GRANTING REPRESENTATION IN THE ELECTORAL COLLEGE TO THE DISTRICT OF COLUMBIA

MAY 31, 1960.—Referred to the House Calendar and ordered to be printed.

Mr. Celler, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S.J. Res. 39]

The Committee on the Judiciary, to whom was referred the joint resolution (S.J. Res. 39) proposing amendments to the Constitution of the United States to authorize Governors to fill temporary vacancies in the House of Representatives, to abolish tax and property qualifications for electors in Federal elections, and to enfranchise the people of the District of Columbia, having considered the same, reports favorably thereon with amendments and recommends that the joint resolution do pass.

The amendments are as follows:

Amendment No. 1: Page 1, line 3, strike out all the language after the resolving clause and substitute the following:

"The following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

"A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

"Sec. 2. The Congress shall have power to enforce this article by appropriate legislation."

Amendment No. 2: Amend the title to read:

"A joint resolution proposing an amendment to the Constitution of the United States granting representation in the Electoral College to the District of Columbia."
The amendments are in the nature of a substitute bill and are explained in the "Section Analysis of Resolution" set out later in this report.

PURPOSE

The purpose of this proposed constitutional amendment is to provide the citizens of the District of Columbia with appropriate rights of voting in national elections for President and Vice President of the United States. It would permit District citizens to elect Presidential electors who would be in addition to the electors from the States and who would participate in electing the President and Vice President.

The District of Columbia, with more than 800,000 people, has a greater number of persons than the population of each of 13 of our States. District citizens have all the obligations of citizenship, including the payment of Federal taxes, of local taxes, and service in our Armed Forces. They have fought and died in every U.S. war since the District was founded. Yet, they cannot now vote in national elections because the Constitution has restricted that privilege to citizens who reside in States. The resultant constitutional anomaly of imposing all the obligations of citizenship without the most fundamental of its privileges, will be removed by this proposed constitutional amendment.

NEED FOR CONSTITUTIONAL AMENDMENT

Simply stated, voting rights are denied District citizens because the Constitution provides machinery only through the States for the selection of the President and Vice President (art. II, sec. 1). In fact, all national elections including those for Senators and Representatives are stated in terms of the States. Since the District is not a State or a part of a State, there is no machinery through which its citizens may participate in such matters. It should be noted that, apart from the Thirteen Original States, the only areas which have achieved national voting rights have done so by becoming States as a result of the exercise by the Congress of its powers to create new States pursuant to article IV, section 3, clause 1 of the Constitution.

It was suggested that instead of a constitutional amendment to secure voting rights, the District be made either into a separate State or its land retroceded to the State of Maryland. Apart from the serious constitutional question which would be involved in the first part of this argument, any attempted divestiture by the Congress of its exclusive authority over the District of Columbia by invocation...
of its powers to create new States would do violence to the basic constitutional principle which was adopted by the framers of the Constitution in 1787 when they made provision for carving out the 'seat of Government' from the States and set it aside as a permanent Federal district. They considered it imperative that the seat of Government be removed from possible control by any State and that the Constitution in article I, section 8, clause 17 specifically directs that the seat of Government remain under the exclusive legislative power of the Congress. This same reasoning applies to the argument that the land on which the District is now located be retroceded to the State of Maryland.

MINIMUM IMPACT; PRESERVATION OF ORIGINAL CONCEPT OF CONSTITUTION

The proposed amendment would change the Constitution only to the minimum extent necessary to give the District appropriate participation in national elections. It would not make the District of Columbia a State. It would not give the District of Columbia any other attributes of a State or change the constitutional powers of the Congress to legislate with respect to the District of Columbia and to prescribe its forms of government. It would not authorize the District to have representation in the Senate or the House of Representatives. It would not alter the total number of presidential electors from the States, the total number of Representatives in the House of Representatives, or the apportionment of electors or Representatives among the States. It would, however, perpetuate recognition of the unique status of the District as the seat of Federal Government under the exclusive legislative control of Congress.

AMENDMENT NOT RELATED TO HOME RULE

This proposed constitutional amendment with respect to voting by citizens of the District in national elections is a matter entirely separate from questions as to possible changes in the form of local government which the Congress might establish for the District. The present constitutional provisions relating to the District already vest plenary power in the Congress to legislate in this respect and the present constitutional powers would not be modified by the amendment here proposed. Questions as to possible changes in the form of local government for the District, including local home-rule proposals and other possible changes in the structure of the District government, are

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1 Art. I, sec. 8, clause 17 provides that the Congress shall have power "To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States."

2 While the Continental Congress was meeting in Philadelphia on June 26, 1785, soldiers from Lancaster, Pa., veterans of the Revolutionary War, arrived at Philadelphia "to obtain a settlement of accounts." The harassment by the soldiers continued through June 28, 1785, on which date Congress, abandoning hope that State authorities would disperse the soldiers, removed itself from Philadelphia. It met successively in Princeton, Trenton, N.J., Annapolis, Md., and New York City.

3 While no repetition of the Philadelphia experience came about, the Continental Congress nonetheless did not lightly dismiss this Philadelphia incident and on October 7, 1783, the Continental Congress adopted a resolution providing for land to be under the exclusive jurisdiction of the United States. Records fail to disclose any action taken to implement this resolution. Probably, when the urgency diminished, the resolution was allowed to expire.

4 When the present Constitution was before the Constitutional Convention of 1787, it was urged that some provision be made in the Constitution for a seat of government under the exclusive control of the Federal Government and that such seat be at a place away from any State capital because such a situation would tend "to produce disputes concerning jurisdiction" and because the intermingling of the two legislatures would give "a provincial tint" to the national deliberations. This suggestion was adopted and resulted in Art. I, sec. 8, clause 17 of the Constitution, providing for a permanent seat of government, now known as the District of Columbia (Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States (June 1957), GPO, pt. II, pp. 16-17).
matters which may properly be brought before other committees of
the Congress and will not be affected by the constitutional amendment
here proposed.

SECTION ANALYSIS OF RESOLUTION

The resolution, as amended by the committee, consists of two parts.
The first part provides by its terms that the resolution shall be valid
as a part of the Constitution only if ratified by the legislatures of
three-fourths of the States within 7 years after it has been submitted
to them by the Congress.⁸

Then follows the proposed article of amendment. It consists of
two sections. Section 1 provides that the District constituting the
seat of Government shall appoint in such manner as the Congress may
direct, a number of electors for President and Vice President equal to
the whole number of Senators and Representatives in Congress to
which the District would be entitled if it were a State but in no event
more than the least populous State. It should be noted that this
language follows closely, insofar as it is applicable, the language of
article II of the Constitution.

It is the committee's intention that the number of electors to be
elected by the District be based upon each decennial census as it occurs
and as is now the procedure adopted for national elections; it is not
intended to use the present population of the District as the basis for
determining the number of its electors in all future presidential elec-
tions. It is the committee's intention, regarding future enabling
legislation to carry out the provisions of this constitutional amend-
ment, that no district inhabitants (including minor dependents) who
maintain legal domiciles or voting residences elsewhere, be included
in the census computation insofar as determining the number of
electors is concerned. The electors are to be in addition to those
appointed by the States but they are to be considered for purposes
of the elections of President and Vice President as now provided in
article XII of the Constitution to be electors appointed by a State.
They are to meet in the District and perform such duties as provided
by the XIIth article of amendment.

Section 2 of the proposed article provides that Congress shall have
power to enforce this article by appropriate legislation. This section
and section 1 of the proposed article, as well as other provisions of the
Constitution (especially arts. I and II thereof) are authorizations to
Congress to establish, among other things, the qualifications of electors
and of voters in connection with national elections for President and
Vice President as well as to provide for the conduct, manner, time, and
place of elections.

The second part of the committee amendment is to change the title
of the bill to reflect the subject matter of the amendment by stating
that Senate Joint Resolution 39 is amending the Constitution of the
United States in order to grant representation in the electoral college
to the District of Columbia.

⁸ Congress first adopted the 7-year limitation provision in proposing the 18th amendment to the Constit-
ution. It did so because, at that time, several proposed constitutional amendments already submitted
to the States for ratification had long lain dormant but were nevertheless subject to being resurrected and
acted upon by the several States. (See Dillon v. Glass, 256 U.S. 368, 373 (1921).)
The first 10 amendments to the Constitution were ratified by the necessary number of States within 10
months, 20 days of their submission by the Congress. According to a statement in Coleman v. Miller, 307
U.S. 483, 490 (1939), the average time for ratification of amendments 10–21 has been computed to be 1 year,
6 months, 18 days; 3 years, 6 months, 26 days has been the longest time used in ratifying. The 22nd amend-
ment was ratified in 3 years, 11 months, 7 days. (See also Dillon v. Glass, 256 U.S. 368, 372; Constitution
of the United States, 82d Cong., 2d Sess., p. 39.)
CONSTITUTIONAL PROVISIONS AFFECTED BY SENATE JOINT RESOLUTION 39 AS REFERRED TO THE COMMITTEE

There follows in parallel columns the provisions of the United States Constitution which are affected by Senate Joint Resolution 39 as referred to the House Committee on the Judiciary.

UNITED STATES CONSTITUTION

[Art. I. sec. 2, clause 1]

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *

[Art. I, sec. 2, clause 4]

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

SENATE JOINT RESOLUTION 39 AS REFERRED TO THE COMMITTEE

On any date that the total number of vacancies in the House of Representatives exceeds half of the authorized membership thereof, and for a period of sixty days thereafter, the executive authority of each State shall have power to make temporary appointments to fill any vacancies, including those happening during such period, in the representation from his State in the House of Representatives. Any person temporarily appointed to fill any such vacancy shall serve until the people fill the vacancy by election as provided for by article I, section 2, of the Constitution.
United States Constitution

[Art. I, sec. 2, clause 1]

* * * and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[Amendment XVII]

* * * The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

[Art. I, sec. 2, clause 1]

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *

[Art. II, sec. 1, clause 2]

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

SENATE JOINT RESOLUTION 39 AS REFERRED TO THE
COMMITTEE

The right of citizens of the United States to vote in any primary or other election for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax or to meet any property qualification.

Nothing in this article shall be construed to invalidate any provision of law denying the right to vote to paupers or persons supported at public expense or by charitable institutions.

The people of the District constituting the seat of the Government of the United States shall elect, in such manner and under such regulations as the Congress shall provide by law—
a number of Delegates to the House of Representatives equal to the number of Representatives to which they would be entitled if the District were a State with such powers as the Congress, by law, shall determine;
a number of electors of President and Vice President equal to the whole number of Senators and Representatives in the Congress to which the District would be entitled if it were a State; such electors shall possess the qualifications required by article II of this Constitution; they shall be in addition to those appointed by the States, but they shall be considered,
The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. * * *
CONSTITUTIONAL PROVISIONS AFFECTED BY COMMITTEE AMENDMENT

Since the House Committee on the Judiciary has amended Senate Joint Resolution 39 by striking out its entire text following the resolving clause and substituting new language, there follows in parallel columns the provisions of the United States Constitution which are affected by the committee amendment.

UNITED STATES CONSTITUTION

[No pertinent provision affected.]

[Amendment XII]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. * * *

COMMITTEE AMENDMENT

The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.