in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of £30 current money, and having resided in the county in which they offer to vote one whole year next preceding the election." In North Carolina, for Senators, "all freemen of the age of 21 years who have been inhabitants of any one county within the State 12 months immediately preceding the day of election, and possessed of a freehold within the same county of 50 acres of land for six months next before and at the day of election," and for members of the house of commons "all freemen of the age of 21 years who have been inhabitants in any one county within the State 12 months immediately preceding the day of any election, and shall have paid public taxes."

In South Carolina "every free white man of the age of 21 years, being a citizen of the State and having resided therein two years previous to the day of election, and who hath a freehold of 50 acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot), hath been a resident within the election district in which he offers to give his vote six months before said election, and hath paid a tax the preceding year of 3 shillings sterling toward the support of the Government"; and in Georgia such "citizens and inhabitants of the State as shall have attained to the age of 21 years, and shall have paid tax for the year next preceding the election, and shall have resided six months within the county." (Minor *v.* Happersett, 88 U. S., pp. 172–173.)

The CHAIRMAN. You have consumed your 30 minutes.

Mr. FRENCH. I thank the committee for its courtesy.

Mr. PLUMLEY. I would like to have your citations before you sit down.

Mr. FRENCH. Would you like to have all of them?

Mr. PLUMLEY. I would like all of your citations.

Mr. FRENCH. The citations that——

Mr. PLUMLEY (interposing). That you are relying on.

Mr. FRENCH. I will put them in the record.

Mr. PLUMLEY. You are going to put them in the record?

Mr. FRENCH. Yes. I would say that they are all either excerpts from decisions of the Supreme Court or the reports of committees of Congress upon various questions that I think bear upon the subject.

Mr. CANTOR. Submit them to the Chairman, so we may know what you rely upon. You need not do it just at this moment, but can do it later on.

Mr. BROCKSON. Why do you advocate the passage of this law? Is it because you question the power of the States to pass such a law, or is it because you believe the States will not do it?

Mr. FRENCH. I believe the States, of course, have the power to pass such laws. They have already passed such laws in numerous States, some nine or ten, and I believe that it is good policy, and I believe it would be well to extend the principle to all the States. If there is a question about the constitutionality of the measure, and we can not be certain that it would or would not be held constitutional, I would do with respect to it just as you gentlemen of the committee did with respect to the eight-hour law for women a few weeks ago, which you helped to pass, not knowing of a certainty whether it was constitutional or not, and as you did with regard to the income-tax law a year ago, not knowing of a certainty that it was constitutional. (Applause.)

Mr. BROCKSON. Aside from any constitutional question, do you think it good policy for the United States to force upon some States a suffrage different from that they now have?

Mr. FRENCH. My judgment is that it is a suffrage that is so satisfactory wherever it has had an opportunity to work that its blessings could and should be extended to all the States.

Mr. BROCKSON. Even though they do not want it?

Mr. FRENCH. I think many women in all the States want the right of suffrage. I think we have the right to call upon citizens in time of war to defend our country, and if we believe that conditions are such that the women of this country have a peculiar view of economic and social questions that men do not have, we have the right to call upon them to help solve them. (Applause.)

Mr. BROCKSON. You would not send the women to war, would you?

Mr. FRENCH. Not at all. The men are glad to volunteer whenever the country says that time has arrived.

The CHAIRMAN. Miss Bronson, who will be your first speaker?

Miss BRONSON. Congressman Sherley, of Kentucky.

[PUBLIC—No. 111—63D CONGRESS.]

[S. 2860.]

An Act Providing a temporary method of conducting the nomination and election of United States Senators.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter.

SEC. 2. That in any State wherein a United States Senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be in accordance with the laws of such State regulating the nomination of candidates for and election of Members at Large of the National House of Representatives: *Provided,* That in case no provision is made in any State for the nomination or election of Representatives at Large, the procedure shall be in accordance with the laws of such State respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire State: *And provided further,* That in any case the candidate for Senator receiving the highest number of votes shall be deemed elected.

SEC. 3. That section two of this Act shall expire by limitation at the end of three years from the date of its approval.

Approved, June 4, 1914.

63D CONGRESS,
2D SESSION.

S. 3507.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 1, 1913.

Mr. SHAFROTH introduced the following bill; which was read twice and referred to the Committee on Woman Suffrage.

A BILL

To grant to women citizens of the United States the right to register and vote for Senators of the United States and for Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That women who are citizens of the United States and possess such qualifications of age, residence, property, or education as may be required of men to make them legal voters in the several States shall be eligible to register and vote in all States of the Union at all elections for Senators of the United States and for Members of the House of Representatives.

63D CONGRESS, 2D SESSION. } S. 3507.

A BILL

To grant to women citizens of the United States the right to register and vote for Senators of the United States and for Members of the House of Representatives.

By Mr. SHAFROTH.

DECEMBER 1, 1913.—Read twice and referred to the Committee on Woman Suffrage.

63D CONGRESS,
1ST SESSION.

H. R. 9393.

IN THE HOUSE OF REPRESENTATIVES.

NOVEMBER 22, 1913.

Mr. FRENCH introduced the following bill; which was referred to the Committee on Election of President, Vice President, and Representatives in Congress and ordered to be printed.

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That women who are citizens of the United States and possess such qualifications of age, residence, property, or education as may be required of men to make them legal voters in the several States shall be eligible to register and vote in all States of the Union at all elections for Senators of the United States and for Members of the House of Representatives.

63D CONGRESS, 1ST SESSION. } **H. R. 9393.**

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

By Mr. FREICH.

NOVEMBER 22, 1913.—Referred to the Committee on Election of President, Vice President, and Representatives in Congress and ordered to be printed.

64TH CONGRESS,
1ST SESSION.

H. R. 6.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 6, 1915.

Mr. HELVERING introduced the following bill; which was referred to the Committee on the Election of President, Vice President, and Representatives in Congress and ordered to be printed.

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That women who are citizens of the United States and possess such qualifications of age, residence, property, or education as may be required of men to make them legal voters in the several States shall be eligible to register and vote in all States of the Union at all elections for Senators of the United States and for Members of the House of Representatives.

64TH CONGRESS, 1ST SESSION. } **H. R. 6.**

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

By Mr. HELVERING.

DECEMBER 6, 1915.—Referred to the Committee on Election of President, Vice President, and Representatives in Congress and ordered to be printed.

64TH CONGRESS,
1ST SESSION.

H. R. 379.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 6, 1915.

Mr. RAKER introduced the following bill; which was referred to the Committee on Election of President, Vice President, and Representatives in Congress and ordered to be printed.

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That women who are citizens of the United States and possess such qualifications of age, residence, property, or education as may be required of men to make them legal voters in the several States shall be eligible to register and vote in all States of the Union at all elections for Senators of the United States and for Members of the House of Representatives.

64TH CONGRESS, 1ST SESSION. } **H. R. 379.**

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

By Mr. RAKER.

DECEMBER 6, 1915.—Referred to the Committee on Election of President, Vice President, and Representatives in Congress and ordered to be printed.

64TH CONGRESS,
1ST SESSION.

S. 1539.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 10, 1915.

Mr. LANE introduced the following bill; which was read twice and referred to the Committee on Woman Suffrage.

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That women who are citizens of the United States and possess such qualifications of age, residence, property, or education as may be required of men to make them legal voters in the several States shall be eligible to register and vote in all States of the Union at all elections for Senators of the United States and for Members of the House of Representatives.

64TH CONGRESS, 1ST SESSION. } S. 1539.

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

By Mr. LANE.

DECEMBER 10, 1915.—Read twice and referred to the Committee on Woman Suffrage.

64TH CONGRESS, 1ST SESSION.

H. R. 767.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 6, 1915.

Mr. RAKER introduced the following bill; which was referred to the Committee on the Election of President, Vice President, and Representatives in Congress and ordered to be printed.

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That women who are citizens of the United States and possess such qualifications of age, residence, property, or education as may be required of men to make them legal voters in the several States shall be eligible to register and vote in all States of the Union at all elections for Senators of the United States and for Members of the House of Representatives.

64TH CONGRESS, 1ST SESSION. } **H. R. 767.**

A BILL

To protect the rights of women citizens of the United States to register and vote for Senators of the United States and for Members of the House of Representatives.

By Mr. RAKER.

DECEMBER 6, 1915.—Referred to the Committee on the Election of President, Vice President, and Representatives in Congress and ordered to be printed.

64TH CONGRESS, 1ST SESSION.

H. J. RES. 7.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 6, 1915.

Mr. HAYDEN introduced the following joint resolution; which was referred to the Committee on the Judiciary and ordered to be printed.

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States extending the right of suffrage to women.

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 be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said legislatures, shall be valid as part of said Constitution, namely:

"ARTICLE —.

"SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"SEC. 2. The Congress shall have power, by appropriate legislation, to enforce the provisions of this article."

64TH CONGRESS, 1ST SESSION. } H. J. RES. 7.

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States extending the right of suffrage to women.

By Mr. HAYDEN.

DECEMBER 6, 1915.—Referred to the Committee on the Judiciary and ordered to be printed.

64TH CONGRESS, 1ST SESSION. **S. J. RES. 85.**

IN THE SENATE OF THE UNITED STATES.

JANUARY 24, 1916.

Mr. NORRIS introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary.

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States for the election of the President and Vice President by a direct vote.

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 be proposed as an amendment to the Constitution of the United States, which shall be valid as a part of said Constitution when ratified by the legislatures of three-fourths of the States, to wit: In lieu of paragraphs one, two, and three of section one, Article II, of said Constitution, and of amendment numbered twelve thereto, insert the following:

"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

64TH CONGRESS, 1ST SESSION. } **S. J. RES. 85.**

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States for the election of the President and Vice President by a direct vote.

By Mr. NORRIS.

JANUARY 24, 1916.—Read twice and referred to the Committee on the Judiciary.

President, chosen for the same term, be elected as follows: The choice of each State for President and Vice President shall be determined at a general election of the qualified electors of such State. The time of such election shall be the same throughout the United States, and unless the Congress shall by law appoint a different time such election shall be held on the first Tuesday after the first Monday of November in the year preceding the expiration of the regular term of the President and Vice President. Each State shall be entitled to, and shall be given, as many votes for President and Vice President as the whole number of Senators and Representatives to which the State may be entitled in Congress. Each State shall certify and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate, the result of said election. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all 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 votes to which all of the States are entitled; 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 the President. In

choosing the President the votes shall be taken by roll call of the members and all such votes shall be recorded in full in the Journal, and a majority of all of the Representatives shall be necessary to a choice. 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. 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 votes to which all of the States are entitled, and if no person have a majority, then from the two highest numbers on the list the Senate shall, in like manner, choose the Vice President, and a majority of the whole number of Senators 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."