

Repeal of the 17th Amendment Does it achieve the Intended?

(The neither the content of this essay may be reproduced in part or in whole nor its thesis used without the permission of CVConnect)

Originally Congressional Senators were appointed by the legislative body of each State, two per State (Article I, Section 3, Clause 1): “The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.”

Senators were essentially ambassadors of the several States to the Federal Government, and as such represented the interest of their respective States and took instructions from legislative branch of their State Government. This is why the Senate had Executive Advise and Consent Powers (Article II, Section 2, Clause 2). The Senate was intended to be one of the several checks and balances to the Federal Government on behalf of the States. Possibly the first consequential example of the power of the States in this regard was when Patrick Henry, as a member of the Virginia General Assembly, used his voice and influence to block James Madison from a seat in the U. S. Senate and forced Madison to promise a Bill of Rights in order to be elected to the U. S. House of Representatives.

From 1788 to 1912 Senators were chosen in accordance with Article I, Section 3, Clause 1. On May 13, 1912, with the ratification of 17th Amendment, the process changed. Senators were popularly elected by the citizens of the respective States, just as in the case of the U. S. House: “The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.”

The 17th Amendment came about because of charges that (1) Senators were corrupt and for the most part were being selected from a pool of wealthy individuals who used their money to persuade State Legislatures to appoint them as Senators and (2) representation in the Senate was lax, either because States were no filling vacate seats or Senators did not bother to attend to their duties. However, the charges were made primarily by Yellow journalist William Randolph Hearst who was no less corrupted and ambitious than the very members of the U. S. Senate. [Yellow journalism, or the yellow press, is a type of journalism that presents little or no legitimate well-researched news and instead uses eye-catching headlines to sell more newspapers, click [HERE](#). For the origins of the term click [HERE](#).]

As the years have past it has become clear that the extent of corruption and laxness at the time was possibly not to the extent claimed and that corruption and laxness, to the extent it did exist, was more due to other than the claims made in the newspapers which endorsed the 17th Amendment. But no matter, then as it is today, the press held vast sway and influence over the public and in many ways the public was no better informed or better understanding than those today whom Rush Limbaugh terms “The Low-information Voter.”

At the time of the passage of the 17th Amendment one important consideration should have been very clear: It eradicated the Voice of the States in Congress. Senators were no longer ambassadors of their States. With passage the people elected them, and to be elected a senatorial candidate had to cater to the wants of, make promises to, and heap gifts upon the voters. The same was true for a Senator who wanted to be re-elected. One of the most important parts of the checks and balances between the States and the Federal Government was permanently eliminated by the 17th Amendment. Or had the Checks and Balance aspect already been eliminated by something else? By 1912 how much influence did States have on their Senators? By 1912 was there a more powerful influence on Senators?

By 1912, 239 political parties at both State and National levels had pledged some form of direct election, and 33 states had introduced the use of direct primaries, click [HERE](#). By 1912 Political Parties had a major influence on Senators and thus on the passage of the 17th Amendment. By that date Political Parties had done much to shift the influence on a Congressional Senator from that of the State to that of the Party.

At the time of the writing of the Constitution Political Parties did not exist. It was not until 1792, 5 years after the writing of the Constitution, that the Political Party System came into being in the United States. Thus at the writing of the Constitution there was no consideration of the effect a Political Party System would have on the intent of the purpose of the U. S. Senate. No one, not Madison, not Hamilton, not Franklin, not Washington, nor anyone else foresaw the issue during the Philadelphia Convention. If they had then possibly Section 3, Clause 1, and even Section 2, Clause 1, of Article I would have been written differently. And it is because of present –day influence of Political Parties that there should be some pause for believing a simple repeal of the 17th amendment will re-establish Senators being ambassadors from their respective States, and thus restoration of the lost-check and balance.

Suppose we simply repeal the 17th Amendment. Then we revert to Article I, Section3, Clause 1 for choice of Senators. You say, “Yes, that is what we want.” But do you revert to intended purpose? Will it be a choice by the “State” or a choice by the “Party?”

Suppose both chambers of a State’s legislative body are in the hands of the same Party. Then that Party is going to choose someone from their Party because that Party will want to control what that Senator does. If you are affiliated with the minority Party you are not going to be happy. The possibility exists for law suits and thus in the end it is the Courts that decide – and the latter was never intended.

Suppose the control of the two chambers is split. If emotions are as strongly partisan as they are currently then likely the decision process will be painful. If you stop and think about the stalled Virginia Budget, because of Democrat-controlled State Senate wanting

Medicaid Expansion and a Republican-controlled State House opposing then it is easy to envision a Congressional Senator might not be chosen.

But lets suppose that irrespective of the situation Senators are chosen and sent to Congress. Do you believe the State legislative bodies will give instructions to their Senator how to vote or what to do? Or would you suspect that each Senator's Political Party will provide that guidance? Moreover, do you expect that Democrat or Republican Congressional Senator will spend any more time on the other side of the aisle than he or she does today?

What I am suggesting is the following: Today, under the popular election method provided by the 17th Amendment, matters in the Senate function according to the Party in Power. Simply repealing the 17th Amendment will not change that. Something more than a simple repeal would have to be done if we are to have the effect we desire by doing away with the 17th Amendment.

Frankly, I do not see a remedy that does away with Political Party influence, on how Senators are chosen and what Senators do when they sit in Congress. The best I can envision is a procedure that somewhat neutralizes or balances the effects of Political Parties. So with my wife's admonition of "Don't come to the table with a problem unless you have a potential solution," the following are two.

In addition to simply repealing the 17th Amendment include something such as one of the following -

Either 1:

Alternate the Party making the selection for a particular Senatorial seat, except for when one Party's presence in a State Legislature is below a particular minimum minority. That would eliminate the long-term influence of a Party for a State unless that Party maintains a long-term majority in that State's legislative body. It would also bring term limits into play.

- 30 -

Or 2:

Require that the two Senators of a State can not be of the same Party, that each of the two-most represented parties in the respected State Legislatures each choose a Senator, with the stipulation they each have at minimum minority in that legislative body. (Though similar to Solution 1 it can result in a different makeup of who are the Senators. For example, term limits is not necessarily going to occur.)

- 30 -

It should be clear from this that restoring the role of Senators as State ambassadors, thus providing a check and balance between the States and the Federal Government, is difficult. In truth such never existed once the Political Party System became established. The influence of a Senator's Political Party is stronger than a "State's". Unless something far reaching occurs it does not matter whether a Senator is popularly elected or chosen by the State legislatures.

Edward R. Long, Ph.D.