



Minnesota Woman Suffrage Association Records.

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[undated]

H. F. 856

Mr. Warner.

A BILL

For an Act to provide that women may vote in all primary elections in Minnesota, prescribing qualifications.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. From and after the passage of this act, and subject to all the provisions of the laws of this state as to age, residence, citizenship, and otherwise regulating the manner and form of holding primary elections; but specially exempt from every disqualification, direct or indirect, on account of sex, every woman in this State shall have the right to vote at any primary election held under the laws of this State.

PROVIDED, that no woman shall be allowed to vote in any primary election unless, when requested by the judges she will make oath that she is ~~not~~ of the same political faith, of the party holding said primary election, and that she will give her moral support to all nominees of said political party.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Section 3. This Act shall take effect and be in force from and after its passage.

A BILL

FOR AN ACT EXTENDING TO WOMEN THE RIGHT TO VOTE
AT ANY PRIMARY ELECTION IN THIS STATE, HELD FOR
THE PURPOSE OF NOMINATING CANDIDATES FOR ANY ELEC-
TIVE OFFICE, OR HELD FOR THE PURPOSE OF CHOOSING
DELEGATES TO ANY CONVENTION HELD FOR THE PURPOSE
OF NOMINATING CANDIDATES FOR ELECTIVE OFFICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
MINNESOTA.

Section 1. Any woman of the age of twenty-
one years and upwards and possessing the qualifications
requisite to a male voter, may vote the same as men at
any primary in this state, held for the purpose of
choosing candidates for any elective office or held for
the purpose of choosing delegates to any convention for
the nomination of candidates for any elective office.

Section 2. This act shall take effect and be in
force from and after its passage.

A B I L L

FOR AN ACT EXTENDING TO WOMEN THE ELECTIVE FRANCHISE PERTAINING TO THE NOMINATION AND ELECTION OF PRESIDENT, VICE-PRESIDENT AND PRESIDENTIAL ELECTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Every woman of the age of twenty-one years and upwards, possessing the qualifications requisite to a male voter, shall be entitled to vote the same as men, at any election held for the purpose of nominating or electing presidential electors, at any primary election held for the purpose of choosing delegates and alternates to the national conventions of political parties, and at any presidential preference primary election held for the purpose of allowing a popular expression for the party nominations of president and vice-president.

M E M O R A N D U M.

The method of appointing presidential electors is determined, not by the State constitutions, but by the United States constitution, which provides as follows:

"EACH STATE SHALL APPOINT IN SUCH MANNER AS THE LEGISLATURE THEREOF MAY DIRECT, a number of electors equal to the whole number of senators and representatives to which the state may be entitled by the Congress" (Article II, Sec 1, U.S. Constitution)

There are a number of precedents in which the state legislature has acted independently of the state constitution in choosing presidential electors. The most recent example is that of Illinois, whose legislature passed an act conferring presidential suffrage upon the women of the state in 1913. Six times, attacks have been made upon this act in whole or in part, and each time its validity has been upheld by the Courts. In the early history of the United States there were several instances in which the State Legislatures themselves chose the presidential electors. This method was regularly followed in South Carolina up to and including the year 1860.

On several occasions State Legislatures have passed regulations for the presidential election enabling persons to vote who, by the State Constitution, would have been debarred from voting; and the right of the State Legislatures to do this has always been upheld by the courts. Thus Maine Legislature, on March 24, 1864, passed an act to enable soldiers who were absent

in the field to vote for presidential electors; and the next day it submitted an amendment to the State Constitution to enable soldiers absent in the field to vote for State officers. The latter required a constitutional amendment; the former did not. New Hampshire (see Public Laws of 1864) passed a Soldiers' Voting Act for presidential electors, the legality of which was unanimously upheld by the State Supreme Court (45 N.H. p. 607) although the act was in conflict with the State Constitution. The Supreme Court took the ground that the question as to how the presidential electors should be chosen "is governed wholly by the Constitution of the United States as the paramount law, and the Constitution of this state has no concern with the question". The Vermont Supreme Court gave an opinion to the same effect. (37 Vermont Appendix.

The National House of Representatives also upheld the constitutionality of the Michigan Soldiers' Voting Act. More than twenty years ago the Michigan Legislature departed from the custom of having the presidential electors chosen upon a general ticket. It divided the State into electoral districts, each district to choose one elector.

Minnesota -

1910

QUESTIONS ON STATE LEGISLATION

1. How many sessions has the legislature held in your state from 1899 to 1909, inclusive?
2. In what years were they held, if not annually?
3. What Suffrage Bills have been introduced, and when and ^{what} ~~XXXX~~ was the result in each case?

Minnesota Woman Suffrage Association

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Organization—MRS. J. B. GALARNEAULT, Aitkin
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MISS MARIA BURNS,
999 Portland Ave., St. Paul
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MRS. MAUD C. STOCKWELL, 3204 East 51st St., Minneapolis

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1786 Dayton Ave., St. Paul
MRS. L. C. CORSER, 1911
615 James Ave. No., Minneapolis

QUESTIONS ON STATE LEGISLATION.

1- We have had six legislative sessions in Minnesota from 1899 to 1909 inclusive, as our legislature meets bi-ennially.

2- In the years 1899, 1901, 1903, 1905, 1907, 1909.

3- At each session a bill has been introduced asking that an amendment be submitted to the voters eliminating the word male from the voting qualification. This has ^{always} been referred to a committee, usually the judiciary committee, and the advocates been given a polite hearing before the committee. Then the committee always as politely killed the bill. At the last session the bill was put into the hands of the Committee on Elections, whose chairman was a lawyer for the brewery which is throttling the city of St. Paul, and largely controls the state. Of course its doom was sealed then. However, we were accorded a hearing before the joint session of the committees of both Senate and House, and so large was the number of people who gathered to hear us, that the senate adjourned, and gave us the Senate Chamber. We had a most respectful hearing, and there was that feeling of interest evinced which was absolutely new to us. But when our friends in the legislature tried to get a report from the committee, it was voted down, but by a much smaller majority than ever before. The opposition was very much surprised at our strength.

Emily E. Dobbin, Pres.

1912

A Bill for an Act Proposing an Amendment to Section One (1) of Article Seven (7) of the Constitution of the State of Minnesota, *LH* relating to the elective franchise.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to Section One (1) of Article Seven (7), of the Constitution of the State of Minnesota, is hereby proposed to the people of the State of Minnesota, for their approval or rejection; that is to say, said section shall be amended to read as follows:

"Section 1. Persons entitled to vote. - Every person of the age of Twenty-one (21) years or upwards, belonging to any one of the following classes, who has resided in this state six months next preceding any election, shall be entitled to vote at such election in the election district of which said person shall at the time have been for thirty days a resident, for all officers what now are, or hereafter may be, elective by the people.

1. Citizens of the United States who have been such for the period of three months next preceding any election.

2. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

3. Persons of Indian blood residing in this state, who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state. "

Section 2. This proposed amendment shall be submitted to the electors of said state for their approval or rejection at the next general election in the year 1912, as is now provided by law for the submission of amendments to the constitution of this state, and each of the legal voters of said state may at said

election vote by ballot for or against said amendment and if it shall appear that a majority of the voters who voted at said election, have voted in favor of the same, then the Governor shall thereupon make proclamation thereof; and said amendment shall thereupon take effect and be in force as a part of the constitution of the State of Minnesota.

THE MUNSON
SUPERIOR BOND

1914

SUFFRAGE SITUATION IN MINNESOTA.

SUFFRAGE BILL IN THE SENATE:

Bill was introduced in the Senate by Senator Saging, two years ago. Was reported out of committee favorably, five to two, and will soon be brought up for a second vote in the Senate.

INITIATIVE PETITION

method can not be used in Minnesota.

GENERAL ACTIVITY

The progress of the suffrage association has been so rapid that it has caused the Antis to organize and petition the Committee for a hearing. Although a report had been made, the bill was taken into committee again and a hearing granted to both sides. This hearing was held in the Senate Chambers on January 26th.

[Jan. 23, 1913]

*This bill was presented in the House by
Mr. Lamon*

A bill for an act to empower women to vote at presidential preference primaries and for the nomination and election of presidential electors:

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Every woman, of the age of 21 years and upwards, possessing the qualifications requisite to a male voter, shall be entitled to vote the same as men, at presidential primary elections and at any election of presidential electors, for the party nomination of president and vice-president, for the nomination of presidential electors, for the election of delegates to the national convention and for presidential electors.

Every woman entitled to vote as aforesaid, as a qualification for voting at such elections, shall comply with such statutory regulations as are required of male electors.

MEMORANDUM.

Section 1 of Article II of the Constitution of the United States provides as follows:

"EACH STATE SHALL APPOINT, IN SUCH MANNER AS THE LEGISLATURE THEREOF MAY DIRECT, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress." It is thus apparent that the Legislature has the power to give women the right to vote, as provided in this bill.

Illinois has given women presidential suffrage.

Presented by Wold for Miss Peyton

[Mar. 23, 1915]

A BILL FOR AN ACT GRANTING WOMEN THE RIGHT TO VOTE FOR PRESIDENTIAL ELECTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Every woman of the age of twenty-one (21) years and upward and possessing the qualifications requisite to a male voter, is hereby given and shall hereafter have the right to vote at any primary or election held for the purpose of choosing presidential electors.

Section 2. This Act shall take effect and be in force from and after its passage.

[April 6, 1915]

Mr. Bjornson

, from the Committee on Elects

A BILL FOR AN ACT TO EMPOWER WOMEN TO VOTE AT PRESIDENTIAL PREFERENCE PRIMARIES AND FOR THE NOMINATION AND ELECTION OF PRESIDENTIAL ELECTORS:

Section 1. Every woman, of the age of 21 years and upward, possessing the qualifications requisite to a male voter, shall be entitled to vote the same as men, at presidential primary elections and at any election of presidential electors, for the party nomination of president and vice-president, for the nomination of presidential electors, for the election of delegates to the national convention and for presidential electors.

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✓

18797

ORIGINAL

H. F. No. 1012

473

A BILL FOR AN ACT to empower women
to vote at presidential pre-
ference primaries and for the
nomination and election of
presidential electors.

Introduced }
and Read First Time } 1915.
By Mr. Larson,

Ref. to Com. on ~~Elections~~
Reported Back ~~Majority~~
Read Second Time ~~Report adopted~~
Com. of Whole ~~Adopted by Senate~~
Read Third Time
Passed
Transmitted to Senate

Chief Clerk H. of R.

Read First Time
Ref. to Com. on
Reported Back
Read Second Time
Com. of Whole
Read Third Time
Passed
Returned to House

Secretary of Senate.

APR -6 1915

By motion to table

MINNESOTA.

1867. Suffrage Amendment - given Hearing.
- 1868 Suffrage Amendment defeated.
- 1870 Bill for straw vote - passed, but vetoed by Governor.
- St. Louis* 1876. School Suffrage passed and became law.
1877. Bill for suffrage on liquor question failed.
- St. Louis* 1885. Enlarged school suffrage bill passed and became law.
1891. Municipal Suffrage Bill passed... House - postponed.
1892. Proposal for Suffrage by Act of Legislature alone - failed.
1893. Suffrage Amendment. . . ayes 54 nays 44 (Lacked the necessary 2/3. Had been substituted for Municipal Suffrage Bill)
1895. Suffrage Amendment - indefinitely postponed.
1897. Tax Payers Suffrage Bill not reported.
- 1901-1903. Suffrage Amendments killed in Committee.
1906. Petitions to Governor.
amend. killed in Com.
1907. Suffrage Amendment - failed.
1909. Suffrage Amendment - defeated by small margin.
1911. Suffrage Amendment. . . Senate - defeated by majority of two
House - passed by a majority of 81.
1913. Suffrage Amendment. . . *See a 80 n 37*
Senate - ~~defeated by 3 votes.~~
a 30 n 33
1915. Presidential Suffrage. . . House - not voted upon. Effort to have it placed on special orders failed of necessary 2/3, but polled large majority.
- Suffrage Amendment. . . Senate - ayes 33 nays 34.

*Footnote * From 1890 to 1897 Petitions were presented to each Legislature for suffrage on liquor question and for municipal suffrage, but no action was taken.*

*Bill drawn up by Mr. S. R. Child for Legislature 1917.
Memorandum prepared by Minn. W. S. Allen*

A BILL

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MEMORANDUM

The method of appointing presidential electors is determined, not by the state constitution, but by the United States constitution, which provides as follows:

"EACH STATE SHALL APPOINT IN SUCH MANNER AS THE LEGISLATURE THEREOF MAY DIRECT, a number of electors equal to the whole number of senators and representatives to which the state may be entitled by the Congress." (Article II, Sec. 1, U.S. Constitution)

There are a number of precedents in which the state legislature has acted independently of the state constitution in choosing presidential electors. The most recent example is that of Illinois, whose legislature passed an act conferring presidential suffrage upon the women of the state in 1913. Six times, attacks have been made upon this act in whole or in part, and each time its validity has been upheld by the Courts. In the early history of the United States, there were several instances in which the state legislatures themselves chose the presidential electors. This method was regularly followed in South Carolina up to and including the year 1860.

On several occasions State Legislatures have passed regulations for the presidential election enabling persons to vote, who by the State Constitution, would have been debarred from voting; and the right of the State Legislatures to do this has always been upheld by the courts. Thus the Maine Legislature, on March 24, 1864, passed an act to enable soldiers who were absent in the field to vote for the presidential electors, and the next day it submitted an amendment to the State Constitution to enable soldiers absent in the field to vote for State Officers. The latter required a constitutional amendment, the former did not. New Hampshire (see Public Laws of 1864) passed a Soldiers' Voting Act for presidential electors, the legality of which was unanimously upheld by the State Supreme Court (45 N.H. p. 607), although the act was in conflict with the State Constitution. The Supreme Court took the ground that the question as to how the presidential electors should be chosen "is governed wholly by the Constitution of the United States as the paramount law, and the Constitution of this State has no concern with the question." The Vermont Supreme Court gave an opinion to the same effect (37 Vermont Appendix)

The National House of Representatives also upheld the constitutionality of the Michigan Soldiers' Voting Act. More than twenty years ago the Michigan Legislature departed from the custom of having the presidential electors chosen upon a general ticket. It divided the state into electoral districts, each district to choose one elector

[1917]
From Mrs. Ueland,
for your files.

*WS - Saw
(Presidential
Suffrage)*

A B I L L

FOR AN ACT EXTENDING TO WOMEN THE ELECTIVE FRANCHISE PERTAINING TO THE
NOMINATION AND ELECTION OF PRESIDENT, VICE-PRESIDENT AND PRESIDENTIAL
ELECTORS.

6 copies
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(Article 11, Sec. 1, U.S. Constitution.)

There are a number of precedents in which the state legislature has acted independently of the state constitution in choosing presidential electors. The most recent example is that of Illinois, whose legislature passed an act conferring presidential suffrage upon the women of the state in 1913. Six times, attacks have been made upon this act in whole or in part, and each time its validity has been upheld by the Courts. In the early history of the United States there were several instances in which the State Legislatures themselves chose the presidential electors. This method was regularly followed in South Carolina up to and including the year 1860.

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RECEIVED
JAN 24 1917

day it submitted an amendment to the State Constitution to enable soldiers absent in the field to vote for State Officers. The latter required a constitutional amendment; the former did not.

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Jan. 29, Bill still in committee, hearing sometime in February, when we wish it.

Chances in the House fair, pretty doubtful in Senate.

1917

MINNESOTA -

1. FULL SUFFRAGE AMENDMENT introduced in House January 12th.
Reported favorably out of Committee February 10th.
Passed House 85 to 41, February 21st. Defeated in Senate
14 - 40 April 9th.
2. PRESIDENTIAL SUFFRAGE BILL introduced January 17th. De-
feated in Senate 31 to 35 on March 29th.

MINNESOTA.

A Suffrage Amendment was passed in the House by a vote of 85 to 41 on February 21st, 1917. It was defeated in the Senate on April 9th, 1917, by a vote of 40 to 14.

Legislative Action
State Courts -

[ca 1918-1919]

Vote on Presidential Bill

The question being taken on the adoption of the resolution.

And the roll being called, there were yeas.....and nays....., as follows:

Those who voted in the affirmative were:
Those who voted in the negative were:

Nays	Yeas	Nays	Yeas
		☒ KINGSBURY	
☒ ADAMS		☒ KUNTZ	
☒ ANDERSON		☒ LARSON	
☒ BALDWIN		☒ LEE	
☒ BENSON		☒ LINDSLEY	
☒ BESSETTE		☒ LOONAM	
☒ BLOMGREN		☒ McGARRY	
☒ BONNIWELL		☒ MADIGAN	
☒ BOYLAN		☒ MILLET	
☒ BROOKS		☒ NAPLIN	
☒ CALLAHAN		☒ NOLAN	
☒ CARLEY		☒ NORD	
☒ CASHEL		☒ ORR	
☒ CLIFF		☒ PALMER	
☒ COLEMAN		☒ PETERSON	
☒ CONROY		☒ PUTNAM	
☒ COSGROVE		☒ RASK	
☒ CUMMING		☒ REED	
☒ DENEGRE		☒ RIBENACK	
☒ DEVOLD		☒ ROCKNE	
☒ DWYER		☒ ROMBERG	
☒ ERICKSON		☒ SAGENG	
☒ FOWLER		☒ SCHMECHEL	
☒ GANDRUD		☒ STEPAN	
☒ GILLAM		☒ SULLIVAN, G. H.	
☒ GJERSET		☒ SULLIVAN, J. D.	
☒ GOODING		☒ SWANSON	
☒ GUILFORD		☒ TURNHAM	
☒ HALL		☒ VAN HOVEN	
☒ HAMER		☒ VIBERT	
☒ HANDLAN		☒ WARD	
☒ HEGNES		☒ WIDELL	
☒ HOPP		☒ WOLD	
☒ JACKSON			
☒ JOHNSON			

So the resolution

adopted.

*Vote on Handlan Resolution to refer bill to
judiciary committee*

Presidential

A BILL

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Statement of the Minnesota Woman Suffrage Association
On Suffrage Bills Now Before The Legislature.

Owing to the discussion which has arisen throughout the Press of the State and also among suffragists themselves, The Minnesota Woman Suffrage Association believes it to be advisable to make the following statement:-

The Minnesota Woman Suffrage Association, assembled in Convention in Minneapolis, Dec. 4, 5, and 6, 1916, voted practically unanimously not to submit a Constitutional Amendment for Suffrage to the Minnesota Legislature at its present session. The Convention also voted with the same unanimity to present a Presidential Suffrage Bill asking the Legislature to give Minnesota women the right to vote for Presidential electors.

The reasons for the above decisions were laid before the Convention, were thoroughly discussed and were as follows:-

(1) The Minnesota Constitution is so difficult to amend--requiring the majority of the highest number of votes cast for any office during an election--that no amendment against which there has been any organized opposition has ever been passed in this State.

(2) The situation is even more complicated at this time owing to the fact that a Prohibition Amendment will come before the people at the same time that a Suffrage Amendment, if passed by the Legislature during this session would come before the people. It is the opinion of Prohibition and Suffrage Leaders that the success of both amendments would be jeopardized should they be brought before the people at the same time. Suffragists are not willing and have never been willing to stand in the way of dry legislation.

(3) The difficulties of amending the majority of the State Constitutions of the country have convinced the leaders of the Suffrage movement that the strongest and most concentrated effort must be placed upon work for a Federal Amendment, which will enfranchise the women of every State without the time, effort and expense of the State campaign. Further it is the ground of the highest idealism to consider the greatest good of the greatest number--growing solidarity of women everywhere emphasizes this truth.

(4) If a State Suffrage Amendment came before the people in 1918 and was defeated there is grave danger that it would affect the ratification of a Federal Amendment by the Minnesota State Legislature in 1919, when it is very possible such a Federal Amendment may be submitted. In view of a defeated State Amendment the Minnesota Legislature might consider itself justified in refusing such ratification on the ground that Minnesota does not want woman suffrage. In this way Minnesota would stand in the way of the enfranchisement of the women of the entire country.

The reasons for the effort of the State Association to procure the passage of a Presidential Bill through the present Legislature are as follows:-

- (1) The passage of The Presidential Suffrage Bill, giving the women of the State the right to vote for Presidential electors would add great strength to the fight for the Federal Amendment which would nationally enfranchise the women of the whole country.
- (2) Such a bill possesses the advantage of becoming law as soon as it is ratified by both Houses of the State Legislature and does not require the laborious program of a state referendum.
- (3) It is well to get every small measure of suffrage which can possibly be gained. The Presidential Bill is a means to an end--full suffrage through national enactment or State Constitutional amendment. No measure of suffrage once conferred has ever been taken away from the women of any state.
- (4) It is the policy of the National American Woman Suffrage Association under whose wise guidance such great gains have been made in suffrage during the last few years, that Presidential Bills shall be passed in as many states as possible during this year, particularly such states as have constitutions difficult to amend. It is the duty of the Minnesota Woman Suffrage Association to stand back of the policies of the National Association as long as it remains a part of that organization, just as it is the duty of the organizations affiliated with the State organization to stand back of its policies.
- (5) Four states not having full suffrage have already passed Presidential bills, Illinois, Indiana, North Dakota and Ohio. Three of these have been passed within the year.

The amount of suffrage conferred by a Presidential Bill is determined solely by the wording of each State's Constitution. The bill of each of the states aboved mentioned confer more suffrage than would such a bill in Minnesota. In Minnesota a Presidential Bill carries with it the right to vote for Presidential electors and for no other office.

There is nothing in the terms of any Presidential bill to prevent the granting of full suffrage later; on the contrary it is a help in working for the full suffrage. Both Illinois and North Dakota are working for full voting privilege of their States at the present time.

In conclusion-

The Minnesota Presidential Bill was planned and work for it well under way before the Bill for a constitutional suffrage amendment was laid before the Legislature. The women who presented the bill for a constitutional amendment did so independently and against the judgment of the majority as represented by the Minnesota Woman Suffrage Association and the votes of the delegates at the State Convention. However, should the Constitutional Amendment be passed by the present Legislature, the Minnesota Woman Suffrage Association will stand back of it and we shall do all in our power to facilitate the passage of the amendment in spite of the fact that the State Association does not consider the measure expedient at this time.

STATE OF MINNESOTA.

FORTY-FIRST }
SESSION }

H. F.

No. 222

Introduced by Mr. Christianson, T.

January 23, 1919.

Referred to Committee on Elections.

Reported back February 11, 1919.

Matter in italics is new; matter in capitals when in () is old law to be omitted.

A BILL

For an Act Extending to Women the Right to Vote for Candidates for Presidential Elector.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Every woman who has attained the age of twenty-one years and who possesses all other
2 qualifications requisite to a male voter, shall be entitled to vote the same as men, at any election held for
3 the purpose of electing presidential electors.

SEC. 2. This act shall take effect and be in force from and after its passage.

Feb. 19, 19

A BILL

FOR AN ACT EXTENDING TO WOMEN THE RIGHT TO VOTE FOR CANDIDATES FOR
PRESIDENTIAL ELECTOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

SECTION 1. Every woman who has attained the age of twenty-one years and who possesses all other qualifications requisite to a male voter, shall be entitled to vote the same as men, at any election held for the purpose of electing presidential electors.

SECTION 2. This act shall take effect and be in force from and after its passage.

MEMORANDUM

The method of appointing presidential electors is determined, not by the state constitution, but by the United States constitution, which provides as follows:

"EACH STATE SHALL APPOINT IN SUCH MANNER AS THE LEGISLATURE THEREOF MAY DIRECT, a number of electors equal to the whole number of senators and representatives to which the state may be entitled by the Congress." (Article I, Sec. 2, U.S. Constitution)

There are many precedents in which state legislatures have acted independently of their state constitutions in choosing presidential electors. In the early history of the United States, there were several instances in which the state legislatures, themselves, chose the presidential electors. This method was regularly followed in South Carolina up to and including the year 1860.

On several occasions State Legislatures have passed regulations for the presidential election enabling persons to vote who, by the State Constitution, would have been debarred from voting; and the right of the State Legislatures to do this has always been upheld by the courts. Thus:

THE MAINE LEGISLATURE, on March 24, 1864, passed an act to enable soldiers who were absent in the field to vote for presidential electors, and the next day it submitted an amendment to the State Constitution to enable soldiers absent in the field to vote for State Officers. The latter required a constitutional amendment, the former did not.

NEW HAMPSHIRE (see Public Laws of 1864) passed a Soldiers' Voting Act for presidential electors, the legality of which was unanimously upheld by the State Supreme Court (45 N.H. p. 607), although the act was in conflict with the State Constitution. The Supreme Court held that the question as to how the presidential electors should be chosen "is governed wholly by the Constitution of the United States as the paramount law, and the Constitution of this State has no concern with the question."

THE VERMONT SUPREME COURT gave an opinion to the same effect (37 Vermont Appendix)

THE NATIONAL HOUSE OF REPRESENTATIVES, also upheld the constitutionality of the Michigan Soldiers' Voting Act (Feb. 14, 1866). The report of the case appears in 2 Bartlett's Contested Election Cases, at page 46.

MICHIGAN: Elaborate consideration of the subject of the manner of appointing presidential electors was given by the Supreme Court of Michigan and the Supreme Court of the United States in litigation brought to test the constitutionality of a statute of Michigan passed in 1891 dividing the State into districts for the election of

presidential electors. The Supreme Court of Michigan held that the act was valid. The decision in this case, which was entitled McPherson v. Blacker, is reported in 92 Mich. 377; 52 N.W. 469; 16 L.R.A. 475; 31 Am. St. Rep. 587. The decision of the Supreme Court of Michigan was reviewed on writ of error by the Supreme Court of the United States 146 U.S. 1 and was affirmed.

PRESIDENTIAL SUFFRAGE FOR WOMEN

The following states have extended the Presidential Suffrage to women by legislative act altho general suffrage was at the same time denied to them by the State Constitution:

Illinois	1913
North Dakota	1917
Michigan	1917
Nebraska	1917
Rhode Island	1917
Indiana	1919
Vermont	1919
Wisconsin	1919

[Feb 22, 1919]

Copy - C. U.

No 1

PRESIDENTIAL SUFFRAGE LEGAL

Many Precedents for the Constitutionality of the Extension of Voting Privilege to Women

Seven states have granted presidential suffrage - Illinois, North Dakota, Indiana, Nebraska, Rhode Island, Vermont and Wisconsin. As the legality of the measure has been called in question it may be well to state once more the constitutional basis for such action, and to give some of the historical precedents.

Rests On Federal Constitution

Under the Constitution of the United States, the Legislature of every State has the sole power to determine how the presidential electors from that State shall be chosen. The second clause of the first section of the second article of the U. S. Constitution says:

"Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress," etc.

Precedent in South Carolina

In the early history of the United States there were several instances in which the State Legislatures themselves appointed the presidential electors. In South Carolina this was always done, up to and including the year 1860.

On several occasions State Legislatures have passed regulations for the presidential election enabling persons to vote who were debarred from voting by the State Constitution, and the right of the State Legislatures to do this has always been upheld by the courts, because the U. S. Constitution is the supreme law of the land. Anything in any State constitution which conflicts with the Federal Constitution is legally void.

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Michigan constitution could not govern the matter, as the United States constitution gave the State Legislature absolute power over it. There are no decisions the other way.

Indiana was the first State, so far as is known, to have a presidential suffrage bill introduced in its Legislature. That was in 1873. Such bills have been introduced from time to time in several other States. Rhode Island suffragists for years have centered their efforts upon this measure. The Massachusetts Woman Suffrage Association for a long time used to ask every Legislature regularly for all that it could give - presidential and municipal suffrage by statute, and the submission of a full suffrage amendment to the State constitution. In Kansas, in 1911, a presidential suffrage bill came within two votes of passing the lower house.

Illinois was the first State to grant women presidential suffrage, in 1913. The bill gave women also municipal suffrage, and a vote for all officers not named in the constitution, as well as the right to vote on all questions submitted to the people. The constitutionality of the law has been repeatedly assailed in the courts, at the instigation of the Illinois liquor interests, but the law has always been sustained.

One of these cases challenged the constitutionality of the section of the law, enabling women to vote for presidential electors; but the Illinois Supreme Court upheld it. Some bitter anti-suffragists predicted that the vote of Illinois in the late presidential election would be thrown out because of the women; but no attempt to throw it out has even been made.

A great "boom" was given to presidential suffrage when it was adopted by so important a State as Illinois; and now in States all over the country the friends of equal rights are introducing what has come to be known as "the Illinois law".

In the last New Jersey Legislature, at the hearing on the presidential suffrage bill before the Judiciary Committee, the attorney of the anti-suffragists attacked the constitutionality of the measure. Senator Rathburn, the chairman of the Judiciary Committee, although a strong opponent of suffrage, advised him to waste no further time in discussing that point, as the members of the Judiciary Committee were all convinced that the Legislature had the constitutional right to grant presidential suffrage to women. In view of the well-known conservatism of New Jersey Judiciary Committees, this is the more significant.

Opinions

1. Presidential electors perform only duties pertaining to the government of the United States. They are provided for, not by a State law, but by a United States law, to wit, the Constitution of the United States. Therefore, in providing for the appointment of presidential electors, the Legislature of the State does not act under the authority and constitution of that State, but solely under the authority of the Constitution of the United States; and the latter instrument has placed the matter of appointing presidential electors in the hands of the State Legislature, and has given the latter full discretionary power with respect thereto.

Judge Hiram T. Gilbert,
Illinois Bar

2. In an historic case which came to the United States Supreme Court from the State of Michigan in 1891, Chief Justice Fuller delivered an opinion that was concurred in by all the other members of the Court. He said:

"The Constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It recognizes that the people act through their representatives in the Legislature, and leaves it to the Legislature exclusively to define the method of effecting the object."

3. "The people in adopting the Federal Constitution took away from the States, as such, all control over the manner of appointment of presidential electors. They provided that the electors shall be appointed in such manner as the Legislature may direct. The words, 'In such manner as the Legislature thereof may direct', have been held by the Supreme Court of the United States to be a limitation upon the power of the States. As those words are a limitation upon the power of the States, nothing in any State constitution can divest the Legislature of the power to determine at any time the manner of selecting presidential electors. In so far as provisions of a State constitution attempt to limit the right of suffrage to men in voting for presidential electors, such provisions of a State constitution are void.

"The Legislature of each State has supreme and plenary power over the manner in which electors shall be chosen. That power necessarily includes the right to prescribe the qualifications of voters when the appointment of presidential electors is ordered by the Legislature to be effected by a popular election. Any State Legislature may itself retain that right of appointment, or it may give it to all of its citizens, women as well as men, regardless of any provisions in the State constitution."

Charles LeRoy Brown,
Chicago Bar

PARTIAL SUFFRAGE LAWS IN THE COURTS

There have been many cases brought before the courts against the Illinois woman suffrage bill. None of them have been specifically against the presidential suffrage clause. Many have, however, involved the right of the Legislature to grant such suffrage as is not specifically provided for in the State Constitution, and so have some bearing on this clause. These decisions are furthermore of special interest in those states having laws of the Illinois type, where it may be feared that an attack on other clauses in the law may involve the presidential clause.

In *Scown vs. Czarnecki* (264 Ill. 305, June 1914) the Court decided that:

"Elections provided for by statute and not by constitution are wholly within the control of the Legislature."

The decision cited as precedent two decisions under the Illinois School Suffrage Law of 1891 (*People vs. English* 139 Ill. 622 & *Plummer vs. Yost* 144 Ill. 68) and concluded on this account that: "By these decisions the rule is settled that Art. VI, Sec. I of the constitution refers only to elections provided for by that instrument."

But, the decision goes on, the Woman Suffrage Law of 1913 provides not only the right of women to vote for election of statutory officers but on all questions submitted to the electors of municipalities in other subdivisions of the state. The constitution provided for a referendum upon various questions and in some respects the law of 1913 entrenched on this constitutional provision. In so far, in the statute of 1913, the Legislature exceeded its power, but this does not invalidate the statute, for: "It is a well settled rule that a statute may be in part constitutional and in part unconstitutional and that in such cases the constitutional part of the act will be given effect and the unconstitutional part disregarded."

A few of many other Illinois decisions in which the validity of the principle underlying the woman suffrage law is upheld, are:

People vs. Czarnecki 265 Ill. 489
Franklin vs. Westfall 273 Ill. 402
People vs. Peltier 265 Ill. 630
People vs. Wilitzer 272 Ill. 387
People vs. Vaughan 282 Ill. 163
Alberts vs. County of Danforth 281 Ill. 521

The lists above are chosen from almost 50 suits - most of them brought to invalidate 'dry' local option elections - against the law.

In Indiana, in October 1917, the State Supreme Court rendered a decision that those sections of a state law much like that of Illinois which covered municipal and school suffrage were unconstitutional and further held that "where valid and invalid provisions of an enactment are so connected the one with the other that it is apparent that the Legislature would not have passed the act except as a whole the entire statute must fall." With the loss of the statute as a whole went the presidential clause. There was, however, nothing in the decision itself that attacked the constitutionality of that clause and in January, 1919, a pure presidential suffrage law was introduced and passed by the Indiana Legislature.

There has been no case in any state against a presidential woman suffrage law or a presidential suffrage clause in a bill of the Illinois type. In Ohio the liquor interests did not dare to test the presidential suffrage law in the courts but instead circulated an initiative petition for a referendum in the law. The referendum vote was unfavorable and but for lack of funds the suffragists would have taken to the courts.

The legal decisions in regard to the Legislature's right to this respect belong to the days before woman suffrage and are to be found in the accompanying brief.

Copy - C. U.

No 3

"C O P Y"

Feb 22, 1917
No 1

Dear Mrs. Pinchot:

I have given careful attention to the question of the constitutionality of a proposed Act of Assembly in Pennsylvania qualifying women to vote for Presidential electors.

The Constitution of Pennsylvania provides (in Article 8 thereof) that "Every male citizen of twenty-one years of age" and possessing certain specific qualifications shall be entitled to vote at all elections.

In view of this provision, an Act of the Legislature extending the franchise to females would be unconstitutional unless it were passed in the exercise of a power conferred upon the Legislature by the Constitution of the United States.

In Article 2 of the Constitution of the United States it is provided that "Each State shall, appoint in such manner as the Legislature thereof may direct" a certain number of Presidential electors. The Constitution of the United States is the supreme law of the land. The provision just quoted, therefor, confers upon the Legislature of Pennsylvania the power to extend to women the franchise in the case of Presidential electors if the phrase "shall appoint in such manner as the Legislature thereof may direct" should properly be interpreted as applicable not only to the machinery of appointment but to the qualifications of those who are to make the choice.

I am strongly of opinion that the term manner is necessarily applicable to the qualifications of those who are to choose the electors as well as to the mere mechanics of selection. The question whether Presidential electors are to be appointed by the votes of men and women is as much a question of the manner of their appointment as is the question whether they are to be appointed by the Governor of the State, or by the Legislature, or by popular vote. /

You will, of course, understand that while the opinion I am giving in response to your inquiry is in form an opinion upon a question of law, yet in the last analysis it is one which will be answered according to the social and governmental convictions or prejudice of the mind that has the responsibility of ultimate decision. While the natural, ordinary and reasonable meaning of the word "manner" is that which I

have indicated, it is nevertheless true that one of a mind pre-disposed against the extension of suffrage to women might readily adopt a restrictive interpretation and decide that the function of the Legislature was merely to determine the mechanical method by which electors are to be chosen, leaving the qualifications of the voters (if the choice is to be by popular votes) to be settled by the provisions of the State Constitution. For the reasons given above, my opinion is that such a restrictive interpretation would do violence to that provision of the National Constitution which wisely aims to leave each State Legislature free to act in accordance with what, at the time of its action, it believes best to accord with the social consciousness of the people of the State.

Yours sincerely,

(Signed) Geo. Pepper.

Copy - @u.

No 4.

[Feb 22, 1919]

PRESIDENTIAL SUFFRAGE VERMONT

A suffrage bill granting women the right to vote for presidential electors on the taking of the freeman's oath went through the Senate January 29th and the House February 6th, 1919.

February 19th Governor Clement vetoed the bill ostensibly on the grounds that it is not constitutional.

Constitutionality of Bill

The Constitution of the United States states in Article II, Section I, the following:

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed as elector."

The foregoing section which delegates to state legislatures the absolute power of determining who the presidential electors shall be would seem to be the only authority necessary to convince a Vermont doubter of the constitutionality of the bill. If, however, there be need of further inquiry in order to be convinced, complete satisfaction on the subject may be had from a ruling of the Supreme Court in Vermont in 1864 on a similar matter.

Opinion of the Judges of the Supreme Court of Vermont

on the

Constitutionality of an Act Providing for Soldiers Voting

The General Assembly of the state of Vermont in session in Montpelier in 1863 passed "An Act providing for Soldiers Voting." The act provided that

soldiers might vote for governor, lieutenant governor, treasurer, members of Congress and presidential electors.

The 12th section of the act provides that "this act shall not take effect until the governor submits the same to the judgment of the Supreme Court with the inquiry 'Are the provisions of this act constitutional?'

The judges rendered a decision April 1, 1864 as follows:

"Article II, Section 1 of the U. S. Constitution (quoted above) provides for the choice of electors. Under this provision the appointment of electors has been variously provided for by the state legislatures. In some states the legislatures have directly chosen the electors themselves. This mode of election was followed in this state, as we recollect, down to 1824. In other states they have been chosen by general ticket throughout the whole state, and in others the legislatures have divided the state into election districts for the choice of electors. All of these various modes of elections have been regarded as fairly within the power of the legislatures. Upon the principles already alluded to there would seem to be no ground to question the power of the legislatures to authorize voting for electors as they have done by this bill. Voting for representation to congress and for electors has never been understood by our legislature as affected by the provisions of our constitution.

We there certify the opinion of the Judges of the Supreme Court that so much of the act in question as authorizes votes to be given for governor, lieutenant governor and treasurer, without the state or at any place except in a freemen's meeting, holden in some town within the state is unconstitutional; and that so much of said act as authorizes such voting for members of congress and electors is not contrary to any province of the constitution of this state or of the United States."

Governor's Veto

If the authority to decide who presidential electors shall be is delegated to the legislatures by the Constitution of the United States, the logical deduction is that the Governor has not the power to veto, any more than he has the power to veto the ratification of a federal amendment by a state legislature.

Statement of Mrs. McCulloch in telegram received Feb. 28th:

"Federal Constitution controls presidential suffrage. That gives no authority."

Statement of Mrs. McCulloch in letter of March 3rd:

"As to Governors signing bills granting only Presidential Elector Suffrage I believe that they are not needed. Article II, Section 1, U. S. Constitution, states, 'Each state shall appoint in such manner as the Legislature thereof may direct' and this gives no authority to a Governor. I have not briefed the matter to see whether the question was ever raised. In Illinois our vote for Presidential Electors was in a bill providing also a vote for various other officers and propositions. Our Governor Edward F. Dunne did sign the bill covering all these varied things. It did no harm too. Your point was never raised in Illinois. I think our attitude when a governor vetoes should be that his disapproval is a moral and social disappointment as his approval would have been 'so pleasant', but that the Legislature was the only 'appointing power' and we will go blithely to the Presidential Election anyhow."

7/25 5
" C O P Y "

Law Offices

STERRETT and ACHESON.

Oliver Building.

Pittsburg, February 22, 1919.

Mrs. J.O. Miller,
Senate Hotel,
Harrisburg.

My dear Mrs. Miller:

I see no reason why the Legislature of Pennsylvania may not validly enact a law giving women in Pennsylvania the right to vote for Presidential Electors. The matter is regulated by the Constitution of the United States, which in Article II, Section I, provided that the appointment shall be by each State, and "in such manner as the Legislature thereof may direct". Here is unlimited power conferred by the Federal Constitution in an exclusively federal matter. If, then, the Legislature in the exercise of that power sees fit to enact that the Electors shall be appointed pursuant to a vote by the people, including the women of the state, the Act, it seems to me, would be clearly within the terms of the grant.

I do not see how the State Constitution could in any wise restrict the unqualified power which the Federal Constitution has thus lodged in the State Legislature, and, therefore, it seems to me there is no further inquiry on this score. In addition to this, however, I do not see that the provisions of Article VIII, Section I, of the Constitution of Pennsylvania, would operate in that regard at any rate. What the article and section of the State Constitution does, is to secure to male citizens, possessing certain qualifications, the right to vote at all elections, which does not appear to me to be the denial of the power to the Legislature to confer the right on women. At all events, the provision does not appear to me to purport to be, even if it could be, a restriction on the power of the Legislature to give women the right in Pennsylvania to vote for Presidential Electors.

I think the above covers the main question you presented to me. The other question I really have not had time to consider, but offhand I would say that it is not clear to me that the Legislature might not

give women the vote generally in Pennsylvania. It is true the constitutional provision in Pennsylvania is limited to "every male citizen of twenty-one years of age, possessing the qualifications," etc. In terms, however, this is a provision in effect forbidding the Legislature to deprive men of the vote, but is not otherwise a restriction upon the Legislature. Of course, it is fundamental that the Legislature has all powers not denied it by the State and Federal Constitutions, and under the Fourteenth Amendment women are clothed with the capacity to become voters. However, as I say, I have not had a chance to get into this phase of the matter very far.

Very truly yours,

(Signed) M.W. ACHESON, Jr.

PRESIDENTIAL SUFFRAGE LEGAL

Many Precedents for the Constitutionality of the
Extension of voting Privilege to Women.

Seven states have granted presidential suffrage- Illinois, North Dakota, Indiana, Nebraska, Rhode Island, Vermont and Wisconsin. As the legality of the measure has been called in question, it may be well to state ~~at~~ once more the constitutional basis for such action, and to give some of the historical precedents.

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Under the Constitution of the United States, the Legislature of every State has the sole power to determine how the presidential electors from that State shall be chosen. The second clause of the first section of the second article of the U. S. Constitution says:

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Judge Hiram T. Gilbert,
Illinois Bar.

3. In an historic case which came to the United States Supreme Court from the State of Michigan in 1891, Chief Justice Fuller delivered an opinion that was concurred in by all the other members of the Court. He said:

"The Constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It recognized that the people act through their representatives in the Legislature, and leaves it to the Legislature exclusively to define the method of effecting the object."

"The people in adopting the Federal Constitution took away from the States, as such, all control over the manner of appointment of presidential electors. They provided that the electors shall be appointed in such manner as the Legislature may direct. The words, 'In such manner as the Legislature thereof may direct', have been held by the Supreme Court of the United States to be a limitation upon the power of the States. As those words are a limitation upon the power of the States, nothing in any State constitution can divest the Legislature of the power to determine at any time the manner of selecting presidential electors. In so far as provisions of a State constitution attempt to limit the right of suffrage to men in voting for presidential electors, such provisions of a State constitution are void."

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Charles LeRoy Brown,
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PARTIAL SUFFRAGE LAWS IN THE COURTS

There have been many cases brought before the courts against the Illinois woman suffrage bill. None of them have been specifically against the presidential suffrage clause. Many have, however, involved the right of the Legislature to grant such suffrage as is not specifically provided for in the State Constitution, and so have some bearing on this clause. These decisions are furthermore of special interest in those states having laws of the Illinois type, where it may be feared that an attack on other clauses in the law may involve the presidential clause.

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But, the decision goes on, the Woman Suffrage Law of 1913 provides not only the right of women to vote for election of statutory officers, but on all questions submitted to the electors of municipalities in other subdivisions of the state. The constitution provided for a referendum upon various questions and in some respects the law of 1913 entrenched on this constitutional provision. In so far, in the statute of 1913, the Legislature exceeded its power, but this does not invalidate the statute, for: "It is a well settled rule that a statute may be in part constitutional and in part unconstitutional and that in such cases the constitutional part of the act will be given effect and the unconstitutional part disregarded!"

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There has been no case in any state against a presidential woman suffrage law or a presidential suffrage clause in a bill of the Illinois type. In Ohio the liquor interests did not dare to test the presidential suffrage law in the courts but instead circulated an initiative petition for a referendum in the law. The referendum vote was unfavorable and but for lack of funds the suffragists would have taken to the courts.

The legal decisions in regard to the Legislature's right in this respect belong to the days before woman suffrage and are to be found in the accompanying brief.

"C O P Y "

Dear Mrs. Pinchot:

I have given careful attention to the question of the constitutionality of a proposed Act of Assembly in Pennsylvania qualifying women to vote for Presidential electors.

The Constitution of Pennsylvania provides (in Article 3 thereof) that "Every male citizen of twenty-one years of age" and possessing certain specific qualifications shall be entitled to vote at all elections.

In view of this provision, an Act of the Legislature extending the franchise to females would be unconstitutional unless it were passed in the exercise of a power conferred upon the Legislature by the Constitution of the United States.

In Article 2 of the Constitution of the United States it is provided that "Each State shall, appoint in such manner as the Legislature thereof may direct" a certain number of Presidential electors. The Constitution of the United States is the supreme law of the land. The provision just quoted, therefore, confers upon the Legislature of Pennsylvania the power to extend to women the franchise in the case of Presidential electors if the phrase "shall appoint in such manner as the Legislature thereof may direct" should properly be interpreted as applicable not only to the machinery of appointment, but to the qualifications of those who are to make the choice.

I am strongly of the opinion that the term manner is necessarily applicable to the qualifications of those who are to choose the electors as well as to the mere mechanics of selection. The question whether Presidential electors are to be appointed by the votes of men and women, is as much a question of the manner of their appointment as is the question whether they are to be appointed by the Governor of the State, or by the Legislature, or by the popular vote.

You will, of course, understand that while the opinion I am giving in response to your inquiry is in form an opinion upon a question of law, yet in the last analysis it is one which will be answered according to the social and governmental convictions or prejudice of the mind that has the responsibility of ultimate decision. While the natural, ordinary and reasonable meaning of the word "manner" is that which I have indicated, it is nevertheless true that one of a mind pre-disposed against the extension of suffrage to women might readily adopt a restrictive interpretation and decide that the function of the Legislature was merely to determine the mechanical method by which electors are to be chosen, leaving the qualifications of the voters (if the choice is to be by popular votes) to be settled by the provisions of the State Constitution. For the reasons given above, my opinion is that such a restrictive interpretation would do violence to that provision of the National Constitution which wisely aims to leave each State Legislature free to act in accordance with what, at the time of its action, it believes best to accord with the social consciousness of the people of the State.

Yours sincerely,

(Signed) Geo. Pepper.

PRESIDENTIAL SUFFRAGE VERMONT

A suffrage bill granting women the right to vote for presidential electors on the taking of the freeman's oath went through the Senate January 29th and the House February 6th, 1919.

February 19th Governor Clement vetoed the bill ostensibly on the grounds that it is not constitutional.

Constitutionality of bill

The Constitution of the United States in Article II, Section I, the following:

"Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed as elector."

The foregoing section which delegates to state legislatures the absolute power of determining who the presidential electors shall be would seem to be the only authority necessary to convince a Vermont doubter of the constitutionality of the bill. If, however, there be need of further inquiry in order to be convinced, complete satisfaction on the subject may be had from a ruling of the Supreme Court in Vermont in 1864 on a similar matter.

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Constitutionality of an Act Providing for Soldiers Voting

The General Assembly of the State of Vermont in session in Montpelier in 1863 passed "An Act providing for Soldiers Voting." The act provided that soldiers might vote for Governor, lieutenant governor, treasurer, members of Congress and presidential electors.

The 12th section of the act provides that "this act shall not take effect until the governor submits the same to the judgment of the Supreme Court with the inquiry 'Are the provisions of this act constitutional?'"

The judges rendered a decision April 1, 1864 as follows:

"Article II, Section of the U. S. Constitution (quoted above) provides for the choice of electors. Under this provision the appointment of electors has been variously provided for by the state legislatures. In some states the legislatures have directly chosen the electors themselves. This mode of election was followed in this state, as we recollect, down to 1834. In other states they have been chosen by general ticket throughout the whole state, and in others the legislatures have divided the state into election districts for the choice of electors. All of these various modes of

elections have been regarded as fairly within the power of the legislatures..... Upon the principles already alluded to there would seem to be no ground to question the power of the legislatures to authorize voting for electors as they have done by this bill. Voting for representation to congress and for electors has never been understood by our legislature as affected by the provisions of our constitution.

We there certify the opinion of the Judges of the Supreme Court that so much of the act in question as authorizes votes to be given for governor, lieutenant governor and treasurer, without the state or at any place except in a freemen's meeting, holden in some town within the state is unconstitutional; and that so much of said act as authorizes such voting for members of congress and electors is not contrary to any provision of the constitution of this state or of the United States."

Governor's Veto

If the authority to decide who presidential electors shall be is delegated to the legislatures by the Constitution of the United States, the logical deduction is that the Governor has not the power to veto, any more than he has the power to veto the ratification of a federal amendment by a state legislature,

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"Federal Constitution controls presidential suffrage. That gives no authority."

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"As to Governors signing bills granting only Presidential Elector Suffrage, I believe that they are not needed. Article II, Section I, U. S. Constitution states, 'Each state shall appoint in such manner as the Legislature thereof may direct' and this gives no authority to a Governor. I have not briefed the matter to see whether the question was ever raised. In Illinois our vote for Presidential Electors was in a bill providing also a vote for various other officers and propositions. Our Governor, Edward F. Dunne did sign the bill covering all these varied things. It did no harm too. Your point was never raised in Illinois. I think our attitude when a governor vetoes should be that his disapproval is a moral and social disappointment as his approval would have been "so pleasant", but that the Legislature was the only "appointing power" and we will go blithely to the Presidential Election anyhow."

No. 5

"C O P Y"

Law Offices

STERRETT and ACHESON

Oliver Bldg.

Pittsburg, February 22, 1918.

Mrs. J. O. Miller,
Senate Hotel,
Harrisburg.

My dear Mrs. Miller:

I see no reason why the Legislature of Pennsylvania may not validly enact a law giving women in Pennsylvania the right to vote for Presidential Electors. The matter is regulated by the Constitution of the United States, which in Article II, Section I, provided that the appointment shall be by each State, and "in such manner as the Legislature thereof may direct." Here is unlimited power conferred by the Federal Constitution in an exclusively federal matter. If, then, the Legislature in the exercise of that power sees fit to enact that the Electors shall be appointed pursuant to a vote by the people, including the women of the State, the Act, it seems to me, would be clearly within the terms of the grant.

I do not see how the State Constitution could in any wise restrict the unqualified power which the Federal Constitution has thus lodged in the State Legislature, and, therefore, it seems to me there is no further inquiry on this score. In addition to this, however, I do not see that the provisions of Article VIII, Section I, of the Constitution of Pennsylvania, would operate in that regard at any rate. What the article and section of the State Constitution does, is to secure to male citizens, possessing certain qualifications, the right to vote at all elections, which does not appear to me to be the denial of the power to the Legislature to confer the right on women. At all events, the provision does not appear to me to purport to be, even if it could be, a restriction on the power of the Legislature to give women the right in Pennsylvania to vote for Presidential Electors.

I think the above covers the main question you presented to me. The other question I really have not had time to consider, but off hand, I would say that it is not clear to me that the Legislature might not give women the vote generally in Pennsylvania. It is true the Constitutional provision in Pennsylvania is limited to "every male citizen of twenty-one years of age, possessing the qualifications," etc. In terms, however, this is a provision in effect forbidding the Legislature to deprive men of the vote, but is not otherwise a restriction upon the Legislature. Of course, it is fundamental that the Legislature has all powers not denied it by the State and Federal Constitutions, and under the Fourteenth Amendment women are clothed with the capacity to become voters. However, as I say, I have not had a chance to get into this phase of the matter very far.

Very truly yours,

(Signed) M. W. ACHESON, Jr.

PARTIAL SUFFRAGE LAWS IN THE COURTS

There have been many cases brought before the courts against the Illinois woman suffrage bill. None of them have been specifically against the presidential suffrage clause. Many have, however, involved the right of the Legislature to grant such suffrage as is not specifically provided for in the State Constitution, and so have some bearing on this clause. These decisions are furthermore of special interest in those states having laws of the Illinois type, where it may be feared that an attack on other clauses in the law may involve the presidential clause.

In *Scown vs. Szarnecki* (264 Ill. 305, June 1914) the Court decided that:

"Elections provided for by statute and not by constitution wholly within the control of the legislature."

The decision cited as precedent two decisions under the Illinois School Suffrage Law of 1891 (*People vs. English* 139 Ill. 622 & *Plummer vs. Yost* 144 Ill. 68) and concluded on this account that: "By these decisions the rule is settled that Art. VI, Sec. I of the constitution refers only to elections provided for by that instrument."

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Dear Mrs. Pinchot:

I have given careful attention to the question of the constitutionality of a proposed Act of Assembly in Pennsylvania qualifying women to vote for Presidential electors.

The Constitution of Pennsylvania provides (in Article 8 thereof) that "Every male citizen of twenty-one years of age" and possessing certain specific qualifications shall be entitled to vote at all elections.

In view of this provision, an Act of the Legislature extending the franchise to females would be unconstitutional unless it were passed in the exercise of a power conferred upon the Legislatures by the Constitution of the United States.

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Very truly yours,

(Signed) M. W. ACHESON, Jr.

Minneapolis, Minn., March 10, 1919.

Dear Senator:-

Because of the serious confusion which might follow in our next presidential election, should the pending Woman Suffrage Bill for Statutory Franchise be enacted, may I urge your Inspection of the authorities cited in the accompanying open letter to Senator Sageng.

I might add, perhaps, that the Illinois case was carefully reviewed by the Indiana Supreme Court, in the later case, and the soundness of the leading opinion in the Illinois case was so criticized that the Indiana Supreme Court refused to follow it.

Yours sincerely,

(Signed) J.B. Gilfillan

Law Offices Of
John B. Gilfillan,
812 New York Life Bldg.,
N.W. Main 1200.

OPEN LETTER

Hon. Ole A. Sageng,
Chairman of Senate Committee on Elections,
State Capitol,
St. Paul, Minnesota.

Dear Sir:-

By request and in view of the pendency in the Legislature of one or more bills relating to suffrage, may I, in the spirit of helpfulness, call your attention to the following provisions and authorities, that may possibly be of some aid to you, in the discharge of your responsible duties.

By Article VII of the State Constitution, as originally adopted, the right to vote at any election, was limited to male persons.

In 1875 an amendment was proposed by the Legislature, and adopted by the people, granting to women the privilege of voting for school officers.

In 1898, this provision was again amended in the same way, to read as follows:

"Section 8. Women may vote for school officers and members of library boards, and shall be eligible to hold any office pertaining to the management of schools or libraries.

"Any woman of the age of Twenty-one (21) years and upwards and possessing qualifications requisite to a male voter may vote at any election held for the purpose of choosing any officer of schools or any members of library boards, or upon any measure relating to schools or libraries, and shall be eligible to hold any office pertaining to the management of schools and libraries."

It would seem to me therefore that by every rule of construction, these provisions were intended as a restriction, and to have the effect of a constitutional declaration that women may vote only for the purposes specified and for none other.

But it is claimed by some that choosing of Presidential electors is not voting for a candidate for office, within the meaning of our constitution, - but such construction seems misleading.

The Constitution of the United States, Art II, provides that, - "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors" of President, etc.

Now, the legislature of our State, in accordance with the general custom of the states, has provided, that the Presidential electors shall be appointed or chosen by the voters, at a general election, and such is the purport of the pending bills. The question whether the Legislature might itself appoint the electors or provide some other way, is not the issue, but having provided for their appointment or choosing at a general election, by the voters, we must resort to our own constitution, to ascertain who are entitled to vote at elections, and that seems to me to settle the question. In this way full force can be given to the provisions of both the National and State constitutions, and this should always be done when not in conflict.

In support of these views allow me to call your attention to the following:

Board of Election Com'rs of City of Indianapolis, et al, vs. Knight, 117 N.E. 565, October, 1917, and cases cited.

As against these authorities some are inclined to cite, Scown vs. Czarniecki, 264 Ills. 305, Decided October 1914.

In reference to this case, allow us to suggest,

FIRST - By reason of different conditions or provisions existing here, the case has no application in this state.

SECOND - It was a decision in a court of seven Judges, three of whom filed elaborate and exhaustive dissenting opinions. The case turned then, really upon the opinion of one Judge, and we challenge a careful scrutiny of all the opinions, confident that infinitely the best law will be found in the dissenting opinions.

THIRD - The majority opinion is based upon the unwholesome doctrine of 'stare decisis' - let the decision stand - even if erroneous, based partly on legislative construction, and partly on early decisions, rather than declare the better doctrine based upon sound principles of law and rules of construction.

Whatever force may be given to legislative construction of our constitution must be held as against the pending bills. Our Legislature, as above shown, has, first in 1875, construed our constitution as giving no right as originally adopted, for women to vote for anything, and amended it; and again in 1898 as giving no right as it then existed to vote for anything except school officers and members of library boards. It has been, therefore, twice amended by the people, as shown, and there it must stand, with the right of women to vote as so limited, until the people see fit to further amend it. The Legislature alone, is powerless to extend the right to vote beyond the provisions of the Constitution, as amended, as it seems to me.

Respectfully submitted for your consideration,

Sincerely yours,

John B. Gilfillan

1919

To Members of the Minnesota State Senate:

An open letter relating to certain papers circulated in the Senate PURPORTING to be resolutions of "The Minnesota Federation of Women's Clubs", favoring S.F.355, relating to women voting for Presidential Electors.

OPEN LETTER

To members of the Minnesota State Senate.

March 11th, 1919.

Dear Senator:

Our attention has been called to a set of resolutions endorsing Statutory Franchise, that purported to have been passed unanimously by the Minnesota Federation of Women's Clubs on Feb. 22, this year.

Upon investigation, it appears that the resolutions were introduced before an assemblage that had no power to pass them, but only to recommend their passage at a later meeting. This fact is substantiated by the following telegram signed by Mrs. George J. Allen, President of the Minnesota Federation of Women's Clubs:

"Rochester, Minn., Mar. 10, 1919.

"Mrs. J. B. Gilfillan,
Minneapolis, Minn.

"Understand you are questioning resolutions proposed at recent Federation meeting. According to our rules these can only be recommendations to be acted upon at annual District meetings in Spring and annual State meeting in Fall. Several resolutions, including one on Suffrage, were unanimously recommended, also endorsed by Executive Board. Misunderstanding on part of Suffragets; rules not explained to them."

(Signed) Mrs. Geo. J. Allen,
Pres., Minnesota Federation
Women's Clubs."

It further appears that those voting were uninstructed delegates, and that the vote was taken after about fifty per cent of their members had left.

The resolutions were not forwarded as an official expression of opinion of the delegates as a body, but at the instigation of some individual delegates.

The fact that Clubs do not always record the opinion of their memberships, but of their Executive Boards, should be emphasized. The Woman's Club of Minneapolis is a case in point. The question of endorsing Woman Suffrage was presented to the Executive Board recently. A list of 130 members who opposed such

a course was immediately forthcoming. The Executive Board, therefore, agreed to decide the question of keeping the Club neutral in the matter, by taking a straw vote of the membership. A very large response showed that the Club was about equally divided in its opinion, and that it would be impossible to carry a vote favoring the Club's endorsement of Suffrage. The matter was dropped.

It was a significant fact that many Suffragists, and many who had not declared their positions, voted with the Anti-Suffragists, to exclude politics from the Club.

We have presented this explanation because we deprecate inferences based on insufficient premises. It is a moot question how many really desire the ballot.

The Suffragists who prepared these resolutions evidently are not confident enough about it to risk submitting Suffrage to a State-wide vote, and yet is it conceivable that a Suffrage Amendment would be defeated unless a majority of the women concerned were either indifferent or opposed?

If they are indifferent or opposed, then Legislative Franchise is unfair to the majority. If they are not, why resort to such a partial solution as legislative franchise, when a Suffrage Amendment would settle the question conclusively?

Yours very truly,

Mrs. J. B. Gilfillan	Minneapolis
Mrs. Edmund Pennington	"
Mrs. Alfred F. Pillsbury	"
Mrs. Elbert L. Carpenter	"

Mrs. E. C. Lindley	St. Paul
Mrs. Wm. Davis	"

March 14, 19

MINNESOTA WOMAN SUFFRAGE ASSOCIATION

Eight states, including Michigan, which later gave full suffrage have granted Presidential Suffrage; Illinois, Indiana, North Dakota, Nebraska, Rhode Island, Vermont, Michigan and Wisconsin. Power to grant such a bill comes to the Legislature from the United States constitution and cannot be limited by the State Constitution.

There has been no case in any state against a Presidential Woman Suffrage law or a Presidential Suffrage clause in a bill of the Illinois type.

In Illinois itself a case against the entire Illinois law challenged also the constitutionality of the section of the law enabling women to vote for Presidential election; BUT THE ILLINOIS SUPREME COURT UPHELD THE LAW.

In Indiana the Indiana Supreme Court rendered a decision against a suffrage law much like the Illinois law, which included a Presidential clause; BUT SO APPARENT WAS IT THAT THE DECISION WAS NOT AGAINST THIS PRESIDENTIAL CLAUSE THAT IN JANUARY 1919 THE INDIANA LEGISLATURE PASSED A PURE PRESIDENTIAL SUFFRAGE LAW.

In New Jersey, Senator Rathburn, the chairman of the Judiciary Committee, although a strong opponent of suffrage advised the Anti Suffragists to waste no time in discussing the question of the constitutionality of the Presidential Suffrage bill as the members of the Judiciary committee were all convinced that the Legislature had the constitutional right to grant Presidential Suffrage to women.

In Wisconsin where the legislature passed a Presidential Suffrage bill in February, the Governor, though personally opposed to woman suffrage, used these words in signing the bill:

"The question therefore, for determination is; Can the legislature lawfully provide that persons who are not qualified electors of the state may participate in choosing presidential electors without submitting the same to a vote of the people at a general election?"

I have submitted this bill to competent counsel and an opinion has been rendered to me sustaining the affirmative of the proposition, and upon this opinion I have based my action in giving this bill my approval."

OPINIONS

M.W. Acheson, Junior, Constitutional Lawyer of Sterrett and Acheson, Pittsburg:

"I see no reason why the Legislature of Pennsylvania may not validly enact a law giving women in Pennsylvania the right to vote for Presidential Electors. The matter is regulated by the constitution of the United States---If then the Legislature in the exercise of that power sees fit to enact that the electors shall be appointed pursuant to a vote by the people, including the women of the state, the act, it seems to me, would be clearly within the terms of the grant.

I do not see how the State Constitution could in any wise restrict the unqualified power which the Federal Constitution has thus lodged in the State Legislature, and therefore, it seems to me there is no further inquiry on this score."

George Pepper, Constitutional Lawyer, Pennsylvania:

"An act of the Legislature extending the franchise to females would be unconstitutional unless it were passed in the exercise of a power conferred upon the Legislature by the Constitution of the United States.

In Article 2 of the Constitution of the United States it is provided that "Each State shall, appoint in such manner as the Legislature thereof may direct" a certain number of Presidential electors. The Constitution of the United States is the supreme law of the land. The provision just quoted, therefore, confers upon the Legislature of Pennsylvania the power to extend to women the franchise in the case of Presidential electors if the phrase "shall appoint in such manner as the Legislature thereof may direct" should properly be interpreted as applicable not only to the machinery of appointment but to the qualifications of those who are to make the choice.

I am strongly of opinion that the term manner is necessarily applicable to the qualifications of those who are to choose the electors as well as to the mere mechanics of selection. The question whether Presidential electors are to be appointed by the votes of men and women is as much a question of the manner of their appointment as is the question whether they are to be appointed by the Governor of the State, or by the Legislature, or by popular vote."

Judge Hiram T. Gilbert, Illinois Bar:

"Presidential electors perform only duties pertaining to the government of the United States. They are provided for, not by a State law, but by a United States law, to wit, the Constitution of the United States. Therefore, in providing for the appointment of presidential electors, the Legislature of the State does not act under the authority and Constitution of that State, but solely under the authority of the Constitution of the United States; and the latter instrument has placed the matter of appointing presidential electors in the hands of the State Legislature, and has given the latter full discretionary power with respect thereto."

Charles LeRoy Brown, Chicago:

"The Legislature of each State has supreme and plenary power over the manner in which electors shall be chosen. That power necessarily includes the right to prescribe the qualifications of voters when the appointment of presidential electors is ordered by the Legislature to be effected by a popular election. Any State Legislature may itself retain that right of appointment, or it may give to all of its citizens, women as well as men, regardless of any provisions in the State Constitution."

COPY

LANCASTER & SIMPSON
First National-Soo Line Bldg.
Minneapolis

William A. Lancaster
David F. Simpson
James E. Dorsey
Harold G. Simpson

March 17th, 1919.

Mrs. Andreas Ueland,

Minneapolis, Minn.

Dear Madam:

You ask our opinion upon the question: Would a law enacted by the Minnesota Legislature giving women the right to vote for Presidential Electors be valid?

We are of the opinion that such a law if passed will be valid.

A reading of Section 1 of Article 2 of the Constitution of the United States--having in mind that in matters therein dealt with the Federal Constitution is the supreme authority of the land--clearly answers the question. This Article provides:

"Each State shall appoint, in such manner as the Legislature thereof may direct," a prescribed number of Presidential Electors.

By unmistakable terms the Federal Constitution has vested the State Legislature with the power to determine the manner of appointing Electors. This is a Federal matter. The power to act in it is necessarily controlled by the Federal authority. Though the State Legislature exists under authority of the State Constitution, in the matter of directing the manner of appointing Federal Electors it acts under the authority of the Federal Constitution. The authority thus granted by the Federal Constitution cannot be enlarged, nor can it be impaired by any State Convention.

It follows that if there were a conflict between the State and Federal Constitutions as to the power of the Legislature to direct the manner of appointing Electors, the Federal Constitution would prevail. But there is no such conflict. When the State Constitution provides the qualifications for the exercise of the elective franchise in the State, it refers only to the exercise of elective franchise in matters within the State control, and the State provision cannot be construed to apply to the appointment of Presidential Electors, the manner of the appointment of which is determined solely by the Federal power. From the beginning of the Federal Government, Presidential Electors were chosen in different States in different ways, as the respective Legislatures directed. In some the Legislature by direct action appointed the Presidential Electors; in some they were chosen by State wide popular vote; in some by districts; and in one State, for a time, the Legislature designated by name Electors to choose Presidential Electors by Districts. The provision in the Minnesota Constitution, that no person not belonging to one of the special classes shall be entitled or permitted to vote at any election in this State, could not fairly be construed to apply to the appointment by popular ballot of Presidential Electors, but in any event, as we have already stated, the provision of the Federal Constitution must control.

Decisions, both State and Federal, and authors of recognized authority seem to sustain without conflict the opinion above expressed. Cases dealing with the validity of laws giving women a vote for municipal or other State officers clearly have no application to the point here in-

volved, that is, the right of the Legislature to determine the manner of appointing Presidential Electors. Such a case is Board of Election Commissioners of City of Indianapolis, et al. vs. Knight, 117 N.E. 565. In an opinion by Mr. Charles LeRoy Brown, of the Chicago Bar, there is a very full discussion of authorities bearing on this question. That opinion is in print. It is, therefore, unnecessary to refer again to cases referred to by Mr. Brown.

The point raised against the validity of an Act of the Legislature giving women the right to vote for Presidential Electors is, on principle, exactly the same as the point raised in behalf of the so-called Wets that the Federal Dry Amendment has not been legally adopted, because, in certain States in which the Legislatures have ratified the Amendment, there is a provision for a referendum vote. Both these claims are alike answered by the proposition that the Federal Constitution determines the manner in which a State Legislature shall act in the exercise of a Federal power and not the State requirements in state matters.

We think there is no reasonable doubt as to the validity of the law if the Legislature passes it, giving women the right to vote for Presidential Electors.

Respectfully submitted,

(Signed) Lancaster & Simpson

W.S. Laws - Pres. Suff

COPY

Law Offices
S. R. Child and Sherman Child
816 Lumber Exchange
Minneapolis, Minn.

March 18th, 1919

MRS. ANDREAS UELAND, President,
Minnesota Women's Suffrage Association.

My Dear Mrs. Ueland:

In response to your request for my opinion as to the constitutionality of the bill before the Minnesota legislature, giving women the right to vote the same as men, for presidential electors, I can only refer to the United States constitution, which is the sole and exclusive authority on the subject. It provides, (Art. 2, Sec. 1), - "Each state shall appoint in such manner as the legislature thereof may direct, a number of electors" etc. The legislature has heretofore "directed" that electors be "appointed" by men voters, and now by this bill "directs" that they be "appointed" by men and women voters.

The federal constitution is complied with, and that is all there is to the question. There is no chance to argue over the state constitution, as it cannot enter into the consideration. The only question is, does the bill follow the direction of the federal constitution. The legislature is made the sole judge of how the electors shall be "appointed". It may direct that the electors be appointed by itself, by the governor, by the people of the state, by the bankers, by the farmers, by men and women voters, or by any other method. No state constitution or any other act of the people of the state can add to or

subtract from the right of the legislature to designate how the electors shall be appointed.

Not by way of argument, for no argument seems necessary, but by way of illustration, I call your attention to similar relations of federal and state constitutional and statutory provisions:

Our state constitution provides (Art.4, Sec.25), "Senators of the United States from this state, shall be elected by the two houses of the legislature" etc., while the seventeenth amendment of the Federal Constitution provides that the two senators from each state shall be elected by the people.

Again, the United States constitution provides that "The Congress may determine the time of choosing the electors", while our state constitution provides that the general elections "shall be held on the first Tuesday after the first Monday in November." Would any one contend that if Congress should designate the time of choosing electors in some other month, that the state constitution need be considered?

All arguments against the constitutionality of this bill, fail to recognize the supremacy of the federal constitution.

Respectfully submitted,

(Signed) S. R. Child

March 19, 1919.

Mrs. Andreas Ueland,
President, Women's Suffrage
Association.

In answer to your request for my opinion as to the constitutionality of a proposed act of the State Legislature, giving women in this State the right to vote for presidential electors, I will state as briefly as possible, after looking over the matter carefully, that the said Legislature of the State of Minnesota has the undoubted right under the Constitution of the United States to pass a law giving women the right to vote for presidential electors. I am surprised that anybody would question it.

The Constitution of the United States governs. The United States Constitution is very clear on that subject and provides as follows:

"Each State shall appoint in such manner, as the legislature may direct a number of electors equal to the whole number of senators and representatives to which the State may be entitled in Congress."

It would be very hard to word that provision of the Constitution, so as to give the Legislature more full authority over the matter than the Constitution already does. The Constitution of the United States is the paramount law and absolutely governs and controls the whole matter of how the State shall appoint its electors that are to vote for President. If there was any provision in our State Constitution that conflicts on this matter with the United States Constitution, it would be void. The Supreme Court of the United States, in a case in which the State of Michigan was interested in 1891 delivered an opinion by Chief Justice Fuller, all the other members of the Court concurred, in which he said: "The Constitution does not provide that the appointment of electors shall be by popular vote nor that the majority of those who exercise the elective franchise can alone choose the electors, it realizes that the people act through the representatives, in the Legislature and leaves to the Legislature exclusively to define the method of effecting the object."

The fact that eight States have passed the so-called Presidential bill by their Legislature giving women the right to vote for Presidential electors is very strong evidence that the legal Department of those States did not regard it unconstitutional, nor has such action been interfered with by the Courts in any case. Those states are: Illinois in 1913; North Dakota in 1917; Michigan in 1917; Nebraska in 1917; Rhode Island in 1917; Indiana in 1919; Vermont in 1919; Wisconsin in 1919; The Constitution of the United States grants a general power of attorney to the State Legislatures.

Respectfully yours,

J. W. Lusk.

Minneapolis, Minnesota,
March 21, 1919.

Mrs. J. B. Gilfillan,
Minneapolis, Minn.

Dear Madam:-

Referring to the Bill now before the Minnesota Legislature extending to women the right to vote for candidates for presidential elector, and your request for my opinion as to the constitutionality of that measure, I submit the following as my conclusions after careful examination of the questions involved:

Without an amendment to the State Constitution the Minnesota Legislature has no power to extend to women the right to vote for candidates for presidential electors. Without detailed argument or discussion of all the authorities bearing upon the question, I will submit the following outline of the grounds for the conclusion thus reached.

The elective franchise is clearly defined and limited by Article 7 of the State Constitution, which provides as follows:

"Section 1. Persons entitled to vote - Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who has resided in this State six months next preceding any election, shall be entitled to vote at such election in the election district of which he shall at the time have been for thirty days a resident, for all officers that now are, or hereafter may be, elective by the people." * * "

"Section 2. Persons not entitled to vote - No person not belonging to one of the classes specified in the preceding section * * shall be entitled or permitted to vote at any election in this State."

This limitation of the elective franchise is doubly specific. It is both inclusive and exclusive. Moreover, it applies to any officer elective by the people, either at the time the constitution was adopted or thereafter, - and this, too, whether such officer be made elective by constitutional provision or by legislative enactment. In no State Constitution in the Union has the elective franchise been more definitely defined and limited to males than in the Minnesota Constitution.

Not confined to Elections
Specified in the Constitution

It is claimed that the limitation is confined to offices expressly provided for in the Constitution and that the legislature may extend the franchise to women as to such offices as shall be created by the legislature or made by the legislature elective by the people. Such claim was obviously anticipated by the framers of the Constitution and made forever groundless by the express provision that the limitation should apply to all officers "hereafter elective by the people", and by the further exclusive provision in Section 2 that none but the male voters specified should ever "be entitled or permitted to vote at any election in this State."

The leading adjudicated case which is cited to the contrary is that of *Scown vs. Gzarnecki*, decided in October, 1914, 264 Ill., page 305; but this case is not only not authority for the proposition to which it is cited, but is under the circumstances an authority against that proposition as attempted to be applied now in Minnesota. The *Scown* case upheld the right of the Illinois Legislature to allow women to vote for certain county and municipal officers, and also presidential electors. This was on the ground that these were officers the election of which was not expressly provided for by the Constitution, but were provided for only by statute and that therefore the constitutional limitations of the elective franchise did not apply. It was held that the Constitution had only provided generally for county, town and city organizations by the Legislature and that offices created by the Legislature under this power of organization could be made elective by the people, and that as to such elections the constitutional restrictions on the franchise did not apply.

But the Illinois Constitution did not contain the franchise restrictions expressed in the Minnesota Constitution. It did not indicate directly in any way that the restriction of the franchise to males was intended to apply to any office thereafter created or thereafter made elective by the people. It provided only that male

residents of the State might vote at "any election therein" (see Section 1, Article 7, Illinois Constitution). The constitutional provision, as so worded, was not expressly exclusive of females, particularly as to offices thereafter created by the legislature and the election of which was not expressly provided in the State Constitution. It was, however, expressly held in that case that "if the Constitution had prescribed the qualifications of electors, such qualifications cannot be changed by the Legislature". In other words, if the language of the Illinois Constitution had been the same as the Minnesota Constitution, the Illinois decision would have been the reverse of what it is.

But this Illinois decision was by a divided court, three out of the seven judges dissenting. Indeed, the majority opinion contains a substantial admission that the decision is wrong in principle and against the views of the court. Years before a similar holding had been made with regard to the enfranchising of women by the legislature as to certain offices created by the legislature and this limited female franchise had become, by precedent, one of the institutions of the State. Therefore, although wrong in principle, the majority of the court in 1914 followed these early decisions on the principle solely of "stare decisis" and the majority opinion said that by the previous decision on this question certain constitutional rights had been established "under which the highest political rights had been held and exercised without question for many years" and that it was not now consistent with the principle of stare decisis to overturn the decisions of the former judges of that court "even if the successors who sit in their seats should hold different views" (264 Ill. p. 330).

The dissenting opinions, concurred in by three judges, hold that even under the Illinois Constitution the legislature has not the power, without constitutional amendment, to extend the elective franchise to women for any of the offices specified in the statute under consideration, and hold that the words in the Illinois Con-

stitution, "any election therein" refer not only to then existing offices, but to all offices which at any time now or hereafter are elected. The only difference between the majority opinion and the minority opinion was as to the construction to be placed upon these words "any election therein". There was no disagreement that if the construction of these words was as contended by the minority opinion then the State Legislature had no power to extend the franchise to women, but it already appears that there is no doubt left open by the provisions of the Minnesota Constitution, which expressly and fully provide, inclusively and exclusively and as to the present and as to the future, the class of elections to which the male suffrage is limited.

Therefore, it is apparent that the Illinois decision cited to support the legislative power of extending the franchise to women without a constitutional amendment is, when applied in Minnesota, an authority squarely against that contention.

The Minnesota Constitution has been construed
as Prohibiting Extension of Elective Franchise
By the Legislature.

The question came up in 1875 as to the necessity of a constitutional amendment in order to allow women to vote for school officers, and again in 1898 with reference to members of library boards. Now, there is no direct constitutional provision for the election of school officers nor for the election of members of library boards. Nothing is said about library boards and the only thing that is said about school officers is that Section 1 of Article VIII makes it the duty of the Legislature "to establish a general and uniform system of public schools". School officers and members of library boards are in Minnesota officers under the State Constitution, in a much less degree than were the county, municipal and other officers included in the Illinois Legislative Statute which was considered in the Scown case already discussed. Nevertheless, in order to extend the elective franchise to women

with reference to officers of schools and of library boards, it was, first in 1875, and again in 1898, deemed by the Legislature and the people of Minnesota, necessary to make an express constitutional amendment for that purpose. These were official constructions of the provisions of the Minnesota Constitution as to the limitation to males of the elective franchise. Therefore, if there is anything in the force of precedent, which alone was the ground of the decision by the Illinois Court in the Scown case, the history of these amendments of 1875 and 1898 are precedents which not only confirm the view of the constitutional provisions as here expressed, but have established the conclusion which I present as the settled constitutional law of this State.

Again, the very presence of these constitutional amendments of 1875 and 1898 in the Constitution (Section 8, Article 7, Minnesota Constitution), constitutes a solemn expression by the Legislature and the people of Minnesota of the only exceptions, in favor of female suffrage which they have thus far been willing to make to the original constitutional limitation to males, and also that these exceptions so formally made, exclude the possibility of all other exceptions, unless made in a similar way, - that is by constitutional amendment. Under the well-known principle of law the inclusion of these exceptions has the effect to exclude all other exceptions, unless adopted and expressed as part of the Constitution.

Not only have the Legislature and people of Minnesota construed the Constitution as against the present attempt to extend the franchise by legislative enactment alone, but all authorities are against such legislative power.

The Indiana Statute in 1917 had attempted to extend the voting suffrage to women in respect of the election of certain city officers of Indianapolis, and also of school officers. The Indiana Constitution prescribed male suffrage for all elections not otherwise provided for by the State Constitution and provided that all of-

ficers whose appointments are not otherwise provided for in the State Constitution should be chosen "as prescribed by law". It was held that female suffrage could not be extended by the Legislature, without constitutional amendment, to elective offices created by the Legislature. (Board of Election Commissioners vs. Knight, (decided Indiana Oct. 26, 1917) 117 N. E. Rep. p.565).

The provisions of the Indiana Constitution limiting the electorate to males were not as definite or specific as are the provisions of the Minnesota Constitution. The elective franchise provisions of the Minnesota Constitution were taken bodily from that of New York. In the New York Constitution it was expressly provided that the male franchise should apply to "all officers that now are or hereafter may be elective by the people", and in construing this provision the New York courts denied the right of the Legislature to extend to women the right to vote for a school commissioner. That office was one which the Legislature had created and made "elective by the people". (In re Gage, 141 N. Y., 112.)

Some Absurdities Involved

If the restrictions upon the elective franchise, contained in the Minnesota Constitution, apply only to elections provided for in or under the Constitution, then by the same token the provision of Section 15, Article 4, excluding from the privilege of electing or being elected any person convicted of bribery, perjury, or any other infamous crime, would not apply to any office or election of any officer, not created or provided for by the terms of the Constitution itself. It would not apply to presidential electors or to voters for a presidential elector and it would not apply to a great many other officers.

Presidential Electors No Exception.

A distinction is attempted in the case of election of presidential electors, on the grounds, first, that while that is an office "elective by the people", it is not an office under the Constitution of Minnesota, and second, that the elective franchise for that office is defined, if at all, by the Federal Constitution.

The Federal Constitution provides as to presidential electors that "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, etc." (Section 1, Article II). It is claimed that the office of presidential elector is not a state office and further that absolute and unlimited discretion is given to the State Legislature as to the manner of selecting presidential electors, including the elective franchise to be exercised at any election, if the selection be by election. Therefore, it is claimed, the State Legislature of Minnesota may extend to women the franchise to vote for presidential electors, and this too, without a state constitutional amendment. The argument is further urged on the strength of the expressed provision that those voting in each state for members of the National House of Representatives and of the National Senate "shall have the qualifications requisite for voting for electors of the most numerous branch of the State Legislature." (Section 3, Article I and Amendments Article XVII.)

Now, if a State had by proper Constitutional amendment, extended to women the franchise to vote for members of the State Legislature, the women could vote for members of Congress. But, if the State Legislature of Minnesota, without constitutional amendment, should pass a statute allowing women to vote for members of Congress, such an election would not be recognized either in Congress nor by the Courts, either Federal or State. This for the reason that the fundamental law of the state had not been

complied with in such election.

The action of the Legislature, so far as it affects an election or appointment, provided for by the Federal Constitution, must, in order to be valid and effective, be in compliance with the fundamental law of the state, so far as it purports to control the action of the Legislature in question.

Now, with reference to presidential electors, the Federal Constitution provides that each state may "appoint", in such manner as the Legislature thereof shall direct, its presidential electors. This means simply that the Legislature may exercise its choice as to the manner of selection. It may provide that electors be appointed or that they be elected. If it provides that they shall be elected, the Legislature may decide whether they are elected by the Legislature or by the Supreme Court or by some other method than by an election by the people. In the same way it may provide that presidential electors shall be "elective by the people". If the Legislature decides, as in Minnesota, that presidential electors shall be "elective by the people," then such an election is a state election of an officer who is (in the words of the State Constitution) "now or hereafter elective by the people". In such case, the provisions of the State Constitution restricting the elective franchise immediately apply.

Such power of "appointment" means nothing except the method of selection, and authorizes the Legislature only "to determine the manner of election and does not authorize the Legislature to define the electorate which may participate in the election," (Board of Election Commissioners vs. Knight, (Indiana), 117 Northwestern Reporter, page 565.)

The power given to the Legislature by the Federal Constitution with reference to the selection of presidential electors is not independent of any provisions of the State Constitution relating thereto. So far as consistent, the State Constitu-

tional provisions must be read with and construed and enforced at the same time as the provisions of the Federal Constitution. As stated by the United States Supreme Court, with reference to the provisions of the Federal Constitution for the selection of presidential electors, in the case of McPherson vs. Blacker, 146 U. S. 1, 25:

"What is forbidden or required to be done by a State is forbidden or required of the legislative power under state constitutions as they exist. * *

"The clause under consideration (Article II, Section 2, U. S. Constitution) does not read that the people or the citizens shall appoint, but that 'Each State shall' and if the words 'in such manner as the legislature thereof may direct' had been omitted, it would seem that the legislative power of appointment could not have been successfully questioned in the absence of any provision in the state constitution in that regard."

This means that if the State Legislature has exercised its power under the Federal Constitution and has determined that the method of selection of presidential electors shall be by election, and therefore made the office one which is "elective by the people," then the provisions of the State Constitution which apply to any elections by the people, must be observed and cannot be ignored by the Legislature. The same McPherson case holds that whether the election of presidential electors be by the people of the state as a whole or by the people of separate districts, in either case the election is a state election, with reference to which, so far as not inconsistent with the express provisions of the Federal Constitution, the fundamental law of the State must be observed. This means that, under the elective franchise provision of the Minnesota Constitution, the franchise cannot be extended to women to vote for presidential electors, by mere statute of the Legislature, without an amendment of the State Constitution.

Presidential electors are state officers as to whose election, if made elective by the people, it was never the in-

tention of the Federal Constitution to interfere or supplant any state law or Constitution. As said by the United States Supreme Court in the case of *In re Green*, 134 U. S. 377, 379:

"The sole function of the presidential electors is to cast, certify and transmit the vote of the State for President and Vice President of the nation. Although the electors are appointed and act under and pursuant to the Constitution of the United States, they are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators, or the people of the States when acting as electors of representatives in Congress. * *

"Congress has never undertaken to interfere with the manner of appointing electors, or, where (according to the general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors; but has left these matters to the control of the States."

The Vermont Legislature passed a bill permitting women to vote for presidential electors. The only qualification for the elective franchise in the Vermont Constitution was the provision that "Every man of the full age, etc. etc. * * shall be entitled to all the privileges of a freeman of this State." It was contended that this constitutional provision did not prevent the Legislature from allowing women to vote for presidential electors. The bill passed but Governor Clement vetoed the bill on the ground that it was an attempt to change the Constitution by an Act of the Legislature.

For the foregoing reasons, my conclusion is as first stated above, that the measure now pending before the Minnesota State Legislature to extend to women the franchise to vote for presidential electors is unconstitutional.

I might add that, on the authority of *McPherson vs. Blacker*, 146 U. S. 1, the controversy here is one which draws in question the validity of a state statute as being repugnant, not only to the Constitution of the State, but also to the Constitution of the United States. In other words, a Federal Constitu-

tional question is involved which, if decided in favor of this measure by the State Courts, would be reviewable by the Federal Supreme Court.

Respectfully submitted,

Rome G. Brown

O'Brien, Young, Stone & Horn
Attorneys at Law
St. Paul, Minnesota.

March 22nd, 1919.

1114-17 Pioneer Building

Mrs. J. B. Gilfillan,
222 Clifton Avenue,
Minneapolis, Minnesota.

Dear Madam:--

You have asked my opinion as to whether or not the Legislature of the State of Minnesota, may, in the absence of an amendment to the present Constitution of this state, authorize women to vote for presidential electors.

I regret that my engagements, and the brief time allowed me, prevent a more comprehensive examination of the question, than I have been able to make.

In my opinion, when the Legislature adopts as the manner of appointment of presidential electors, their selection by a vote of the people, there can vote at such election, only those to whom the Constitution has extended the right of suffrage, and that consequently the proposed bill would be ineffective to confer upon women the right to so vote.

Yours respectfully,

Thomas D. O'Brien

(COPY)

3/22/19.

Hon. Clifford L. Hilton,
Attorney General,
St. Paul, Minn.

Dear Sir:

I have been requested by the Minnesota Anti-Suffrage Association to write to you to the end that this and other letters of like import may direct your attention to and obtain your official consideration of that certain measure before the legislature granting to, or attempting to grant to women the right to vote for presidential electors in this state.

I am of the opinion that the measure is a violation of our state constitution. Without burdening you with a brief, permit me to state the reasons for my opinion. In the first place, it must be conceded that the question is governed by the state constitution. There is nothing in the federal constitution such as there is in the case of election of members of congress to prevent women voting in the different states for presidential electors, Article two of the federal constitution provides, "Each state shall appoint in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress, but no senator or representative or person holding an office of trust or profit under the United States shall be appointed an elector."

We turn then to the state constitution and find that Article seven, which has to do with the elective franchise, provides in part as follows:

"Every male person of the age of 21 years or upwards, belonging to either of the following classes, who has resided in this state six months next preceding any election, shall be entitled to vote at such election in the election district of which he shall at the time have been for 30 days a resident, for all officers that now are or hereafter may be elective by the people.

1. Citizens of the United States who have been such for the period of three months next preceding any election.

2. Persons of mixed white and Indian blood who have adopted the customs and habits of civilization.

3. Persons of Indian blood residing in this state who have adopted the language, customs, and habits of civilization, after an examination before a district court of the state, in such manner as may be provided by law.

No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony unless restored to civil rights;

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Hon. Clifford L. Hilton

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and no person under guardianship or who may be non compos mentis or insane shall be entitled or be permitted to vote at any election in this state."

It must be conceded that the state constitution is not a grant of power, but a limitation upon the otherwise absolute power of the legislature.

It must be conceded also that when the constitution has determined who shall exercise the elective franchise, there is no power to change it except the people themselves by the adoption of a new constitution or the amendment of the old one.

It must be conceded also that the suffrage or elective franchise is not an inherent or natural right, but a privilege conferred by somebody having the power or authority to grant the privilege.

It follows from the principles above stated, which are elemental and admitted on all hands, that if our constitution provides as to the class or classes who may exercise the elective franchise, that the legislature cannot either add to that class or subtract from it.

But because a state constitution is a limitation on legislative power, and not a grant of power, it has been maintained that where the constitution does not in terms prohibit all others than these names, the legislature has the power to add to the classes. This is a mistaken contention, and an error that arises from a confusion in the application of the principle that the constitution is a limitation, and not a grant of power. For the right to vote was originally conferred upon the inhabitants of the territory of which the present state of Minnesota was a part, by an act of congress; thereafter the congress by an enabling act conferred upon certain citizens residing in the territory the right to vote for delegates to a constitutional convention; this convention in turn framed our constitution, and the people of the state by complying with the enabling act, became a state of the Union. It would be a rather strange result if those not entitled to vote for members of the constitutional convention, were not authorized to vote by the constitution framed in that convention, could nevertheless thereafter be authorized to vote by the legislature of the state, so framed under the act of congress and the constitution of the state. But this is exactly what happens if the legislature can add to the classes authorized by the constitution to exercise the electors' franchise. It follows that people who are not authorized, and who could not vote for delegates who framed the constitution, might nevertheless immediately after that constitution had been framed in 1858, if the legislature acted, vote for the very officers which the constitution had just prescribed the qualified electors for. Such a construction would lead to the result that the constitution is a

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limitation of the power of the legislature in only one respect, and that is, that the legislature could not take away the franchise from those named in the constitution, but might grant the franchise to all others not named in the constitution.

But even the above construction cannot be contended for in Minnesota, because paragraph two of our constitution as quoted above, says: "No person not belonging to one of the classes specified in the preceding section shall be entitled or permitted to vote at any election in this state."

But it will be contended that the constitution which I have quoted is prescribing the qualification for voters for officers whose offices are created by the constitution of the state of Minnesota, and that the words, "any election in this state," refers to any elections in this state for officers to be elected to offices which are created by the constitution, and that the words do not refer or apply to elections for officers whose offices are not created by the constitution, but which were created by the legislative enactment or by federal law.

This in my opinion is the only serious contention which can be made in favor of the bill which has been enacted. Presidential electors are not officers holding offices created by the constitution of Minnesota. They are the creatures of legislative enactment under direction of the Federal constitution.

In short, the contention is that the qualifications for the elective franchise in the constitution extends to and covers only officers & offices created by the constitution, and that it does not cover or extend to officers and offices created by the legislature, and it was this distinction which led to the decision of the case of Scown vs. Czarnecki, 106 Northeastern, 276, by the Supreme Court of the state of Illinois by a division of the judges, four on one side, and three on the other.

The question, therefore, to be determined, is: "Should our constitution in Article seven be construed as applicable only to constitutional officers?" Justice Story, in paragraph 451 of his work on the constitution, says: "The people make them (constitutions); the people adopt them; the people must be supposed to read them with the help of common sense, and cannot be presumed to admit in them any recondite meaning or any external gloss." Would it occur to any average person in reading the paragraphs of our constitution referred to, that the words, "officers that are not or hereafter may be elective by the people," refer only to offices created by the constitution of the state, and not to officers such as congressmen, presidential electors, and the long list of important officers who have been created from time to time by the legislature? Would the average person surmise that the words, "shall be entitled or permitted to vote at any election in this state," refer only to elections for governor, lieutenant-governor, and other state officers provided by the constitution, but do not apply to congressmen, presidential electors, and the large number of officers whose offices are created by legislative enactment? I think not. The history of elections

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in this state bears conclusive evidence to the contrary.

If these sections of the constitution referred only to officers created by the constitution, then why was paragraph eight of Article seven adopted as a part of that constitution, to-wit: Woman may vote for school officers and members of library boards, and shall be eligible to hold any office pertaining to the management of schools or libraries. Any woman of the age of 21 years and upward, and possessing the qualifications requisite to a male voter, may vote at any election held for the purpose of choosing any officer of schools or any members of library boards, or upon any measure relating to schools or libraries, etc." If the constitutional provisions referred to only constitutional offices, why was it necessary for the constitution in a later paragraph to provide the qualifications for women who might vote for school officers and members of library boards. School officers and members of library boards are not constitutional officers, and if the contention made by the proponents of this measure is correct, the legislature could have authorized women to vote for school members and library members, without any constitutional provision. The people of this state thought otherwise. The legislature of this state thought otherwise, for in order to qualify women to vote for these non-constitutional officers, two amendments were adopted to the constitution, the first in November, 1875, and the last in November 1898. This is the most conclusive evidence of the construction which the people of this state and the legislature have placed upon our constitution, relative to the elective franchise, which could possibly be given.

Now the legislature assumes to qualify women by legislative enactment to vote for presidential electors, without any change in the constitution, yet they find it necessary in order to grant women the right to vote in this state for school officers, to change the constitution.

There are other sections in our constitution under Article seven that show that no such restricted meaning as is contended for by the proponents of this measure, can be given to the constitution. Paragraph 5 provides: "During the day on which any election shall be held, no person shall be arrested by virtue of any civil process," is, if the meaning of the constitution, that a man qualified to vote for a constable or justice of the peace, which are constitutional officers, cannot be arrested, while a man voting for presidential electors is subject to arrest because presidential electors are not constitutional officers.

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Paragraph three of our constitution provides: "For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States, nor while engaged upon the orders of this state or of the United States, nor while a student of any seminary of learning, nor while kept at any alms house, or any other asylum, nor while confined to any public prison." Was it intended by this section that one who is absent from his home, engaged on business of the United States, which requires his residence in Washington, shall be protected in his right to vote for a justice of the peace in Minnesota, but not in his right to vote for presidential electors?

Paragraph four provides: "No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed within the same." The purpose of this provision is quite apparent. It was meant to prevent any soldier, seaman, or marine stationed in the state of Minnesota to vote in this state. Was it the intention to prevent such soldiers from voting for a justice of the peace or a constable, and not to prevent them from voting for presidential electors and other more important offices, simply because justices of the peace are provided for by the constitution, while presidential electors are not? It seems to me these questions answer themselves. No such construction should be placed upon our constitution as will lead to such absurd results.

When we take into consideration the fact that the constitution of Illinois does not contain any provision in reference to women voting for school boards or other offices, and when we take into consideration that the decision by a divided court in the case that I have referred to was brought about by the fact that there existed in Illinois a former decision, *Plummer vs. Yost*, 144 Illinois, 168, which was decided on this very question of women voting for members of school boards, and in which case the Supreme Court of Illinois based the decision upon the fact that members of school boards were not officers under the constitution of the state, and consequently that the legislature could authorize women to vote for such officers, I am led to the conclusion that the reasoning of the majority opinion as well as of the minority opinion in the first case referred to, supports the contention that the bill now under consideration in Minnesota is contrary to the Minnesota constitution. The writer of the majority opinion in the Illinois case distinctly states that he is led to the conclusion because of the decision in *Plummer vs. Yost*. If the constitution of Illinois contained a provision defining the qualification of women voters for school members, can there be any question of what the decision of that court would have been when the question of presidential electors came up?

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Furthermore, the constitution of Illinois does not contain any such paragraph as Par. 2 of Article 7 in our constitution, which says:

"No person not belonging to one of the classes - - shall be entitled or permitted to vote at any election in this state."

If the English language means anything, that paragraph means that no woman can vote at any election in the state of Minnesota because she does not belong in either of the three classes referred to. Of course this provision is qualified by the later provision adopted in 1875, which specifically authorizes women to vote for members of school board and library board. It seems to me that an attempt is now being made to twist words so as to give them a meaning contrary to that which the plain words themselves justify, and contrary to the meaning which for more than 50 years has been given to them by the people of this state and its legislature.

I am not concerned with the public policy involved in the question of Woman's Suffrage. As before stated, suffrage is not an inherent or natural right. It is given only to certain classes. The question as to what classes or under what conditions it should be conferred, is a political question. If the suffrage is to be conferred upon women, it should be conferred in a constitutional way. Certainly the exigency is not sufficient to justify the starting of this change by a violation of the constitution. It was found possible in 1875 and 1898 to amend the constitution so as to authorize women to vote for certain offices. It ought to be possible if the people so desire, to change the constitution in 1919 so as to permit women to vote for other offices.

It is important to keep in mind that at the adoption of the constitution, presidential electors had been elected in other states by popular vote for more than 50 years. The 12th amendment of the constitution of the United States was enacted in 1803, and its enactment was brought about by the very serious situation which resulted in the Jefferson-Burr contest in 1800. The framers of our constitution well knew, at the time of its adoption, that male suffrage existed in the other states of the Union, and had for many years, and that female suffrage did not exist for presidential electors or state officers. It must be realized that the constitution was adopted with this situation fully understood, and in construing the words of the constitution that situation must be taken into account. Can there be any doubt of what the words, "any election," mean, or what the words, "any elective officer," mean in view of the situation that existed at the time the words were used? When our constitution is construed as it has been heretofore universally understood, and as it has been inter-

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preted by the legislature, the courts, and the people of the state for sixty years, there can be no question in my mind that the act is contrary to that constitution, and that it transcends the legislature's power, and I respectfully submit that while the legislature undoubtedly has power to create and provide for the election of officers not named in the constitution, it has no power to provide qualifications for voters at the election of such officers, which qualifications are different from the qualifications prescribed by the constitution.

Respectfully submitted,

JO-RM

(Signed) James E. O'Brien

True copy in deep

BARROWS, STEWART, & METCALF
Lawyers
1415 Pioneer Building
St. Paul, Minn.

March 22, 1919.

Mrs. Wm. Davis,
409 Laurel Ave., City.

Dear Madam:

In reference to the constitutionality of the Act just passed by our legislature, giving to women who have attained the age of twenty-one, and possess the other qualifications requisite to a male voter the right to vote at elections held for the purpose of electing presidential electors:

The determination of the right of women to vote for candidates for presidential elector is in our opinion a matter to be determined by State law and not a federal question. See in re Green, 134 U.S. 380. Article 7, Section 1 of our constitution provides that every male person of the age of twenty-one or upwards shall be entitled to vote for all officers that now are or hereafter may be elective by the people. This provision has never been changed except in so far as the constitution was amended to permit women to vote for school officers and upon school matters.

It seems to us that any fair construction of our statutes relating to the election of presidential electors can lead only to the conclusion that they are elective officers by the people. Section 298, General Statutes 1913, provides all presidential electors shall be chosen at the general elections held in November. Section 329 provides the manner in which the names of presidential electors shall be placed upon the ballot and the method of voting for them. It seems very clear to us that under our constitution and our statutory method of selecting presidential electors that this bill is unconstitutional. We have made no careful examination

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of the authorities from other states in view of the short time you have allowed us for this opinion, but we believe from a cursory research that our opinion is supported by the authorities in other states. See Board of Election Commissioners vs. Knight, (Ind.) 117 N.E. 565 and cases cited therein.

It seems to us that the case of Scown vs. Czarniecki, 254 Ills. 305, some times cited as contrary to statements of law made by is in this opinion is clearly distinguishable, principally because of different provisions in the constitutions of Illinois and Minnesota.

Yours truly,

Morton Barrows

MORTON BARROWS.