

U.S. Senator from said State shall be elected by the people thereof for the term commencing on the 4th day of March next thereafter" (U.S.C., title 2, sec. 1).

This section, too, was amended in 1934. The amendment does not detract from the meaning assigned by the Congress to the word "elections" in the constitutional provision—the voting for Senators and Representatives.

In 1915, after deliberating a year and a half, the Court decided (*United States v. Mosley* (238 U.S. 383)). This case was alluded to by Senator Javits in his testimony before this committee on January 19, 1960. The Court in that case construed the old section 5508 of the Revised Statutes, which had then become section 19 of the Penal Code. It was held constitutional and in the language of the Court "constitutionally extends protection to the right to vote for Members of Congress and to have the vote when cast counted." It was held to apply "to the acts of two or more election officers who conspire to injure and oppress qualified voters of the district in the exercise of their right to vote for Members of Congress by omitting the votes cast from the count and the return to the State election board"—all a part of the actual election.

Along with the *Mosley* case, Senator Javits cites *United States v. Saylor, et al.* (322 U.S. 385). We allude to it now although it was not decided until 1944. There is a 6 to 3 decision, the Court held that Congress had the power to punish a conspiracy by election officers to stuff a ballot box in an election in which a Member of Congress was to be elected, and that the Federal statutes were sufficiently broad to embrace such an offense.

Mr. Justice Douglas, with whom Mr. Justice Black and Mr. Justice Reed concurred, dissented. They thought that the general language of section 19 of the Criminal Code under which Saylor had been convicted was insufficient to embrace the acts for which Saylor had been indicted.

I quote Justice Douglas:

"Under section 19 of the Enforcement Act of May 31, 1870 * * * the stuffing of this ballot box would have been a Federal offense. That provision was a part of the comprehensive "reconstruction" legislation passed after the Civil War. It was repealed by the act of February 8, 1894 * * * an act which was designed to restore control of election frauds to the States. The committee report (H. Rept. No. 18, 53d Cong., 1st sess., p. 7), which sponsored the repeal, stated: 'Let every trace of the reconstruction measures be wiped from the statute books; let the States of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used they will be the first to feel it. Responding to a universal sentiment throughout the country for greater purity in elections many of our States have enacted laws to protect the vote and to purify the ballot. These, under the guidance of State officers, have worked efficiently, satisfactorily, and beneficently; and if these Federal statutes are repealed that sentiment will receive an impetus which, if the cause still exists, will carry such enactments in every State in the Union.' This Court now writes into law what Congress struck out 50 years ago. The Court now restores Federal control in a domain where Congress decided the States should have exclusive jurisdiction. I think if such an intrusion on historic States rights is to be made, it should be done by the legislative branch of the Government. I cannot believe that Congress intended to preserve by the general language of section 19 the same detailed Federal controls over elections which were contained in the much-despised reconstruction legislation" (op. cit., pp. 390-392).

Thereafter, Justice Douglas cited the *Bathgate* case, 246 U.S. 220, and then said: "Congress has ample power to legislate in this field to protect the election of its members from fraud and corruption. * * * I would leave to Congress any extension of Federal control over elections."

Presently, we shall come to consider the problem: How far can Congress go under the Constitution in extending Federal control over election? How far can Congress go in this field of protecting the election of its members from fraud and corruption? Do the Senate bills under consideration exceed the powers of Congress delegated to it by the States? Does the Constitution of the United States warrant what Justice Douglas denominated as "such an intrusion on historic States rights?"

When we come to consider those questions, let us consider Justice Black's admonition in *Reid v. Covert* (354 U.S. 1, at p. 14): "The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the