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Mike Mansfield 1903-2001

Mr. MANSFIELD. Mr. President, how goes the time?

The PRESIDING OFFICER. The Senator from Montana has 6 minutes remaining and the Senator from Pennsylvania has 3 minutes remaining.

Mr. MANSFIELD. Mr. President, I yield myself as much time as I may require within the 6 minutes.

Mr. President, so far as I am aware, not a Member of this body, to my knowledge, has spoken during this floor debate against extending the voting franchise to those 18 and above. There is a great deal of concern about the proper way to achieve this objective. Some persons think, very honestly, that the only way is through the constitutional process. Others think it is by statute.

There has been a lot of talk this morning about the Randolph constitutional amendment resolution, with 74 or 75 signatures, which now resides within the confines of the Judiciary Committee. There has been some talk, encouraging at least on the surface, that if we do not do anything about this, or let it slide by, it will not be long before the Randolph resolution will be reported out of the Judiciary Committee.

Frankly, I doubt that it will be reported shortly, under the very best of circumstances. Frankly, I know, as far as the House Judiciary Committee is concerned, no action will be taken this year, any more than was taken in previous years.

So what we are going to do if we do not face up to this issue on this basis, not only for this year but perhaps for years to come, is forgo the possibility of a constitutional amendment which will put into effect what every Member of this body desires, at least as far as I am aware——

Mr. AIKEN. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. AIKEN. I wonder if perhaps the Senator feels that if the amendment is defeated today the defeat will be taken as the sentiment of this body, and perhaps the constitutional amendment proposal will never come out of the Judiciary Committee at all, since the interpretation will be that the Senate has already voted against it, and so why bother?

Mr. MANSFIELD. That is correct. It is a good burial ground for certain types of legislation, and I do not think we ought to try to blink away the facts.

What we have now is the first chance and the only chance that I can recall, on a national scale, for this institution to face up to this issue squarely.

This amendment would extend the right to vote to every citizen of the United States who is 18 years old and older. It would afford that right in every election, Federal, State, or local.

Much has been said lately about extending the franchise by statute. It is

argued by those that oppose this method that Congress does not have the power to act; only the Supreme Court can make those fine constitutional distinctions. The Supreme Court is the final arbiter of these questions, but it is about time that Congress assumed its responsibilities as well.

In an effort to determine the limits of Congress' constitutional authority, I sent a telegram to Prof. Paul Freund, probably the best constitutional lawyer in this country. In addition, I looked up the testimony of the former Solicitor General of the United States, Archibald Cox, talked to other people, and have received information which, to my way of thinking, as a nonlawyer, validates the procedure which we are following and does insure a possible way by means of which the 18-year-olds and above can achieve the right to vote.

At 18, 19, and 20, young people are in the forefront of the political process—working, listening, talking, participating. They are barred from voting.

I do not think they do enough talking. I do not think they do enough infiltrating into the established political parties. I think those of us above the age of 30 could stand a little educating from these youngsters—not the minuscule minority that always gets the publicity, but the conscientious, idealistic majority of young men and women who could bring our parties some new blood, some new vigor, some new ideas. Both parties could stand a pretty strong transfusion.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. MANSFIELD. If I may finish, first. I am on a tight schedule here.

They will not only bring us a fresh outlook, but will bring us their innovation, and will do what they can through acts of participation, to become a part of the whole, rather than on the outside, as is the case at the present time.

They fight our wars. You can brush aside that argument all you want, but that is a most important argument, and I think these youngsters who are called because of our responsibility, because we have laid down the policy, should have a right, at least in some small part, to influence the setting of that policy.

They are eligible to be treated as adults in the courts, in both civil and criminal actions. They marry at 18. They have children. They pay taxes. The hold down full-time jobs.

So I would hope that the Senate would approve the ballot for the 18-year-olds at this time, in this fashion, and on this, the voting measure to which it is germane. As a political forecaster, I possess no extraordinary capacities. But I am aware of the public reports by some in opposition to the extension of voting rights—by any method—to 18-year-olds. I know that some who have spoken out are in a position to thwart the efforts of the congressional proponents of this proposal. So this amendment on this bill will be, in my opinion, the only chance the Congress will have of enacting this proposal. Either it becomes law on this bill, or it is dead for this Congress.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD with my remarks a letter which I received from Prof. Paul A. Freund of Stanford University under date of March 5, 1970.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CENTER FOR ADVANCED STUDY IN THE BEHAVIORAL SCIENCES,
Stanford, Calif., March 5, 1970.

Hon. MICHAEL J. MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: I greatly appreciate your telegram inviting me to elaborate on the opinion which I expressed in an address in June 1968, that Congress might, by statute, lower the voting age for state and Federal elections to the age of eighteen.

The Constitution of 1787 left the question of suffrage basically to the several states. In Article I, section 2, it is provided that the electors in each state for the House of Representatives "shall have the qualifications requisite for electors of the most numerous branch of the state legislature." Article I, section 4, provides that the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state. Congress is given the power by law to make or alter such regulations. My opinion does not at all rest on the last clause Although "manner" has been given a generous construction to include, for example, Federal corrupt practices laws applicable to national elections, the specific provision on "qualifications" in the earlier section would rule out any effort to absorb the requirement of a minimum age for voting into the "manner" of holding such elections. And so if the text of 1787 stood alone there would appear to be no basis for the legislative proposal.

But that original text does not stand alone. The Fourteenth Amendment, with its guarantee of equal protection of the laws (no less than the Fifteenth, prohibiting specifically disqualifications based on race or color) introduced a vital gloss on the authority of the states, namely that unreasonable classifications by law are unacceptable. This general standard applies to the laws of suffrage no less than to other laws, despite the fact that racial disqualifications are treated specifically in the Fifteenth Amendment. It is much too late to question this force of the Fourteenth Amendment in this area. Indeed, the first of the so-called white primary cases was decided on the basis of the Fourteenth rather than the Fifteenth. As Justice Reed later pointed out, "Without consideration of the Fifteenth, this Court held that the action of Texas in denying the ballot to Negroes by statute was in violation of the equal protection clause of the Fourteenth Amendment," *Smith* v. *Allwright*, 321 U.S. 649, 658 (1944), referring to *Nixon* v. *Herndon*, 273 U.S. 536 (1927). The whole line of reapportionment cases rests on the applicability of the equal-protection guarantee to the suffrage; and surely religious qualifications, which are impermissible for office-holding, would be equally forbidden for voting in light of the Fourteenth Amendment.

The essential question, then, is whether Congress, in its power and responsibility to enforce the guarantees of the Fourteenth Amendment, may properly conclude that the exclusion from the suffrage of those between 18 and 21 years of age now constitutes an unreasonable discrimination. That this is a judgment for the Congress to make is plain from the original conception of the Fourteenth Amendment and from recent decisions under it. Section 5 of that Amendment, empowering Congress to enforce its provisions "by appropriate legislation," was regarded as the cutting edge of the Amendment. It was expected that Congress would supply the substantive content for the deliberately general standards of equal protection, due process, and privileges and immunities.

Recent decisions have emphasized the propriety, indeed the responsibility, of Congressional action in the area of voting rights. In 1965, as you know, Congress enacted a provision of the Voting Rights Act that overrode state requirements of literacy in English, where a person had received a sixth-grade education in another language in a school under the American flag. It was argued, in contesting the Federal law, that Congress could so provide only if the English-literacy requirement were regarded by the Court itself as in violation of the equal-protection guaranty of the Fourteenth Amendment. Upholding the Federal law, the Supreme Court emphasized that the judgment of unreasonable discrimination was one that Congress had appropriately made for itself, and that its judgment would be upheld unless it were itself an unreasonable one. Any other view of the Court's function, said the Court, "would depreciate both Congressional resourcefulness and Congressional responsibility for implementing the Amendment. It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the 'majestic generalities' of section 1 of the Amendment." "[I] is enough," the Court added, "that we perceive a basis upon which Congress might predicate a judgment that the application of New York's literacy requirement . . . constituted an invidious discrimination in violation of the Equal Protection Clause." *Katzenbach* v. *Morgan*, 384 U.S. 641, 648–649 (1966).

The Supreme Court has held, in a six-to-three decision, that the poll tax as a condition of voting in state elections is unconstitutional even without a Congressional judgment on the matter. *Harper* v. *Virginia Board of Elections*, 388 U.S. 663 (1966). Whether or not one agrees with that decision, for present purposes the case has a twofold significance. The first relates to the dissenting opinions. Justice Black, protesting against the "activism" of the majority (as others have termed it), went on to say, "I have no doubt at all that Congress has the power under section 5 to pass legislation to abolish the poll tax in order to protect the citizens of this country if it believes that the poll tax is being used as a device to deny voters the equal protection of the laws . . . But this legislative power which was granted to Congress by section 5 of the Fourteenth Amendment is limited to Congress . . . For Congress to do this fits in precisely with the division of powers originally entrusted to the three branches of government—Executive, Legislative, and Judicial." *Id.* at 679–680. The other dissenters, Justices Harlan and Stewart, referred to the possible authority of Congress and said that they "intimate no view on that question." Id. at 680, n. 2. Thus it is entirely possible that had Congress itself acted, the decision might have been unanimous.

The second point of significance in the poll-tax case is the bearing of the constitutional amending power. There was then in effect, of course, the Twenty-Fourth Amendment, abolishing poll taxes in relation to Federal elections. Both the majority and minority opinions show that Congressional authority is not precluded because the subject might be committed, indeed had been committed, to the amending process.

It could be asked whether, on the bas'

of the views reflected here, it was actually necessary to have achieved woman suffrage through a constitutional amendment. At the time of the Nineteenth Amendment the power of Congress to enforce the equal-protection guaranty was in a dormant state. The alternatives were thought of as a judicial decision striking down exclusively male suffrage, or an amendment to the Constitution. In retrospect, it seems tolerably clear that from the standpoint of constitutional power (putting aside considerations of political expediency), Congress could have determined by law that exclusion from voting on the basis of sex was an unwarranted differentiation.

The question for Congress is essentially the same, whether the exclusion be on criteria of sex, residence, literacy, or age. It is not my purpose to review the considerations that have been brought forward in favor of reducing the voting age. They involve a judgment whether twenty-one has become an unreasonable line of demarcation in light of the level of education attained by younger persons, their involvement in political discussion, their capacity in many cases to marry, their criminal responsibility, their obligation for compulsory military service. Historically, we are told, twenty-one was fixed as the age of majority because a young man was deemed to have become capable at that age of bearing the heavy armor of a knight.

The cummulative effect of such considerations on the continued reasonableness of twenty-one as a minimum voting will, I am sure, be canvassed by the Congress. My purpose, responsive to your invitation, has been to indicate why I believe that Congress may properly make such a judgment and embody it in the form of a statute.

Yours very sincerely,

PAUL A. FREUND,
Professor, Harvard Law School.