UNITED STATES ELECTIONS.

SPEECH

OF

HON. CHARLES J. FAULKNER,

OF WEST VIRGINIA,

IN THE

SENATE OF THE UNITED STATES,

FRIDAY, JANUARY 16, 1891.

WASHINGTON.
1891.

SPEECH

OF

HON. CHARLES J. FAULKNER.

The Senate having under consideration the bill (H. R. 11045) to amend and supplement the election laws of the United States, and to provide for the more efficient enforcement of such laws, and for other purposes—

The VICE PRESIDENT. The question is now, the Chair supposes, on the amendment——

Mr. FAULKNER. I desire to offer an amendment to the amendment of the Committee on Privileges and Elections, of which I gave notice some days ago, and which is one of the suspended amendments.

The VICE PRESIDENT. The Chair was just on the point of presenting that as the question pending, it being the amendment of the Senator from West Virginia to strike out section 14. That is the amendment to which the Senator refers?

Mr. FAULKNER. Yes, sir; and I desire to take the floor on that amendment.

Mr. HOAR. Will the Senator allow me to ask him a question?

Mr. FAULKNER. With pleasure.

Mr. HOAR. I wish to know whether the Senator objects to the arrangement suggested by the Senator from Alabama [Mr. MORGAN], that the amendments which have been offered by me with the sanction of the majority of the committee should be first proposed?

Mr. FAULKNER. I do not understand that the committee has had anything to do with the amendments submitted by the Senator from Massachusetts.

Mr. HOAR. I understand that.

Mr. FAULKNER. He stated distinctly, in reply to the Senator from Indiana [Mr. VOORHEES], that the bringing in of those amendments was his act and his volition entirely, and that it was not any act of the committee whatever. Consequently, whatever may have been the usual rule or courtesy of the Senate in reference to those questions, it is not a rule that applies under the circumstances to the amendments submitted by the Senator from Massachusetts.

Mr. HOAR. I did not speak of any committee amendments in my question. I asked whether the Senator objected to the suggestion which was made by the Senator from Alabama, that the amendments proposed by me with the sanction of the majority of the committee should be first considered.

Mr. FAULKNER. I do not know, Mr. President, whether the Senator himself would not move to lay his amendments on the table, even if we should consent that they might come before the Senate.

Mr. HOAR. The only question is whether the Senator objects.

Mr. FAULKNER. Of course he objects.

Mr. HOAR. That is all.

Mr. FAULKNER. I have no idea of consenting that an amendment offered by any other Senator on this floor shall take precedence over an amendment which I have offered, which is pending now before the

Senate for its consideration, and which was offered and read to the Senate some ten days or two weeks ago.

Mr. TELLER. I ask the Senator if he will yield to me just one moment?

Mr. FAULKNER. Certainly; I yield to the Senator from Colorado.

Mr. TELLER. On the question of laying the amendment of the Senator from South Carolina [Mr. BUTLER] on the table I did not vote, being paired. If it is contended by anybody who is in favor of this bill that judicial power is given to this commission, I should have voted (had the matter been presented so that I could have done so) for the amendment of the Senator from South Carolina, because I am not in favor of giving to that body any judicial authority whatever.

Mr. HOAR. Nobody is.

Mr. TELLER. I understand that that is disclaimed by the friends of the measure. If the language is not clear, I think the friends of the bill ought to make it clear so that there will be no necessity for an amendment like that suggested by the Senator from South Carolina.

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Mr. FAULKNER. Mr. President, in referring to the remarks made by the Senator from Colorado [Mr. TELLER], I desire to say that, knowing his ability as a lawyer, if he will follow me through the discussion of the provisions of the fourteenth section and listen to the quotations from the remarks of the distinguished Senator from Massachusetts, he will concur with me that under the fourteenth section, as framed by the Committee on Privileges and Elections, there can be no question that there is a broad, wide, and unlimited discretion conferred upon the canvassing board that will invest it—not, as the Senator from Massachusetts was careful in his guarded language to say, with such judicial power as is contemplated by the Constitution of the United States—but will confer on it that broad and wide discretion and that exercise of a quasi-judicial power which are obnoxious to every State statute in conferring powers on canvassing boards, except two, within the limits of this Republic.

Mr. TELLER. If the Senator from West Virginia will allow me, I will say to him that my judgment, after looking carefully over this amendment as now framed, is that it does confer judicial power upon this board, although I understand that is not the intention of the bill.

Mr. BUTLER. So it seems, if the Senator from West Virginia will permit me, that the Senator from Vermont is mistaken as to the effect of the language of the fourteenth section of this bill.

Mr. EDMUNDS. That may be, but I think not.

Mr. BUTLER. So that my amendment was not so wide of the mark after all.

Mr. FAULKNER. I have not participated to any extent in the discussion of the bill that is now before the Senate for its consideration, preferring to reserve any remarks which I had to submit until that period in its consideration when it would be proper to submit amendments which I assumed the Senate would honestly, fairly, and deliberately consider, with a view of correcting the many errors involving principles and details found in the amendment of the committee, and after such deliberate and careful consideration as has heretofore marked the course of the Senate upon all important measures would intelligently enable a majority of the Senate to pass upon the amendments so offered, and subsequently on the bill as it might be amended by a majority; but seems now that the usual course of proceeding is not to be followed in the consideration of this measure. Motions to lay upon the table all amendments offered, thus preventing debate, and continuous sessions of

the Senate without recess are to be resorted to during the next forty-eight or ninety-six hours without even the claim upon the part of the majority that any act of the minority has justified the inference that it is the purpose or object of that minority to engage in any proceedings to defeat this measure other than the exercise of an unquestioned right and the performance of an imperative duty of discussing fully, yet courteously, the dangers, conflict of jurisdictions, and impolicy of the adoption of so radical and revolutionary a measure by Congress. When this has been done, the majority in this body must assume the responsibility of approving the provisions of this bill, and, should they do it, the minority will exercise its further right of appeal from their decision to the supreme power in this country, the people.

Our friends upon the other side have determined, sir, that not only shall we be tired out and wearied, so that the discussion on this bill and the amendments that are to be proposed shall not be heard upon the floor of the Senate, but that the country shall not hear the real objections to the several provisions contained in it. It is the deliberate purpose of the friends of the bill, whenever they can get the floor when an amendment is pending, to move to lay it on the table, thus cutting off debate in this body and closing the mouths of the representatives of the States upon all important questions that will necessarily be involved in the amendments which will be submitted. I see an ironical smile upon the faces of some of the Senators on the other side of the aisle.

What, I will ask, is a general debate, as distinguished from debate upon the merits and details of the provisions of a bill?

A general debate is for the purpose of addressing the minds of Senators to the general principles that underlie the bill itself, and not for the purpose of going into the details of the measure with a view of showing, by careful analysis, the enormity of its provisions. Just the reverse is the object of a debate upon amendments. It is to criticise with more minuteness the provisions of the bill and, by unmasking its concealed motives, pointing out its contradictions, and disclosing the effect of its practical operation by means of a debate on the part of those supporting or opposing its adoption, to direct the attention of the Senate and of the country to a more particular consideration of its provisions.

We at last realize that it is the purpose of the majority of this Chamber to prevent that discussion of the details of this bill if they can do it by moving to lay all amendments upon the table, and in that way hurrying through this legislation by a virtual adoption of the previous question upon every amendment submitted. Under this understanding, Mr. President, of the intention of the majority, I wish to say that I do not propose to surrender the floor until after I have discussed fully and elaborately the amendments which I have submitted to the Senate for its action.

In considering this bill, Mr. President, I will observe that the Committee on Privileges and Elections have advanced a step in the right direction beyond that of the body that sent to us for our consideration the original measure. They have said that the Army of the United States shall not be employed around the polls to terrorize, to bulldoze, or to influence a voter at the election. They have gone a step further, and they have told us that the attempt upon the part of another body to change the jury law providing for the selection of jurors to serve in Federal courts, which amendment had for its object the organization of a partisan jury to try all offenses under this law, was too unamerican in principle and too dangerous in policy to meet their approval. They

have therefore eliminated those two provisions from this bill and rebuked the House of Representatives for its extreme and dangerous partisanship.

The Senate committee have made an attempt to go one step further and to deny to supervisors of elections the power to make a "house-to-house" canvass to ascertain the age, birth, residence, and complexion of every voter at his domicile, feeling that such an interference with the rights of the American citizen would cause a revolt against the policy of the Republican party that would sweep it from power. I will frankly admit that in my judgment the majority of that committee attempted to eliminate that clause from the amendment as submitted by it to the Senate. I will go further and I will say that not having succeeded fully in doing it I believe there is an amendment proposed by the chairman of that committee which will withdraw that entire question from the consideration of the Senate.

But all other objectionable provisions are retained, all the conflicting clauses which affect the jurisdiction of the State over elections for State, county, and district officers, all those partisan features which were massed in this bill in order to secure the support of a majority of this Chamber are carefully—yes, I repeat, carefully—retained in the Senate amendment. I heard the Senator from Rhode Island [Mr. DIXON], in his remarks upon this subject this evening, say that his State was jealous of the exercise of all the rights which, under the Constitution, were reserved to the States or the people thereof; that he felt a pride in those traditions of his State, and would be one of the last to do anything to alter or change the views which were entertained by the people of that State in reference to those rights.

Mr. President, when a practical mind analyzes the provisions of this bill, considers it in reference to its details, and does not lose sight of the fact that it must be applied at the same time and on the same day that elections for State, county, and district officers are held, it must come to the conclusion that it is a bill not for the purpose as is claimed of supervising and guarding the elections of members of the House of Representatives, but it is a bill framed deliberately for the purpose of controlling also the election of State officers.

I have heard Senators say that these supervisors of election have nothing to do with the election more than to exercise a supervision over the conduct and acts of those conducting it. I can not concur in this construction of the bill. I call the attention of the Senate to the provision on page 95, lines 34 and 35, where the power is still retained, authorizing Federal supervisors of election to reject votes that may have been deposited in the ballot box "as being in whole or in part defective" when they are canvassing the same on the evening of the election. They may decide that certain ballots are defective, reject them, and, when they have so decided, all of those ballots must under the law be taken by the supervisor and forwarded to the chief supervisor of elections, although these ballots have on them the names of persons voted for for State, county, and district offices, and the State inspectors may be of the opinion that the ballots are legal.

Another provision, Mr. President, which will in its practical workings affect most seriously elections in the States, is found on pages 94 and 95, commencing at line 13 and ending at line 45. We must remember that these elections are held upon the same day that the Congressional elections are held. Further than that, the ballot for the member of the House of Representatives is a part of the ticket on which are the names of all persons voted for for all the State, county, and district offices, and how do the provisions of this bill affect the interests of those parties?

We have a provision of the bill which provides that "the supervisor of elections shall take one ballot of each kind, size, style, or form found to have been cast for each candidate for the office of Representative, after it has been deposited in the ballot box, and attach the same to his return made to the chief supervisor as a sample of the ballots voted at said election." What will be the practical effect of this provision? I will address that question to the Senator from Wisconsin [Mr. SPOONER], as the Senator from Massachusetts [Mr. HOAR] is not in his seat.

I desire the attention of the Senator from Wisconsin who is a member of the committee, and who, when the chairman is absent, I suppose takes charge of this bill. I would ask that Senator what will be the practical effect of the provision which provides that one of every "kind, style, or form" of ballot deposited in the ballot box shall be taken by the supervisor of elections and made a part of his return to the chief supervisor of elections.

Mr. SPOONER. I suppose, Mr. President, the Senator wants an answer. Though I can not turn to the precise phrase in the bill the object is to preserve a sample of each ballot which is found in the box. As I recollect the provisions it requires one of each kind of ballot cast to be appended to the return and indorsement on the back of the ballot of the number of ballots of that kind cast at the poll, the same as is required by the New York law. If the ballot box were found to contain a large number of tissue ballots, or a large number of what were called at one time "sugar-kiss ballots," or a very large number of any other kind of ballots, it would preserve evidence of the character of the ballot itself and of the number of such ballots which were cast.

Mr. GRAY. If the Senator from West Virginia will allow me, I should like to call the attention of the Senator from Wisconsin to the fact that this provision of the tenth section requires not only that ballots that are fraudulent or suspected to be fraudulent shall be sampled in this way, but that it is made the duty of the supervisors to—

> Securely paste or attach to each of said statements of such canvass, which statements shall be respectively numbered 1 and 2, one ballot of each kind, size, style, or form found to have been cast for each candidate for the office of Representative or Delegate in Congress, and they shall state in words at full length, immediately opposite such ballot, and written partly on such ballot and partly on the paper to which it shall be pasted or attached, the whole number of all the ballots that were received which correspond as to kind, size, style.

Mr. SPOONER. That is the provision to which I allude.

Mr. GRAY. Exactly; but how does that aid in detecting a fraudulent ballot? for we will presume that a majority of the ballots cast—I suppose that is the experience of the Senator from Wisconsin in his State; it is in mine—that the majority of all ballots cast, so far as I know in my experience, are genuine, bona fide, and honest ballots. A specimen of each kind of ballot must be taken from the box, whatever may be the State laws, no matter whose names are contained upon that ballot, though, in addition to the Representative or Delegate in Congress, there may be the names of candidates for supreme court judges, sheriffs, county officers, and so on, to a score or more.

One of each must be taken from the ballot box and sent in to this supervisor, contravening in my State the law that provides for the preservation of all ballots, and interfering, it seems to me, in a very unnecessary way with the election of State officers where that happens to be held, as it is usually held, at the same time as the election for Representatives. What is the necessity for it and how does it aid? I did not understand the Senator from Wisconsin to state how it can aid in the detection of

fraud, if any fraud is committed. That is what I understand the Senator from West Virginia is calling the attention of the Senator from Wisconsin to.

Mr. FAULKNER. That is the question to which I directed the attention of the Senator from Wisconsin. This question does not involve the preservation of the evidence of tissue ballots. This provision does not relate to even fraudulent ballots. It embraces all kinds of ballots that may have been deposited in the ballot boxes, good as well as bad. I desire to direct his attention to the consideration of the effect of that provision upon the elections in the States. We never have, Mr. President, less than two political parties arrayed against each other at any general election; consequently there would be two different ballots under the provisions of this section, at least, that would be taken from the box at each precinct in the United States by the Federal supervisors and pasted on their returns to the chief supervisor of elections.

The counties in the United States will average fifteen precincts and in each precinct there must necessarily be taken from the ballot boxes two original ballots, and these transferred to the Federal authorities under this proposed law, and if there are three parties or four parties each character of ballot must be taken from the boxes and transferred to that same authority. Further than that, if there is a different kind of ballot used by the same party, each one of those different kinds of ballots must be made a part of the return of the supervisors to the chief supervisor of elections of the district.

Now, let me illustrate the effect of this provision in my own State. In my State it averages fifteen precincts for every county, and 2 ballots for every precinct would therefore be 30 ballots taken from each county. There are on an average sixteen counties in each Congressional district. Therefore there would be taken 480 original ballots from the counties of each Congressional district and transferred to the chief supervisor of election. At the lowest calculation and for the entire State there would be taken from the fifty-four counties 1,620 original ballots.

Mr. SPOONER. What of it?

Mr. FAULKNER. I will tell the Senator from Wisconsin if he is not sufficiently familiar with the necessity and importance of preserving the original ballots in the States. Under the laws of every State the precinct officers have to make their return to the county canvassers; and, under the laws of every State I have been able to find, any candidate in a county has a right to demand a recount of the original ballots.

Mr. SPOONER. It would be quite easy to obviate any difficulty in that respect. This bill only requires that a sample ballot containing the name of a candidate for Representative in Congress shall be forwarded by the Federal supervisor, which I think is entirely within the jurisdiction of Congress. If the States see fit, they can provide, as some of them do, a distinct ballot for members of Congress, and conform their legislation in that respect to the legislation of Congress.

Mr. FAULKNER. I am speaking of the effect of the operation of this law under existing State laws.

Mr. GRAY. Does not the Senator from Wisconsin—I ask pardon of the Senator from West Virginia—think that some consideration is due to the existing institutions of States when we come to legislate here about a matter so important as elections?

Mr. SPOONER. The Senator from Wisconsin thinks that when Congress undertakes to regulate the Congressional elections under the Constitution it will regulate them to suit itself in the manner which will in its opinion bring about honest elections for members of Con-

gress, and that the States will conform their legislation, so far as their State tickets are concerned, to the mode prescribed by Congress.

Mr. GRAY. Do you not think the Congress of the United States, having regard to the fact that all the States are necessary to the Union whose government in its legislative department we represent, will find it quite as easy and quite as consistent with propriety in the Congress of the United States, if it undertakes this matter at all, to fix a time—and it has a right to fix the time—that will separate the elections of Congressmen from those of the States, and that it is just as much our duty to look out for that here in this legislative body of the whole United States as it is to require forty-four States to alter their regulations?

Mr. SPOONER. I have not thought, Mr. President, that it would require the alteration by forty-four States. A great many of the States now have provided for a separate ballot for members of Congress. I have not thought myself, although there is something to be said in favor of that proposition, that it is wise to attempt to require by Federal legislation an entirely distinct election for members of Congress. There are several reasons why it has not commended itself to me. In the first place, it would bring about a great multiplicity of elections, which I think ought to be avoided as far as possible.

In the next place, I see no necessity for it. There are only parts of this country where there is any complaint, so far as I know, that elections at which members of Congress are chosen are not fairly conducted, and I have not for one felt that this legislation should be shaped and made applicable to the entire country where it is unnecessary, in order to accomplish a result in sections where it seems to be necessary. In other words, it seems to me, if I had a boil on the back of my neck which needed a poultice, I would not want to put it all over my back. [Laughter.]

Mr. FAULKNER. The distinguished Senator from Wisconsin, in the heat of debate, has frankly admitted to the Senate and to the country that the object and the purpose of this measure is partisan and sectional. When the distinguished Senator from Massachusetts [Mr. HOAR] opened the discussion on this bill during the last session, he presented it to the country as a fair, honest, and beautiful plan, a scheme devised solely for the purpose of purifying the elections of this country from one end to the other; he expressly repudiated the suggestion that the framers of this bill or that he himself supported it because of its partisan or sectional character.

Mr. SPOONER. I say I want it so framed that it may be put in operation, not everywhere, but wherever it is necessary; and I suppose the Senator from West Virginia is not in the heat of debate just now.

Mr. FAULKNER. Not so far as to lose control of my mental faculties. [Laughter.]

Mr. SPOONER. The Senator may not be the best judge on that subject. [Laughter.]

Mr. FAULKNER. I will leave that to the judgment of a generous public, and not to the distinguished Senator from Wisconsin. [Laughter.]

Mr. President, the real object and concealed purpose of the authors of the measure have at last been made plain; the mask has fallen off; the batteries have been uncovered, and the question is now clearly, fairly, and unequivocally presented to the Senate and to the American people. Shall the minority be forced, by night sessions and by all the means that can be put into operation by a majority to force through the Senate a partisan and a sectional measure, to yield their constitu-

tional right to be heard even before a discussion of the details of so important a bill have been entered upon?

When I attempt in a fair, lawyerlike, I hope in a courteous manner, to call the attention of those who are responsible for the framework of this bill to what I conceive to be glaring errors, errors which my association with those Senators have induced me to believe they would be glad to correct if they had unconsciously through an unskilled hand been led into them, I am met with the distinct declaration that there is only one section of this country in which there are unfair elections. This, Mr. President, is a remarkable declaration. Has the gentleman forgotten the arraignment, the analysis, and the statistics, which are undisputed to this moment, that were laid before this senate by the distinguished Senator from New Jersey [Mr. MCPHERSON] in reference to the character of the elections held in Philadelphia and in New York?

Mr. SPOONER. Mr. President, I have not said anything about sections of the country. I say that I want this bill so framed that, if in Philadelphia, or if in New York, or if in Illinois, or if in Wisconsin, or if in any Southern State the necessity exists for this Federal supervision, the machinery may be set in motion as it has been in various States of the North.

Mr. FAULKNER. I would ask the Senator from Wisconsin whether he will not go with me, with that calm and judicial mind I know he generally possesses, and try to see whether some of the views which I entertain are not worthy of his consideration and whether he will not also see the need of correction as well as I do of some of the errors which I shall point out?

Mr. SPOONER. I am listening to the Senator now with a calm, judicial mind. [Laughter.]

Mr. FAULKNER. Having brought the distinguished Senator who now has charge of this bill to that frame of mind in which he will, I hope, appreciate some of the remarks I am about to make in reference to this bill, I will proceed to discuss its provisions.

I want the attention of the Senator that I may propound to him a pertinent and important question. It is the duty of the supervisors of election to take from the ballot box ballots that have been deposited and make them exhibits to their returns. Is it right, is it just, or is it fair to the States that we should by law deprive the authorities of the State of the possession of sixteen hundred and twenty original ballots, as would be the case in West Virginia, containing the names of the candidates for every State, county, and district office, as well as for members of Congress, transfer the possession of these ballots to the Federal authorities and thus prevent the operation of State laws which have been found necessary in exposing frauds and in detecting errors that might occur in the State?

I believe the laws of every State which I have examined provide that the inspectors of election at the different precincts shall forward to the county canvassing board the ballots, the tally list, and their certificate of the number of votes polled, and these State laws further provide that it shall be the duty of the county canvassing boards, whose duty it is to tabulate those returns from the different precincts in the county, at the request of any one interested in the election, to recount the ballots deposited at all or any precinct. How could this necessary and essential provision to correct errors be complied with if the provisions of this act should be enforced? How could they recount the votes with any degree of accuracy when at least thirty original ballots have been transferred from the possession of the State authorities into the control of the chief supervisor of elections?

How is it possible, I would ask the distinguished Senator from Wisconsin, to carry out this fair and just provision of the laws of the State, even as to candidates within a county? and when you extend the limits to a senatorial district or to a Congressional district or to the entire State, what embarrassment would surround the county, district, or State canvassing boards. In West Virginia should a court be called upon to pass in a contest upon the rights of any State official to his office we would find 1,620 original ballots taken from the ballot box and transferred to Federal control, with no right to take proof of their contents by any court in order to arrive at a conclusion as to the proper judgment that should be rendered on the issue made in said contest.

I assert that this is a material defect in the bill, and one which in its operation would be exceedingly prejudicial to the interests of the State and all who are interested in fair and legal State elections.

But, Mr. President, this is not all. The distinguished Senator from Wisconsin gave great weight to the fact that this was a law to protect and defend the ballot against tissue ballots and all illegal ballots deposited in the several ballot boxes provided by the State, and upon that argument excused the provisions of the bill which authorize the supervisors to inspect all the boxes in which ballots for any State officer may be deposited. It is in the power of this Congress, if it has the power claimed by the advocates of this bill, to provide that Congressional elections shall be held at a time other than that at which State elections are held, but the exercise of this power would not accomplish the purpose and object of the framers and supporters of this bill.

Such a law would not have authorized Federal agents to guard, supervise, or control State elections, and influence the deposit of ballots for State, county, and district offices. Consequently they have declined to fix the time for holding Congressional elections at a time other than that at which State elections are held, but have provided that every ballot box, although it is not a box in which a Congressional ballot can be legally deposited, shall be examined before the opening of the polls by the Federal supervisors to see whether it is clear of all ballots.

It strikes me that this is an interference and an invasion that Congress under no authority, even that claimed by the Senators on the other side who favor this bill, can justify. There is no provision of the Constitution conferring upon Congress any such power as that, nor has it been claimed in any discussion that Congress has not the right to provide, under the view that you take of your powers under the Constitution, that this law shall be so framed that an election for members of the House of Representatives shall not be held upon the same day as an election for State offices, but, as I have said, that would not accomplish the purpose its framers had in view, and they have provided that the box in which ballots for members of the House are required to be deposited shall be inspected, and, taking one step further, have repealed the laws of the States which provide that if a ballot is placed in the wrong box it shall not be counted. It further provides that every State box that is used at the election shall be opened in the presence of the supervisors, and that no returns for State officers shall be made until after every box has been so opened and the ballots counted in the presence of and by the Federal supervisors of election.

The object of this provision will be understood when it is stated that, although the ballot is deposited in the wrong box, it shall be counted for a member of Congress. This section is framed to encourage fraud.

What is the only limitation that you put upon the supervisors in counting ballots deposited in the wrong box? It provides that no

greater number of ballots shall be counted for Congressmen than the aggregate of all the ballots cast at that particular precinct; that is, no matter how many ballots are in these boxes or what boxes they are in, up to the extent of the number of votes polled in that precinct, that number of ballots shall be counted in deciding the election of a member of the House of Representatives. Why, Mr. President, there is not a Senator who has had any experience in elections who does not know that there is not an instance on record where every voter at an election has voted in favor of a candidate for every office on the ticket.

Such an instance can not be cited. It will encourage some to proceed after having deposited their ballots in the regular box to deposit a similar ballot in other boxes, knowing that if the aggregate number of ballots in the proper box does not reach the aggregate number of votes polled the fraudulent ballots will be counted. I venture the assertion, which I make in all sincerity and with an honest belief in its correctness, that there never has been within the knowledge of of any Senator a full vote polled for any office at any election; there never has been and there never will be, and yet here is an invitation to perpetrate a fraud upon the elective franchise by offering an inducement to the voter, after depositing his ballot in the proper box, to proceed then to another box and deposit his ballot in that, with the legal assurance on his part that it shall be counted if the aggregate number of ballots in the proper box is not equal to the aggregate number of votes polled.

Mr. President, there is another very striking amendment offered to the present election law to which I desire to call the attention of Senators in favor of this bill, and I do it with the hope that it will result in some explanation that will at least attempt to justify the action of the committee. I do not know how it is in some States or with some people, but in the State where I was born and reared, and in all the adjoining States and others with which I am familiar, the people of those States feel that they have a right to know something about the election officers who are to receive their ballots and control their elections.

I ask whether there is any Senator on this floor who can point to an instance in the forty-four States where the commissioners of elections who are to decide upon the right of a free American citizen to deposit his ballot are appointed from any other section or territory, either of county, district, or State, other than the limits of the precinct in which they are to discharge their duty? I pause for a reply. None, Mr. President, can be given. In order to accomplish the purposes of this bill, even a Federal statute, passed in the wildest days of prejudice and bitterness, adopted and enacted for the purpose of controlling elections in the interest of a party, has to be repealed to carry out fully the purposes and object of this bill.

Why is it, I ask the Senator from Wisconsin, who so kindly gives me his attention, that you propose to repeal section 2028 of the Revised Statutes, which says you shall appoint your supervisors from the precincts in which they are to discharge their duty? Why is it you repeal that section and authorize supervisors of election to be appointed from any part of the Congresssional district in which they are to serve? I ask the Senator to give to the Senate and to the country an answer to that question, if he will do me the honor to do so. I ask it also for my personal information.

Mr. SPOONER. I shall endeavor to reply to some of the suggestions and questions of the Senator after he has finished his remarks.

Mr. FAULKNER. Mr. President, I want information.

Mr. SPOONER. I shall try to give it to the Senator.

Mr. FAULKNER. I want it as I go along. I want to know whether I am in error, if I am, and whether the Senator in his answer, which I know will be frank and lawyerlike, can give me a good reason why the custom of the Anglo-Saxon race which has existed for centuries, from the days when suffrage was first known to them, should be overthrown and those who are appointed to pass upon their right and their qualification to vote—the highest right of a freeman—should not be taken from the vicinage, from the very precinct in which they are to perform their duties and in which they are supposed to know all who have the right to vote.

Why do you say that from 150 miles off shall be brought a man to guard, supervise, and control an election in a county, who knows nobody and whom nobody knows? No satisfactory answer can be given to the Senate or to the American people. As a member of the Senate, when Senators bring measures before this body for its consideration, and especially when those measures were considered by one side of the Chamber in committee, I have a right, when I submit a courteous, pointed, and pertinent question, to ask that the Senator having charge of it shall give the reason for so important a change in the existing law.

Mr. SPOONER. I hope the Senator will not suppose for one moment I intended to be guilty of any discourtesy to him. I am not in charge of the bill nor responsible for everything in it.

Mr. FAULKNER. I know that.

Mr. SPOONER. Nor do I feel called upon to defend everything in it. I have not attempted to do it. I think now of no reason why the appointments should not be limited, except perhaps that which governs as to the drawing of jurors in the Federal courts, who are generally taken throughout the district. My own impression was that it would be better to limit the appointment to men from the vicinity. I do not know of any good reason why it should not be done. I think the Senator will regard that as a sufficiently frank answer. I do not see any particular objection either to its being done. I think in the discussion upon the bill in committee I was in favor of it, as I recollect it now.

Mr. PASCO. I should like to suggest to the Senator from West Virginia that in the remarks I made this afternoon I made the suggestion that the bill gave the chief supervisor the power to remove from their own precincts the supervisors who were the officers of a political party, and I stated that in my opinion that was one of the purposes of this power in order to give the Federal supervisor the opportunity, the power, the authority to remove these men from their own precincts and in that way deprive them of their lawful votes. I can see no other reason whatever for this remarkable provision in the bill.

Mr. SPOONER. I would remind the Senator from West Virginia in this connection that when he presented his amendment, while we were discussing the other day the amendment offered by the Senator from South Carolina, I took occasion to indicate the opinion that the amendment proposed by the Senator from West Virginia was not an improper one, and I thought great care should be used to exclude the possibility by section 14 of the exercise of other than the ordinary ministerial or quasi-ministerial functions of an ordinary canvassing board.

Mr. FAULKNER. The Senator from Wisconsin, with that uniform courtesy which is characteristic and with that frankness which I have always admired in my intercourse with him, has stated to the Senate and to the country that he, as a member of the Committee on Privileges and Elections, a gentleman who has made the ablest pres-

entation in favor of this bill that possibly could have been made, can give no reason to the Senate or to the country why, not only this provision is found within the leaves of this amendment, but why a statute law which has been in existence for seventeen years in this country should be repealed.

Is not this rather a remarkable admission? Mr. President, I have a right to assume that the distinguished chairman of the committee who is now relieving himself from the tediousness of this hour by enjoying that refreshment which we all so much crave, has left the distinguished Senator here in charge of this bill to answer pertinent and relevant inquiries of Senators in the proper discussion of these questions. If, sir, he could give no satisfactory answer to the question, where is there a Senator within the limits of this Chamber who can give a reason that will justify the action of the committee in the repeal of this statute?

Mr. SPOONER. I do not want the Senator from West Virginia to make any mistake. I was not left here by the Senator from Massachusetts. I stay here on my own hook to listen to the Senator from West Virginia.

Mr. FAULKNER. Mr. President, I am fully aware that the distinguished Senator from Wisconsin never goes on the hook of anybody else, and that we shall always find him frank and square when we do not get him too much excited in debate; and as he is in so judicial a temper now I feel that I can, with perfect propriety and safety to myself as a lawyer at least, submit any legal question to his fair judgment.

Mr. President, you can see the motive, the Senate can see the motive for this provision. The country will understand it as they proved they did understand it on the 4th of last November. This was one of the most important provisions of the proposed law, and I took occasion upon the hustings to direct the attention of the people of the State of West Virginia to the evils which might follow its enforcement.

I felt, sir, that this was a matter that all could appreciate; that every citizen would understand the importance of standing face to face with one whose life and character he knew when he went to the ballot box to exercise the highest right of an American freeman and was confronted with one who was to pass upon his qualifications, to challenge his vote, and to admit or to exclude his ballot from being deposited. And now, when we come here in the discussion of this question, we find it frankly admitted by the first lieutenant of the captain in charge of this bill, that he can give to the Senate or the country no reason to justify the repeal of a statute, and the insertion of a provision, which will be abhorrent when understood to every fair-minded American.

The citizen will know, and he will have a right to believe, that there is a hidden purpose in this matter; that its purpose is to assign to precincts supervisors whose characters are not known—perhaps one of the very worst criminals in the Congressional district—that he may perpetrate his villainy as the paid agent of partisan power regardless of the rights of the people who are to exercise their suffrage within the limits of that precinct. It can be for no other purpose. He is protected by the power of the National Government; and the construction of that power, as determined by the Supreme Court, deprives the citizen of any redress in the State courts, and after having perpetrated the crime that he is sent from one end of the Congressional district to the other to accomplish, he can slip off between the going down of the sun and its rising and never be heard of again. Known to no man in the whole precinct, it would be absolutely impossible to furnish any clew by which he could be traced or the evidence furnished the district attorney of crimes or iniquities that he may have perpetrated on the day of election.

This single provision, this clause in the proposed statute, should be sufficient to cause any fair-minded man to oppose it; any man who believes in the purity of elections, who is not afraid to have the officials who are placed in charge of the ballot box known to the voter, should oppose the passage of this bill. This section provides that you may assign a supervisor residing in any portion of the Congressional district to any precinct within the district, thus placing a stranger to guard the ballot who is unknown to a single voter of the precinct; who does not know one of the voters, and who can only properly discharge the duties, or, I may say, improperly discharge them, by obeying the instructions of the partisans who have placed him in this position of trust and responsibility. He must receive from them his instructions and obey them implicitly. How could he challenge an illegal voter, never having been in the precinct before and having no acquaintance with the voters? On whom is he to rely in discharging these duties? He must rely absolutely—and that is the purpose of the measure—upon the suggestion and information of those who have placed him there to execute their fell purpose.

Mr. KENNA. Let me call the attention of my colleague at that point——

The PRESIDING OFFICER (Mr. DOLPH in the chair). Does the Senator from West Virginia yield to his colleague?

Mr. FAULKNER. I do.

Mr. KENNA. I desire simply to call the attention of my colleague at that point in the discussion to the fact that these men are not required by this bill to be men of character from the standpoint of their original appointment or of their original locality, and whatever there is of that sort, even under the existing law, so far as it is appropriate to the machinery established by this bill, is specifically repealed by the bill.

Mr. FAULKNER. I understand that is the fact, Mr. President. Good character, I believe, is required in this bill as a qualification for the appointment of canvassers, but it is not regarded as a necessary qualification to secure the appointment of supervisors who are to carry out the provisions of the bill and to supervise and guard the election at the different precincts, and therefore it was purposely omitted by the framers of this measure.

Mr. President, there is another provision of this proposed law which I want to criticise, and I want my distinguished friend from Wisconsin to give me his attention while I am doing it. In the twenty-third section, on page 127, there is this provision:

> Nor shall any such box—

Which is alluding to the box in which the ballots are deposited—

> at any time during the day of election, any State, Territorial, or municipal law to the contrary notwithstanding, be shifted, changed, or otherwise moved from the place in which under this act it may properly be placed at the opening of the polls.

Mr. President, I will venture to assert that that provision of this proposed Federal law conflicts with four-fifths of the State laws of this Union and repeals one of the wisest provisions of those laws enacted to prevent fraud. The laws of most of the States provide that in all precincts where over 500 votes are cast and in large towns the canvassers of election, not the inspectors, shall commence counting the ballots as soon as 500, in some instances, in others 250, and in others 1,000, are deposited, and shall continue the count until the ballots of the first box are completed. Then it is taken and transferred to the inspectors of election, and the second box is then taken by the canvassers in the

same room of course, and opened, and the count continued. So through the whole day, it is known to all officers of all parties within that room how the election is running.

It is true that most statute laws provide that the commissioners or inspectors shall not disclose to any one outside of the room the condition of the count. The result of the system is that when the election is closed and the ballots have ceased to fall, although a large poll has been made during the day, it will not take the canvassers more than an hour or an hour and a half to complete the count of the entire election. This of itself, as has been found in the State of New York, is one of the greatest preventives of fraud, as the ballots are counted almost as promptly as they are deposited, and no opportunity is given after the polls have closed for the manipulation either of the returns or of the ballots. This measure comes in and strikes down that valuable modern feature of the election law, and says, "No, not a ballot shall be counted until every one has been deposited and the polls have been closed."

In addition to the inconvenience, in addition to the opportunity it will offer for fraud in the manipulation of the returns after hearing the result from other precincts, it strikes down, I repeat, one of the most valuable modern provisions found in the laws of almost all of our States. For that reason I sincerely hope that the amendment which I have offered to that clause of the proposed statute will be adopted.

But if that is adopted, Mr. President, other modifications will be necessary. Additional Federal agents will have to be appointed to assist and supervise the count, or, under the amendment offered by the committee, two of the supervisors could be assigned to supervising the election, and two to supervising the count. Still, I suppose that those who favor this bill, and whose purpose clearly is to increase the number of officeholders, will say that if we do that we must increase the number of officials.

With that peculiar frankness which distinguishes the Senator from Massachusetts he has offered an amendment to-day which he tells us has been suggested by an anxious desire on his part to make this election law perfectly fair, by which he provides for four supervisors of elections, not more than two of whom shall be of the same political party. I am afraid, Mr. President, that this proposition merely suggests the question as to whether the political party of which he is a member shall buy two or one, that is all. It resolves itself into that.

Mr. HOAR. Do you think the Democrats are as purchasable as that?

Mr. FAULKNER. Unfortunately when you have the Treasury of the United States instead of the campaign fund of the Republican National Committee to draw on to pay these men on an average $40 or $50 at each election and when you give yourself the power without notice, without an opportunity of calling the attention of the judge to the character of the men whom you appoint, when, in other words, you take the appointment of these men into your own hands, you can easily select men at $40 or $50 whom you can purchase.

Mr. HOAR. What does the Senator mean by paying them $40 or $50 a day?

Mr. FAULKNER. I mean you may employ them so many days for registration; you have a right to use them so many days before the election; and you pay them on the day of the election for their services $10. This will give an average of $40 or $50 per man for each election.

Mr. HOAR. The amendment further provides that they shall not

be paid more than is paid by the State for the same officers, except that the compensation shall not be less than $3 a day.

Mr. GRAY. What amendment is that?

Mr. HOAR. That is one of the amendments of which I gave notice this afternoon.

Mr. FAULKNER. I have never seen that amendment. But even then it is not brought down to the pay given by the State.

Mr. HOAR. The Senator was commenting on the amendment which I offered, and that is part of it.

Mr. FAULKNER. I have not seen it, and only heard the Senator when he stated to the Senate this evening what was the amendment that he offered. I did not hear him allude to any question of compensation to be paid said officials.

Mr. HOAR. I stated that.

Mr. FAULKNER. I did not catch that point. But it shall not be less than $3 a day. Why should that be put in?

Mr. HOAR. Because you want to secure a reasonable provision. It shall not be less that $3 a day, and with that limitation it shall be no more than the States pay.

Mr. FAULKNER. But why that limitation? Why should you double the compensation of the Federal supervisors of election? Is there any reason for it? If the State can get competent, worthy, and honest men for $1.50 a day, as is done in my State, why should you place by their side men who have not the responsibilities which you admit State inspectors of election have when exercising their high functions, and yet you double their compensation? No; the compensation of State officers would not supply sufficient funds to enable the manipulators of this law to accomplish the purpose they have in view, and you therefore fix their compensation at not less than $3 per day, although State officers acting in the same capacity receive but $1.50.

Mr. President, there are other provisions that conflict with the State election laws. In discussing these questions we must remember that the names of the candidates for every State office, every district office, and every county office voted for are upon the same ballot that contains the name of the candidate for the House of Representatives. Remembering this fact, we find that the bill provides how the ballots shall be counted and how, if there is an excess in any box, they shall be drawn, all of which provisions are in direct conflict with the laws of the States. I submit this question to any Senator who is in favor of this bill: So far as the nominee for Congress is concerned the Federal law must be obeyed, even though it conflicts with the State law which contains provisions for the counting and drawing of the ballots. Will the drawing of those ballots in accordance with this Federal act, which is in conflict with the State law upon the same subject, affect the validity of the election of State officers?

Why, necessarily it will do so. When there is an excess of ballots found in the boxes, the ballots to be counted for either candidate must depend upon chance or lot, and it becomes necessary, in order to ascertain the correct number of ballots that shall be counted, that the election officers shall intervene by drawing from the box a number equal to the number of votes polled; now, when this proposed law prescribes one method and the State law prescribes another, will that drawing as to the State officers be a valid drawing upon which the candidate declared elected can rest his title to the office? If that is not a pertinent question, if it is a difficult question to answer to a legal mind, if in fact there is not almost a moral certainty that it will invalidate the election of State, district, and county officers, I should like to hear

from some Senator the reason why it will not. If A B is running for a State office against C D and there should be drawn five ballots with the name of A B upon them in accordance with the scheme devised by the Federal law, which conflicts with the State law on the same subject, upon what theory could those ballots be properly counted for A B against C D?

Would not any court, when that matter is brought before it, necessarily be compelled to exclude from the aggregate vote a ballot drawn in that way? And yet this is the contradiction, the confusion into which this measure necessarily throws all the State elections. This is but one of the many conflicts which will result from its adoption, and yet we have here half a dozen Senators who seem to care nothing whatever for the considerations of the legal questions involved in the pending bill, many of whom have never I fear taken one hour's time to examine critically the provisions of this proposed law which they are trying to fasten upon the American people.

[At this point the honorable Senator yielded for a call of the Senate.]

Mr. FAULKNER. Mr. President, when interrupted by the Senator from Florida [Mr. PASCO], I was speaking of the conflict which this bill would cause with State jurisdiction of elections. There is another matter I desire to call the attention of the Senate to, for not only is the drawing in entire conflict with the State laws, but in discussing this the Senate must remember that the ballots upon which is the name of the nominee for the House of Representatives contain also the names of all the State, county, and district officers. The section provides:

If, however, the number of ballots found in the proper box shall be in excess of the number of persons who have voted, then such excess shall be disposed of as provided in this section for ballots found in other than the proper box; and it shall be the duty of the chairman or acting chairman of the inspectors of elections to count the number of ballots for Congress found in boxes other than the proper one, and then to deliver them to the chairman or acting chairman of supervisors of election, who shall open them and immediately place them, together with a statement of their number, and the box or boxes from which they were taken, in an envelope, which shall be sealed and forwarded to the chief supervisor, who shall file and preserve them.

Mr. President, what is the effect of that provision? If the drawing is done in accordance with the Federal act, in direct conflict with the provision of the State law, the excess of ballots found in these boxes are transferred from the authority of the State to that of the Federal officer; if there is a contest between candidates for a State office originating by reason of the vote which has been thus drawn and given to one of said candidates, the evidence would be important of the original ballots in the determination of that question, but they would not be under the control of the courts that would pass upon that question, neither would they be under the control of the canvassing board of the county, that must pass upon the correctness of the returns from the several precincts of the county, and which must be done even before a certificate of election is given to any State, county, or district officer. You have removed from the jurisdiction of the State official the only evidence that the law has recognized upon which a canvassing board or a court could decide the question of the certificate in the first instance, and, second, as to the validity of the election.

Such, Mr. President, are the numerous conflicts between this Federal act and the State laws. The practical operation of this bill will be to throw everything in the State into absolute confusion. There is but one way out of this difficulty; and it is surprising to me that those in charge of this measure who believe that they have the power to adopt this bill do not adopt it. Hold your own registration, hold your own election for members of the House of Representatives, and

by your own officers. As a distinguished gentleman has said, do your own registration, your own voting, and your own counting; but do not throw the whole system of State elections into absolute confusion by producing a conflict between the Federal and State laws, both of which can not be operative, and the practical effect of which conflicting provisions, if attempted to be carried out, would necessarily place the State in such a condition that hardly in an instance could a contest be fairly and honestly decided by the courts.

It may be said, Mr. President, that 20 or 25 votes thus taken from the ballot box would not make any difference in the result. In the year 1888, in the election in the State of West Virginia for members of the House of Representatives, if I recollect correctly, in the case of three of the members returned from that State their majority in neither case exceeded 34 votes.

Mr. President, there is another clause in this proposed statute that I am not very much wedded to and feel very little affection for, and that is the eleventh clause of the seventh section. Why is it that our friends upon the other side have deemed it proper to draw a clear, unequivocal distinction between the rights of a native-born American citizen and the rights of a naturalized citizen who has become an American citizen? Why should you put the brand upon the forehead of the naturalized American citizen when you do not dare to do it (as was done in the House bill) upon the forehead of the native-born American citizen? Why is he to be specially singled out by this bill to have a brand stamped upon him?

The place of his nativity, the date of his birth and naturalization, whether he was a minor when naturalized, and the names and residence of his witnesses—all these facts relating to every naturalized American citizen must be ascertained; and yet you require nothing of that sort as to the native-born American citizen. Is it supposed by our friends upon the other side that when a man lands from a foreign country he is, at once, a subject in the hands of men who, for the purpose of perpetrating a fraud upon the elective franchise, can use these emigrants as mere tools by placing in their hands void and fraudulent naturalization papers which will apparently constitute them American citizens?

Why, that has occurred once, I believe, in the city of New York, and it never has occurred since then, so far as I have been able to judge from the discussion in the Senate by those who are familiar with that subject. But this does not apply only to the seaboard and to those cities where that might perhaps have occurred once or twice, but it applies in every hamlet where this law is put in operation, and in every section of this Union the declaration is to go forth that every man who has become a naturalized citizen must have his whole life inspected, the record of his naturalization papers must be hunted up, and I suppose there will be contingent appropriations for the purpose of enabling these supervisors of election, who, learning from the naturalized American citizen, perhaps in West Virginia, that he was naturalized in Boston, to travel up there and inspect the records of the court to see whether or not that man was duly and legally naturalized by a court having jurisdiction of the subject.

It is a discrimination, Mr. President, that, so far as I am concerned, between the native and naturalized American citizen; I would never vote to place in any bill. If there are fraudulent naturalization papers in their possession, you have the means at your command to ascertain that fact. You have the courts of this country to bring them before, that the question may be tried; and if they are parties to that fraud they may be punished. But there is no more reason why you should

draw this distinction between the man you clothe under your laws with the rights of American citizenship and a citizen who was born within the limits of this Republic. It is a discrimination without any justification whatever.

Mr. President, I had a controversy a few days ago with my friend, the distinguished Senator from Wisconsin, in reference to the seventh subdivision of section 7 of the bill as to the effect of the action of the supervisors of election during the time of the holding of the election and as to their duty at the polls——

Mr. GRAY. Is that section 7 of the substitute or of the original bill?

Mr. FAULKNER. Of the Senate amendment. It provides:

> Seventh. To require the statutory oath or oaths to be immediately put to any voter whose right to vote shall be challenged, and in case the State, Territorial, or local election officers shall neglect or refuse to immediately put such oath or oaths, and to at once pass upon the qualifications of any such challenged person, then it shall be the duty of the chairman of the supervisors, or in his absence the duty of either of his associates who may be present, to, without delay, put such oath or oaths, whereupon the supervisors of election present shall at once make a record of the facts. It shall be the duty of every supervisor of election to make and keep in his record or return of the registration in the back of the poll book or list or in some other book a record of all challenged persons and of the challengers.

Now, Mr. President, it strikes me that that clause will necessarily have the tendency of depriving many a voter of his vote. If the State inspector does not immediately put the oath and pass upon the qualification (and the judge of that question as to "immediately" is vested in the Federal supervisor), what becomes in the mean time of the voter? Under this clause what is the duty of the supervisor? If you are going this far why do you not take the House provision and allow the supervisor to take possession of the voter, and having taken him from the hands of the State inspector control the question of his right to vote until the Federal supervisor has placed the ballot of the voter in the State box? But no, you have stopped short of that, and after having taken the voter from the State officers you then proceeded to require that the oath shall be put to him by the Federal supervisors of election, who shall do what? Pass upon his qualifications? Deposit his ballot in the box? No. He shall then make a record of the facts. You have therefore by your own act transferred this voter who is seeking to exercise his right of suffrage without even a decision by the State officers that he is not a competent voter. You have taken him from the control of the State officers, placed him in the hands of the Federal supervisor, and all you require of him is to administer the oath and then ask him such questions as he may desire and record the facts.

Can any lawyer here say that in a contest in reference to State officers, that any court would admit the right of that man to have his vote counted when the State officers were prevented from passing upon his right and the ballot had never been deposited in the ballot box? Why, of course not. That vote is not only lost to the candidate for the House of Representatives, for whom the voter desired to cast it, but it is absolutely lost to the candidate for any State office or district office for whom that voter intended to cast his ballot when he approached the polling place. I repeat therefore that there can be no explanation of the seventh section other than that which I have given. [A pause.]

Mr. MITCHELL. Question!

Mr. FAULKNER. If the Senator from Oregon will contain himself in patience for awhile I shall submit a question for his consideration, and one which I hope he will answer as satisfactorily to my mind as did the Senator from Wisconsin when he sat by his side.

At this point the honorable Senator yielded to his colleague [Mr. KENNA].

Mr. FAULKNER. I ask that the amendment which I offered as a substitute for the fourteenth section be read by the Secretary, after which I shall proceed to make my comments upon the Senate amendment and the amendment that I ask now to have read.

The PRESIDING OFFICER (Mr. WASHBURN in the chair). The amendment will be read.

The CHIEF CLERK. It is proposed to strike out section 14 of the amendment of the committee and to insert in lieu thereof the following:

SEC. 14. That whenever application shall have been made as provided in this act for supervision and scrutiny of an election in an entire Congressional district, or a city, county, or parish, including an entire Congressional district, the court having jurisdiction as hereinbefore provided shall, for the State within which said Congressional district lies, appoint three persons of good standing and repute, citizens of the United States and citizens and residents of the State for which they shall be appointed, who shall be known as the United States board of canvassers of the Congressional vote within and for the State for which they shall be appointed; one of said three persons shall, when appointed, be named as chairman of the board. Such persons shall be sworn to the faithful performance of their duty and to support and defend the Constitution of the United States.

They shall each hold their office for two years, or until their successors are appointed and qualified, and not more than two of them shall belong to the same political party; they shall each receive a salary of $15 a day for each day actually employed in the work of canvassing the statements and certificates of ballots cast at any election, general or special, for a Representative or Delegate in Congress, and a further sum of $5 per day for their personal expenses. They shall have a seal and may appoint a clerk, who shall receive $12 a day for his services and expenses while actually in attendance upon said board. As a board it shall be the duty of such appointees of the said circuit court to convene on the 15th day of November of each even year, unless the same shall fall upon Sunday, when they shall convene on the following day, and to give public notice of the place and hour of their meeting.

In case of a special election they shall convene one week from the day of such special election. They shall so convene at such place in their State as shall be most convenient for them, which place must, however, be a place where a term of the circuit court of the United States is by law regularly held, and there proceed to finally canvass and tabulate the votes which shall have been stated and certified as cast for Representative or Delegate in Congress in each Congressional district in their State in and throughout which the election shall have been scrutinized under the provisions of this act, and not elsewhere, and shall declare and certify the result of the election thereof in each such district.

For the purposes aforesaid they shall use the returns and certificates as shall have been forwarded to the clerk of the circuit court of the United States in the several judicial districts in their State, and the same shall be by such officers produced before the said board for such purpose. When opened by the chairman or acting chairman of the said board, he shall mark each separate sheet of each such return and certificate as shall be contained therein with the initials of his name. The said board may also require the production before it of such certificates and returns and tallies filed with the several chief supervisors of elections in the same judicial districts as shall be necessary, for examination and comparison by said board, where it shall appear, by a comparison of the tabulated returns furnished, as herein provided, for their inspection and reference by such chief supervisors with the returns and certificates filed with the several clerks of the circuit courts, that there are discrepancies or errors existing.

It shall also be authorized and empowered to summon and compel the attendance before it of the supervisors of election who served on election day and to examine such officers as to the genuineness of the returns, certificates, and tallies filed with the clerk of the circuit court, or with the chief supervisor of elections, and all statements made before said board shall be taken down in writing. Any supervisor of election who shall fail, neglect, or refuse, without good or sufficient excuse, to obey any summous of said board to so attend at the time and place required therein shall be liable to arrest, and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both such fine and imprisonment. The marshal of the United States in the judicial district in which any such board of canvassers shall be convened shall detail one of his deputies to attend its sessions and preserve order thereat, who shall be paid $5 a day for his attendance. Such marshal shall, by his deputies, serve all summonses of said board.

The determination arrived at and stated in the declarations and certificates

of any such United States board of canvassers shall, as to each such Congressional district, be at once made public, and the declaration and certificate for each Congressional district shall be made in quadruplicate, be signed by each member of the board, and have affixed thereto the seal of said board; one shall be filed in the office of the chief supervisor of elections under whose supervision the Congressional district covered by it was, together with the returns, certificates, and tallies, considered by the board for the purpose of ascertaining, declaring, and certifying the result in said Congressional district; another shall be forwarded by mail to the person found by them to have been elected, addressed to him at his place of residence; the third copy shall be similarly forwarded to the Clerk of the House of Representatives of the United States at Washington; the fourth copy shall be similarly forwarded to the Secretary of State at Washington. In case of a tie in any district a certificate of that fact shall be made by said board in quadruplicate, under their hands and seals, and forwarded as follows: One to the governor of the State, another to the Clerk of the House of Representatives, the third to the proper chief supervisor of elections, the fourth to the Secretary of State at Washington.

The final declaration and certificate of said board as to the result in each and every Congressional district which shall be under its jurisdiction shall be completed and transmitted to the Clerk of the House of Representatives as soon as practicable, and in no event later than the last day of the month in which by law said board is to convene. So soon as the certificate of said board has been issued any person who was at said election a candidate for Representative or Delegate in Congress, and who deems himself aggrieved by the action of said board, may present to the circuit court of the United States having jurisdiction in the district where said election was held his petition, which shall be duly sworn to, and shall set forth that he believes himself to have been duly elected, and the ground or grounds upon which he insists that the action of said board in issuing said certificate is erroneous, a copy of which said petition shall be served upon the said board, upon the person to whom said certificate was issued, and upon all other persons upon whom the court shall think justice requires such service, and he may, upon ten days' notice after the filing and service of said petition, move the said court to review the action of said board in issuing said certificate; and if upon a hearing of said motion the court shall be satisfied that there is reasonable ground therefor, it shall make and enter an order requiring the production before it, at the time in said order to be named, of all returns, protests, reports, tickets, and other evidence filed in the office of the chief supervisor of elections, and the said court shall thereupon, by reference to a master or court commissioner or otherwise, upon the evidence filed in the office of the chief supervisor, and such other relevant testimony, determine the truth of the case, and shall make an order confirming said certificate, if it shall be found to have been properly issued, or declaring who is entitled thereto, and shall certify the same to the Clerk of the House of Representatives; and the determination of said court in said proceeding, as to the right to said office shall be conclusive evidence of the right thereto in all courts and places until the House of Representatives shall have decided otherwise.

Mr. FAULKNER. I desire to say to those members of the Committee on Privileges and Elections of the Senate who are present that the amendment I now offer as a substitute for the fourteenth section is offered in absolute good faith, to remove, as I consider, every question of doubt as to conferring judicial functions or powers upon the canvassing board appointed in each State or district, and with a view to test the sincerity of those who have charge of this measure. I have not changed a word in the fourteenth section except where the word or sentence would clothe the canvassing board with functions that are in their character judicial and give to them a large discretion that is given to no other canvassing board, except in one or two States. I determined to be so careful in framing it that it would be a perfect test as to whether the declarations of Senators that they were not in favor of conferring any judicial functions or quasi-judicial functions upon this board were true or not.

Mr. President, in order to discover whether judicial functions and powers are by the terms of this proposed law conferred upon the canvassing board you must ascertain that fact from provisions in the bill other than those contained in the fourteenth section. It has been carefully worded by the ingenious hand that drew the section in order to conceal from observation the great powers conferred upon this board. You have to search through all the sections of this bill to learn what

are the matters that go before that canvassing board for its consideration and upon what facts its judgment must rest.

Mr. President, I desire to give a review of the provisions that under the fourteenth section must be considered, or at least may be considered by the canvassing board, in reaching a conclusion. By number is incorporated into this bill section 2018 of the Revised Statutes. I desire to read what are the duties of supervisors under that section which is now made a part of this proposed law, and I shall show the connection of the section with the powers of the canvassing board and with its functions further on. Section 2018 of the Revised Statutes provides:

SEC. 2018. To the end that each candidate for the office of Representative or Delegate in Congress may obtain the benefit of every vote for him cast, the supervisors of election are, and each of them is, required to personally scrutinize, count, and canvass each ballot in their election district or voting precinct cast, whatever may be the indorsement on the ballot, or in whatever box it may have been placed or be found; to make and forward to the officer who, in accordance with the provisions of section 2025, has been designated as the chief supervisor of the judicial district in which the city or town wherein they may serve, acts, such certificates, and returns of all such ballots as such officer may direct and require, and to attach to the registry list, and any and all copies thereof and to any certificate, statement, or return, whether the same, or any part or portion thereof, be required by any law of the United States, or of any State, Territory, or municipal law, any statement touching the truth or accuracy of the registry, or the truth or fairness of the election and canvass, which the supervisors of the election, or either of them, may desire to make or attach, or which should properly and honestly be made or attached, in order that the facts may become known.

I ask the attention of the Senator to this:

Any statement touching the truth or accuracy of the registry, or the truth or fairness of the election and canvass, which the supervisors of the election, or either of them, may desire to make or attach, or which should properly and honestly be made or attached, in order that the facts may become known.

Now, Mr. President, that is one of the sections which are incorporated by number in this bill. These are the duties imposed upon the supervisor, not to simply supervise and count the votes and to certify the result of the vote, tabulated and returned, but they are to make a further report of the correctness and truth of the election. Sir, they are to go further! They are to make return as to the fairness of the election, and that is to be submitted as a part of their report to the chief supervisor of elections.

When I go on further, Mr. President, I will show that under an express provision of the fourteenth section that paper is required to be laid before the canvassing board for its consideration, and if that is true and I have made a correct deduction from the language of this section, I ask Senators why is it that you lay before the canvassing board a return or statements showing the fairness or unfairness, fraud or other irregularities, of an election unless that is to be taken into consideration by the board before whom it is laid, whose judgment under that fourteenth section is bound to rest upon this as one of the papers? It is the foundation, as the Senator from Tennessee [Mr. HARRIS] says——

Mr. SPOONER. What is the Senator reading?

Mr. FAULKNER. I am reading section 2018 of the Revised Statutes, which is incorporated in the bill. I hold, that being a paper which legally, under the provisions of the fourteenth section, would be brought under the consideration of the canvassing board, it could not be argued with any plausibility by Senators, having under the provisions of the statute brought it within the jurisdiction of that board, that it should not be the foundation of the action of that board, and if the foundation of its action, then it gives the board the power, because of fraud, unfairness, or other irregularity that may be shown

by said statement, the right to pass upon that question, and to determine as to whether a precinct should be thrown out or not. The supreme court of Florida denied this right, even in 1876 under the broad provisions of the statute of that State conferring power upon the returning board of carpetbag days, realizing that it was a dangerous power, exercised in a mere *ex parte* proceeding without any publicity as to the facts. In addition to that, it also incorporates section 2020 of the Revised Statutes, in which these same supervisors are required to return to the chief supervisor a statement as to whether they were—

allowed to exercise and discharge, fully and freely, and without bribery, solicitation, interference, hinderance, molestation, violence, or threats thereof on the part of any person, all the duties, obligations, and powers conferred upon them by law, the supervisors of election shall make prompt report, under oath, within ten days after the day of election to the officer who, in accordance with the provisions of section 2025, has been designated as the chief supervisor of the judicial district in which the city or town wherein they served acts, of the manner and means by which they were not so allowed to fully and freely discharge the duties and obligations required and imposed herein.

Mr. President, why is this done? Why are threats ageinst these supervisors, why is intimidation at the polls, why is bribery, interference, hinderance, molestation—why are these reports to be made by the supervisors to the chief supervisor and which this fourteenth section requires to be turned over to the canvassing board? Why are they turned over to this board if it is not for the purpose of authorizing them to be considered by that board? If such is the purpose I would submit to any legal mind whether, if such functions and powers are conferred upon that canvassing board to consider questions of fraud, intimidation, threats, irregularities, fairness, or unfairness of the election at any precinct, whether or not that does not confer a broad discretion, in fact, judicial functions, upon that tribunal and not merely ministerial powers.

Mr. SPOONER. Will the Senator allow me a moment?

Mr. FAULKNER. Yes, sir.

Mr. SPOONER. I know the Senator is discussing this amendment with sincerity and fairness.

Mr. FAULKNER. Perfectly so. I am thoroughly sincere, I assure the Senator from Wisconsin, in the position I have assumed.

Mr. SPOONER. Section 2018 and section 2020, to which the Senator refers, are sections which require certain information or statements to be transmitted by the supervisors to the chief supervisor. I do not now recall any provision in this bill which requires or even contemplates that those statements, provided for by the section to which the Senator alludes, shall be transmitted by the chief supervisor to the canvassing board.

The statute explicitly provides that there shall be sent to the clerk of the circuit court one of these certificates and statements, which is to contain a tabulation of the votes, etc., to be laid before the State board of canvass, or whatever it is called. It provides also that one shall be sent to the chief supervisor, who shall tabulate the vote for presentation to the board of canvassers. I think the Senator is mistaken in assuming that there is any provision or any contemplation that any other paper than that is to be transmitted by the chief supervisor to the board of canvassers for their action.

Certainly there is no impropriety, if there has been any molestation at the polls or any of the unlawful acts referred to in the two sections to which the Senator alludes, that information of the fact should be lodged with the chief supervisor. If there is a requirement that all the papers, all the returns, and all the information which is required by law to be communicated to the chief supervisor is to be laid before

the board of canvassers, then I should say there was force in the argument the Senator makes, but I have not understood this bill as requiring that the chief supervisor should lay before the board of canvassers anything but that tabulation of votes.

Mr. FAULKNER. I will show the Senator from Wisconsin that there was no intention on the part of the framers of this bill to leave the question in doubt. The papers, reports, statements, and other documents are, by the terms of the bill, fully described. It was not left as a matter of construction as to the meaning of the term "accompanying paper," because perhaps some of these reports did not form part of the returns. By sections of the bill other than the fourteenth its framers have particularly prescribed the duties of the supervisor, and by others have imposed duties upon said supervisors by incorporating existing sections of the Revised Statutes into the bill by reference alone to their number, with the hope, I suppose, that the eye of the legal critic would not discover the effect of these provisions, and then in general terms, in the fourteenth section, have provided for their consideration by the board, leaving no question of doubt to exist as to what is the intention of the act, but still fearful that the terms employed would not be sufficiently definite, a fuller and more particular description of the character of the papers that were to be considered by the canvassing board and which should be considered by the court on review, is given.

Under the terms used no question can arise that all the reports, protests, and statements were to be considered. The use of the language "protests" clearly refers to section 2020, which authorizes the supervisors to receive complaints or protests made by persons at the time of holding the election, and which they are required to transmit to the chief supervisor of elections.

At this point the honorable Senator yielded for a call of the Senate.

Mr. FAULKNER. Mr. President, when I was interrupted by my distinguished friend from Montana [Mr. SANDERS] in the discussion of the fourteenth section of the amendment of the Committee on Privileges and Elections, I referred the Senate to section 2018 of the Revised Statutes, relating to the powers of supervisors, and to section 2020, which gives them power to make statements in connection with the returns of an election as to whether there was unfairness, intimidation, or other irregularity in the conduct of the election. I now desire to call the attention of the Senate to the additional powers conferred by the amendment of the committee. At the close of section 10 of the amendment there is a further provision that—

> Any supervisor of election may make in duplicate any additional statement he may desire, one copy whereof shall be inclosed with each statement so subscribed by him.

One of the copies under the provisions of another section is to be forwarded to the clerk of the circuit court, and the other to the chief supervisor of the district.

That is an important provision as conferring power upon the supervisors of elections, because it is held by all legal authorities that any statement as to the facts made by a supervisor or a commissioner of elections, not required or authorized by statute, can not be considered by the board of canvassers, either in the county, district, or State; but if, on the other hand, the statute authorizes a statement, no matter what may be its character, to be made by the supervisor, then that statement is to be considered by the canvassing board before whom it comes, in order to tabulate, canvass, and decide upon the questions submitted to it. It is therefore extremely important, for not only do ex-

press provisions of the statute in this case require the supervisor to report as to certain facts that may have occurred at the election, but he is given here unlimited power or discretion to go to the extent of putting in any statement that he may desire or deem proper.

[At this point the honorable Senator gave way for a motion to adjourn.]

Mr. FAULKNER. Mr. President, the seventh subdivision of section 7 also requires certain duties of supervisors of election, which they are required to embody in their statements which form a part of the returns which they make to the chief supervisors, and which may subsequently be laid before the canvassing board; that is, that when the State supervisors of election do not immediately administer the oath and pass upon the qualification of a voter then it becomes the duty under this provision of the statute at once for the Federal supervisors to administer that oath and record the facts, which shall then be made a part of the statement and returns to the chief supervisor. That is followed up by section 10 which makes another requirement of the supervisors which also becomes a part of their returns. On page 95 it provides:

> They shall also paste or attach to statement numbered 1, or shall securely seal up and forward with such statement, all the ballots containing the name of any candidate for Representative or Delegate in Congress which shall have been rejected either by the inspectors of elections or by the supervisors of election as being in whole or in part defective.

Now, these ballots, decided to be defective either by the supervisors of election or by the inspectors of election, and rejected because defective in part or in whole, are taken possession of at once by the Federal supervisors and constitute under this section a part of the returns made of the results of the election.

There is still another conflict between the State and Federal law. The bill recognizes by its very terms the fact that does exist in almost every State, if not every State, that the name of the person voted for for the lower House of Congress is on a ticket which includes also the names of others voted for for different State, county, and district officers, but this section provides that no matter how many State, county, or district officers are voted for upon that ballot, if rejected by either State or Federal officers of election it shall be delivered over into the hands and transferred into the possession of the Federal agents, to be by them preserved for the purposes that are declared in subsequent sections.

Mr. President this, being made a part of the return, necessarily comes before the canvassing board for its action, for its consideration, and for its determination as to the legality of the rejection of the ballot either by the State or Federal election officers.

That presents, Mr. President, another difficulty, involving State as well as Congressional elections. We find that we are in the position that if a contest is made in the courts in reference to these ballots they are beyond the jurisdiction of the State courts in any suit having for its object the determination of the title to any State, county, or district office. Not a part but all of these rejected ballots have been transferred into the possession of the chief supervisor of election of that particular district.

The rule of law which is uniform in every State, that it is the right and duty of the canvassing county board at the proper time to count, at the request of any candidate or party interested, the ballots that have been sent up from the several precincts and to pass upon these questions, has been annulled if this provision is carried into operation. As I said, under all the authorities which I have been able to

find, wherever the law under which the canvassing board acts authorizes or countenances any particular return, then it becomes a matter for the consideration of the board before which it goes, and the very fact that these statements and these returns are authorized constitutes them proper subjects-matter for the consideration of the canvassing board. That has been decided by all the authorities which I have been able to examine and it is the turning question as to what matters may be considered by these boards depending upon the terms of the law which provides the character of statements and returns which shall be made by the officers from the precincts, and subsequently from the county canvassing board, to the final canvassers of the Congressional district.

Mr. EDMUNDS. What is the law of West Virginia on that point?

Mr. FAULKNER. In West Virginia it is provided that where a ballot is rejected by the commissioner of the State, that ballot shall be kept separate, sealed, and returned as a rejected ballot to the county commissioners of the county; and they can not even open that ballot or consider it in any way whatever; that can only be done after a contest is instituted in a proper tribunal. Our canvassing boards have no functions whatever except the mere authority to tabulate, with the discretionary power that exists in all ministerial boards of this character to pass upon the genuineness of the returns made to them. That is a matter that they have a right to pass upon, and that alone, under our law.

But when they have once established the fact that the return is genuine, then they have no power to consider any matter but the simple arithmetic duty of adding up the returns. That is, where it passes beyond the county canvass. In the case of county canvassers any one interested has a right to ask that the ballots be recounted of any or all the precincts in the county, when the canvassing board then simply performs the function for the county that has been performed by the inspectors of election.

Mr. President, there is another matter that I desire to direct the attention of Senators to, for the reason, that it has been asserted by all who have addressed the Senate in favor of this bill, that under its provisions there is no interference by the supervisors of election with the counting or conduct of the election; and yet, sir, we find an express provision which provides for the rejection of a ballot by either the inspectors of election or the supervisors of election during the process of counting and canvassing the vote, and whether the vote is rejected by State or Federal agents, in both instances all these ballots have to be transferred into the possession of the supervisors of election if they have upon them the name of one voted for for the House of Representatives.

Then as I have previously stated, but in this connection I desire to allude to it again, because I am trying at this time to bring together all the facts that are required to be embodied in the returns by the supervisor with a view subsequently to show that these returns give to the canvassing board a wide discretion, almost, I may say, a judicial, and certainly a quasi judicial power in the exercise of the duties and powers vested in that tribunal——

Mr. EDMUNDS. Does my friend really think there is anything more in this than in the State boards?

Mr. FAULKNER. Yes, I very frankly say to the distinguished Senator from Vermont that in my humble judgment and with the best lights before me, and after an attempt to thoroughly understand this provision, it does give to them larger discretionary power than is given

to any other tribunal of a similar character created by the laws of the several States except that conferred on the returning boards in two of the Southern States.

Mr. GEORGE. They do not exist now, though.

Mr. FAULKNER. I am not certain whether the returning board has not judicial functions in Louisiana.

Mr. GEORGE. To-day?

Mr. FAULKNER. Yes; but that I have not been able to examine fully, and I therefore express no opinion upon it; but when I did examine it and found the law that perhaps was in force some years ago, it certainly conferred judicial powers.

At this point the honorable Senator yielded for a motion to dispense with further proceedings under the call of the Senate.

Mr. FAULKNER. Mr. President, when I ceased to address a few remarks to the Senate with reference to the bill now pending before it I had covered all the ground I desired in bringing to the attention of Senators the duties of the supervisors of elections, except one that is found in the ninth section of the bill, which provides that all ballots which may be found in any of the boxes in excess of the proper number shall be taken by the supervisors of election and made a part of their return to the chief supervisor of the district. I had commented upon the condition in which this placed the nominees on the State, county, and district ticket provided any question arose because of the system provided by this act for the drawing of the number of ballots to make up the aggregate number of votes polled, and I do not feel that it is necessary for me to refer further to that at this time.

Mr. President, it was necessary to analyze this bill in the way in which I have done to show what papers were embraced in the returns made by the supervisor of elections to the chief supervisor, to show what papers were under its provisions laid before the canvassing board, and thus prove to the Senate that the acts of that board were not to be based solely upon a tabulation of the aggregate vote cast at the different precincts in the district, but that it was to take into consideration other subjects embraced in the returns of the supervisor of elections.

In considering the fourteenth section, Senators will observe on page 102 that the language of the fourteenth section in reference to the subject is as follows:

> For the purposes aforesaid they shall use the statements and certificates and such accompanying papers, if any, as shall have been forwarded to the clerk of the circuit court of the United States in the several judicial districts in their State.

And on the same page in lines 52 to 54 inclusive:

> The said board may also require the production before it of such certificates and statements and such accompanying papers and tallies filed with the several chief supervisors of elections.

Mr. President, this is peculiar language to be used in reference to the powers of a board that is claimed to be purely ministerial in its functions. Statements and certificates—assuming that the term "statements" is synonymous with "returns"—would include all those papers usually presented to a canvassing board. The framers of this proposed law, understanding the character of the returns to be made under authority of the several provisions to which I have called the attention of the Senate, it was their deliberate purpose and intention when formulating this measure to include other distinct, independent papers which were to be laid before the board, and upon which it was to base its judgment. To carry out this purpose that indefinite phrase

was employed unknown to any of the several statutes of the States of this Union, to wit, "accompanying papers."

To further carry out the same idea, beginning in line 62 on the same page, it is provided:

It shall also be authorized and empowered to summon and compel the attendance before it of the supervisors of election who served on election day in any election district in and from which there shall be found to exist incomplete, imperfect, or inconsistent certificates and statements and of arriving at the facts.

When we consider that the term "statement" is used throughout the whole section as referring to those matters which in all other returns would be regarded as extraneous entirely to the certificate and return that is usually made to canvassing boards, the force and effect of this provision is clearly seen, especially when we compare it with other election laws where the board acts simply as a ministerial tribunal. We find that under the general authority conferred on such boards the right to bring the inspectors of elections before it is limited to an examination as to the genuineness of the returns filed with the board, and to perhaps some technical defects in the certificate.

When once the genuineness of the returns and their regularity are established then every canvassing board except two in the United States acts purely and absolutely in a ministerial capacity. No discretion, no power is given to them to look beyond the returns, no matter how satisfactory may be the evidence before them of fraud in the conduct of the election or irregularities that would vitiate and destroy the poll as a valid return. Yet in all instances in the States, this being a mere *ex parte* proceeding of a tribunal not required to hold public sessions, which gives confidence to the judgment of a court, all extraneous matters are withdrawn entirely from their consideration, and although it may be conclusively proven to the canvassers that the returns are fraudulent, if regular and genuine on their face, I know of no States in the Union where a mandamus will not lie to compel a canvass, tabulation, and aggregation of the vote, and a declaration of the result. No discretion, no power is vested in it to go outside, *aliunde*, the returns themselves.

Permit me to show the importance of this principle. All the courts have asserted the doctrine that it is competent for the Legislature to give enlarged powers to these boards if they deem it proper, and if those enlarged functions are conferred by the legislative enactment, and other matters than the mere return of the vote polled with the proper certificates required to be made by the inspectors of election in the precinct have been authorized, the board which canvasses the result have a right to look into any matter which the Legislature had empowered the inspectors of election to make as a part of their returns. But, sir, you will find that in none of the States except two, so far as I have been able to find, has the Legislature ever conferred such powers on the canvassing boards.

Mr. President, to show that this is not intended to be limited and circumscribed by simply a tabulation as a ministerial act of the votes polled in the several precincts of the Congressional district, after the board has reached its conclusion as to the result in any district, the provision of the bill in the same section is as follows:

One (certificate) shall be filed in the office of the chief supervisor of elections, under whose supervision the Congressional district covered by it was, together with all the papers, statements, and documents used, or which might by law be used, before such board for the purpose of ascertaining, declaring, and certifying the result in said Congressional district.

Mr. President, as the scheme is gradually developed under the

terms of this section, the object and purpose of the framers is more clearly understood. Here, for the first time in the section we find that papers, other than accompanying papers, are referred to; for the first time do we find the use of the term "document" in this section; and the provision that all of these papers and documents are matters that were properly before the canvassing board in reaching the conclusion upon which they granted the certificate.

To leave no doubt or question as to the purpose and intention of the framers of this section, when an appeal or review of the decision of the canvassing board on a petition filed by one interested against that decision is had, we find that they enlarge the terms of description of the papers that have been used before the canvassing board.

The petition is granted upon the *prima facie* showing after notice first given, because Senators will remember that none of these papers filed with the chief supervisor or with the clerk of a circuit court are permitted to be made a part of the petition asking that the error claimed in the decision of the canvassing board should be reviewed by the court; but the court decides after argument and notice on the *prima facie* case as made by the petition. The parties to that petition is one of the novel features of this bill. On whom is the notice to be served? Not only on the person holding the certificate, but the board having been made a party must be served with notice of the proceeding. This tribunal, which should be absolutely impartial in its action, is by the provisions of this section placed in the attitude of a contestant to the claim of the defeated candidate, and as a codefendant with his opponent who holds its certificate.

Where can there be found in the whole records of judicial proceedings such a proposition as is contained in this section?

But I was proceeding, Mr. President, to refer to what was before the canvassing board as understood by the framers of this measure when the court ordered that its decision should be reviewed on the *prima facie* case made by the petitioner. What record does it bring up from the chief supervisor of elections? It is clearly defined in this proposed act:

> It shall make and enter an order requiring the production before it, at the time in said order to be named, of all returns, protests, reports—

Drawing, you will see, a distinction between returns and reports—

> tickets, and other evidence—

It might be said by some who have not examined this law that there are other papers perhaps in the possession of the chief supervisor which in justice and fairness would under the order of the court be brought up for review, but which were not before the canvassing board. But, sir, it stops not here. It proceeds with this language:

> upon which the said board acted in awarding the certificate aforesaid.

This clearly shows that the board acted upon the returns, protests, reports, tickets, and other evidence embraced within all of those provisions of the statute to which I have referred. This is the first time that the term "protest" appears on the face of the bill.

Sir, there is another provision to which I did not call the attention of the Senate, which provides that if there is any complaint at the precinct by any one in interest as to irregularity, as to fraud, intimidation, or threats, such complaints shall be taken by the supervisors of election and forwarded to the chief supervisor. In this section for the first time is introduced the term "protests," clearly referring to the complaints provided for in a section of the Revised Statutes which has been incorporated as a part of this bill by its number, and referred to

as a paper proper to go before the canvassing board, and upon which, as the bill says in express terms, they have awarded the certificate.

Mr. President, let us see what is understood as the duties of an ordinary canvassing board such as we find in all the States.

It is well settled that the duties of canvassing officers and boards are ministerial merely, and not judicial. Their duty is to count the votes as cast, and they have no authority, unless expressly granted, to hear evidence or to pass upon or correct alleged errors, irregularities, or frauds.

And the canvassing boards are bound by the returns when in due form, and can not, unless expressly authorized by law, receive or regard anything outside of them, or reject them for other reasons than those appearing on their face. Returns void upon their face may be rejected, but if the returns be regular, the duty of the canvassers "consists in a simple matter of arithmetic."

And even matter appearing upon the face of the returns which is not by law required to be there is *functus officio* and is to be disregarded.

Mr. President, we can understand why this bill departs from the well-recognized principles which govern similar boards in the States in making the opinion of the supervisors of election a part of the statement or return which is made by them to the chief supervisor and to the clerk of the circuit court of the United States. It is that, under the principles of law which I have read, it being a part of the statement or returns made by authority of the act, it may be considered by the board and the certificate which they grant may rest upon it.

Mr. President, it is not necessary for me to suggest or to argue to the intelligent body that I am now addressing that when they authorize to be presented to this board statements of fraud, of irregularity, or of error in the conduct of an election, that it is presented to it for some purpose, that it could have no place in this proposed act as a subject to be considered by it unless it was the intention of the Legislature that it should base some official action upon these papers. If that is true, what is the necessary result which will follow? That, having before it the question of fraud, irregularity, threats, and intimidation, it is authorized to pass upon an *ex parte* statement without notice to the party to be affected by it, and adjudicate whether or not there has been such fraud, irregularity, or intimidation in the conduct of the election at any particular precinct as would justify it in throwing out the vote of that poll.

When you do that, when you place such power as that in the hands of a canvassing board, you do confer upon it such a discretion that, if not in its full terms a judicial power, it is quasi judicial to an extent that is far in excess of any power conferred upon similar boards in the States.

Mr. President, you will find that there is a concurrence of authority in support of the principles to which I have referred.

So far has this doctrine been carried that it has been held that where the returns show votes distributed, for example, to "William H. Smith," "W. H. Smith," and "W. Smith," the canvassing board can not count them all for William H. Smith on the assumption that the voters intended to vote for him.

This is the decision of the supreme court of the State of Maine. New York has dissented to some extent from that doctrine.

But the contrary has also been held, and it would seem to be the true rule that the canvassers are at liberty to take notice of such facts of general notoriety as may aid them in arriving at the true intention, but matters requiring the aid of evidence *aliunde* must be reserved for the courts or other established tribunals.—*Mechem's Public Offices and Officers*, sections 208, 209.

And yet, Mr. President, if all of these papers relating to frauds, to unfairness, to irregularities, to protests—if all of these subjects are to go before the canvassing board to be considered by it, the proposed law does not confine them to mere ministerial duties, but requires that they shall consider evidence *aliunde* the returns as to the validity of the

election at any particular precinct. In McCrary on Elections the general principle is well and concisely stated thus:

It is well settled that the duties of canvassing officers are purely ministerial, and extend only to the casting up of the votes and awarding the certificate to the person having the highest number; they have no judicial power. In State *vs.* Steers (44 Mo., 223), which was a case in which the canvassing board had undertaken to thow out the returns from one voting precinct for an alleged informality, the court said: "When a ministerial officer leaves his proper sphere, and attempts to exercise judicial functions, he is exceeding the limits of the law, and guilty of usurpation." And again: "To permit a mere ministerial officer arbitrarily to reject returns, at his mere caprice or pleasure, is to infringe or destroy the rights of parties without notice or opportunity to be heard, a hing which the law abhors and prohibits."

In section 82 he says:

But of course it does not follow from this doctrine that canvassing and return judges must receive and count whatever purports to be a return, whether it bears upon its face sufficient proof that it is such or not. The true rule is this: They must receive and count the votes as shown by the returns, and they can not go behind the returns for any purpose, and this necessarily implies that if a paper is presented as a return, and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself.

And that doctrine was sustained in New York. In section 84 the learned writer here gives the general doctrine and quotes a number of authorities.

SEC. 84. The doctrine that canvassing boards and return judges are ministerial officers possessing no discretionary or judicial power is settled in nearly or quite all the States.

The author cites a number of States which have passed upon this question and settled it, and not one of these authorizes any such statements to be made by the inspectors of election as to frauds or to irregularities at the precinct as is contemplated by this bill. The laws of the States provide that the inspectors of election shall return to the canvassing board of the county a certificate of the number of votes for each candidate voted for, the ballots, and the tally lists, and on the receipt of these evidences of the election, and satisfactory proof of the regularity and genuineness of the returns, the canvassing board may be required to tabulate the same and issue a certificate of election.

No case, could be stronger, Mr. President, in sustaining these views than the decision by the supreme court of the State of Wisconsin in the case of the Attorney-General *vs.* Barstow. In that case the supreme court said:

They—

The canvassing officers—

are to add up and ascertain, by calculation, the number of votes given for any office. They have no discretion to hear and take proof as to frauds, even if morally certain that monstrous frauds have been perpetrated.

This decision accords with the current of authority throughout the whole country. In fact I have not found an exception, save that Mr. McCrary, in section 89, refers to a statute of Texas, as construed by Congress, and also to statutes of Alabama, Louisiana, and Florida, as giving judicial power to the returning boards in those States.

The construction of those powers, however, is not by this author referred to as a judicial construction, but simply as a construction of the House of Representatives. The supreme court of Florida, in construing the statute of that State as to the powers given to its returning board, expressly deny this broad discretion or quasi judicial function as attaching in any way to that board.

[At this point the honorable Senator yielded to Mr. HARRIS.]

Mr. FAULKNER. Mr. President, in the case of the Attorney-

General *vs.* Barstow, the syllabus, I think, very clearly and concisely states the view of the court:

> The State board of canvassers are required to make their statement and determination of the result of an election from the certified statements of the county canvassers alone; and they have no authority to hear, receive, or determine upon any other evidence.

In examining that case I find that the law of Wisconsin, like that of all other States, allows none of the statements that are provided for by this bill to accompany the returns of the precinct officers. There is nothing to be included in those returns, under the statute, but the aggregation of the vote for the particular officer voted for, and the certificate provided by statute.

Now, to show that this question, in the opinion of the chairman of the Committee on Privileges and Elections, goes beyond the power and duty conferred upon a ministerial officer, I desire to refer to the language of that distinguished Senator in reply to a question which I addressed to him, and to be found on page 713 of the RECORD. He said:

> I understand in the present case this provision requires that these officers may receive not merely a naked certificate, but the return is to be something more. It is to return certain facts, and on these returns which they get they are to act, and if those returns do not contain the whole statement, if there is a diminution of the record or a failure to certify a fact which the law required to be certified, the board of canvassers in the first instance and the court ultimately have not a right to go into the evidence of all mankind, as the House of Representatives have, not to see that A B, who voted, was twenty-one years old and was a resident of the district, and all that, but they are only to decide the fact according to the return.
> These local officers provided for in this bill have two functions.

If any one doubts the opinion of the distinguished Senator from Massachusetts let him listen to his language:

> They are, in addition undoubtedly to these returns of what took place which they are to make, to observe and record and preserve the facts, which will be facts for the use of the House of Representatives in its final judgment.

Mr. President, that is the main purpose of these statements and certificates, the first being for the consideration of the returning board, and, secondly, that they may be transmitted from the chief supervisor of elections to the House of Representatives in case of a contest. I therefore do not feel that I have misquoted the distinguished Senator when I refer to the fact that, upon his own admission, the powers and functions conferred upon the canvassing board are extended beyond those ordinarily and usually conferred upon ministerial boards constituted for similar purposes in the States.

Mr. MCPHERSON. May I ask the Senator from West Virginia a question?

Mr. FAULKNER. Certainly.

Mr. MCPHERSON. If I understand correctly the position taken by the Senator from West Virginia it is this: That in addition to the ballots which have been returned, in addition to the tabulated returns, so to speak, coming from the supervisors of election, sent to the chief supervisor, and transmitted by him to the returning board or the canvassing board, there is also a provision in the bill that all rejected ballots, that all defaced ballots, are also to be sent, and they must finally reach the canvassing board. In addition to that, if there are any statements or certificates, whatever they may be, therein described (and I suppose it is left entirely to the judgment and discretion of the supervisors of election what they are to be), they also are to go into the possession of the canvassing board.

Now, why the necessity for all these defaced ballots, all these rejected ballots, all the certificates for which provision is made, or statements, if it is not the intention that they are to be influential upon the canvassing board in determining the result? As I understand it, it is absolutely as much a part of the return as the tabulated statement and the count, so to speak, as made by the supervisors of election, that is to go into the hands of the returning board; that is, a statement made by a supervisor of elections is a part of the return and can not be separated from it.

Mr. FAULKNER. The Senator is correct in all the statements he has made, except, that if he supposes there is any indefinite language used as to the power of these supervisors to make a statement to accompany the returns as to any fraud or unfairness in the election, he is mistaken. Its framers have incorporated by section 2018 a provision which expressly requires the supervisor to make these returns as a part of his official duty; and they have incorporated section 2020, which expressly requires him to make a report of any threats or intimidations or molestation or any interference in any way with the officers of election. So that when all of this great mass of evidence, made *ex parte*, is used for the purpose of ascertaining by the board of canvassers the true result at any precinct, it submits to it the question whether there was such fraud perpetrated as would invalidate the election.

Mr. MCPHERSON. If the Senator from West Virginia will yield to me a moment longer, as I understand him further, the bill makes provision that in case of a difference which may exist in the count, or the computation, or the canvass, so to speak, of the ballots cast at any voting precinct, where a difference of opinion as to the count exists between the Federal supervisor of elections and the State supervisor of elections, the count of the Federal supervisor is sent up to the chief supervisor, and from the chief supervisor to the returning board. Therefore there can be no other testimony before the returning board except this *ex parte* statement or count of the Federal supervisor upon which the canvassing board can act.

Mr. FAULKNER. Mr. President, I will add to the statement of the Senator from New Jersey, that not only is the canvassing board confined to that evidence, but even the circuit court, upon a review of the decision of the board, is, by the terms of the fourteenth section, limited to the papers, documents, returns, and other evidence that were before the returning board and on which they issued the certificate. That is to be the evidence and the sole testimony that can be introduced in the circuit court on a review of the decision of the canvassing board. In other words, it is not, as the Senator from Wisconsin [Mr. SPOONER] in his very able argument the other day maintained before the Senate, a judicial function that is imposed upon this court.

It tries nothing. It acts simply in the capacity of a canvassing board, with no final judgment that can in any way affect the title to the office, any more than that given by the canvassing board. It has no more force or effect, and could have no more force and effect, than the certificate issued by the canvassing board, because, under the Constitution, the House of Representatives is made the final judge of the qualifications and elections of its own members.

Mr. GEORGE. Mr. President——

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from Mississippi?

Mr. FAULKNER. Certainly.

Mr. GEORGE. Mr. President, the Senator is discussing a subject of very great interest to the people of the United States. If I understand his argument, it is about this: That all the evidence to come at all before the canvassing board or the returning board—which I think is the proper name for it—are the returns, statements, and certificates made by these partisan supervisors of election. Is that true?

Mr. FAULKNER. No other papers can be considered by the canvassing board.

Mr. GEORGE. I am talking about the canvassing board.

Mr. FAULKNER. Documentary evidence and papers——

Mr. GEORGE. But made by the supervisor only.

Mr. FAULKNER. Yes, made by the supervisors, except the protest or complaints which are made by any one interested in the result of the election.

Mr. GEORGE. Then the protests are the only things that can come before the canvassing board from any other party except the supervisors?

Mr. FAULKNER. That is all.

Mr. GEORGE. Then I understand the Senator to say also that when this evidence, thus circumscribed and thus made, is considered by the canvassing board, if they reach a determination in the case, and an appeal is taken to the circuit court, and it is disposed of in the circuit court, then that court is confined in its examination solely to a table laid before the canvassing board. Is that true?

Mr. FAULKNER. To the papers, documents, etc., which were before or might have been before the canvassing board.

Mr. GEORGE. Then I wish to suggest to the Senator this proposition: Here is a court whose functions are to examine, ascertain, and determine—that is, it is its function to determine the right, without the right to examine and hear competent and legal evidence to enable the court to reach a proper determination—by this proposed law the court of the United States has no power to summon witnesses, to examine into evidence other than such as may be given to it by this canvassing board, and yet that is supposed to be a judicial function on the part of such court. With all of its evidence fixed by another tribunal, with all of its power to examine evidence limited by this bill, it is called upon then to perform, I may say, the ridiculous function simply of determining whether this canvassing board, on this evidence, determined the matter aright or not. Is that a judicial function?

Mr. FAULKNER. I would say, Mr. President, that it is not. But there can be no question or doubt as to the evidence either before the canvassing board or the court, for the amendment proceeds to provide that if the court grants a petition—

> it shall make and enter an order requiring the production before it, at the time in said order to be named, of all returns, protests, reports, tickets, and other evidence upon which the said board acted in awarding the certificate aforesaid—

and there it stops, conferring no power upon the court, except that the evidence so transmitted may be referred to a master commissioner of the court, and to show that it is not the purpose or intention of the section that any issue should be awarded in that tribunal, it is expressly provided that the judge shall decide the question.

Mr. President, I think our distinguished chairman of the Committee on Privileges and Elections [Mr. HOAR] has not acted fairly and frankly with the Senate. When asked time and again whether there were judicial functions conferred on this board he has used very guarded and evasive language in his reply. But none can read his answer

without understanding fully his meaning. On page 712 of the RECORD he says:

I do not understand that these are in the constitutional sense judicial powers—

Referring to the canvassing board—

and I do not intend to confer on anybody, other than judicial officers, judicial powers in any State.

Well, now, everyone would admit that to be a fact. These are not judicial powers within the meaning of that term used in the Federal Constitution so as to make these canvassers judicial officers of the United States, but they are discretionary powers in which judgment must be exercised, and they constitute a principal part of that great mass of powers which are understood as quasi-judicial powers and which are conferred upon no canvassing board in the States, with this single limitation, that they have the discretion to decide whether or not the returns are genuine and regular. That is a quasi-judicial power, but one which it is absolutely essential that it should possess that the board might act intelligently. But when those two questions have been decided its duties should be purely ministerial, so that they could be compelled by mandamus, which is the true test of the question, to canvass the vote and to certify the result.

Mr. President, there is another expression in this section that seems to conform with the view of its framers that the board should have quasi-judicial functions:

In case no person be found duly elected in any district a certificate of that fact shall be made by said board.

"Found duly elected!" Why not use the language used in every statute of every State in the Union? Why not say, in case there is a tie between two persons having the highest vote—if you mean that, why not say it? But if you mean to confer judicial powers upon this board that it may pass upon the question whether or not the person is found to be duly elected, which involves all of the questions I have referred to, and also under a number of authorities, the power to pass upon the qualifications of the person claiming the office to which he is elected, the language which has been employed will certainly carry out this view.

I have, Mr. President, in the amendment which I have offered to this section, treated with fairness and frankness the Senators who are in favor of this bill and who are responsible to the Senate for its phraseology. I have not attempted to eliminate from this section many of the errors and imperfections which it contains, but have stricken from it certain language and inserted at other points of the amendment language that will clearly indicate to a court or to the canvassing board that no judicial or discretionary power has been conferred upon them by Congress.

I desire, Mr. President, to have the clerk note in my amendment on page 3, line 44, after the word "certificates," to strike out the words "as shall," and insert in lieu thereof "of the votes cast which;" and on the same page, in line 52, after the word "tallies," to insert the words "showing the vote cast which have been."

The VICE PRESIDENT. The amendment will be reported.

The CHIEF CLERK. Modify the amendment as follows: In line 44, page 3, after the word "certificates," strike out the words "as shall" and insert the words "of the votes cast which;" so that it will read:

For the purposes aforesaid they shall use the returns and certificates of the votes cast which have been forwarded, etc.

Also in line 52, after the word "tallies" insert the words "showing the vote cast which have been," so that it will read:

The said board may also require the production before it of such certificates and returns and tallies showing the vote cast which have been filed with the several chief supervisors, etc.

The VICE PRESIDENT. The modifications will be considered as agreed to, if there be no objection. The Chair hears none.

Mr. FAULKNER. Mr. President, I have amended the original section reported by the committee as to the power of the board after having summoned the supervisors of elections to testify before them, limiting their right to examine those officers as to the genuineness of the returns, certificates, and tallies filed with the clerk of the circuit court; and I have further provided that in case of a tie in any district, the certificate of that fact shall be made as provided for by the amendment reported by the committee.

The review by the circuit court is purely *ex parte* under the amendment submitted by the committee, and in my judgment would be a useless expense to which the parties should not be subjected. To give it some value I have provided that if such a review is asked, the court may refer the case to a master or court commissioner, or otherwise, and upon the evidence filed in the office of the chief supervisor and such other relevant evidence as the court may determine to be proper shall hear and determine the case.

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