Voter registration reform: A problem and a plan for Montana

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VOTER REGISTRATION REFORM:
A PROBLEM AND A PLAN FOR MONTANA

By

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PREFACE

This study is concerned with the process of voter registration in the United States in general and in Montana in particular. Voter registration, as used in this study, refers to the administrative process by which an individual comes to have his or her name placed upon the official voting lists which are used to determine which persons will be allowed to cast ballots in a public election.

The central thesis of this paper is that voter registration systems, as presently employed throughout the United States, effectively serve to disenfranchise millions of otherwise eligible voters. This study did not deal with the more technical and legal issues of voter registration requirements such as residency, age, poll taxes, property qualifications, or literacy tests. Rather, this study concentrated on the most basic requirement posed by voter registration systems. This requirement, completely unique to the United States, places the responsibility entirely upon the individual voter to seek out the appropriate government official, to request to be registered, and to prove that he meets all the legal requirements.
The Nation's Problem

A steady decline in the percentage of eligible voters casting ballots in the last three presidential elections (1964--62.1 percent, 1968--60.7 percent, and 1972--55.6 percent) has caused great concern in the United States Congress. As voter registration systems have been identified as a contributing factor in this decline, the United States Senate has reacted with the passage of a reform measure which would establish a National Voter Registration Administration to administer a nationwide voter registration through the Postal Service. As of this writing this bill (S.352) is still pending before the House of Representatives.

In early 1974, a Gallup opinion poll reported that only 25 percent of the people polled actually approved of the performance of the President of the United States. At the same time a Harris poll reported that only 21 percent approved of the performance of the United States Congress. In a time of growing distrust in our national government the Congress is seeking to impose federal supervision upon a responsibility that has traditionally belonged to the states.

In effect, this proposal (S.352) attempts to remedy a "nationwide" problem with a "national" solution. The implication of labeling the problem "nationwide" is to admit that it is a problem throughout the United States but to varying degrees in various areas. The problem in many southern states is acute while in some western states it can hardly be considered anything
more than minor. The implication of a "national" solution is that a rigid, uniform remedy will be applied indiscriminately in all fifty states. Such a solution makes no provision for those states that are consciously working to improve their registration systems.

The continued invasion of federal regulation upon what have traditionally been state responsibilities is not a popularly supported trend in the United States. In order to make government more palatable to the average citizen we must show him that government can cope with the problems facing it. Such an ability can be demonstrated most readily at the state and local level. It is argued in this study that voter registration is a state problem and that is exactly where it can and should be solved.

Montana's Problem

The voter registration system presently employed in Montana discourages thousands of Montanans from voting in public elections. The problem is not in meeting the legal requirements as to age and residency but simply their failure to appear at the courthouse to be registered prior to the registration deadline. This situation can be remedied and that was the purpose of this paper.

In terms of methodology the approach of this study was basically descriptive. For any discussion of voter registration to be considered complete it would have to consider the
activities, past and present, of the United States Congress, the United States Supreme Court, and government in general at the national, state and local levels. Of equal importance would be consideration of the work done by prominent social scientists in the areas of voting behavior and political motivation. The approach employed in this paper has drawn together this diverse material so as to clearly demonstrate its implications for voter registration reform in Montana.

This study has demonstrated the magnitude of the problem in Montana as well as the inability of the present system to remedy it. In order to provide some understanding of the problems involved as well as the actual probability of implementing registration reform in Montana, this study has analyzed the expressed opinions of Montana lawmakers and the public officials most closely associated with the actual operation and administration of Montana's present voter registration system.
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CHAPTER I

VOTER REGISTRATION AS A NATIONAL ISSUE

Introduction

The purpose of this chapter is to expand briefly upon the major arguments that have been offered in support of the proposition that voter registration systems severely inhibit public participation in public elections in the United States. Presently the debate over voter registration reform is most intense in the United States Congress. For this reason this chapter also outlines the status of voter registration reform at the national level. This national perspective is essential to any future discussion concerning Montana.

Senator Walter Mondale, speaking on the floor of the United States Senate, briefly summarized the factors contributing to the present concern over voter registration. Senator Mondale asserted:

Mr. President, when 62 million otherwise eligible Americans fail to vote in a presidential election year, as happened in 1972, we have a problem.

It seems to me the problem can be largely described by the following facts:

First, in 1968, 47 million voting age Americans did not vote. The President received only 31 million votes.

Second, in 1972, 62 million voting age Americans did not vote. Nixon received 47 million votes out of 77,460,000 total votes.
cast. This means 55 percent of voting age Americans voted in 1972. It also means that President Nixon was elected by one-third of the voting age population.

Third, roughly 60 percent of voting age Americans voted in the past four presidential elections, while 75 percent of Canada's voting age citizens cast their ballots; 80 percent of England's voting age citizens cast their ballots and 85 percent of Germany's voting age citizens cast their ballots.

It is my conviction that a large part of this dismal record has been caused by our prior voter registration system. For example:

First, 9 out of 10 registered Americans vote.
Second, only 6 out of 10 voting age Americans vote.

Third, 80 percent of voting age Americans voted in 1876, before registration laws were adopted.
Fourth, 48 percent of voting age Americans voted in 1924, after registration laws were adopted. In short, one-third of America in 1924 stopped voting.
Fifth, the Gallup poll concluded in December, 1969 that: "It was not a lack of interest, but rather the residency and other registration qualifications that proved to be the greatest barrier to wider voter participation in our Nation."  

The Purpose of Elections and Voter Registration

In 1963 the President's Commission on Registration and Voting Participation described the act of voting in public elections as "... the fundamental act of self government." According to the Commission, the function of elections in the United States is to allow the citizen to make decisions, judgments, and choices in regards to how the community, the state, and the nation shall be run. "The ballot box is the

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medium for the expression of the consent of the governed." ²

Other descriptions of the function of elections in a
democratic system have emphasized its purpose in expressing,
as accurately as possible, "public opinion" ³ as well as pro-
viding the means for "... giving majority approval to the
exercise of leadership." ⁴ Regardless of the particulars as to
definition, public elections in the United States are generally
regarded as the vehicle by which the citizens of a democracy
give direction and legitimacy to their government for the future
and hold it accountable for the past.

The function of voter registration is simply to guarantee
the legal integrity of this election process. To this end voter
registration systems are intended to insure that only those who
are "qualified" vote. Those who are not qualified and those
who attempt to cast more than one ballot or in any other way
commit fraud are restrained from the ballot box by the opera-
tion of a voter registration system. ⁵

For the majority of American citizens voter registration

²Report of the President's Commission on Registration and
Voting Participation, Richard M. Scammon, Chairman (Washington,

³Constance E. Smith, Voting and Election Laws (New York:

⁴Jack Dennis, "Support for the Institution of Elections
by the Mass Public," The American Political Science Review,
LXIV (September, 1970), 819.

has become the legal prerequisite to voting. The registration act is in fact a qualification in itself. To exercise the franchise in the United States most citizens are required to perform two deliberate acts, registration and voting, on two different days.6

Senator Moss of Utah aptly described this interdependence when he said, "Registration is the sine qua non of the voting process."7

The History of Voter Registration

In 1800 the state of Massachusetts adopted the first voter registration requirements in the United States. It was only a few years till other of the New England states adopted similar requirements. Yet by 1860 only a few states outside of the New England region had adopted such requirements. However, the period 1860 to 1880 saw most of the industrialized states in the North also initiating requirements for voter registration. Most of the western and southern states adopted similar requirements by 1910.8 Therefore, by the turn of the century voter


8 See Joseph P. Harris, Registration of Voters in the United States (Washington, D.C.: The Brookings Institute, 1929), pp. 65-92. Today forty-nine of the fifty states require formal registration. North Dakota is the single exception (utilizing poll booth registration) while in six other states registra-
registration had become an accepted part of the American elec-
toral system. The expressed purpose for such requirements
then, as now, was to guarantee the integrity of the election
process by eliminating electoral fraud.

Unfortunately, voter registration systems have sometimes
served as a cloak for voting fraud. In some elections it was
discovered that the voting lists had been swelled with the
names of the dead and nonexistent. In the southern states
the voter registration system has been employed as an overt
means of denying Blacks of their right to vote and for a
seemingly similar reason the emergence of registration require-
ments in the northern industrial areas coincided with the mass
influx of immigrants from Europe.\textsuperscript{9} Regardless of the original
intent, voter registration fast became an effective means of
political control by limiting access to the ballot box.

The significance of the historical development of voter
registration becomes more evident when examining the turnout
of voters for presidential elections during the same periods.
The decline in voter participation in national elections appears
to display a direct correlation with the widespread adoption of
voter registration systems.

\textsuperscript{9}Penn Kimball, The Disconnected (New York: Columbia
Between 1864 and 1900 the average Presidential turnout was 76.8 per cent of those eligible. Since formal registration requirements were introduced throughout the land, turnout in Presidential elections in the twentieth century has averaged only 59.2 per cent . . . 10

This historical "coincidence" between the advent of nationwide registration systems and the drastic decline in voter participation at the turn of the century has also been noted as significant by the President’s Commission on Registration and Voting Participation and in a special study conducted jointly by the National Municipal League, the Council of State Governments, and the League of Women Voters. 11

U.S. Voter Participation as Compared With Other Democracies

Virtually every discussion of the problem of voter participation in the United States invokes a comparison with voter participation in other western democracies.

The voting record of America becomes even more dismal when we compare it with the record of other Western democracies. In 1970 in Britain, 71 percent of the eligible voters went to the polls and they called it one of the lowest turnouts in British history. In recent elections in other European nations, the turnout has been even higher - 74 percent in Canada, 77 percent in France, and 91 percent in West Germany. 12

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10Ibid.


Edward Kennedy testifying before the Senate Committee on Post Office and Civil Service, February 7, 1973.)

Of course, one to one comparisons must be approached with caution due to the number of variables involved in voting turnout, the greater homogeneity of their populations, the differences in procedures for reporting election returns, and the fact that many democracies employ compulsory registration and some even have compulsory voting.\textsuperscript{13}

The President's Commission on Registration and Voting Participation, apparently allowing for the comparative problems, concluded:

Even with adjusted figures, the plain fact remains that citizens of other democracies vote in greater relative numbers than Americans. The United States, leader of the free world, lags behind many other free countries in voter participation.\textsuperscript{14}

Comparisons of voter participation rates are important to the discussion of voter registration in that of all the western democracies, the United States is the only country where registration rests entirely upon the voluntary act of the individual citizen. In all the other western democracies the government takes the responsibility to see that all of its eligible citizens are registered. When voter turnout is computed as a


\textsuperscript{14}Report of President's Commission, p. 8.
percentage of the registered voters, the United States can compare favorably with the other democracies. Yet the fact remains that millions of eligible voters in the United States cannot vote because they are not registered. 15

The Election of 1972: A Cause for Concern

The presidential election of 1972 probably did more to focus attention on American voter registration systems than any historical trends or international comparisons. More than 77.5 million Americans cast votes in the 1972 presidential election. This marked a continuation of a trend of increasing vote totals begun in 1936, but for the third consecutive election the percentage of eligible voters actually voting declined. Of the more than 139.5 million persons estimated by the Bureau of the Census as eligible to cast votes in the 1972 presidential election, only 55.6 percent actually voted, the lowest percentage since 1948. 16

15 See Report of President's Commission, p. 12; Report of the University of Michigan Research Center quoted in Kimball, The Disconnected, pp. 13-14; and Richard J. Carlson, "Personal Registration Systems Discourage Voter Participation," National Civic Review, LX (Dec., 1971), 599. While all of these studies are relatively recent, it should be noted that a study completed in 1930, Harold F. Gosnell, Why Europe Votes (Chicago: University of Chicago Press, 1930), pp. 185-86, also concluded that the American voter registration system was a major factor in America's poor turnout at the polls as compared to European countries.

Of the 62 million eligible Americans who did not cast votes, 20 million were actually registered and simply did not avail themselves of their right to take part on election day. The remaining 42 million voters had no such choice on election day as they had already been disqualified from taking part by their own failure to register. Admittedly, many of these people chose not to register as they had no intention of voting. Yet there is strong statistical evidence to show that this group contained millions of persons who were interested and who would have voted on election day if they had not been barred by the legal technicality of registration.

The large number of nonregistered voters is additionally alarming in view of the pre-election registration drives that were conducted by the major political parties and civic groups such as the AFL-CIO's Committee on Political Education, Student Vote, the Youth Citizenship Fund, the League of Women Voters, the National Urban League, and the Southern Christian Leadership Conference. These registration drives were lauded as "the most intensive efforts" ever conducted and early estimates by the Bureau of the Census and the Gallup Poll showed that only about 34 million eligible voters would remain unregistered.

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18 See Chapter III of this study for a discussion of reasons behind nonregistration.

Besides the actual number of unregistered voters being underestimated by 25 percent, the total number of unregistered voters in 1972 actually represented a rise of over six million from the 1968 total of thirty-six million unregistered voters. Undoubtedly the people most impressed by these figures were the members of those groups who mounted registration drives and accumulated first-hand knowledge of the magnitude of the problem. These same groups are now actively working for the adoption of a system of national voter registration administered by the national government.

The 92nd Congress

While the presidential election of 1972 served to highlight the problem it is a mistake to assume that voter registration was not an issue prior to the 1972 election. For several years there had been pressure upon the United States Congress to provide for a nationwide voter registration system which would standardize registration procedures for federal elections and make the actual registration act as easy as possible. During the 92nd Congress, with the 1972 election fast approaching, six

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20 "The 1972 Elections," Congressional Quarterly Weekly Report, p. 440. Registration of newly enfranchised groups has historically been a difficult task. While women were legally enfranchised with the passage of the Nineteenth Amendment they are only now beginning to register and vote at a rate equal to their male counterparts. This was not expected to be the case with the enfranchisement of the 18-20 year-old age group who were generally viewed as more politically conscious than any other age groups.
separate bills were introduced with each one proposing some form of national voter registration. \(^{21}\)

In October, 1971 the Senate Post Office and Civil Service Committee held public hearings on the four bills which had been introduced in the Senate. All the bills proposed the creation of a National Voter Registration Administration with only minor differences as to the actual mechanics of administering registration forms. Testimony before the Committee emphasized the inhibiting effect of registration in general by citing the historical decline in voter turnout as it corresponded with the advent of registration systems. United States voter turnout as compared with other democracies, where the state assumes the responsibility for seeing that the voters are registered, was often cited along with the lack of uniformity among the registration systems presently employed throughout the United States. \(^{22}\)

On November 9, 1971 the Committee favorably reported a bill (S.2574, S Rept. 92-436) which provided for the establishment of a National Voter Registration Administration within the Bureau of the Census for the purpose of administering a nationwide voter registration program through the Postal Service.

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utilizing postcards. On December 9 the Senate agreed to postpone floor consideration of the bill till March 1, 1972. The bill was finally considered on the floor on March 10 but after five days of debate was finally tabled by a 46-42 roll call vote which, in effect, killed the bill.23

Two bills, similar to those introduced in the Senate, were introduced in the House of Representatives during the 92nd Congress (H.R. 12016 and H.R. 6088). The bills were referred to the Subcommittee on Census and Statistics of the Committee on Post Office and Civil Service and public hearings were commenced in February, 1972 and continued through July. The House hearings were more extensive than those conducted in the Senate with four hearings convened in Washington, D.C. and three regional hearings conducted in Arizona, California, and New York. Numerous civic organizations offered testimony with groups such as the AFL-CIO, the League of Women Voters, the National Education Association, and Common Cause presenting formal endorsements of the proposals for a nationally administered registration system.24

The House Subcommittee failed to report either of the

bills out to the floor of the House. One reason for this might have been the fact that the Senate defeated a similar bill on March 15, just prior to the House Subcommittee's second public hearing. A second reason might have been the nearness of the 1972 general election.

It appears that hopes were high that the 1972 election would reverse the trend of declining voter turnouts as it was to be the first national election in which the newly enfranchised 18-20 year old age group would be eligible to vote; the United States Supreme Court ruling in Dunn v. Blumstein, 405 U.S. 330 (1972) had struck down excessively long state residency requirements as a qualification for voting; and pre-election reports played up the massive registration drives that were being conducted around the country. Representative Charles H. Wilson, Chairman of the House Subcommittee on Census and Statistics was moved to speculate: "Perhaps we can look forward to a better voter participation in the Presidential election to be held later this year than was achieved in the 1968 elections."25

Wilson may well have expressed the false hope of many Congressmen in those months before the 1972 general election. An unmeasureable factor, this optimism might explain in part the inaction in the House and the defeat in the Senate of proposals to establish a national voter registration system during the

25Ibid., p. 41.
92nd Congress.

The 93rd Congress

The presidential election of 1972 did not serve to show that the system could heal itself but instead demonstrated the continuing inability of the present voter registration systems to register a large voting population.

On January 12, 1973 Senator Gale McGee introduced Senate Bill 352. Similar to the registration bill killed in the 92nd Congress, S.352 proposed the establishment of a Voter Registration Administration within the Bureau of the Census. This administration would be headed by an Administrator and two Associate Administrators appointed by the president. The purpose of this administration would be to supervise a national registration program for all federal elections. Under this system postcard forms would be mailed to all postal addresses with instructions to return the completed cards to the local registration officials no later than thirty days before the election. The expense involved in processing the forms would be borne by the Voter Registration Administration. An incentive, in the form of financial aid, was provided for those states which would also adopt the postcard system for registering voters for state and local elections. Penalties were also provided for registration fraud which would be a federal crime and the responsibility of the United States Attorney
On January 18, 1973 Senator Edward Kennedy and others introduced Senate Bill 472. Like S.352 the Kennedy bill proposed the establishment of a Voter Registration Administration but the program it was to administer was entirely different. The Kennedy bill (S.472) proposed a voluntary program of federal assistance to state and local governments who desired to improve their registration systems. The bill set forth a number of federal grant programs under which the state and local governments could receive financial assistance. These grants ranged from providing financial assistance for the hiring of additional deputy registrars to the complete computerization of registration lists.

In February, 1973 public hearings on S.352 and S.472 were begun by the Senate Committee on Post Office and Civil Service under the chairmanship of Senator Gale McGee, the sponsor of S.352. Only three hearings were conducted as it readily became apparent that the amount of new evidence, beyond what the House and Senate hearings had gathered during the 92nd Congress, was limited. Of course, the 1972 election statistics served to


27See U.S., Congress, Senate, A Bill to Amend Title 13, U.S. Code, To Establish Within the Bureau of the Census a Voter Registration Administration to Carry Out a Program of Financial Assistance to Encourage and Assist the States and Local Governments in Registering Voters, 93rd Cong., 1st sess., S.472, pp. 1-8.
intensify the concern that something needed to be done and
the AFL-CIO, the League of Women Voters, and the National
Education Association again appeared to give their formal
endorsements. 28 (Their conviction was undoubtedly intensified
by the 1972 election statistics which showed the inadequacy of
massive registration drives by civic groups.)

On March 27, 1973 the Committee on Post Office and Civil
Service favorably reported S.352 to the Senate. On April 10,
1973 a formal floor debate was begun which was to continue
over the next four weeks and give rise to three cloture votes
in the process. A Republican and southern Democrat filibuster
was led by Senator James B. Allen who had also been instrumental
in the defeat of a similar registration bill during the 92nd
Congress. But on May 9, by a 67-32 vote, debate was halted
and a final vote called for resulting in the passage of the
bill by a vote of 57-37. 29 On May 10, S.352 was delivered to
the House of Representatives where it was referred to the Com-
mittee on House Administration. 30 The House has not, as of
this writing, voted on S.352.

28 See U.S. Congress, Senate Committee on Post Office and
Civil Service, Hearings, pp. 93-273.

29 Complete text of debates and votes appear in U.S. Con-
gress, Senate 93d Cong., 1st sess., Congressional Record, CXIX,
no. 56, April 10, 1973 through no. 70, May 9, 1973.

30 U.S. Congress, House, 93d Cong., 1st sess., May 10,
1973, Congressional Record, CXIX, H3621.
Summary

This chapter has provided only a very brief introduction to the problem of voter registration and its treatment as a national issue. This study was concerned with voter registration in Montana, but to proceed without any perception of what efforts are afoot in Washington would render the study meaningless. A summary of national legislation was also important background for this study in that it has received little or no attention in the news media and many Montana citizens are completely unaware of the status or even the existence of this legislation. The two bills already discussed (S.352 and S.472) are referred to from time to time throughout the remainder of this paper and the basic familiarity will prove beneficial.

During the Senate debate on S.352 Senator Sam Ervin, Jr., a recognized constitutional "expert," summarized his opposition to the bill:

In my considered judgement this is the most unwise legislative proposal ever made to the Senate during my more than 14 years of service. I think there are three fatal defects in this piece of legislation: . . .

The defects outlined by Senator Ervin were that the system encouraged fraud; it was an intrusion by the national government upon a responsibility traditionally belonging to the states and therefore a threat to state sovereignty; and

31 See Chapter V of this study.
finally, it would give the voting power to those people who
do not care enough about their country to take the time to
appear and register.\textsuperscript{32}

While concern with the question of fraud is particular
to the postcard system, the concern over whether voter reg­
istration is the responsibility of the states or the national
government and the concern with the improperly motivated,
apathetic voter are both directed at voter registration reform
in general. Both of these issues have a direct bearing on the
question of voter registration reform in Montana and, there­
fore, are the subjects of the next two chapters of this paper.

\textsuperscript{32}U.S. Congress, Senate, Senator Ervin speaking in opposi­
tion to S.352, 93d Cong., 1st sess., May 9, 1973, \textit{Congressional
Record}, CXIX, S8618-S8619.
CHAPTER II

VOTER REGISTRATION: A QUESTION OF RESPONSIBILITY

Introduction

One of the major objections to a national system of voter registration is that it constitutes an unwarranted, if not illegal, encroachment upon what has traditionally been a state responsibility. If there was not some validity to this reservation the issue of voter registration reform in Montana would immediately be rendered moot. The purpose of this chapter is to examine the particular issues around which this debate revolves. The substance of this debate draws upon the wording of the United States Constitution, past legislation by the United States Congress, and the formal decisions of the United States Supreme Court.

The United States Constitution

The following provisions of the United States Constitution are those which have a direct bearing on the election process in the United States. All of them have come to play a part in the debate over the legality of federal intervention in the state administration of elections and hence voter registration.
Article I, Section 2

(1) The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

The basic provision governing the right to vote in national elections, this provision provides that the determination of the qualifications of "electors" or voters for the election of the national legislature shall be determined by State law. In actual practice this provision is now subject to the limitations of the Fourteenth, Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments as well as relevant decisions by the United States Supreme Court.¹

The adoption of this provision by the Constitutional Convention is generally credited to the inability of the Convention delegates to agree upon a single standard for voter qualification and as the election of representatives was the only selection of members of the national government to be chosen directly, they agreed to leave the matter to the individual states.² In addition to assuring that the House of Representatives would be elected on a popular base, this

¹The individual amendments are discussed later in this section and the relevant decisions of the Supreme Court are discussed in the fourth section of this chapter.

provision in effect avoided the establishment of a national electorate distinct from the state electorates which varied from state to state depending on state laws.³

Article I, Section 4

(1) The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

This section clearly vests the individual state with the power to conduct the elections for Senators and Representatives while the ultimate power and control is retained by Congress. The United States Congress has on occasion initiated legislation under the auspices of this provision and in turn the Supreme Court has found it necessary from time to time to provide amplification and explanation.⁴ This provision provides the focal point in the debate over state or national supervision of elections in general and voter registration in particular.

In Federalist #59, Alexander Hamilton defended the inclusion of this provision in the Constitution by pointing out that: "... every government ought to contain in itself the means of its own preservation." Hamilton was concerned that if the matter


⁴Pritchett, The American Constitution, p. 746. Also see sections on the Congress and the Court in this chapter for further discussion.
of elections was left exclusively to the individual state legislatures the existence of the national government would be completely at their mercy. By simply refusing to hold elections the states could render the national government helpless by failing to provide the people necessary to make it operate. For this reason, according to Hamilton, the Constitutional Convention:

... reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.5

It should also be noted that the wording of this provision empowers the states through the expressed declaration that, "the times and places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof." (Emphasis added.) On the other hand, the power of the Congress is, by the wording, a mere permission.6


6William Winslow Crosskey, Politics and the Constitution (2 vols.; Chicago: University of Chicago Press, 1953), I, pp. 499-500. Crosskey, in this same work, attempts to justify national control of elections and voter qualifications on the basis of Article IV, sec. 4 which guarantees each state a republican form of government. This argument is without legal precedent and is not supported by other constitutional scholars such as Corwin, Peltason, Pritchett, Mathews, and Schwartz. (See Bibliography.)
Article II, Section 2

(2) 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.

This paragraph, and the one following it, establish the so-called "Electoral College" for the election of the President of the United States. This provision gives the states complete freedom as to the manner and procedure to be employed in the selection of presidential electors. Legal and administrative decisions have established that these electors are state officers on the basis of the fact that they are nominated and elected according to state law and are paid some form of compensation from state funds for performing a service for the state.

Amendments to the Constitution

Of the last thirteen amendments to the United States Constitution, six have dealt with some aspect of elections and voting. While this fact on face value appears indicative of America's


desire to realize the democratic principle of universal suffrage it also serves as an indication of the strength of tradition and constitutional language in regards to voter qualifications and election procedures.

The Fourteenth Amendment (1868)

For the United States the conclusion of the Civil War was to mark the beginning of a trend away from the extension of state power in many areas. The second section of the Fourteenth Amendment marked the beginning of such a trend in the determination of the qualifications for voting. This section provided for the reduction of each state's representation in the House of Representatives in proportion to the number of adult males excluded from the right to vote in that state. The purpose of this provision was obviously to force the southern states to expedite the enfranchisement of Black males.

Technically, this provision does not deny the states the right to establish voter qualification requirements that, in fact, exclude a portion of the male population of the state. However, such an exclusion does create a situation in which that state's representation in Congress may be reduced. No state has ever been penalized under this provision.9

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The Fifteenth Amendment (1870)

This amendment provides that citizens of the United States shall not be denied their right to vote because of their "race, color, or previous condition of servitude." Unlike the Fourteenth, this amendment is expressly a limitation upon the national government as well as the states. The power to prescribe qualifications for voting in national and state elections still belongs to the individual states but subject to the limitation that no one can be disqualified because of their "race, color, or previous condition of servitude." 10

The second section of the Fifteenth Amendment authorizes Congress to enact appropriate legislation to protect the guarantees of the first section, but in fact such protective legislation could only be applied against public officials who deprived a person of his right to vote in violation of the amendment. The guarantees of the Fifteenth Amendment are far reaching in that they apply to qualifications for all elections, state and national. 11

The Seventeenth Amendment (1913)

While this amendment did not deal with voting rights as such it is important in the debate over state or national

11Corwin and Peltason, Understanding the Constitution, p. 160.
control of elections and voting. The Seventeenth Amendment provided for the direct election of Senators and stated:

The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

While most constitutional scholars ignore the fact that this wording is identical to Article I, section 2, it takes on new significance in view of the debate this chapter is concerned with. The similarity might well have been the result of Congress's desire to standardize the election provisions for both houses, or it could also be viewed as a reaffirmation of the state's constitutional power to establish voter qualifications.

The Nineteenth Amendment (1920)

This amendment prohibits both the state and national government from denying or abridging the right to vote of any citizen of the United States on account of sex. Since its adoption women have had an equal opportunity with their male counterparts to exercise their right to vote. However, the discrimination prohibited by this amendment is only on the basis of sex and does not prevent a state from excluding women from voting for other reasons.

Crosskey, Politics and the Constitution, p. 524 was the only scholar studied who noted the similarity. (See Bibliography for list of authors and works consulted.)

The Twenty-fourth Amendment (1964)

Yet another prohibition on the states and the national government, this amendment eliminated the use of a poll tax as a discriminatory device for denying the right to vote of those citizens who failed to pay such a tax. This amendment was the culmination of an effort begun in the United States Congress in 1942. From 1942-1949, five separate bills were passed by the House of Representatives in an attempt to eliminate poll taxes through statute. All the bills died in the Senate, three as the result of southern filibusters. In 1962 the Senate approved the constitutional amendment proposal which was ratified on January 23, 1964.\(^{14}\)

The Twenty-sixth Amendment (1971)

The most recent amendment to be adopted it provides that no citizens of the United States who are eighteen years or older shall have their right to vote denied or abridged on account of age. An earlier effort by Congress to affect this change through statute was held by the United States Supreme Court to only be applicable to federal elections. By constitutional amendment it became applicable to both state and national elections.\(^{15}\)


Summary

While this section has examined portions of the United States Constitution out of the context of applicable congressional and Supreme Court actions, which in effect link these provisions to actual practice, it is still beneficial in terms of perspective, to place quickly these provisions in the context of the debate over state or national control of elections and voting.

Proponents of S.352, to establish a national system of voter registration, concede the grants of power to the states set forth in Article I, section 2 and in the Seventeenth Amendment. But they point out that this power cannot be considered ultimate in light of the limitations imposed upon it by the Fourteenth, Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments. The power to impose a national system of voter registration, according to supporters of S.352, is a natural extension of the power granted to the national government under Article I, section 4 as held by the Supreme Court in Smiley v. Holm, 285 U.S. 355 (1932) as well as a line of judicial precedent which holds that the Equal Protection Clause of the Fourteenth Amendment prohibits certain unreasonable state restrictions on the franchise.16

Those who feel that a national system of voter registration

is an unwarranted and illegal infringement upon a state power
cite the grants of power under Article I, section 2 and the
Seventeenth Amendment, as limited by subsequent amendments.
They feel voter registration is a qualification for voting
and therefore a constitutional amendment would be necessary
to limit the state's power in this area. They also cite
Article II, section 2, as S.352 would, in fact, make state
electors into federal electors contrary to administrative
and judicial decisions which have declared them to be state
officers. Therefore, S.352 would be changing the Constitution
without actually amending it. Adoption of S.352 under Article I,
section 4, is attacked on the grounds that, in light of Federalist #59,
this power was to be used only as a means of
preserving the existence of the national government. Opponents
of S.352 do not feel such a threat presently exists.\textsuperscript{17}

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\textbf{The Congress}
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This was not until 1842 that the national government sought
to exercise its power to regulate the "times, places, and

manner of holding elections for Senators and Representatives," as provided for in Article I, section 4. Until that year it had been common practice among the states to provide that members of the United States House of Representatives were to be elected at large. On June 25, 1842 Congress enacted legislation, 5 Stat. 491 (1842), which required the states to select members of the House of Representatives from "contiguous and compact districts."  

In 1866 Congress enacted legislation to standardize and regulate the procedures by which the individual state legislatures selected their United States Senators, 14 Stat. 243 (1866). But it was not until 1870 that the first truly comprehensive package of federal legislation regulating federal elections was passed. This legislation was incorporated in the Reconstruction legislation following the Civil War. The Enforcement Act of 1870 and a subsequent act in 1872, 16 Stat. 254 (1870) and 17 Stat. 347-349 (1872), made it a federal offense to register falsely, to bribe a voter, to vote with no legal right, to make false returns of votes cast, to interfere in any manner with an election official, and for an election official to neglect any duty required of him by state or federal law. Congress also authorized federal officers to

register voters and to certify election results.  

In 1897, after twenty-four years of experience under the Enforcement Act, Congress repealed those portions of the Reconstruction legislation which provided for federal control over federal elections. The committee report which accompanied the repeal expressed a hope that state laws would be enacted to "protect the voter and purify the ballot."  

During a Senate debate on February 10, 1911 concerning the direct election of Senators, Senator Elihu Root referred to the Enforcement Act of 1870:

I do not know, sir, that the time will ever come - I hope it never will - when it will be necessary to apply another Federal election law to prevent the creation of members of this body from being a shame and a disgrace . . .

It would appear that as late as 1911 some members of Congress still looked upon the power over federal elections, Article I, section 4, as a matter of last resort.

In 1911, 37 Stat. 15, and again in 1929, 46 Stat. 21, Congress dealt with the issue of reapportionment. As a result of enactments in 1925 and 1939, 53 Stat. 1148, criminal penalties

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19 Ibid.


were placed upon certain financial transactions designed to influence candidates or voters. These acts were strengthened again in 1940, 54 Stat. 767, 772.²² Throughout history the Congress has limited its exercise of power over the conduct of elections to setting standards and eliminating corrupt practices. In every case this legislation was only applied to federal elections. Any attempt to regulate voter qualifications had always been implemented by means of constitutional amendment rather than statutory enactment.

The Civil Rights Acts

In 1957 Congress passed the first of a series of Civil Rights Acts which were expressly designed to enforce the Fifteenth Amendment's ban on racial discrimination in voting. This action was taken under the grant of power to Congress, in section two of that amendment, to enforce the guarantees of the amendment through appropriate legislation. Just as the Reconstruction Acts of the post-Civil War period were directed at the southern states, so were the Civil Rights Acts. In most of the southern states voter registration procedures were serving as an effective means of denying Blacks of their constitutional right to vote.²³

Under the C.R.A. of 1957 the United States Attorney General

²³Carlson, Modernizing Election Systems, p. 5.
was empowered to intervene and secure a federal court injunction to restrain both state officials and private individuals from interfering with the exercise of the right to vote through coercion or intimidation. This applied to all elections at which federal officials were chosen. Injunctions could also be secured against anyone attempting to deprive a citizen of his right to vote on the basis of race. Yet in thirty-three months of operation the C.R.A. of 1957 made no significant changes in the pattern of Black disenfranchisement.  

The Civil Rights Act of 1960 sought to strengthen the 1957 Act by authorizing the United States Attorney General to secure state voter registration records without resorting to the slow process of a formal lawsuit. In addition to making the records available the states were also required to retain them on file for at least twenty-two months after the election. Federal judges were also empowered to appoint federal officials to register Black voters who had been denied registration in areas where a pattern of discrimination had been established by legal suits brought under the 1957 Act. It readily became apparent that the case-by-case litigation was producing little change in the status quo of those areas of the South which were strongly opposed to Blacks voting. By 1965 over seventy cases had been brought to court under

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24 See Donald S. Strong, Negroes, Ballots and Judges (University, Ala.: University of Alabama Press, 1968), pp. 1-6; Corwin and Peltason, Understanding the Constitution, p. 46; and Pritchett, The American Constitution, p. 754.
the provisions of the Civil Rights Acts. In one Alabama county, after four years of litigation by the United States Justice Department and two federal court rulings against discriminatory practices, Black voter registration rose from 156 to 383 out of a total of 15,000 Blacks of voting age. The impact of the C.R.A. of 1957 and 1960 upon state efforts to keep Blacks from voting could hardly be characterized as anything more than minimal.25

In 1964 Congress passed another Civil Rights Act which dealt primarily with discrimination against Blacks in various types of public accommodations. However, it did impose additional federal controls on the voter registration process by requiring state registrars to apply voting qualification standards equally, to disregard minor errors in filling out registration forms, and to administer literacy tests in writing.26

The Voting Rights Acts

The general ineffectiveness of the Civil Rights Acts of 1957, 1960, and 1964 in extending the franchise to the Blacks prompted Congress to take drastic action. In 1965 a Voting Rights Act (PL89-110) was passed under the authority of section two of the Fifteenth Amendment. It specifically declared that

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no type of voting qualification or legal prerequisite to voting could be imposed for the purpose of denying or abridging an individual's right to vote on account of race or color.

The Act provided for the United States Civil Service Commission to appoint federal voting "examiners" to review the qualifications of voters who had been denied the right to vote by state or local officials and if the "examiner" found the person qualified he was empowered to compel state and local officials to enroll him as a voter eligible to take part in all federal, state, and local elections as well as party caucuses and state party conventions. A "triggering" formula provided that these federal examiners would be appointed in those states or their subdivisions where the United States Attorney General had determined that literacy tests or similar devices had been used as a qualification for voting on November 1, 1964 and the Director of the Census had determined that less than 50 percent of the voting age population were registered to vote on that date or had actually voted in the 1964 presidential election. While many states had literacy tests only Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and portions of North Carolina qualified under both provisions.

In those areas subject to the provision of the Act the use

of literacy tests or similar devices were suspended for five years. This suspension could only be appealed by bringing suit in the Federal District Court of the District of Columbia where the state was required to prove that the particular device in question had not been used for the purpose of racial discrimination during the preceding five year period. If any state under the supervision of this Act desired to change any aspect of their election laws this change would have to be reviewed by federal officials to determine if it would operate in a racially discriminatory manner. Any such changes would have to finally be approved by the United States Attorney General or the Federal District Court of the District of Columbia.27

What the three Civil Rights Acts had intended to do, the Voting Rights Act of 1965 finally accomplished. While operating under the legal provisions of the Civil Rights Acts, the United States Justice Department estimated that by 1965 the percentage of Blacks registered in Alabama had only increased by 5.2 percent, in Mississippi by 4.4 percent, and in Louisiana by only one-tenth of 1 percent. After one year of supervision under the Voting Rights Act of 1965, which sidestepped the cumbersome legal process, the percentage of Blacks

registered to vote in Alabama increased by 32.1 percent, in Mississippi by 26.5 percent, and in Louisiana by 15.4 percent.\(^{28}\) The total percentage of Black voters actually registered in the seven southern states covered by the Voting Rights Act, after five years of supervision, had risen from 33.1 percent in 1965 to 60.6 percent in 1970.\(^{29}\)

On June 22, 1970 President Richard Nixon signed into law House Bill 4249 (PL91-285) which amended the Voting Rights Act of 1965. These 1970 amendments extended the provisions of the 1965 Act another five years, until 1975, and revised the "triggering" formula to employ November 1, 1968 and the 1968 presidential election as standards. This latter change extended coverage of the Act to portions of Alaska, Arizona, California, Idaho, New York, and Oregon. The provision of the original Act which suspended literacy tests and other discriminatory devices for five years was also amended to increase the suspension to ten years.

In addition to congressional concern for voting rights of minorities, as guaranteed by the Fifteenth Amendment, this Act also imposed new restrictions on all the states in an effort to improve voting opportunities for all citizens. To this end the Voting Rights Act Amendments of 1970 suspended the use of


\(^{29}\)Statistics cited by Penn Kimball, *The Disconnected*, p. 263.
literacy tests as a qualification for voting in all federal, state, and local elections; eliminated durational residency requirements as a qualification for voting in a presidential election; required states to accept registrations for voting in presidential elections up to thirty days before the election; required states to provide means for absentee registration and voting; and lowered the age for voting in federal, state, and local elections from twenty-one to eighteen.30

Summary

Supporters of the present effort to establish a national system of voter registration cite the historical line of congressional action as a type of precedent. Yet this line of precedent deserves closer scrutiny. Prior to the 1950's congressional action was limited to dealing with the times, places, and manner of holding federal elections as they were entitled under Article I, section 2. Congressional action in these areas has generally been limited and employed only as a matter of last resort to guarantee the legal integrity of federal elections. However, when the issue of voter qualifications was to be dealt with Congress always found that a constitutional amendment was the only means of imposing any national

standards upon the "exclusive" state power set forth by Article I, section 2, the Seventeenth Amendment, and Article II, section 2.

The Civil Rights Act and the Voting Rights Acts since 1957 would seem to represent a statutory infringement by Congress upon the power of the states to set voter qualification standards under Article I, section 2, but this infringement is constitutionally justified specifically under section two of the Fifteenth Amendment and generally under the "Necessary and Proper Clause" of Article I, section 8. The Voting Rights Acts Amendments of 1970 sought to extend federal statutory regulation beyond implementation of the Fifteenth Amendment to voter qualification standards in general and to make them applicable to all the states. This effort has run afoul of the Constitution and the United States Supreme Court has provided a landmark ruling which is discussed in the next section on the Court.

In terms of historical precedent the Civil Rights Acts and the Voting Rights Acts do not lend support to congressional action under Article I, section 4 in establishing a national system of voter registration, as all of these acts were taken under the grant of power in section 2 of the Fifteenth Amendment. Yet the most basic question that remains to be answered is whether voter registration is a "qualification" for voting under Article I, section 2 or is a form of time, place, or manner of holding elections under Article I, section 4. Such
a question will obviously be left to the United States Supreme Court to decide.

The United States Supreme Court

Introduction

Ever since Chief Justice John Marshall delivered the opinion of the Court in the case of *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803), the United States Supreme Court has been recognized in the American democratic system as the final arbitrator in applying the words and spirit of the Constitution to the actual practice of government. By exercising "judicial review" the Court measures acts of Congress against the wording of the Constitution and of course the wording and intent of the Constitution are supreme. In the debate over federal or state control of voter registration both sides base their arguments on specific grants of power in the Constitution. The Supreme Court has and will continue to be the final arbitrator of conflicting claims such as these. This section introduces the more significant decisions by the Court which might provide some indication as to how the Court would rule on a case challenging the constitutional validity of a law establishing a national voter registration system.

The Right to Vote

The United States Supreme Court has invariably recognized the right to vote as "a fundamental political right, because
[it is] preservative of all rights." (Yick Wo v. Hopkins, 118 U.S. 356 [1886].) In its 1964 decision in the case of Wesberry v. Sanders, 375 U.S. 1, the Court stated

No right is more precious than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.31

Preservation of the integrity of this right has, throughout history, been of primary importance to the Court and the overriding consideration in its decisions on elections and voting.

Significant Decisions

Minor v. Happersett, 88 U.S. 162 (1875)

In this case the President of the Missouri Woman Suffrage Association was suing a state election registrar for her right to vote, arguing that as a citizen of the United States she was guaranteed the right by the Fourteenth Amendment. The Court held that under Article I, section 2 the state was responsible for setting the legal standards for designating the electorate. Once state law had determined who was eligible to vote by statutory provisions covering state elections, then and only then could the United States Constitution guarantee

those people their right to vote for members of Congress. The position of the Court was that the Constitution did not "confer" the right to vote upon anyone. The Court took a similar view the following year in regards to the Fifteenth Amendment in the cases of United States v. Reese, 92 U.S. 214 (1876), and United States v. Cruikshank, 92 U.S. 542 (1876). In the Reese Case the Court said that the Fifteenth Amendment did not confer the right upon anyone, but merely:

. . . invested the citizens of the United States with a new constitutional right which is . . . exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.33

Ex parte Yarbrough, 110 U.S. 651 (1884)

In 1884 the Court upheld the conviction of several Georgia Klansmen for conspiring to prevent, by intimidation, a Black from voting in a congressional election. They were held to be in violation of the Enforcement Act of 1870 which made it a federal offense to conspire to injure or intimidate a citizen in the exercise of any federal right. The constitutionality of the Enforcement Act had already been upheld by the Court in an earlier case. (Ex parte Siebold, 100 U.S. 371 [1880].) The Court ruling held that the Congress has the power, under Article I of the Constitution, to protect congressional elec-


33Quoted in U.S., Congress, Senate, S. Doc. 170, p. 1183.
tions from violence, corruption, or fraud and to punish election law violators. The Court viewed the actions of the Klansmen as an impairment upon federal voting rights.  

At this point the Court re-evaluated the negative implication it had applied to the Fifteenth Amendment in the Reese Case and recognized an affirmative implication in those situations where a former slave holding state still retained the word "white" in their state constitution as a qualification for voting, the Fifteenth Amendment did annul the discriminating word "white" leaving the Black with the same right to vote as the white. The most enduring principle set forth in this case was that while control over the qualification of voters may be left to the states, the right to vote for Senators and Representatives is derived from the United States Constitution and not state law. In the words of the Court:

The right to vote for members of the Congress of the United States is not derived merely from the Constitution and laws of the State in which they are chosen, but has its foundation in the Constitution of the United States.

While the right emanates from the United States Constitution the conditions upon which this right may be exercised are still determined by state law. In terms of legal precedent the

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decision is far-reaching in that where a federal right is involved it would only seem appropriate to assume that federal legislation could be passed to protect it.

In re Green, 134 U.S. 377 (1890)

In 1890 this case yielded a Supreme Court ruling which held that federal control over presidential elections amounted to little more than the power to control the election calendar. Justice Gray pointed out that presidential electors are, "no more officers or agents of the United States than are members of the State legislature when acting as electors of Federal Senators."37

In Burroughs and Cannon v. United States, 290 U.S. 534 (1934) the Court upheld the validity of the Corrupt Practices Act of 1925 as it applied to presidential elections but again conceded that presidential electors were not federal officers. As late as 1952, in Ray v. Blair, 343 U.S. 214, the Court held that even "faithless" electors could not be subjected to federal control.38

Guinn v. United States, 238 U.S. 347 (1915)

Shortly after the state of Oklahoma was admitted to the Union the suffrage provisions of the state constitution were

38Ibid., pp. 234-237.
amended by the addition of a literacy test from which most white people were exempted by the provisions of a "grandfather clause." (This provision exempted from the test those people whose ancestors had been entitled to vote in 1866.) The United States Supreme Court held the clause invalid as it constituted a discrimination under the Fifteenth Amendment.  

However, the Court expressly affirmed:

Beyond doubt the [Fifteenth] Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning.

The legality of the literacy requirement was upheld by the Court as being so clearly within state power as to require no discussion. In 1959 a unanimous Court adhered to this same view in the case of Lassiter v. Northampton County Board of Elections, 360 U.S. 45.

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41 See Pritchett, The American Constitution, p. 749; Claude, The Supreme Court and the Electoral Process, pp. 75-76; and Blumstein, Issues of Electoral Reform, p. 36.
State Supreme Court held that the governor's veto was invalid as the legislature was redistricting under a special federal constitutional power and not under their normal state law-making capacity subject to the governor's veto. The United States Supreme Court overturned the decision of the state court in a unanimous decision that the federal Constitution did not shield state redistricting proposals from gubernatorial veto.42

The decision presented Chief Justice Charles Evans Hughes an opportunity to comment on the power of Congress under Article I, section 4:

It cannot be doubted that these comprehensive words [Times, Places, and Manner of holding elections for Senators and Representatives] embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental rights involved.43

This was, by far, the broadest interpretation applied by the Court to Article I, section 4 and obviously forms the basis of the legal precedence cited by supporters of the plan.


to establish a national system of registration.

Breedlove v. Suttles, 302 U.S. 27 (1937)

The result of a suit by a Georgia citizen who had been denied the right to vote in a federal and state election for failure to pay a poll tax, this case gave the Court an opportunity to reaffirm their belief that voter qualifications were the responsibility of the states so far as they did not violate any prohibitions of the Constitution or its amendments. The Court ruled that the imposition of a poll tax was a valid revenue measure and that payment as a voting condition was simply an effective means of collecting it. The poll tax could not be viewed as discriminatory device in violation of the Fifteenth or Nineteenth Amendments as the tax was applied equally to white and black, men and women.

In the 1940's several attempts were made in Congress to eliminate poll taxes by statute under the power of Article I, section 4. But as this action would have only eliminated them in federal elections a constitutional amendment was proposed in 1962 and on January 23, 1964 it was ratified as the Twenty-fourth Amendment.44

United States v. Classic, 313 U.S. 299 (1941)

This case was concerned with the federal prosecution of several primary election officials in New Orleans, Louisiana

for fraud. Members of a New Orleans group attempting to stop the Huey Long political machine, the election officials deliberately altered and falsely counted certified ballots cast in a congressional primary. The prosecution's case appeared weak in light of previous Court decisions in United States v. Newberry, 256 U.S. 232 (1921), which held that congressional power did not extend to making rules for primary elections, and in Grovey v. Townsend, 295 U.S. 45 (1935), which held that primaries were the private affair of political parties who were free to set their own qualifications for participation.

In the Classic Case the Supreme Court established two tests to determine whether officers such as those being prosecuted could be held accountable by the federal government for the proper conduct of a primary election. The Court held that a contest for federal office is subject to federal control when it is an "integral part" of the election process by law and when it "effectively controls the choice" of the federal election. By these standards all party primaries and pre-primaries for the selection of candidates for national office effectively became subject to congressional legislation and control.

While the Classic decision reversed the decisions in the Grovey and Newberry Cases in practice, it was not until 1944 in the case of Smith v. Allwright, 321 U.S. 649 that the Court reaffirmed the doctrine set down in the Classic doctrine and overturned the Grovey decision by name.45


In this case, concerning malapportionment in the state of Tennessee, the petitioners were supported by an amicus curiae brief from the United States Department of Justice. This brief argued that even though the issue was over election districts for the state legislature, this was a matter the United States Supreme Court should look into as it involved the basic right to vote. The Justice Department brief insisted that the geographical discrimination of the Tennessee apportionment plan was akin to racial discrimination against voters as the plan made the votes of some people worth more than others. The brief argued that the right to be free of any discrimination in the selection of the state legislature was a federal right protected by the Fourteenth Amendment. 46

In 1946 the Court had ruled in the case of Colgrove v. Green, 382 U.S. 549, that apportionment issues, in this case over congressional districts, was a political question and therefore, not justicable. In the case of Baker v. Carr the Court did not consider the merits of the petitioners' complaint but instead ruled that federal courts could exercise judicial power over malapportionment cases. The Court felt that a complaint by a voter that equal protection had been denied by a discriminatory apportionment of the state legislature was a justicable matter which could be decided in a federal court of law.

This decision opened up a whole new avenue for judicial review of the election process by way of the equal protection clause of the Fourteenth Amendment. In sustaining a federal court's invalidation of the Georgia election machinery, Sanders v. Gray, 203 F. Supp. 158, the Court's dicta gave birth to the catch phrase of the Baker v. Carr line of precedent—"one person, one vote." 47

South Carolina v. Katzenbach, 383 U.S. 301 (1966)

The unprecedented and far-reaching imposition of federal control upon the southern states by the Voting Rights Act of 1965 was quickly brought to the attention of the Court. The Attorney General of the State of South Carolina had promptly filed a bill of complaints challenging the validity of certain portions of the new law and seeking an injunction against their enforcement. The national interest in this case was reflected in the fact that five states filed amici curiae briefs in support of South Carolina and twenty states filed briefs supporting the United States Attorney General.

South Carolina's arguments hinged on a number of constitutional guarantees such as the right of due process, but the Court rejected them all on the grounds that they were protections designed for the individual citizen and not the state.

47Ibid., pp. 154-165; Carlson, Modernizing Election Systems, p. 8; and Blumstein, Issues of Electoral Reform, pp. 33-34. The same case was retitled Wesberry v. Sanders, 376 U.S. 1, and came back to the Court in 1964. The original dicta "one person, one vote" has since been coined "one man, one vote."
The Court also rejected South Carolina's contention that the law violated the principle of "equality of States," as those states which fell under the "triggering" formula of the Act were not allowed to exercise the power over voter qualifications which were still being exercised by states not under supervision of the Act. In the Court's view Congress was employing the necessary tools to implement the guarantees of the Fifteenth Amendment in those areas where such an action was clearly needed. The Court recognized that the exercise of congressional power under this Act was "inventive," but the Court at the same time noted that the provocation had been great and the measures in question were only proposed after milder approaches, the Civil Rights Acts, had failed. The states had only themselves to blame for the fate that had befallen them. While the decision upholding the validity of the Voting Rights Act was unanimous, Justice Black insisted that the Reconstruction-style requirements for the southern states to amend their laws under the condition of federal approval violated the constitutional scheme of proper federal-state relations. 48


The power of the United States Congress to implement the provisions of the Voting Rights Act Amendments of 1970 was

challenged by the state of Oregon in this 1970 suit. All the challenged provisions were upheld by the Court except the lowering of the voting age which four judges viewed as legal when applied to federal elections and five judges held that it was unconstitutional as it pertained to state and local elections. This problem was resolved with the ratification of the Twenty-sixth Amendment within less than a year after the Court's decision.49

Justice Black announced the judgment of the Court and in an opinion expressing his own views stated:

Any doubt about the powers of Congress to regulate congressional elections, including the age and other qualifications of the voters should be dispelled by the opinion of this Court in Smiley v. Holm, 285 U.S. 355.50

The Court clearly respected the states' right to set qualifications for state and local elections in terms of minimum age, but came very close, four to five, to approving a national qualification for federal elections by statutory enactment.

The Test of "Compelling State Interest"

The 1962 ruling in the case of Baker v. Carr, as already noted, opened up the entire election process to review known


as the "compelling state interest" test. 51 Under this test the individual state had to establish a "compelling interest" for maintaining the requirement or classification which was being imposed upon the voters. Under this standard the Court struck down a New York requirement that voters in school elections must be parents or property owners, Kramer v. Union Free School District, 395 U.S. 621 (1969). In the case of Cipriano v. City of Houma, 395 U.S. 701 (1969) the Court condemned the exclusion of non-property taxpayers from voting on municipal utility revenue bonds. 52 Failure by the state of Maryland to show a "compelling interest" resulted in the Court voiding that state's exclusion of residents of federal enclaves from the electorate, Evans v. Cornman, 398 U.S. 419 (1970). 53

In 1972 the Court struck down Tennessee's one-year state and three-month county residency requirements as unconstitutional under the equal protection clause, Dunn v. Blumstein, 405 U.S. 331 (1972). Justice Marshall, speaking for the Court, pointed out that the classification of voters on the basis of their length of residency must be "necessary to promote a compelling governmental interest." The Court emphasized that the states did have the power to require that voters be bona fide residents of the relevant political subdivision but in this


case it was the additional durational residency requirement that was being challenged.\(^{54}\)

Since the decision in the Dunn Case two additional cases have come before the Court involving voters' rights in Arizona, \textit{Marston v. Lewis}, 41 U.S.L.W. 3498 (1973), and in Georgia, \textit{Burns v. Fortson}, 41 U.S.L.W. 3499 (1973). In the Marston Case the Court upheld Arizona's fifty-day registration closing date for certain state elections, agreeing that the fifty-day period was "necessary" to promote the state's "important interest" in accurate voting lists. The Court, accepting this administrative argument, also applied it to the Burns Case, but noted that the fifty-day period approached the outer constitutional limits in this area.\(^{55}\)

Summary

Clearly, from the few cases cited here, several lines of precedent present themselves in terms of future decisions. Some decisions have been reversed in practice, \textit{Classic} in reference to \textit{Newberry} and \textit{Grovey}, and even overturned by name, \textit{Grovey} cited in \textit{Allwright}. Other decisions have been rendered moot by subsequent amendments to the Constitution, such as \textit{Breedlove v. Suttles} and the Twenty-fourth Amendment and the eighteen year-old vote provision in \textit{Oregon v. Mitchell}

\(^{54}\)Ibid., pp. 3, 362.

and the Twenty-sixth Amendment. Yet in each case the Court's dicta concerning the federal relationship remains persuasive in terms of future decisions.

What does remain can generally be summarized as a continual encroachment upon previously recognized state responsibilities. *Baker v. Carr* and subsequent cases under the equal protection clause and *South Carolina v. Katzenbach* have provided major inroads into the state's power over voter qualifications and elections even at the state and local levels. The dicta of *Smiley v. Holm* would seem to present an unlimited congressional power over the process of the election of its members.

Yet a single understanding has run strong through all the Court's decisions since *Minor v. Happersett*, and that is that unless expressly forbidden by the Constitution or its amendments, the states have exclusive, unquestioned control over state and local elections and the appropriate electorate. Senate Bill 352, which proposes a national system of voter registration, recognizes this fact as the bill is expressly applicable to federal elections and primaries only, but does contain the already mentioned financial inducement for the states to adopt voluntarily the national postcard system for use in state and local elections.

In testimony before the House Subcommittee on Census and Statistics in 1972 and more recently before the Senate Committee on Post Office and Civil Service, official spokesmen
for the United States Department of Justice have expressed their reservations as to the constitutionality of the national voter registration legislation. The Department of Justice is concerned over the fact that while such a bill (S.352) would supersede state registration requirements for federal primaries and elections it would, in fact, impose registration requirements on the state of North Dakota which presently has none. If the federal authorities were to determine bona fide residency, and in fact Congress was empowered to supersede state residency requirements in Oregon v. Mitchell, how is this reconciled with the opinion in Dunn v. Blumstein which conceded that the state still has the right to determine who is a bona fide resident? The Justice Department concedes that Smiley v. Holm grants seemingly unlimited congressional power over the election of Senators and Representatives. But this decision has no bearing on the authority concerning the selection of presidential electors whom the Court has conceded are state rather than federal officers—In re Green and Ray v. Blair.56

In spite of these reservations the Court's dicta in the case of South Carolina v. Katzenbach might well present ominous forewarnings. As pointed out previously, the Court has always maintained a supreme respect if not infatuation with the right to vote. In South Carolina v. Katzenbach the

Court recognized the "inventive" provisions set forth by Congress to bring about enfranchisement of the southern Blacks. The Court's decision recalled the broad discretion in congressional power conceded one hundred-fifty years ago by Chief Justice John Marshall whose judicial standard for reviewing congressional action was "... let the end be legitimate. ..."

If voter participation in presidential elections continues to decline and the percentage of nonregistered voters continues to rise, the Court might again be incensed enough to seek a legitimate end at the expense of more traditional constitutional considerations.

_In Summary: The Fear and the Future of the States_

_The Federal System_

Following the American Revolution the thirteen former colonies were loosely bound together by the Articles of Confederation. The term loosely is more than appropriate in that under the terms of this arrangement each state owed allegiance to no higher authority and in effect the central government derived its power from the states. The establishment of the United States Constitution transferred a loose confederation into a federal system.

Daniel Elazar, Director of the Center for the Study of Federalism at Temple University, points out that one of the primary bases of federalism is the principle of "contractual noncentralization--the structural dispersion of power among
many centers whose legitimate authority is constitutionally guaranteed. . . ."57 The federal system set forth by the United States Constitution disperses power between the central or national government and the individual state governments. This expressed dispersion is achieved by granting specific powers to the national government only, to both the state and national government concurrently, and to the states only. In turn, the Constitution specifically denies certain powers to the national government; to the national and state governments, and to the state governments only. This allocation of power is given a hierarchal orientation by the second paragraph of Article VI, the "supremacy clause," which provides that the Constitution, the laws, and the treaties of the United States shall be the "supreme law of the land" and each state is bound by them.

Early in the nineteenth century the Supreme Court of Chief Justice John Marshall, in arbitrating disputes between the states and the national government, implemented the use of the "supremacy clause" as a legal principle. The "nullification crisis" of the 1830's and the Civil War could be considered as overt tests of the principle of "national supremacy." In both situations the national government emerged more powerful at the expense of the individual states. World War I and

finally the depression necessitated the take-over, by the national government, of more and more of the governmental services which had originally been the responsibility of the individual states. The continual flow of power from the states to the national government was such as to prompt Harold Laski to remark in 1939, "... the epoch of federalism is over. . . ."58

The constitutional structure of the American electoral system is also reflective of the federal scheme. Constitutionally the specific power over the qualifications of voters is given to the states, Article I, section 2; the national government is given ultimate power over the times, places, and manner of elections, Article I, section 4; and specific prohibitions are placed on the power of both by specific amendments. 59

Yet, as already demonstrated, the power of the states in regards to voting and elections, like so many of their other powers, is undergoing a gradual erosion and submergence into the pool of national power centered in Washington, D.C.

The Fear

While Harold Laski has always been a known critic of American federalism, his brief eulogy to the demise of federalism


in 1939 can only be criticized as premature and not as wrong. The continual trend towards centralization has given rise to numerous proposals to replace the present state governments with regional or sectional administrative units created by and under the direct control of the national government. Such proposals are obviously alarming to the states whose very existence as a political entity is threatened.

Yet even the states are not so naive as to not realize that it is doubtful that a major reversal of the centralization trend can be effected. America's fast-growing society and economic system, which have transformed local problems into national problems thus necessitating centralization, are highly unlikely to again restore them to a local nature. But even so, there remain many areas in which the states can act effectively and still provide a great service to their citizens. The conduct of modern efficient voter registration is just such an area.

The present proposal (S.352) to establish a national system of voter registration manifests an overt as well as a covert threat to the power of the states. Overtly, the registration of voters for the election of the 537 federal elective officers would become subject to the requirements and super-

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vision of the federal government. Registration of voters for the election of the over 520,000 non-federal officers would remain the sole responsibility of the states. Covertly S.352 offers a financial incentive to any state which would adopt the national system for all of its elections. In light of the problems posed by maintaining a dual system of registration, one for federal elections and one for state and local elections, the already poorly financed states are economically coerced into giving up a power and responsibility, over state and local elections, which the federal government could not enjoin by any other means short of constitutional amendment. If this program is an indication of future tactics to be employed to usurp state power, the states rightly have something to fear.

The Future

To speak of the future requires an understanding of the nature of the forces which are propelling us toward the future. Even the states must realize that the continued drive towards national unity, manifested by increased power in Washington, has been the result of necessity rather than a conscious pursuit of an established doctrine.

As early as 1906 Senator Elihu Root warned:

It is useless for the advocates of states rights to inveigh against the supremacy of the constitutional laws of the United States

\[^{62}\text{Figures cited in Carlson, Modernizing Election Systems, p. 8.}\]
or against the extension of national authority in the fields of necessary control where the states themselves fail in the performance of their duty. . . . It may be that such control would better be exercised in particular instances by the governments of the states, but the people will have the control they need, either from the states or from the National Government; and if the states fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised—in the National Government.  

In spite of this warning the centralization trend has continued unchecked and even today prominent academics and politicians continue to echo Root's admonition—". . . if the states can't or won't do it, the federal government will."  

In terms of the future Daniel Elazar forecasts:

The continued central role of the States is no longer a foregone conclusion within the framework of American federalism. While it is not seriously possible to conceive of the States not playing a major role, the significance of their role will depend to a very great extent upon their responses over the next half generation to the challenges which confront them.  

The issue of improving voter registration systems is just such a challenge. The states are in a position to render their citizens a service by improving voter registration systems or they can adamantly abdicate the responsibility in favor of an already over-burdened national government and its bureaucracy which realizes that in spite of the administrative or legal problems posed, the needs of the citizens must be served.

1957), p. 246 for similar views that the trend in centralization can be stemmed if the states will simply attempt to solve their own problems, with their own resources, at their own level.
CHAPTER III
THE NONREGISTRANT: THE WHO AND WHY
BEHIND THE FAILURE TO REGISTER

Introduction

The most common objection to efforts aimed at expanding voter registration is that if a person does not have enough interest to register on his own he will not have enough interest to vote and that even if he did vote it would reflect his disinterest and apathy and the governmental system would suffer.\(^1\) Apparently, consistent with this line of thought, voter registration presents a type of qualification which should be labeled "the degree of political interest." On September 6, 1964 the New York Times reported the comment of a New York voter regarding the adequacy of that city's voter registration system: "I sure do want to vote against that man (Senator Barry Goldwater), but I don't think I hate him enough to stand on that line all day long!"\(^2\) This incident, of course, raises the question of how much interest is enough?

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\(^{1}\)See Senator Ervin's remarks concerning S.352, Chapter I of this study and survey results Chapter V of this study.

At that time in New York City a voter's qualification on the basis of interest hinged on the number of hours he was willing to stand in line waiting to be registered.

Of course the question of interest and disinterest cannot be explained simply as a function of long or short voter registration lines but the question of interest does deserve closer scrutiny and finer qualification. The purpose of this chapter is to demonstrate that while voter disinterest and apathy is a major factor in nonregistration and nonvoting, it is only one of several factors which keep thousands of Montanans and millions of Americans from the polls. Utilizing available information this chapter attempts to come to terms with who the nonregistrants are, how many of them there are, and why they fail to register.

The Theoretical Nature of Nonvoting

While this study was concerned with those who do not register the legal requirements in the United States are such that while nonvoters are not necessarily nonregistrants, all nonregistrants are nonvoters, therefore any discussion of nonvoting is relevant to this study. This point is made in that the study of voting behavior is generally a post-World War II phenomena and as with the development of any new field of inquiry major efforts are only now being made to examine the peripheral areas such as registration. 3 The major studies of voting behavior

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3 While Joseph P. Harris, Registration of Voters in the United States was an early work in the field, it was a description of the institution of registration and did not explore the
were used by this study for the valuable insight they have provided as to the nature of the nonvoter and, hence, some understanding of the nonregistrant.

While relatively new, the study of voting behavior has probably attracted more scholarly attention in the last twenty-five years than any other area in the field of American politics. The result of such an intensive effort has been that many of the hypotheses set forth in these studies are virtually accepted as "givens." These studies explained voting behavior on the basis of socio-demographic and psychological factors.

The Nonvoter: A Socio-Demographic Profile

The socio-demographic profile of the nonvoter is the one aspect of voting behavior which has come to be regarded as a "given." In contrast to the psychological aspects which are not so readily identifiable or testable, the socio-demographic model of nonvoting is visible and readily verifiable from election to election. The socio-demographic profile of a nonvoter most widely accepted by social scientists is that the nonvoter is most likely to be a woman; to have less than a high school education; to be a rural resident; under thirty years of age;

question of nonregistration as the result of psychological or socio-demographic factors and even if he had the nature of the American electorate has drastically changed since that time. (Washington, D.C.: The Brookings Institute, 1929).

^See Clifton McClesky and Dan Nimno, "Differences Between Potential Registered and Actual Voters: The Houston Metropolitan Area in 1964," Social Science Quarterly, XLIX (June, 1968), 103 for comments on the status of studies in the field.
to have a low socio-economic status; and to be a member of a minority group.5

These same studies, while agreeing upon who the nonvoter is likely to be, displayed varying degrees of concern for the psychological aspects motivating voter turnout. The two earliest studies simply concluded that voter turnout was a function of interest. As interest in politics in general and the election in particular declined so did the probability that the individual would turn out on election day to vote. Those people with the least interest were those who fit the socio-demographic profile described above.6

The other major studies, while accepting the interest-turnout correlation, sought to explore the multitude of psychological factors which might come into play in determining the level of interest. The one factor identified by all the studies was the influence of a person's sense of "political efficacy."

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Political efficacy, or effectiveness, manifests itself as political self-confidence or, in reverse, a sense of political futility. Robert Lane pointed out:

It has, of course, two components—the image of the self and the image of democratic government—and contains the tacit implication that an image of the self as effective is intimately related to the image of democratic government as responsive to the people.\(^7\)

Those people who feel the least amount of political effectiveness are the ones described by the socio-demographic profile of the nonvoter. It is this depressed social and economic environment which fails to produce a political environment conducive to the development of any degree of political effectiveness.\(^8\)

The Nonvoter as Apathetic

While we may be able to identify who the nonvoter is and possibly some of the psychological processes at work, the question remains as to whether "disinterested" and "apathetic" are appropriate explanations.

Apathetic is the adjective most commonly attached to those who for one reason or another fail to make their way to the polls. The term implies a lumpen indifference arising from some alleged deficiency of character in the individual. The data gathered in this study suggest that the feeling of powerlessness among the urban poor is often an accurate reflection of the institutional bias actually at work for describing the supposed embittered state of

\(^7\)Lane, Political Life, p. 149. Also see Campbell, et al., The American Voter, pp. 103-105.

\(^8\)Lane, Political Life, pp. 147-155 and Milbrath, Political Participation, pp. 50-64.
those who withdraw from the political mainstream. That image also does an injustice to many persons whose sincere efforts to participate are thwarted by roadblocks capable of discouraging those whose resources have not been so limited in life. Disconnected - cut off, turned off - is a less normative and more accurate word, and also more suggestive of a system gone dangerously wrong.  

For all its impressive empirical support, however, the "income-education-apathy thesis" may have a potentially fatal flaw: It assumes that people fail to participate in politics chiefly because they do not think it is worth the time because they fail to understand what is at stake. It begins, in other words, with a conceptual framework attuned to political life in a modern democracy where participation is truly open. (Emphasis added.)

The implication of the two studies seems clear, namely that we have too long accepted at face value the correlation between interest in politics and political participation at the polls. This view has allowed us to place the blame upon the individual and to ignore the possibility that the system itself may be at fault.

A Cost Analysis Explanation

To this point this discussion has had to rely on the major studies dealing with voting and nonvoting and through deductive logic, all nonregistrants are nonvoters, imply their relevance

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9Penn Kimball, The Disconnected, p. 2.

to the study of nonregistration. Two studies, concerned directly with nonregistration, have built upon the theoretical model laid down by Anthony Downs, An Economic Theory of Democracy. The theory of voting set forth by Downs provided that an individual's decision to vote or not to vote hinges on a cost-return analysis. Downs summarized his discussion of abstention from voting:

When voting is costless, any return whatsoever makes abstention irrational, so everyone who has even a slight party preference votes. . . . When voting is costly, its costs may outweigh its returns, so abstention can be rational even for citizens with party preferences. In fact, the returns from voting are usually so low that even small costs may cause many voters to abstain; hence tiny variations in cost can sharply redistribute political power.\(^{11}\)

A 1960 analysis of registration and voting in 104 of the nation's largest cities was conducted to test Downs' cost-return model. The study clearly demonstrated that voter registration did pose a cost to the potential voter. The costs identified were: 1) Monetary costs--some states had poll taxes at that time plus the income lost for time away from work to register; 2) Simple inconvenience--normally a person was required to go out of his normal way to get their name on the registration list; and 3) Obtaining information--the individual would have to invest time and energy to find out if he were eligible and when and where he could register. These costs were amplified

by literacy tests (at that time still in use), periodic registration, early closing dates for registering, and restricted hours and places where a person could be registered. The study confirmed Downs' findings that the costs involved weighed heaviest on those in the lower socio-economic status groups.

One of the conclusions from this study suggests an important relationship between the socio-demographic profile of the nonvoter already discussed and the cost consideration.

When the costs of registering are generally high, differences from place to place in the value of variables affecting the motivation to vote - education for example - will account for a considerable part of the variation in rates of registration; when the costs of registration are low, differences from place to place in the value of such variables will be relatively less important, and differences in the convenience of arrangements for registration relatively more important, in their effects on rates of registration.

Another study building upon Downs' model is being conducted by Robert H. Blank and only some of his research notes are so far available. While Downs' model assumed a rational decision, conscious or unconscious, it only explained voluntary nonvoting and nonregistration. Many legal and administrative requirements overtly disenfranchise people and introduce a degree of nonvoluntary nonregistration. Blank feels that state election laws are an important determinant of voting turnout as they

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13 Ibid., 369.
establish the cost that enters into a person's decision to register or not and establish the requirements that induce a degree of nonvoluntary nonparticipation.

Blank is attempting to establish a scale, "which includes all meaningful items found to measure some underlying dimension defined as electoral structure."14 For this purpose he is employing a Guttman scale which includes fifteen specific measures of electoral provisions which are known to facilitate or deter voter turnout. (He based these on the Report of the President's Commission, 1963 and Milbrath, Political Participation.) The scale assigns a positive score for measures which promote turnout and a score of zero for each one that deters voting turnout. After eliminating those measures which exhibited high error scores, Blank applied his scale to the fifty individual states. The preliminary scores ranged from twelve for Mississippi to ninety-eight for Idaho and Michigan. Montana received a score of seventy-eight or fourteenth highest of the fifty states.15 While Blank's scale would require constant updating as state electoral laws change, his efforts do serve to point up the fact that factors other than apathy may be at work within the system.

In theory most social scientists can agree on who the nonvoter-nonregistrant will be but the explanations for his

15Ibid., 990-993.
action are far from settled. Apathy-disinterest in undoubtedly part of the reason, but not all of it.

The 1972 Presidential Election

The low voter turnout for the 1972 presidential election was the major cause for the high degree of public pressure brought to bear upon Congress to establish a national system of voter registration. In November, 1972 the Bureau of the Census conducted a Current Population Survey to secure data on various aspects of voting and registration during the 1972 presidential election. Their sample was spread over 461 areas comprising 923 counties and independent cities and extending into each of the fifty states and the District of Columbia. Their report is based on the responses from approximately 45,000 occupied housing units. While estimates based on survey data may vary from figures obtained by a complete census due to errors in response and reporting plus sampling variability, this study still provides valuable information in terms of understanding the motivations behind nonregistration. Its inclusion here is to provide a statistical dimension to the understanding of the nonregistrant.

The general conclusion of the survey, first of all, confirms

16See U.S., Bureau of the Census, Current Population Reports, Series P-20, no. 253, "Voting and Registration in the Election of November, 1972," (Washington, D.C.: Government Printing Office, 1973), pp. 1-15. For those percentages which will be quoted in this discussion the standard error ranges from 0.2 to 0.6 and at a 95 percent confidence level variation will not exceed twice the standard error.
the socio-demographic model of the nonvoter already established:

... females, Negroes, persons of Spanish ethnic origin, the youngest (18-34) and oldest age group (65 or older), those who did not complete elementary school education, those in families with income less than $5,000, and those in unskilled occupations, such as laborers and private household workers were less likely to be registered and to vote.¹⁷

This study is especially valuable to a discussion of non-registration in that when a respondent reported that he was not registered to vote he was then asked: "What was the main reason [this person] was not registered to vote?" This allows for a clear differentiation between nonvoters who were registered and the nonvoters who were not registered. A total of 33,242 persons reported that they were not registered. Table 1 below presents the breakdown of the categories of responses.

While apathy obviously plays a major role in voluntary non-registration it also appears that forces are at work which contribute to a significant degree of involuntary nonregistration.

Closer examination of the Census Bureau study reveals that those nonregistrants who cited disinterest as their reason for not registering generally conformed to the socio-demographic profile of the nonvoter established in previous studies. As education levels decreased the incidents of disinterest increased; the 18-24 age group had the highest rate of disinterest; more

¹⁷Ibid., p. 1.
TABLE 1

REASONS FOR NOT REGISTERING

<table>
<thead>
<tr>
<th>Region -</th>
<th>U.S.</th>
<th>North &amp; West</th>
<th>South</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Responses in Thousands -</td>
<td>33,242</td>
<td>21,243</td>
<td>11,999</td>
</tr>
<tr>
<td>Categories of Responses: Percentage of total respondents citing that reason for their failure to be registered</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Not a citizen of the U.S. - - - - - - - - -</td>
<td>10.6%</td>
<td>13.4%</td>
<td>5.8%</td>
</tr>
<tr>
<td>2. Had not lived here long enough to be qualified to vote - - - - - - - - - -</td>
<td>6.0%</td>
<td>5.4%</td>
<td>6.9%</td>
</tr>
<tr>
<td>3. Not interested, just never got around to it - - - - - - - - - - - - - - -</td>
<td>42.9%</td>
<td>40.1%</td>
<td>47.9%</td>
</tr>
<tr>
<td>4. Dislikes politics, did not prefer any of the candidates - - - - - - - - - -</td>
<td>7.6%</td>
<td>8.8%</td>
<td>5.4%</td>
</tr>
<tr>
<td>5. Unable to register because of illness, no transportation, could not take time off from work, etc. - - - - - - - -</td>
<td>12.6%</td>
<td>12.1%</td>
<td>13.6%</td>
</tr>
<tr>
<td>6. Other reasons - - - - - - - - - - - - - - - - - - -</td>
<td>15.0%</td>
<td>15.2%</td>
<td>14.5%</td>
</tr>
<tr>
<td>7. Don't know - - - - - - - - - - - - - - - - - - - - -</td>
<td>5.3%</td>
<td>5.0%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Totals:</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>


females were disinterested than males; disinterest was highest among agricultural workers; Blacks were more disinterested than whites; and in terms of income groups those with incomes from $5,000 to $7,499 demonstrated the highest degree of disinterest.\(^{18}\)

In contrast, those people who reported they were unable to register suggest a much different profile. Inability to register was given as a reason mostly by the 45 to over 65 age group; while inability to register was high among those with less than

\(^{18}\)Ibid., pp. 154-171.
a high school education it was higher for those with some college than for those with only some high school; self-employed workers were unable to register more often than any other working class; managers and directors were unable to register more often than their employees; females were more often unable to register than males; and Blacks were more often unable to register than whites.\textsuperscript{19}

The apathetic model in many cases does not apply to this latter group, in effect apathy and disinterest cannot be cited as an explanation for the failure of these people to be registered in order to vote.\textsuperscript{20}

Nonregistration and Nonvoting in Montana

The first half of this paper has served as an introduction to the various dimensions of the voter registration issue, the second half of this paper is concerned with the issue of voter registration in Montana. This section serves as a transition from the more general to the more specific by identifying, in keeping with the theme of this chapter, the who and why of non-registration in Montana.

Voter Turnout

Voter turnout, the number of people who actually cast ballots, is usually expressed as a percentage of the total popula-

\textsuperscript{19}Ibid.

\textsuperscript{20}On a national level a Gallup Poll estimated this group to be as high as 24\% of the total nonregistrants and Daniel Yankelovich, Inc., estimated the size of the group as 26\% of the total. See New York Times, December 10, 1972, p. 70 and New York Times, November 4, 1973, p. 36.
tion of voting age at the time of the election. The number of votes cast in an election is a matter of public record while figures for the voting age population are the best estimates made by the Bureau of the Census based on, "Current Population Reports, no. 479 and unpublished data."  

Graph A below presents a comparison of the trends in voter turnout as a percentage of the total population of voting age.

**GRAPH A**

VOTER TURNOUT AS A PERCENTAGE OF TOTAL POPULATION OF VOTING AGE

- 72.2, 70.6, 71.7, 71.8, 68.9, 69.1 (Montana)
- 62.6, 60.1, 64.0, 62.9, 61.8, 55.6 (United States)


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turnout for presidential elections for the United States as a whole and for Montana singularly from 1952 through 1972. The low voter turnout on the national level in 1972, as already noted, has been the cause of some concern on the part of many Americans who have, in turn, prompted Congress to take action.22 Posting a consistently higher voter turnout than the nation as a whole, Montana has felt no great pressure to improve or even examine the problem of nonregistration and nonvoting. In terms of ranking among the states, Montana has generally ranked high: 1948—8 of 48; 1952—15 of 48; 1956—14 of 48; 1960—25 of 50; 1964—16 of 50; 1968—19 of 50; and in 1972—4 of 50.23

The trend in voter turnout in Montana over the twenty-year period appears to have been relatively stable. (The maximum fluctuation between any two elections is 3.3 percent, a high of 72.2 percent in 1952 and a low of 68.9 percent in 1968.) On the other hand the nation as a whole has been subjected to major fluctuations. (As much as 8.4 percent between any two elections, a high of 64 percent in 1960 and a low of 55.6 percent in 1972, and as much as 6.2 percent between consecutive elections, 61.8 percent in 1968 and 55.6 percent in 1972.)

An even more stable trend in Montana is exhibited by Graph B which shows the number of Montanans who were registered to vote

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22See Editorials and Letters to the Editor, New York Times, November 10, 1972, p. 38; November 27, 1972, p. 34; and December 4, 1972, p. 38.

as a percentage of Montana's voting age population. Over the
twenty-year period the percentage of Montana's voting age popula-
tion that has been registered has not fluctuated over 2 percent
between any two elections. (A low of 82.4 percent in 1956 and a
high of 84.4 percent in 1964.)
This data seems to suggest two basic conclusions in regards to voter registration reform. First, as Montana ranks high nationally in voter turnout, it will be difficult to convince Montanans that the record can and should be improved upon. Second, it will be difficult to convince Montanans that their registration system is inefficient in that with the passage of the Twenty-sixth Amendment to the United States Constitution Montana's voting age population was greatly increased and none of these new voters were registered, yet the 1972 registration figures show that the current registration system was able to reach a high percentage of these new voters to the extent that the registration percentage overall increased by 1 percent over 1968. Nationwide less than 48 percent of the 18 to 20 year old age group were able to get registered for the 1972 presidential election. One reservation to this efficiency conclusion might have to be that Montana's stable trend also indicates that the system, as presently constituted, may be functioning at maximum efficiency. In support of this reservation a projection of the registration rate, at a generous and continuous 2 percent increase every presidential election, would indicate that by 1984 Montana could expect to have 90 percent of its voting age population actually registered. In order to equal a country

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such as Canada, which has about 98 percent of its voting age population registered, Montana's earliest hope would be sometime around the turn of the next century.

Participation As A Function of Registration

Graph C below presents the trend in voter turnout as a percentage of the total number of voters actually registered.

GRAPH C

PER CENT OF REGISTERED VOTERS VOTING

Obviously, once a person is registered chances are higher that he will actually vote. Of course advocates of the apathy explanation for nonregistration have cited this fact in support of their contention that if a person is interested enough to vote, registration requirements do not pose an insurmountable obstacle. But it must be pointed out that while the percentage of the voting age population actually registered has increased by 1.3 percent over the last twenty years, see Graph B, voter turnout among those registered has declined by 5 percent over the same period, see Graph C. In terms of apathy it might be argued that the registered voter who fails to vote is displaying a greater degree of apathy than the nonregistrant who has yet to overcome the obstacles posed by the registration system. The registered voter does not have that requirement still keeping him from the polls, yet in 1972, 15 percent of the registered voters in Montana did not bother to vote. (Percentage of voting age population voting subtracted from the percentage of voting age population registered.)

Reasons for Nonregistration

In 1972, on the basis of a voting age population of 460,000 and a total registration of 386,867, a total of 73,133 persons

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25 See Kelley, Ayres, and Bowen, The American Political Science Review, p. 362 for a similar conclusion based on their study of 104 major United States cities.

26 Voting age population from the Bureau of the Census, Statistical Abstract of the United States, p. 377 and the registration total from the Montana Secretary of the State,
of voting age in Montana were unable to vote because they were not registered. To better understand the reasons for nonregistration it might be helpful to apply the findings of the Census Bureau study on nonregistration as set forth in Table 1 above. The figures for the North and West would seem to be the most relevant to Montana so those percentages have been extracted from Table 1 and are applied to Montana's nonregistered population in Table 2 below.

TABLE 2
REASONS FOR NONREGISTRATION IN MONTANAa

<table>
<thead>
<tr>
<th>Categories of Responses: (See Table 1)</th>
<th>North &amp; West Percentagesb</th>
<th>Number of Montana's nonregistrants expected to fall in each categoryc</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Not a citizen of the United States</td>
<td>13.4%</td>
<td>9,800</td>
</tr>
<tr>
<td>2. Failed to meet residency require­ments</td>
<td>5.4%</td>
<td>3,949</td>
</tr>
<tr>
<td>3. Not interested</td>
<td>40.1%</td>
<td>29,327</td>
</tr>
<tr>
<td>4. Dislike politics, did not prefer any of the candidates</td>
<td>8.8%</td>
<td>6,436</td>
</tr>
<tr>
<td>5. Unable to register</td>
<td>12.1%</td>
<td>8,849</td>
</tr>
<tr>
<td>6. Other reasons</td>
<td>15.2%</td>
<td>11,115</td>
</tr>
<tr>
<td>7. Don't know</td>
<td>5.0%</td>
<td>3,657</td>
</tr>
<tr>
<td>Totals:</td>
<td>100.0%</td>
<td>73,133</td>
</tr>
</tbody>
</table>

aA projection employing the findings of the Census Bureau study set down in Table 1 of this study.

bPercentages of the total nonregistrants in the North and West citing each particular reason for not registering.

cApplying the percentages in the first column to Montana's total number of nonregistrants, 73,133, and rounding off to the nearest whole number.

Official Canvass of the Vote Cast at the General Election in the State of Montana, Nov. 7, 1972. This section will not deal with
Summary

This chapter intended to come to terms with who the non-registrant is as a person. To this end it was necessary to work first through the various studies on voting behavior which dealt with the characteristics of nonvoting and made no distinction on the basis of nonregistration as the two are logically consistent. These studies summarized voluntary nonparticipation as a function of the level of interest. At the same time, however, the socio-demographic profile of the nonparticipant is such as to suggest that nonvoluntary forces may be effecting his participation. Subsequent studies continue to probe this aspect.

When the question of nonregistration is directed to the individual involved, such as in the Census Bureau study and Gallup and Yankelovich polls, a significant amount of voluntary nonparticipation (apathy) appears, but so do indications that nonvoluntary nonparticipation is taking place among people who do not fit the accepted model of the nonparticipant.

In attempting to come to terms with nonregistration in Montana it was necessary to examine Montana's record of voter turnout and to establish the statistical relationship between turnout and registration. When looking at the projected breakdown of nonregistrants in Montana it appears that apathy cannot be those Montanans who were registered but did not vote as this cannot be construed to be the result of obstacles posed by the registration system which this study contends is the reason for the nonregistration and subsequent nonvoting of a significant portion of Montana's population.
accepted as the overriding reason for the failure to register. It is significant to note that the estimated number of people who did not register because they were not interested is less than half of the number of people who were registered and failed to vote on election day.

What these figures were intended to suggest is that in 1972 at least 8,849 Montanans, and probably more, were involuntarily disenfranchised by Montana's present voter registration system. The only requirement these people failed to meet was that of appearing at a set place, at a set time, before a set deadline. Undoubtedly the statistical validity of the projection set forth in Table 2 is open to question. But it is a fact that the nonregistrants in Montana in 1972 numbered 73,133 and it is a fact that no studies appear to be concerned with determining the reasons behind nonregistration in Montana. Therefore, it remains a problem to be reached through the best means available and application of the Census Bureau study is just such a means.
CHAPTER IV

THE HISTORY OF VOTER REGISTRATION REFORM IN MONTANA

Introduction

The purpose of this chapter is to examine the exact nature of Montana's present voter registration system and to review the various efforts that have been made to change this system. Two major reform efforts, one at the 1971-72 Constitutional Convention and one in the 1973-74 State Legislature, provide valuable insight into the forces at work within Montana which will either facilitate or prohibit any future reform efforts.

Title 23, Chapter 30, R.C.M. 1947

Montana's present system for the registration of voters is established by statute under Chapter 30 (Registration of Electors) of Title 23 (Elections) of the Revised Codes of Montana 1947. Through the thirty individual sections of that chapter the state legislature has set forth who shall be registered by whom; when and how that registration shall take place; and how to transfer, cancel, challenge, and reinstate registration.¹

¹This and future references to the statutes are drawn from Election Laws of the State of Montana 1970; the 1971 Supplement; and the 1974 Supplement, arranged and compiled from the Revised
A cursory examination of the various sections contained in Chapter 30 will give a reader a sense that the system has been set forth in very fine detail with little left to the discretion of the administrators of the system, however, this is misleading. In fact, the registration system established by law in Montana can be characterized as nothing less than highly decentralized from state control and inspection and highly discretionary on the part of the individuals who administer the system. Section 23-3002 designates each of Montana's fifty-six county clerk and recorders as the "ex officio county registrars" for their particular counties and therefore makes them responsible for conducting voter registration and taking care of the subsequent records. In terms of supervision the clerk and recorders are virtually free to administer as they see fit within the boundaries of the law. By law the Montana Secretary of State can only designate the use of standardized forms and the only report received from the county lists the total number of registrants for that county. The active role of the Secretary of State is limited to providing election calendars and notices of any changes in the election laws. The locating of control at the county level may well be a matter of political necessity in that by law the financial

Codes of Montana of 1947 (as amended) by Frank Murray, Secretary of State, and published by authority. Hereafter cited as R.C.M.

2Frank Murray, Montana Secretary of State, private interview held in his office in Helena on June 10, 1974 and Joann Woodgerd, Assistant Secretary of State, telephone interview held June 7, 1974.
costs of voter registration is borne by the cities and counties in which it is conducted.

Montana's present system, like others found throughout the United States, places the responsibility to register solely upon the individual citizen. As section 23-3006 provides: "(1) an elector may register by appearing before the registrar or deputy registrar in the county in which he resides . . . ." However, Montana does provide for absentee registration under Chapter 37 (Absentee Voting and Registration) of Title 23. ³ While provision is made for an infirmed elector to be registered at his home by the registrar or a deputy registrar, it is still the responsibility of the individual to initiate a written request for this service. If an individual changes his place of residence within the city, county, or state it remains his responsibility, by law, to go through the proper procedures for transferring his registry.

The discretionary aspect of the present system, which may well have the most direct impact on the number of voters registered for any particular election, pertains to the hours for registration. By law, Section 23-3005, "The registrar's office shall be open for voter registration from 8 a.m. until 5 p.m. on all regular working days except legal holidays. . . . ." Those hours, of course, coincide with the normal working hours.

³This is a new chapter originally provided for in Chapter 368, Laws of Montana 1969. Under the provisions of the Voting Rights Act Amendments of 1970 all states were required to include provision for absentee registration.
of the Clerk and Recorder's Office but, in fact, only establish the minimum hours during which registration must be taken. While many registrars adhere strictly to these minimum requirements, others keep their offices open on certain evenings and on weekends to accommodate people who were unable to get away from their jobs during the day. This discretion can result in varying registration rates from county to county within the state.\(^4\) By law, provision is made for the appointment of deputy registrars to assist in registration, Section 23-3003, but again the element of discretion is present in that the legal language specifies the "minimum" number to be appointed.

Montana's present system, as provided for by law, can be characterized as totally lacking of any central coordinating authority and, in fact, exists as fifty-six similar but separate systems all working within a general framework which provides only the most basic guidance in terms of procedure. The discretionary aspects appear in those areas which can most readily affect the number of people who will be able to get themselves registered.

Chapter 368, Laws of Montana 1969

During the 1967 regular session of the Montana Legislature House Joint Resolution #20 was passed and, in effect, directed the Montana Legislative Council to make a study of the state's

\(^4\)Frank Murray interview and also see The Missoulian, May 4, 1974, p. 5.
election laws and to make a report of their findings to the Forty-first Legislative Assembly. The resolution noted that the voting act was a "valued expression of citizenship," that most of Montana's election laws were outdated and badly in need of review, and that the people of Montana as well as the state government itself would benefit if these laws were updated. 5

The final report from the Legislative Council confirmed that many of the provisions of Title 23 dated from 1889 and the early twentieth century; at the same time the report noted that age was not a sign that the provisions were bad but simply an indication that they should be reviewed. 6 A review of the voter registration provisions in effect at that time shows that the general conclusion concerning dated election laws was particularly applicable to the registration provisions. In 1968, of the thirty-four sections dealing with voter registration, twenty dated from 1911, two from 1913, nine from 1915, two from 1937 and one from 1943. Only twelve of these sections had been amended since World War II. 7

The Legislative Council study began with a complete redraft-

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7 Compiled from annotations in Election Laws of the State of Montana 1968, Arranged and Compiled from R.C.M. of 1947 (as amended), by Frank Murray, Secretary of State, pp. 180-199.
ing of the twenty-five chapters in Title 23 utilizing more concise language without changing the content of the law. Copies of this redraft were then sent to the Secretary of State, the County Clerk and Recorders, and Dr. Thomas Payne of the University of Montana. Meetings were then held with these people for the purpose of review and revision. The result of this effort was a proposal for a bill, which was recommended to the legislature by the Legislative Council, which repealed the entire content of Title 23 and replaced the original 347 sections with 247 sections and, in effect, reduced the volume of Title 23 by about 40 percent without making any "fundamental" changes.\(^8\)

The council report did recommend some minor changes to Chapter 5 which at that time set forth the provisions for voter registration. The council recommended that justices of the peace no longer be designated as deputy registrars; that the twenty-five cent payment for registering voters be dropped; that county commissioners appoint deputy registrars from lists of people provided by the political parties; that a person be allowed to vote in a precinct other than where he resides; and that the registration of an elector in the United States Service could be cancelled after failure to vote in two general elections. A recommended change under then Chapter 27 of Title 23 was that the Highway Patrol, rather than the county registrars, should be required to submit lists of newly eligible

voters to the state's political parties. 9

During the Forty-first session of the Montana Legislature, Senate Bill 323, "An Act for the Codification and General Revision of the Election Laws of the State of Montana" was passed and signed into law. Of the six recommended changes to the registration provisions noted above, all but the out-of-precinct voting recommendation were incorporated and now appear under Chapter 30 of Title 23. 10

The effect of the 1969 revision was to eliminate archaic language and to provide provisions that were more readily understandable for those to whom they applied. However, major reform of the voter registration system was not yet in the offing.

The Constitutional Convention 1971-72

While 1969 marked the updating of Montana's election laws it also marked the turning point in the concern over updating Montana's entire governmental system. The Forty-first Legislative Session by a two-thirds vote in each house, approved a special referendum (#67) to appear on the 1970 general election ballot. Public approval of the referendum would have directed the Forty-second Legislative Assembly to call a special convention to "revise, alter or amend the Constitution of Montana."

The people of Montana approved Referendum 67 at the 1970 general election, elections for delegates were held, and on November 29, 1971 a constitutional convention was convened in Helena.

The convention found that the constitutional provisions pertaining to suffrage and elections, like much of the rest of the Constitution, were filled with archaic language, requirements that were statutory and not constitutional in nature and provisions which were simply outdated. Article IX of the 1889 Constitution, "Rights of Suffrage and Qualification to Hold Office," had originally contained thirteen separate sections, Article V of the 1972 Constitution, "Suffrage and Elections," is now composed of five sections incorporating portions of six of the original sections and simply deleting the remaining sections of the old article.¹¹

While drafting the new article was mostly a matter of eliminating outdated provisions a problem did arise over the provision providing for voter registration. The debate centered on the provision of Delegate Proposal No. 131 which was introduced on February 3, 1972 by Delegates Bugbee, Gate, Reichert and Harper. The proposal was that there should be a new constitutional section which would provide:

Prior registration shall not be a qualification for voting at an election in Montana. The legislature shall provide methods for establishing voter qualifications on election day at the polling places.12

The proposal was referred to the convention's Committee on General Government and Constitutional Amendment for consideration.13

Before the committee, in addition to the delegates speaking on behalf of their proposals, five additional witnesses testified for various special interest groups. Robert Watt, representing the Montana Student Presidents Association, testified in favor of poll booth registration but pointed out to the committee that such a provision was not constitutional in nature and should, therefore, be left to the legislature to decide.14 Ernie Post of the Montana State AFL-CIO also testified in favor of the poll booth proposal.15

The committee could not unanimously agree on a single draft proposal and therefore forwarded to the convention floor majority and minority reports. Both drafts were identical in every respect except for the provisions of Section 3. The

13Montana Constitutional Convention, Proceedings, Office of the Chief Clerk, February 3, 1972, p. 3.
14Robert Watt, telephone interview held June 14, 1974.
majority report provided:

Section 3. The legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections.¹⁶

The minority report provided:

Section 3. The legislature shall provide by law the requirements for residency, absentee voting and administration of elections. Voter registration prior to election day shall not be a condition for voting. The legislature shall provide for a system of poll booth registration, insure the purity of elections, and guard against abuses of the electoral process.¹⁷

The majority report was signed by six of the committee members and the minority report was signed by the remaining two committee members. Both proposals, with their accompanying texts, were submitted to the convention on February 12, 1972.¹⁸

On February 17, 1972 the convention resolved itself into Committee of the Whole to consider Committee Report No. 1 on Suffrage and Elections. The report was considered section by section with the first two sections of the majority report being adopted. When consideration of section three was reached Delegate Pete Lorello, a member of the Committee on Government and Constitutional Amendment and a sign er of the minority report, made a motion that section three of the minority report be adopted. The motion was passed on a roll call vote of 52 in favor and 46 opposed. The last two sections of the majority report

¹⁶Ibid., p. 2.
¹⁷Ibid., p. 11.
¹⁸Ibid., Letter of Transmittal, p. ii.
report were quickly adopted and a roll call vote on the entire report was passed by a vote of 82 in favor and 18 opposed. The President of the Convention, Leo Graybill, Jr., then announced that Report No. 1 of the Committee on General Government and Constitutional Amendment, having been adopted by Committee of the Whole, would be sent to the Committee on Style and Drafting. The convention then recessed for lunch.19

Reconvening following the noon recess President Graybill announced that he had been in error when he had accepted the motion to accept the Committee of the Whole Report during the morning session and, in fact, consideration was not closed. He asked if any delegate wished to challenge his decision which was in error. Delegate Lorello rose to challenge but the convention sustained Graybill's decision by defeating Lorello's challenge. The convention then resolved itself into Committee of the Whole. Delegate William Artz, having voted in favor of adopting section three of the minority report, moved that the committee reconsider its earlier adoption of this section and the motion carried. In an effort to save the poll booth provision Delegate Paul Harlow then made a motion to amend section three of the majority report by adding:

The legislature shall provide for a system of poll booth registration, insure the purity of elections, and guard against abuses of the electoral process.20

19Montana Constitutional Convention, Proceedings, February 17, 1972, pp. 5-8.
20Ibid., p. 9.
Harlow's substitute motion failed by a roll call vote of 49 in favor to 51 against. A compromise was offered by Delegate Cedor Aronow who made a substitute motion to amend section three of the majority report by adding:

The legislature may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses of the electoral process.21

This motion was passed by a vote of 76 in favor to 22 opposed. Section three was, therefore, adopted as amended.22

Obviously, the noon hour break was the key to the defeat of the poll booth provision. Opponents of the provision were busy organizing opposition, representatives of the Montana County Clerk and Recorders Association were lobbying against it, some delegates were receiving phone calls from constituents, and others were becoming concerned with how the voters back home would react to such a major reform in the present system.23

Convention Delegate Robert Vermillion, a member of the Committee on Government and Constitutional Amendment and a signer of the minority report, recalled that day and how "surprised" and "unprepared" supporters of the poll booth provision were

21 Ibid., p. 10.
22 Ibid., pp. 10-11.
23 Robert Vermillion, Constitutional Convention Delegate, telephone interview held June 17, 1974; Mae Nan Robinson, Constitutional Convention Delegate, telephone interview held June 16, 1974; and George W. Harvey, Chouteau County Clerk and Recorder and Past President of the Montana County Clerk and Recorders Association, telephone interview held June 17, 1974.
when through "parliamentary maneuvering," the adoption of section three of the minority report was reconsidered. After Harlow's substitute motion failed by two votes supporters of the poll booth provision were forced to accept the compromise if they were to retain any reference to poll booth registration in the constitution.

Opposition to the poll booth proposal in the convention hinged on two familiar arguments. First, many delegates, supported by the County Clerk and Recorders, felt that the system would be difficult to administer and would actually encourage fraud. The second point of debate centered on the familiar apathy-disinterest argument. On the floor of the convention this came to light in the debate over whether voting was a right or a privilege. Delegates opposed to the poll booth provision argued that voting was a privilege and that if a person did not care enough to register on his own he should not be allowed to vote.

Dale Harris, Research Coordinator for the convention, during a recent interview, pointed out that the implication of the poll booth compromise was that there was obviously strong support for poll booth registration but not enough to make it a fixed constitutional provision. However, the convention, while only

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24 Vermillion, interview June 17, 1974.
25 Vermillion, Robinson, and Harvey interviews held on June 16 and 17, 1974.
specifying that "the Legislature shall provide by law the requirements for residence, registration . . ." and by the addition of the, "It may provide for a system of poll booth registration . . ." showed that it did want the Legislature to "seriously" consider implementing poll booth registration in Montana.26

The Montana Legislature

The Forty-third Montana Legislative Assembly met the convention mandate to consider poll booth registration. On February 2, 1973 Representative Max Baucus and others introduced House Bill 559 to be known as the "Montana Poll Booth Registration Act." On February 12, 1973 the House Committee on Constitution, Elections and Federal Relations reported the bill with a "do pass" recommendation; on February 20, on second reading, the bill was passed as amended by a vote of 49 in favor and 48 opposed; and on February 23, on third reading, the bill was passed by a roll call vote of 53 in favor and 44 opposed. The Act was then delivered to the Senate for their consideration.27 With the end of the session near and lacking overwhelming support in the Senate, Baucus chose not to push

26 Dale Harris, Research Coordinator of the Constitutional Convention, private interview held in his office in Helena on June 10, 1974.

for a vote on the bill. Senator Bill Groff, a supporter of the bill and a member of the Senate Committee on Constitution, Elections, and Federal Relations which was considering the bill, arranged to have consideration of the bill held over till the new 1974 session.  

When the 1974 session convened there was even less support in the Senate for poll booth registration than there had been during the previous session. The major supporter on the Senate Committee considering the bill, Bill Groff, was no longer in office and had been replaced on the committee by an opponent of poll booth registration. Supporters of the bill kept it in committee throughout most of the session while trying to gather support. With the end of the session again fast approaching Baucus, conceding that the bill had little chance of passage, requested that the committee take action on his bill. The committee voted unanimously against the bill and the Senate accepted the committee report on February 14, 1974 by a vote of 42 to 4.  

Debate over poll booth registration stretched over two sessions in the state legislature while it had only lasted two weeks in the Constitutional Convention. Representative Robert Watt, one of the sponsors of H.B. 559 and Chairman of the House Committee

28 Max S. Baucus, State Representative and sponsor of H.B. 559, telephone interview held June 17, 1974.

29 Ibid. and Montana Kaimin, February 20, 1974, p. 4. Baucus himself noted that the bill died quietly. Neither the Great Falls Tribune nor Helena Independent Record carried articles on the bill's defeat and even the Kaimin article appeared a week after the bill had been killed.
on Taxation, recalled that opposition to the proposal in the legislature tended to come from the more conservative and highly organized groups such as the Montana Taxpayers Association and, "as the voting records would show," the Republicans. In committee, opponents of the bill had conceded that poll booth registration worked well in North Dakota and rural areas but they felt it would not work well in the larger cities. Their greatest fear was of the potential for fraud and the effect of disinterested people being talked into going to the polls by their more politically active friends who would tell them how to vote. 30

Representative Baucus recalled that in the legislature the bill received its greatest support from labor while lobbying against the bill by the Montana Association of County Clerk and Recorders was the most damaging. Although the Democrats held a majority in the Senate partisan alignments did not materialize in support of the bill. 31

Summary

Prior to 1969 most of Montana's provisions for conducting voter registration dated from 1911, the same period when voter

30Robert D. Watt, State Representative, telephone interview held June 14, 1974.

31Baucus interview June 17, 1974 and Ruth P. Bears, President County Clerk and Recorders Association, telephone interview held June 17, 1974. Mrs. Bears personally testified in opposition to H.B. 559 in her official capacity as President of the Clerk and Recorders Association.
registration systems were first appearing in the Western United States (see Chapter I of this study). The 1969 "overhaul" of Title 23 included some necessary changes to the antiquated registration provisions but nothing akin to significant reform was included.

The only significant reform to be proposed in Montana was the poll booth proposal in the Constitutional Convention of 1971-72 and H.B. 559 which was considered during the 1973-74 legislative sessions. In neither instance was the poll booth system able to gain a majority of support, yet in both cases it did gain a sizable amount of support and interest. It appears safe to assume that there is significant support for voter registration reform in Montana. It is unfortunate that the poll booth system has been the only reform measure that has thus far been considered. Supporters of reform may well be alienated by this particular type of system and other alternatives should be examined.

Unfortunately the most significant voter registration reform proposal ever set forth in the state of Montana was grossly overlooked by the Constitutional Convention. Delegate Proposal No. 178 introduced by Mike McKeon provided:

(2) The Legislative Assembly may secure the purity of elections and guard against abuses of the elective franchise through the use of registry list of all electors, provided such laws place upon state government or its subdivisions the burden of compiling and maintaining such list and provided further that electors not so registered may exercise their franchise upon
execution of an oath that they meet the qualifications of an elector in the state of Montana. 32

The first part of this section would, in effect, overturn the most basic principle of American voter registration, a principle which places the responsibility for registration solely upon the individual. (See Chapter I of this study for discussion of the implication of this principle.) The disposition of this proposal by the convention is noted in Committee Report #1 on Suffrage and Elections:

The basic difference between this proposal and the proposed Article is a system similar to the one in Delegate Proposal 131, [Poll Booth Registration] and was not adopted for the same reasons. 33

The committee, apparently only seriously reading the last part of this section, felt it was simply another poll booth proposal and treated it as such. They either overlooked or consciously ignored the significant reform suggested in the first part of the proposal.

When Representatives Baucus and Watt were asked about the prospect for future registration reform proposals they both responded that reform was inevitable and that it would probably be poll booth registration. The next chapter of this study,

33 Montana Constitutional Convention, General Government and Constitutional Amendment Committee Report, p. 16.
utilizing the results of a survey questionnaire administered to selected state officials, was an effort to better assess the prospect for voter registration reform in Montana and to determine, to some extent, what type of reform that might be.

From the activities of the Constitutional Convention and the state legislature it appears that the registration reform effort has unnecessarily been limited to consideration of only one alternative to the present system--poll booth registration. The last chapter of this study suggests alternatives to Montana's present system and to the poll booth system.
CHAPTER V
THE PROSPECT FOR VOTER REGISTRATION REFORM IN MONTANA

Introduction

To spend time designing a reform proposal for Montana completely unmindful of the prevailing political attitudes within the state would, indeed, be an exercise in academic futility. For this reason an integral part of this study has been an effort to identify some of these prevailing attitudes and their implications for voter registration reform in Montana. The means employed to uncover these attitudes was the use of postcard questionnaires. A questionnaire designed to determine the respondents' attitudes on a number of issues related to voter registration was mailed to each of the members of the 1974 Montana Legislature, each of the fifty-six County Clerk and Record- ers, and each of the county chairpersons for the Republican and Democratic parties. These groups were identified as the ones

1 The appropriateness of the mail questionnaire in this situation is confirmed by William J. Crotty, "The Utilization of Mail Questionnaires and The Problem of a Representative Return Rate," The Western Political Quarterly, XIX (March, 1966), 44--"A mail survey is especially feasible when the population to be studied is relatively homogeneous, when the population is distributed over a relatively wide and a relatively equi-distant or dispersed geographical area, and when financial resources are limited."
who would have the most influence upon and interest in voter registration reform.

Methodology

The following subsections set forth the methodological procedures employed in the design, administration, and interpretation of the questionnaire.

Questionnaire Design

The questionnaire consisted of seven separate items printed on the back of an 8 1/2" x 4" postcard. (See Appendix 1). The number of items was held to a minimum so as to require only a few minutes for completion in the hope of obtaining a high rate of response. All of the items were "closed-ended" as the respondent was asked to check one of the fixed responses. A short section at the bottom of the questionnaire was also provided for additional comments.

Aside from the first item, which was a question, the six remaining items were, in fact, statements in declarative form. The choices provided the respondent were either that he or she "agreed" or "disagreed" with the statement and for two of the items a choice of "undecided" was also made available. The declarative statement approach was adopted as all of the items

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touched on areas which are major points of contention in the debate over voter registration reform and it was felt the controversial nature of the statements would stimulate interest among the respondents. The statements were arranged in order of increasing complexity and their direct relevance to Montana. The final statement was the most direct as it required an opinion as to the adequacy of Montana's present voter registration system.

The first question asked the respondent to estimate the percentage of all the eligible voters in their county who were actually registered to vote in 1972. The purpose of this question, and the reason for its position in the order of questions, was to cause the respondent to concentrate and focus upon the specific topic of voter registration and to differentiate in his mind between those groups of people who were registered and those who were not. In terms of analysis, the information provided by this question was expected to be of little value. While the United States Census Bureau provided a voting age population estimate for the entire state for 1972 (see Chapter III of this study), it did not provide county by county estimates. Therefore, there was no means of verifying the responses and it was expected that many estimates by the respondents would be

4 See Marjorie N. Donald, "Implication of Nonresponse for the Interpretation of Mail Questionnaire Data," The Public Opinion Quarterly, XXIV (Spring, 1960), 11.

based on the 1970 Census Reports and thus out of proportion for 1972. The only viable information to be gained from the responses to this question was the sense that the individual was aware that not everyone who was eligible was actually registered.

The second item was, as already noted, in the form of a declarative statement: "A person who fails to register is not interested in voting anyway." The responses to this statement from which the respondent was asked to choose were -- "Agree" or "Disagree." The purpose of this question was to determine how much of the survey population actually accept the apathy/disinterest explanation for nonregistration.

The third statement was adopted verbatim from a national survey conducted as part of the Election Systems Project of the League of Women Voters Education Fund in 1971. This item was included as a means for verifying the survey conducted by this study with that of the national study which did include responses from Montana. The wording of this statement also served as a check on the apathy/disinterest theme of the previous item. For a respondent, who agreed with the apathy/disinterest explanation of statement two, to maintain any consistency in his attitude he would have to disagree with statement three. However, the respondent who rejected the apathy/disinterest explanation of statement two was not similarly bound as he could conceivably

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disagree with the third statement on the grounds that it was not the complexity of the system but something else that inhibited registration. It was expected, however, that both groups of respondents would retain a consistent attitude in response to both statements.

The fourth statement was intended to test the receptivity of the survey population to the idea of overturning the principle of citizen responsibility which serves as the basis of Montana's present voter registration system. The statement suggested: "The state and local governments should take the responsibility to see that all eligible voters are registered." The responses to this statement would be of major importance to any future efforts at drafting reform proposals. The only responses made available to this statement were again--"agree" or "disagree." The fifth statement was designed to measure the survey population's receptivity to national administration of voter registration. The proposal for such a system is the topic of Chapters I and IV of this study. This statement does not suggest what type of system that might be. In addition to the "agree" or "disagree" choices of responses set forth in the previous statements the statement also offered "undecided" as a choice. The reason for the addition of this choice was that some of the survey

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7Chapter I of this study discusses the nature and implications of the "citizen responsibility" principle and the Summary of Chapter IV of this study discusses a proposal to the 1971-72 Constitutional Convention to implement a principle similar to statement four of the questionnaire.
population might not have yet considered such a measure, or, if they were familiar with present efforts at the national level (S.352), they might not have made up their minds as to whether they favored or opposed that specific proposal.

The sixth statement, like statement three, was taken verbatim from the League of Women Voters' Study. In addition to serving as a cross check with the results of the national survey this statement suggested a specific type of registration reform which is similar to the voter registration system employed in Great Britain and Canada. The choice of "undecided" was also available for this question as some of the survey population might have only through this statement become aware of this system and therefore not as of yet formed an opinion on it. Others might have been familiar with the system but did not feel they knew enough about it to decide one way or the other.

The last item, number seven, was considered the most critical in terms of assessing the prospect for voter registration reform in Montana. The statement was: "The procedures presently employed for registering voters in Montana are adequate." In addition to the normal "agree" or "disagree" responses two others were included, "strongly agree" or "strongly disagree." These choices were intended to serve as a measure of the respondent's commitment to his position. In regards to future reform it would be expected that those respondents identifying with these extremes

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8Election System Project, Administrative Obstacles to Voting, p. 13.
would be the sources of the strongest opposition and strongest support. As already noted, the last statement was followed by a blank space labeled "COMMENTS:", about two inches of blank space were left at the bottom of the postcard for this purpose.

Administering the Questionnaire

As the purpose of the survey was to gain information for the purpose of assessing the prospect for voter registration reform in Montana it was essential to apply the questionnaires to those persons who would be the most interested in any reform efforts. With this in mind the questionnaire was mailed, as already noted, to each of the 1974 Montana State Legislators, fifty Senators and one hundred Representatives; each of the fifty-six County Clerk and Recorders; and to each of the County Chairpersons of the Republican and Democratic parties. In all, 315 questionnaires were mailed throughout the state.  

The major criticism of the use of the mailed questionnaire as a research tool is the problem of nonresponse. While no

Lists of the County Chairpersons and their addresses were kindly provided by each of the parties' State Central Committee headquarters in Helena. While the Republicans had county chairpersons designated in all fifty-six counties the Democrats only had fifty-three county chairpersons listed. The Democrats did not list a county chairperson for Meagher, Petroleum and Wibaux Counties.

minimum level of response has ever been established Donald Longworth set forth the most commonly accepted guideline when he said:

When the frequency of returns to a questionnaire is less than ten percent, or for that matter less than fifty percent, serious methodological questions can be raised as to the validity of the study.¹¹

Establishing the 50 percent level as the minimum acceptable return rate administration of the questionnaire was guided by the accepted methods for maximizing response. As already discussed the questionnaire was limited to seven questions printed on the back of a postcard. The front of the postcard was addressed with name of the researcher and a postage stamp had already been affixed to the upper right hand corner to facilitate return.¹²

The postcard questionnaire was included in an envelope with a cover letter. (See Appendix 2). In order to maximize response to the questionnaire the following considerations were incorporated into the construction of the cover letter. The cover letters

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¹¹Donald S. Longworth, "The Use of a Mail Questionnaire," American Sociological Review, XVIII (June, 1953), 311. Passage also quoted in Roeher, "Effective Techniques."

¹²See Kenneth Bradt, "The Usefulness of a Postcard Technique in a Mail Questionnaire Study," The Public Opinion Quarterly, XIX (Summer, 1955), 218-222 and Walter E. Boek and James H. Lade, "A Test of the Usefulness of the Postcard Technique in a Mail Questionnaire Study," The Public Opinion Quarterly, XXVII (Summer, 1963), 303-306.
were professionally printed on high quality bond paper with the University of Montana letterhead. The letter was personalized by addressing the reader as Dear--Chairperson, State Legislator, or County Clerk and Recorder as was appropriate to the particular mailing. All the cover letters were personally signed in ink by the researcher. The text of the cover letter included a number of items which are recognized as being conducive to higher rates of response. The body of the letter was kept as brief as possible and only included twenty typed lines. In this space the researcher introduced himself and the study he was conducting. All of the groups being included in the study were identified by name and their importance to the study was emphasized. Brief directions for completing the questionnaire were included along with an assurance as to the anonymity of the respondent. An inducement for taking part was included by offering copies of the survey results to the respondents. A deadline date for return of the questionnaires was also specified which allowed about three weeks for return after the initial mailing of the question-

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13 See Longworth, "The Use of a Mail Questionnaire," 312, and Goode and Hart, Methods in Social Research, pp. 177, 179.

Cover letters and questionnaires were mailed in a business sized envelope with the University of Montana return address. The personalization effort was extended to the envelope by addressing each respondent by name. Postage stamps were utilized on the envelopes as opposed to business-type machine stamps as that factor has been shown to make a significant difference in the return of questionnaires.\(^{16}\)

**Survey Results**

Of the 315 questionnaires mailed 217 or 68.9 percent were returned completed. Table 3 below provides a breakdown of the number of returns for each of the groups polled.

While the return rate overall and from each group individually was satisfactory the question remains as to whether the responses were representative of the entire survey population.\(^{17}\) Mathematical techniques are available for deriving unbiased estimates based on a sample survey but their application is


<table>
<thead>
<tr>
<th>Group</th>
<th>No. of Questionnaires Mailed</th>
<th>No. of Questionnaires Returned</th>
<th>Return Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Senators</td>
<td>50</td>
<td>33</td>
<td>66.0%</td>
</tr>
<tr>
<td>Republicans</td>
<td>(23)</td>
<td>(17)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(27)</td>
<td>(16)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td>100</td>
<td>62</td>
<td>62.0%</td>
</tr>
<tr>
<td>Republicans</td>
<td>(46)</td>
<td>(29)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(54)</td>
<td>(33)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td>56</td>
<td>52</td>
<td>92.9%</td>
</tr>
<tr>
<td>Republicans</td>
<td>(26)</td>
<td>(24)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(30)</td>
<td>(28)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td>109</td>
<td>70</td>
<td>64.2%</td>
</tr>
<tr>
<td>Republicans</td>
<td>(56)</td>
<td>(35)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(53)</td>
<td>(35)</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>315</td>
<td>217</td>
<td>68.9%</td>
</tr>
</tbody>
</table>

slightly complicated by the nature of this study. First of all, the survey was not a random sample in that the entire population was surveyed. Secondly, responses which were received cannot be considered random as no data is available as to the nature of nonrespondents as opposed to respondents. Therefore, even though the majority of each group polled responded, all conclusions based on this information, as set forth in the following pages, is strictly in the context of those who responded and is not intended as a projection of the attitudes of the remainder of those groups who did not respond. However, this information is considered crucial in the assessment of the prospect of voter
registration reform in Montana as response rates are highest among those individuals most actively involved with the subject matter.\textsuperscript{18} As voter registration reform is a political issue to be decided in the political arena an understanding of the political activists in such a situation is most crucial.

**Item #1**

1. In 1972, what percentage of the total population of eligible voters in county were actually registered? (Best Estimate)

As already discussed under the subject of questionnaire design, this question was included more as a means of focusing attention on the subject of the survey than as a source of useable information. The researcher had no means of verifying county by county responses as the 1972 voting age population estimate provided by the United States Census Bureau is only for the state as a whole. This question sought to draw on the individual's perception of the situation. It was expected that while some estimates would be off the cuff, others would try to employ available figures and others would simply leave the question blank. Of the 217 questionnaires, twenty-five were returned with Item #1 left blank or with a question mark inserted and of the percentages provided by respondents their validity is

\textsuperscript{18}See Donald, "Implication of Nonresponse," 112. Her conclusion concerning return rate as a function of subject involvement is confirmed by this study which showed the highest return rate from the County Clerk and Recorders (92.9 percent) who work with voter registration year round.
suspect. Some of the respondents noted their calculations on the questionnaire; two noted that they used 1970 census figures; two noted that their answers were the percentage of registered voters who actually voted; three others simply listed the total registration figure for their counties; and one State Representative, who apparently checked around to try and find the figures, noted: "County Clerk says she doesn't really have any idea!"

Simply as a matter of interest the county by county estimates ranged from a low of 40 percent to a high of 98 percent. (The actual state-wide figure is 84.1 percent but does not provide a county by county breakdown.)

2. A person who fails to register is not interested in voting anyway.
   Agree □   Disagree □

The intention of this statement was to differentiate between those respondents who explain nonregistration as a result of apathy and disinterest and those who recognize that other forces, besides apathy and disinterest, may be at work. Table 4 provides a breakdown of the responses to item #2. From the results presented in Table 4 it appears that Republican Senators and Representatives accept the apathy/disinterest explanation at a rate of about two to one. Democrats in the Senate display an even split on the issue, yet in the House, Democrats rejected the apathy/disinterest explanation at a rate of two to one. The even split among Democrats in the Senate allows the Republican
TABLE 4

GROUP BREAKDOWN OF RESPONSES TO ITEM #2

<table>
<thead>
<tr>
<th>Group</th>
<th>Agree</th>
<th>Disagree</th>
<th>Total No. of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Senators</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans (ID 6)</td>
<td>19</td>
<td>14</td>
<td>33</td>
</tr>
<tr>
<td>Democrats (8)</td>
<td>(11)</td>
<td>(6)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(8)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td>30</td>
<td>32</td>
<td>62</td>
</tr>
<tr>
<td>Republicans (19)</td>
<td>(19)</td>
<td>(10)</td>
<td></td>
</tr>
<tr>
<td>Democrats (22)</td>
<td>(11)</td>
<td>(22)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td>49</td>
<td>1</td>
<td>50^a</td>
</tr>
<tr>
<td>Republicans (23)</td>
<td>(23)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Democrats (26)</td>
<td>(26)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td>70^b</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans (25)</td>
<td>(25)</td>
<td>(10)</td>
<td></td>
</tr>
<tr>
<td>Democrats (12)</td>
<td>(12)</td>
<td>(23)</td>
<td></td>
</tr>
</tbody>
</table>

^aOne Republican Clerk and Recorder wrote in a third choice, "Not Always," and one Democratic Clerk and Recorder filled in a question mark.

^bTotal for the County Chairpersons of both parties is not relevant.

attitudes to prevail for the body as a whole while in the House the Democratic rejection rate is high enough to overcome the Republicans. This is especially interesting in light of the state legislature's treatment of H.B. 559 discussed in Chapter IV which tends to confirm this analysis.

The responses of the County Chairpersons also display a correlation on the basis of political parties. The Republican Chairpersons, like their counterparts in the legislature overwhelmingly embraced the apathy/disinterest explanation (24 to 10).
The Democratic Chairpersons likewise responded consistently with the Democratic legislators by rejecting the apathy/disinterest explanation at a rate (12-23) about identical to the Republican acceptance rate.

The County Clerk and Recorders, who formally lobbied against poll booth registration in the Constitutional Convention and the state legislature, embraced the apathy/disinterest explanation in near unanimity regardless of political affiliations. Twenty-three Republicans accepted it, none rejected it and one added the comment, "Not Always." Twenty-four Democrats accepted the apathy/disinterest explanation, one rejected it, and one simply placed a question mark for a response. The Democratic Clerk and Recorders, more than any other group accepting this argument, were incensed enough to also commit their position to words in the comments section of the questionnaire. (Twelve of the twenty-four were so moved.) These comments varied but all reiterated the theme of Item #2--Failure to vote is prima facie evidence of an individual's lack of interest in the political process, and a person who is interested enough to vote sees to it that he is registered.

**Item #3**

3. Many nonvoters would vote if registration procedures were less complex.

   Agree □   Disagree □

As noted previously in discussing questionnaire design this statement was taken verbatim from a similar study conducted
nationwide by the League of Women Voters. Nationwide 11 percent of the Chief County Election Officials polled agreed with this statement.\(^\text{19}\) In this survey, 7.7 percent of the County Clerk and Recorders agreed with the statement. This statement was also included in this survey as a cross check on the opinions expressed in the previous statement on apathy and disinterest (Item #2). As pointed out earlier in the section on questionnaire design, agreement to both statements two and three demonstrate a logical inconsistency in that by agreeing with statement two the individual acknowledges that apathy and disinterest were the explanation for nonregistration but by agreeing to the second statement they were acknowledging that voter registration procedures were complex and a bar to voting hence a cause of nonregistration. This inconsistency appeared on sixteen of the 214 questionnaires which responded to both statements. Table 5 provides a breakdown of the responses to Item #3.

The responses to the third statement show virtually the same correlations as did the responses to statement #2. This relationship became evident when comparing Table 5 with Table 4 and the reverse relationships. (Those answering "Agree" on Table 4 generally appear as "Disagree" on Table 5). The only significant exception to this rule appears in the responses of Republican County Chairpersons. In this case an unusually high number of respondents (8) answered disagree to both

TABLE 5

GROUP BREAKDOWN OF RESPONSES TO ITEM #3

<table>
<thead>
<tr>
<th>Group</th>
<th>Agree</th>
<th>Disagree</th>
<th>Total No. of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Senators</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>12</td>
<td>21</td>
<td>33</td>
</tr>
<tr>
<td>Democrats</td>
<td>(2)</td>
<td>(15)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td>32</td>
<td>30</td>
<td>62</td>
</tr>
<tr>
<td>Republicans</td>
<td>(8)</td>
<td>(21)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(24)</td>
<td>(9)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td>4</td>
<td>48</td>
<td>52</td>
</tr>
<tr>
<td>Republicans</td>
<td>(2)</td>
<td>(22)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(2)</td>
<td>(26)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(2)</td>
<td>(33)</td>
<td>67^a</td>
</tr>
<tr>
<td>Democrats</td>
<td>(17)</td>
<td>(15)</td>
<td></td>
</tr>
</tbody>
</table>

^aThree Democratic Chairpersons left their answers blank.

statements two and three. This is not logically inconsistent as they may not accept the apathy/disinterest explanation of non-registration but at the same time not feel that it is the complexity of the voter registration system that is at fault. One Republican Representative provided a significant comment when he noted that the system was not "complex" but rather "inconvenient."

Item #4

4. The state and local governments should take the responsibility to see that all eligible voters are registered.

Agree □          Disagree □

This statement was included as a means of measuring support for this type of reform. The responses to this suggestion appear
in Table 6 below:

TABLE 6

GROUP BREAKDOWN OF RESPONSES TO ITEM #4

<table>
<thead>
<tr>
<th>Group</th>
<th>Agree</th>
<th>Disagree</th>
<th>Total No. of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Senators</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(0)</td>
<td>(17)</td>
<td>33</td>
</tr>
<tr>
<td>Democrats</td>
<td>(6)</td>
<td>(10)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(3)</td>
<td>(26)</td>
<td>61^a</td>
</tr>
<tr>
<td>Democrats</td>
<td>(24)</td>
<td>(8)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(1)</td>
<td>(21)</td>
<td>50^b</td>
</tr>
<tr>
<td>Democrats</td>
<td>(6)</td>
<td>(22)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(8)</td>
<td>(27)</td>
<td>68^c</td>
</tr>
<tr>
<td>Democrats</td>
<td>(18)</td>
<td>(15)</td>
<td></td>
</tr>
</tbody>
</table>

^aOne Democratic Representative said he could not answer without seeing a definite proposal but this might be a possibility.

^bTwo Republican Clerk and Recorders did not respond to this statement.

^cTwo Democratic Chairpersons did not respond to this statement.

Again support and opposition to the proposition appeared to polarize along party lines. As a group the County Clerk and Recorders display the greatest opposition to the proposition but for the first time some support is evidenced among Democratic Clerk and Recorders. The State Senators show the next highest degree of opposition for a single group rejecting the
proposition at a rate of 4 1/2 to 1. No Republican Senators supported the proposition and only six of the sixteen Democrats supported it. Among State Representatives Republicans continued to display a high rejection vote but the Democrats, contrary to their counterparts in the Senate, agreed with the proposition at a rate of three to one. Republican County Chairpersons rejected the proposition at a rate of slightly more than three to one and Democratic County Chairpersons split on the issue giving a slight edge on the side of agreement. Two Republican State Representatives, three Republican County Chairpersons, one Democratic County Chairperson, and one Democratic Clerk and Recorder suggested by comments that this function was best left to the voluntary efforts of the political parties.

Item #5

5. A single, uniform system for nationwide voter registration should be implemented by the National Government.

Agree ☐    Disagree ☐    Undecided ☐

This statement was intended to measure the degree of support and opposition to a nationally administered voter registration system. The responses to this statement appear in Table 7.

On the issue of national administration the responses, for the first time, showed a strict party alignment among all groups. For the first time the majority of Democratic Senators agreed with their counterparts in the House who also agreed with the proposition at a rate of slightly over two to one. For the first time on any of the issues touched on so far, the County
TABLE 7
GROUP BREAKDOWN OF RESPONSES TO ITEM #5

<table>
<thead>
<tr>
<th>Group</th>
<th>Agree</th>
<th>Disagree</th>
<th>Undecided</th>
<th>Total No. of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Senators</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(2)</td>
<td>(11)</td>
<td>(4)</td>
<td>33</td>
</tr>
<tr>
<td>Democrats</td>
<td>(7)</td>
<td>(5)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td>26</td>
<td>24</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>Republicans</td>
<td>(9)</td>
<td>(17)</td>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(17)</td>
<td>(7)</td>
<td>(9)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td>18</td>
<td>24</td>
<td>10</td>
<td>52</td>
</tr>
<tr>
<td>Republicans</td>
<td>(4)</td>
<td>(13)</td>
<td>(7)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(14)</td>
<td>(11)</td>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td></td>
<td></td>
<td></td>
<td>70</td>
</tr>
<tr>
<td>Republicans</td>
<td>(7)</td>
<td>(23)</td>
<td>(5)</td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>(23)</td>
<td>(3)</td>
<td>(9)</td>
<td></td>
</tr>
</tbody>
</table>

Clerk and Recorders split along party lines. While the Republicans rejected the proposition at a rate of about three to one the Democrats accepted the proposition by a slight majority, fourteen to eleven. Republican County Chairpersons also rejected the proposition at a rate of slightly over three to one but the Democratic County Chairpersons overwhelmingly agreed with the proposition at a rate of over seven to one. Approximately 20 percent of each group polled responded to the statement by indicating they were "undecided."

Item #6

6. Door-to-Door registration should be carried out by local government officials in order to get all eligible citizens on the voter registration lists.

Agree □ Disagree □ Undecided □
This statement was taken verbatim from the National League of Women Voters study. In their study 31 percent of the Chief County Election Officials polled agreed with the proposition. Among Montana County Clerk and Recorders, however, only one of the fifty-two, which amounts to 1.9 percent of the total, agreed with the proposition. This statement proposes a specific type of voter registration system similar to that used in Canada. This question is an extension of the principle expressed in statement #4. This correlation is discussed shortly. Table 8 presents a breakdown of the responses to statement #6 by each group polled:

**TABLE 8**

**GROUP BREAKDOWN OF RESPONSES TO ITEM #6**

<table>
<thead>
<tr>
<th>Group</th>
<th>Agree</th>
<th>Disagree</th>
<th>Undecided</th>
<th>Total No. of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Senators</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>4</td>
<td>22</td>
<td>7</td>
<td>33</td>
</tr>
<tr>
<td>Democrats</td>
<td>(2)</td>
<td>(12)</td>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(10)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>13</td>
<td>37</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>Democrats</td>
<td>(0)</td>
<td>(25)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(13)</td>
<td>(12)</td>
<td>(8)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>1</td>
<td>48</td>
<td>3</td>
<td>52</td>
</tr>
<tr>
<td>Democrats</td>
<td>(0)</td>
<td>(23)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(25)</td>
<td>(2)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(4)</td>
<td>(26)</td>
<td>(5)</td>
<td>70</td>
</tr>
<tr>
<td>Democrats</td>
<td>(9)</td>
<td>(19)</td>
<td>(7)</td>
<td></td>
</tr>
</tbody>
</table>

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20*ibid.*, p. 13.
What little support for this proposition that did appear was generally among Democrats and only in the case of the Democrats in the House of Representatives was support greater than the opposition (13 to 12). The unanimous Republican opposition to this proposal in the House coupled with the nearly even Democratic split resulted in that body as a whole rejecting the proposition by about a three to one margin. The County Clerk and Recorders displayed near unanimity in rejecting the proposition at a high rate, over six to one among Republicans and at a rate slightly over two to one among Democrats.

When comparing the results of Item #4 from Table 6 with those of Item #6 from Table 8, the number of respondents from each group who agree with the idea of local government assuming the responsibility for voter registration is greater than the number who agree that local government officials should conduct registration door-to-door. A single exception occurred among Republican State Senators when two of the respondents rejected the fourth proposition but accepted the sixth proposition, a logical inconsistency. All the remaining groups had some respondents who had accepted proposition #4 but indicated they were "undecided" on statement #6. Others who agreed to statement #4, twenty-three total, chose to "disagree" with the proposal set forth in statement #6. Both of these responses on the part of those agreeing with statement #4 are considered logical as statement #4 expressed a general principle and
statement #6 proposed a specific system founded on the basic principle of governmental responsibility.

Item #7

7. The procedures presently employed for registering voters in Montana are adequate.

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly disagree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Probably the most critical item in terms of assessing the prospect for reform, four choices were made available to the respondent. The addition of the "strongly agree" and "strongly disagree" choices was an effort to differentiate positions on this issue on the basis of the strength of commitment. Obviously these will be the people most difficult to persuade to change their positions one way or the other. The group by group breakdown of responses appears as Table 9.

TABLE 9

GROUP BREAKDOWN OF RESPONSES TO ITEM #7

<table>
<thead>
<tr>
<th>Group</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>Total No. Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Senators</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(3)</td>
<td>(11)</td>
<td>(9)</td>
<td>(1)</td>
<td>33</td>
</tr>
<tr>
<td>Democrats</td>
<td>(1)</td>
<td>(5)</td>
<td>(9)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>State Representatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(8)</td>
<td>(17)</td>
<td>(3)</td>
<td>(1)</td>
<td>62</td>
</tr>
<tr>
<td>Democrats</td>
<td>(1)</td>
<td>(8)</td>
<td>(16)</td>
<td>(8)</td>
<td></td>
</tr>
<tr>
<td>County Clerk &amp; Recorders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(11)</td>
<td>(13)</td>
<td>(0)</td>
<td>(0)</td>
<td>52</td>
</tr>
<tr>
<td>Democrats</td>
<td>(10)</td>
<td>(16)</td>
<td>(1)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>County Chairpersons</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>(4)</td>
<td>(25)</td>
<td>(6)</td>
<td>(0)</td>
<td>70</td>
</tr>
<tr>
<td>Democrats</td>
<td>(0)</td>
<td>(16)</td>
<td>(12)</td>
<td>(7)</td>
<td></td>
</tr>
</tbody>
</table>
As through most of the survey, the responses tended to fall along partisan lines with the exception of the County Clerk and Recorders. Looking at both Houses of the legislature as complete groups it appears that a majority in both Houses approve of the present system. The majority of Democrats in both Houses disagree with this but their rate of rejection is not high enough to offset the high rate of Republicans agreeing, about five to one in the Senate and over six to one in the House. The County Clerk and Recorders demonstrate nearly unanimous support for the present system, fifty to two, and also demonstrate the strongest degree of commitment to that position. Twenty-one of the fifty-two Clerk and Recorders "Strongly agreed" with the proposition and this group was about evenly divided among Republicans and Democrats. Among the County Chairpersons Democrats disagreed with the proposition but not at as high a rate as their Republican counterparts agreed with the proposition.

Comments (From Respondents)

As noted in the discussion of questionnaire design the bottom one-fourth of the questionnaire was left blank under the heading "COMMENTS:"

Of the 217 postcards returned, one hundred of the respondents sent accompanying letters. These comments touched on a wide range of topics involving voter registration. Some of these comments have been noted in the previous discussion of specific items. Many comments were amplifications of specific items in the questionnaire while others touched on topics not
mentioned in the questionnaire. Eleven of the respondents suggest implementation of poll booth registration while at the same time four others utilized their comments section to point out that they were specifically opposed to poll booth registration. Other suggestions were that voter registration deadlines should be liberalized; registration should be made available at times and places other than the courthouse; registration might be accomplished by census takers; and that counties could take registration at the same time people paid personal taxes or when they applied for their car licenses.

One respondent commented with a question in reference to item #5: "How are you going to handle the Constitutional issue?" On the same question one Democratic Representative commented: "Voting requirements in the various states are not uniform. It would be difficult to implement a national system acceptable to all states." To the first respondent Chapter II of this study would be of special interest and to the state legislator, the information contained in the latter part of Chapter I (on S.352) may be rather disturbing.

Other interesting comments were:

The whole Elective Procedure should be sacked and we should start over again. The procedure of electing in Montana is antiquated.--A Democratic County Clerk and Recorder.

Voter Registration is one of the last effective blocks to the "right to vote." It should somehow be removed.--A Democratic State Representative.

People do not register because of disgust and distrust of government.--A Democratic State Representative.
The most gratifying comment for the researcher, however, came from a Republican County Chairperson who said: "A Study Commission should be put together to recommend an improved system. This is a good start."

The Prospect for Reform: A Conclusion

The purpose of the survey was to gather the information necessary to make an assessment as to the prospect of instigating voter registration reform in Montana and to some extent what that reform might be. The entire populations of those groups considered to be the most interested in any such reform effort were polled. A clear majority of each of these groups responded (see Table 3). However, this study has not attempted statistically to project the results of the survey onto the population of nonrespondents. Assuming that the response is directly connected with degree of interest and involvement with the subject, documented earlier in this chapter and confirmed by the high rate of return among County Clerk and Recorders, it is expected that the survey results reflect the views of those who are the most politically active and who would, therefore, take the more active roles in opposing or supporting voter registration reform. They would, in fact, be the leaders and organizers of the opposition and support.

Generally, from the survey results, it can be concluded that voter registration reform will be treated as a partisan issue. On the basis of the responses to this survey it might
be expected that a voter registration reform effort could be passed by the House of Representatives by the high degree of Democratic support which exists there. However, the bill would more than likely be defeated in the Senate by the highly polarized Republican opposition and the lack of any highly polarized Democratic support. Obviously, throughout the legislative process the County Clerk and Recorders would be mounting a formidable lobbying effort. This analysis is confirmed by reviewing the legislature's treatment of H.B. 559 in Chapter IV of this study.

In terms of the prospect for future reform the partisan alignments already identified will, in fact, prove conducive to the passage of a reform measure. As far as the survey is concerned Democratic support in the legislature is accepted as a given and Republican opposition hinges on their belief that nonregistration is a function of apathy and disinterest. Chapter III of this paper attempts to provide enlightenment in this area. Through education it would be hoped that this reservation could be eliminated. At the same time, however, the Republicans share a belief which is conducive to voter registration reform in Montana and that is that they oppose a nationally-administered system. The information set forth in Chapters I and II of this study should help to demonstrate that voter

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21 Of course, this projection is based on the responses of the members of the 1974 Legislature. A significant turnover in the 1975 Legislature could easily change the strength of both parties which would significantly effect how either house would treat a voter registration reform proposal.
registration reform in Montana is consistent with this position. While the Democrats clearly support reform they also accept the idea of a nationally-administered system. The discussion of Chapter II of this study is relevant to their position. It would appear mutually advantageous for both parties to compromise their positions. If the Democrats would retreat from their support for a nationally administered system, which the Republicans oppose, then Republicans would possibly support reform at the state level which the Democrats favor.

While the differences between the parties may be resolved the County Clerk and Recorders still represent a critical ingredient. As previously noted the County Clerk and Recorders have acted as an effective lobby in both the Constitutional Convention and the state legislature. This survey has shown that the Clerk and Recorders present a united front, oblivious of party identification, in opposition to voter registration reform. Only on the issue of a nationally-administered system did the Clerk and Recorders show any partisan tendencies. It would be folly to expect that any registration reform effort could expect any chance of success in the face of this solid front of opposition. The most viable prospect for success lies in cracking this solid wall of opposition by proposing a reform measure which is actually supported by a large number of Clerk and Recorders and this is the challenge facing future reformers of Montana's voter registration system.
CHAPTER VI

A PROPOSAL FOR CHANGE

Introduction

Proceeding under the assumption that the threat of the imposition of a nationally-administered voter registration system upon Montana will cause the leaders of both political parties to work together in search of a state level reform measure this chapter examines the alternatives which they might consider. From all appearances Montana lawmakers have unnecessarily restricted themselves to considering only one alternative to Montana's present system; that alternative has been poll booth registration. This chapter examines a number of other alternatives.

The alternatives available to Montana fall into three general categories. The first alternative is obviously the complete elimination of registration altogether. If, on the other hand, it is assumed that registration is an administrative necessity the alternatives fall into two categories. Registration systems may be based on the idea that it is the individual citizen's responsibility to get registered or, alternatively, that it is the government's responsibility to see that all of the citizens are registered.
Eliminating Registration

As discussed in Chapter I, voter registration systems are generally a post-1900 phenomenon. Prior to the advent of voter registration a person simply showed up at the polls and voted. At that time election officials supposedly were acquainted with everyone in their area and therefore familiarity was the only qualification test. As the population grew, especially in urban centers, familiarity with all the voters by the election official was no longer possible. Therefore, to eliminate fraudulent practices, such as voting at more than one place, registration systems were instituted so that election officials would have a list of names of those who were qualified and eligible to vote.

The state of North Dakota (and some rural counties in a few other states) still does not require prior registration in order to vote. This practice, as employed in North Dakota, is commonly called Poll Booth Registration. A voter appears at the polls, gives his name and address, which are then recorded; and then casts his ballot. In effect, the lists show who has voted as opposed to a list, prepared ahead of time, of who may vote.¹

Up until 1951 North Dakota had a registration system similar to those found in most western states. However, section three of Chapter 264 of the Session Laws of 1951, approved February 28, 1951, repealed Chapter 2, "Registration of Electors," of Title 16, of the North Dakota Codes. As presently amended

Title 16 now provides that each clerk of elections keep a poll list of everyone who voted at the election and in addition to the regular election officials each political party may have a "challenger" stationed at each of the polling places. In the event the right of a citizen to vote is challenged, he must sign an affidavit before the Inspector of Elections or a notary public saying that he is a legally qualified voter of the precinct. A false statement is a violation of the law.\(^2\)

North Dakota is a sparsely populated state and the lack of registration has not given rise to widespread fraud as familiarity with nearly all the voters by the election officials remains a viable check. The success of such a system in terms of preventing fraud remains to be tested in the context of more densely populated areas. Historical experience suggests, however, that numerous problems would arise when the face to face familiarity between voters and election officials was no longer common. Therefore, the success of such a system is more likely in the context of a basically rural or sparsely populated area.

The proposal to implement poll booth registration in Montana, H.B.559--43rd Legislative Assembly, was criticized in the legislature by those who felt it would not work well in the cities even though they conceded its success in North Dakota

\(^2\)See North Dakota, Century Code: Annotated, Replacement Vol. III, Sections 16-02-1; 16-10-14; 16-12-14; and 16-04-26. The 1951 copy of the Session Laws of North Dakota is missing from the UM Library and their library officials have been unable to locate it. Without the repealing legislation as a guide the researcher was only able to extrapolate this discussion from his own reading of Title 16.
and in rural areas. The Montana County Clerk and Recorders Association lobbied hard against the bill on the grounds that this particular bill was "terrible" and would simply make more work for the administrators and make the system even more confusing. It is difficult to accept the argument that Montana's degree of urbanization is so much different from North Dakota's that the applicability of the North Dakota system is questionable. It might better be argued that even though our present population is such that a poll booth system might be workable, our projected growth rate would make future administration of such a system increasingly difficult over the years. Therefore, it is only a temporary solution at best.

While the County Clerk and Recorders as a group opposed poll booth registration in general, their criticism of H.B. 559, in particular, is well taken. The major fallacy of the bill was that it attempted to incorporate provisions for poll booth registration into the already existing provisions for registration. Under this bill the present registration requirements and procedures would be retained in addition to providing poll booth registration for those who failed to register ahead of

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3 Robert Watt, State Representative, telephone interview held June 14, 1974.

4 Ruth P. Bears, Meagher County Clerk and Recorder and President of the Montana Clerk and Recorders Association, telephone interview held June 17, 1974.

time. Apparently the authors of this bill could find no other way to provide for the designation of "taxpayers" for those elections which only allow taxpayers to vote, thus necessitating a prior registration list designating which voters were taxpayers. H.B. 559 did not provide for a system of poll booth registration as has been successful in North Dakota.

Registration as the Responsibility of the Government

In the event that the preparation of registration lists prior to the elections is recognized as an administrative necessity, as it is in every state except North Dakota, the alternatives to be considered are whether it should be the responsibility of the government or the individual citizen to see that his name is placed on the registration list.

In Chapter I of this study, in discussing election turnouts in other western democracies, it was noted that only in the United States is the responsibility to register placed solely on the individual. In every other western democracy the government assumes this responsibility and this section is concerned with examining such a system. Universal Voter Enrollment is the name usually applied to a system in which the government assumes both the responsibility and the initiative for seeing to it that all qualified citizens are registered to vote. Great Britain, to whom we owe much of our political heritage, and Canada, the one country in the world most like us socially,
economically, and geographically, both employ universal voter registration systems which result in about 98 percent of their eligible voters being registered. At the same time the turnout in British and Canadian national elections is consistently fifteen percentage points higher than the turnout in the United States during presidential elections.\(^6\)

Of all systems of universal voter registration, the Canadian would probably be the best to study if we are considering universal registration as an alternative to our present system, because of Canadian-American similarities. The governments of both Canada and the United States are organized as federal systems. In the United States, however, the administration of the franchise was left to the individual states (see Chapter II of this study). In Canada, on the other hand, this power was only given to the provinces on a temporary basis as Canada's constitution asserted: "Until the Parliament of Canada otherwise provides . . ." It was not until 1920 with the passage of the Dominion Elections Act that a uniform federal franchise was imposed with a single system for registering voters.\(^7\)

Like the United States the power of the national government can only be extended over national elections. Of the ten provinces in Canada, which are responsible for their own local

\(^6\text{Kimball, The Disconnected, pp. 300-305.}\)

\(^7\text{See J. M. Hamel, "Registering Voters in Canada: A Responsibility of the State," National Civic Review, LXI (July, 1972), 336.}\)
elections, nine employ universal registration systems similar to the national system. The only province that does not, British Columbia, employs a system of personal registration, similar to those in the United States, where registration is voluntary and the responsibility to register is upon the individual voter. J. M. Hamel, the Chief Electoral Officer of Canada, commented on the system in British Columbia:

Rumors go that the system has not worked too well and there are suggestions that the system might be dropped, although there has not been any indication of what it might be replaced with.8

In Canada, the compiling and preparing of registration lists is the direct responsibility of a federal agency which also bears the costs of compiling such lists. These lists are compiled through a door-to-door canvass conducted prior to each national election. The nature of the parliamentary system is such that elections are not held regularly every four years as in the United States. The maximum time between elections is five years, but it is usually much less; during the period 1962-1968 four national elections were held.9 The registration lists are compiled prior to each national election because after the election is over the lists are discarded. J. M. Hamel explained the reasoning behind this practice:

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We feel with the mobility of population today, our lists would get out of date pretty fast. It would be as expensive to have a revision a few months after an election as a new enumeration.10

Presently the provisions for conducting universal registration in Canada are set forth in the Canada Elections Act of 1951 which appears as Chapter 23 of the Revised Statutes of Canada 1952. In 1934, Canada had attempted to utilize personal registration with the establishment of permanent lists but the results, according to Canadian officials, were very disappointing. In 1938 Canada organized its registration system around the concept of universal enrollment and this is the system which has been in effect ever since. Registration rates in Canada are estimated at 98 percent of all eligible voters and election turnouts are consistently 75 percent or higher.11

Section Seventeen of the Canada Elections Act, titled "Preparation of Lists of Electors," sets forth the procedures to be employed in the door-to-door enumeration of voters. For conducting the canvass a "returning officer" is appointed in each of the nation's 264 electoral districts. (This appointment is made by Canada's Chief Electoral Officer who is himself appointed by Parliament and can only be removed from office for cause or mandatory retirement at age 65.) Each of the electoral districts is, in turn, sub-divided into "polling divisions" which by statute must consist of approximately 250

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11 Ibid., and Hamel, "Registering Voters in Canada," 339.
people. To assist the returning officer in conducting the registration canvass Schedule A to Section 17 sets forth the procedures to be employed in the preparation of lists of electors in "urban" polling divisions and Schedule B to Section 17 sets forth the procedures to be employed in "rural" polling divisions. Section 2-35 of the Canada Elections Act defines a rural polling district as one that "... no part of which is contained either within an incorporated city or town having a population of 5,000 or more, or any area designated as an urban polling division by the Chief Electoral Officer."  

In the urban polling divisions enumeration is conducted by a team of two persons appointed by the "returning officer." When possible these appointments are to represent two different and opposed political parties. Nominations for enumerators are usually made by the two major parties. In a rural polling division only one enumerator is nominated and no provision by statute is made to guide in this selection. The logic behind the appointment system is that the urban enumerators, representing opposing parties, would act as an effective check upon each other as to any inclinations to falsify the registration lists. The rationale behind appointing only one enumerator in rural divisions is that due to their relatively stable population any fraudulent padding or thinning of the list would be easily detected.

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12 Canada Election Act 1951 (2nd sess.), c. 3, s.1 appearing as Chapter 23 Revised Statutes of Canada 1952, vol. I.

13 Ibid., Rules (1) § (2), Schedule A to Section 17 and rules (1) § (2) Schedule B to Section 17.

14 Hamel, "Registering Voters in Canada," 337-338.
The door-to-door canvass begins on the forty-ninth day before the election. Both rural and urban enumerators have six days to make their canvass and submit preliminary lists for their respective polling divisions. Urban enumerators are required by law to visit every dwelling in their polling division at least twice—once between nine a.m. and six p.m. and once between seven p.m. and ten p.m. If the occupant is still unavailable for registration a card will be left at the residence listing when the enumerators will return again and where they can be contacted.\textsuperscript{15}

On the other hand a rural enumerator is only charged by law that his list shall be prepared from such information as the enumerator may be able to secure by a house-to-house visitation in the polling division or from such other sources of information as may be available to him and can be conveniently used.\textsuperscript{16}

Once the returning officer receives the preliminary lists from his enumerators he is required by law to have the lists printed by the twenty-sixth day before the election and to furnish copies of the list to all the political candidates. By the twenty-third day before the election the returning officer is also required by law to mail a printed copy of the preliminary list for each urban division to each of the citizens whose name and address appears on that list. At this point the revising

\textsuperscript{15}Canada Election Act, Section 17-1; Rule (15), Schedule A, of Section 17; and Rule (11), Schedule B, of Section 17.

\textsuperscript{16}Ibid., Rule (4), Schedule B, of Section 17.
procedure is implemented utilizing specialized procedures for urban and rural polling divisions.\textsuperscript{17}

In urban areas the urban divisions are first grouped into revisal districts consisting of no more than thirty-five polling divisions. The senate district judge or his appointed substitute acts as a revising officer for the revising districts. No later than the twenty-fifth day before the election the returning officer is required to make a public notice as to the name of the revising officer, the location of the revising offices, the hours of its operation, and the boundaries of the revisal district. The revising offices are open on the eighteenth, seventeenth, and sixteenth days before the election and by law they must be open at ten a.m. for at least one hour and from seven p.m. to ten p.m. on all three days. During these times anyone can have his name added to the lists or challenge the presence of someone else's name on the list. Each of the political parties is allowed by law to have two of its representatives present in the revisal office. At the end of the three days the revisal officer prepares a "statement of additions and changes." The revising officer is then required by law to provide copies of the statement of additions and changes to all the candidates for office and the returning officer no later than the eleventh day before the election.\textsuperscript{18}

\textsuperscript{17}Ibid., Sections 17-5; 17-6; and 17-7.

\textsuperscript{18}Ibid., Rules (17), (20), (23), (26), (38), (40), (41) of Schedule A to Section 17.
In rural polling divisions the enumerator acts as the revising officer. Public notice is given as to when and where he will conduct his revisions and by law this is done from ten a.m. to ten p.m. on the eighteenth day before the election. One representative of each political party may be present at the rural revising office. As in the urban revising this is the only time additions and challenges can be made to the list. No later than the seventeenth day before the election the rural enumerators are required to prepare their "statement of changes and additions" and to forward copies of the statement to the returning officer who, in turn, forwards copies to the candidates for office.\textsuperscript{19}

The preliminary lists with their accompanying statements of changes and additions constitute the official list of electors to be used on election day. The cost for compiling this list in preparation for the 1968 general election was slightly less than sixty-nine cents per elector. Of the total cost 70 percent went to pay for enumerators, revising officers and revising agents. The information required for registration in Canada is simply name, occupation, and whether the person is over the minimum voting age. No signature is required. The absence of signatures precludes the use of absentee ballots in Canada.\textsuperscript{20}

\begin{footnotesize}
\begin{enumerate}
\item[^{19}] Ibid., Rules (13), (14), (19), and (20) of Schedule B to Section 17.
\item[^{20}] U.S., Congress, House, Hearings, p. 21.
\end{enumerate}
\end{footnotesize}
While the system just discussed is in the form of a nationally-administered program it demonstrates great potentiality for adaptation to a state level system. As already noted, systems similar to this are used in nine of the ten provinces of Canada for registering voters for local elections.

**Personal Registration or Business as Usual**

The third distinct category of options for reform is to continue under the assumption that our present systems are based upon, that registration is the responsibility of the individual voter, and do everything practical short of compromising that position. To identify the particular options available one need only review the systems of the forty-eight other states that employ personal registration. Yet with Montana doing so much better than the majority of other states in this regard, Montana is limited as to the number of "more efficient" model systems available. Richard M. Scammon, former Director of the Bureau of the Census and a prominent social scientist, referred to this type of reform as an "improvement" which might best be called the "band-aid approach." Mr. Scammon asserted:

> This is an approach that involves the extension of the right to register by mail. It involves larger numbers of mobile registration teams. It involves a whole series of improvements, betterments in the technique of registration, but it still maintains essentially the volitional character of the registration process.\(^{21}\)

Richard J. Carlson, writing for the National Municipal League, pointed out that there are five basic undesirable consequences of personal registration which cannot be overcome with any number of deputy registrars, extended registration hours, simplified forms, and mobile registration. First, there appears to be a point beyond which the registration level cannot be pushed regardless of the intensity of registration drives and the cooperation of election officials. Carlson points out that this limit appears wedged at around 70 percent of the United States total population of voting age. If this is the level of peak efficiency for this system how can it be accepted when there are other systems available which have been proven more efficient? Second, as the system presumes registration is an individual responsibility, local registration officials are, in effect, freed of any obligation to provide maximum registration opportunities. Legally nonregistration is written off as a function of apathy and disinterest. As Carlson points out:

>This clearly makes voting a privilege to be earned through sacrifice and not a right to be enjoyed simply because one is "eligible."  

The third unfortunate consequence of personal registration cited by Carlson was that the population of unregistered voters, in effect, becomes a type of prize in a game played by political parties, candidates, and nonpartisan registration groups.

Registration drives by the political parties are the result of a careful strategy which decides in what area an increased voting population would be to their advantage. Fourth, the cost of registration efforts on the part of individuals and groups is quite high and this is money that could be better spent educating the voter on the issues and the candidates and possibly promoting "get-out-the-vote" campaigns. Carlson's fifth point is that the decentralized, highly discretionary nature of the administration of voter registration at the local level allows the local election officials to effectively control the size of the electorate by the way they administer voter registration. This, in effect, presents a very viable means for maintaining the political status quo of which the election official is very much a part.

These consequences are inherent in any system of personal registration. Any desire to eliminate these problems will require a reevaluation of the basic principle upon which the system is founded.

Towards a Plan for Montana

Assuming for a few moments that the Montana legislature decides to consider seriously reforming Montana's present voter registration system, this section is concerned with providing

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23 See "'72 Drive for New Voters," op. cit., p. 17.
some specific suggestions as to what direction that reform effort might take.

Standard I--Each state should create a Commission of Registration and Voting Participation, or utilize some other existing state machinery to survey in detail its election laws and practices.25

This was the very first of the specific recommendations made by President Kennedy's Commission on Registration and Voting Participation in 1963. This is the logical starting point for any reform effort in Montana. The Legislative Council performed a similar function in 1968 when they redrafted Title 23 of the R.C.M. 1947. The 1968 effort, however, was concerned with bringing the election provisions up to date. The next such effort must be concerned with providing a workable system for the present and the future.

Any state study commission, and later the legislature itself, will be faced with the three alternatives already discussed. The complete elimination of registration requirements may appear appealing at first but at best it could only be considered a temporary solution in view of a continually expanding population. In fact, advocates of eliminating registration might be hard- pressed to defend it as a solution at all, as North Dakota's voter turnout is not significantly greater than Montana's, although the latter is saddled with a registration system.

If the consensus of the study commission and the legislature is that personal registration should be retained a number of improvements should still be considered. A number of positive improvements can be implemented in Montana without effectively altering the volitudinal nature of the system. Areas which should be examined are:

1) Closing dates for registration--The state of Idaho, with more total registered voters than Montana, allows registration with precinct registrars up till ten days before the election and with the County Clerk and Recorder up till two days before the election.26

2) Hours for registration--Some Montana County Clerk and Recorders attempt to facilitate registration among working people by offering registration in the evenings and on weekends as the registration deadline approaches. This practice should be standardized among all the counties.27

3) Deputy Registrars--By law the county commissioners in Montana are required to appoint a minimum of two deputy registrars per precinct. Multnomah County, Oregon appoints as many deputy registrars as volunteer and complete the instruction course. The result is one registration location every 1.3 square miles and an average of 3.4 registrars per square mile throughout the county.28

4) Branch and Mobil Registration--In Montana the law only requires Clerk and Recorders to conduct registration from their offices. A requirement might be considered that each Clerk and Recorder organize and staff a minimum number of branch or mobil registration offices during the period immediately prior to the close of registration.


5) Registration memorandum cards--A number of states provide each voter with a wallet size identification card when they register. In Oregon the card contains the name and address of the voter, the precinct in which he resides, and a short statement of the circumstances under which he must re-register. Other information which might be included would be the location of the precinct polling place and an election information phone number.\textsuperscript{29}

These are but a few of the areas in which improvements could be made without significantly altering the nature of the present system. However, such improvements in no way resolve the unfortunate consequences identified earlier which are inherent in a personal registration system.

Rather than attempting to salvage these systems, the major studies on registration reform suggest scrapping our present systems and adopting systems of universal enrollment utilizing door-to-door canvasses.\textsuperscript{30} The state of Idaho is the only state whose registration system in any way resembles such a system. In Idaho each County Clerk and Recorder is required by law to appoint an official registrar for each precinct. While not actually assuming responsibility for registration the government attempts to promote registration by paying the precinct registrars for each person they register. The rate is established

\begin{footnotes}
\textsuperscript{29} Section 247.181, \textit{Oregon Revised Statutes}.

\end{footnotes}
by the county commissioners but by law cannot exceed fifty cents for each person registered. The precinct registrars are free to conduct their registration as they see fit and many employ their own door-to-door canvasses. The success of this system is repeatedly cited by studies on voter registration.

In 1972 the government of the state of Wisconsin appointed a special citizens Task Force to study the state's voter registration system. In their final report they reached this conclusion:

However, in assessing the need for change of our registration laws, the Task Force decided that patchwork reform was inadequate to deal with the problems that exist in the current system. Piece-meal change can only serve to perpetuate the inequalities that now exist. Wisconsin's progressive history suggests that we should lead the nation in voter registration reform.

The alternative to Wisconsin's present voter registration system approved by the Task Force in their final report was for a system of Universal Registration. In the words of the report:

The State of Wisconsin should establish a statewide government sponsored and subsidized voter registration system. The government should assume the responsibility for assuring that every eligible elector is on the registration lists. Individuals should not be forced to go through any procedures to vote except to meet the minimum requirements of

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age and residency. Under this Universal Registration System, each municipal clerk would be required to compile and maintain a continually updated list of all eligible electors in his jurisdiction, and to insure the accuracy of that list.\textsuperscript{34}

According to the recommendation of the Task Force's report the system would be initiated by requiring the clerks to conduct a canvass of their jurisdiction either by mail or in person to update and correct the existing registration lists. Revisal of the lists would be accomplished by designating all high schools as permanent registration locations to register students when they turn eighteen and utilizing lists from the telephone and utilities companies plus information from the Bureau of Vital Statistics to record deaths and changes of address. Clerks could conduct mail canvasses at their discretion for updating purposes but by law they would be required to conduct a mail canvass every four years. Computerized registration lists would be compiled by the Secretary of State for the purpose of eliminating duplicate registration.\textsuperscript{35}

Another proposal for a state administered system of universal registration is set forth in the National Municipal League's 1973 Model Election System. Modeled after the Canadian experience the system proposed by the National Municipal League would require a statewide door-to-door canvass every two years. The canvass would be conducted in each precinct by two canvassers

\textsuperscript{34}Ibid., pp. 15-16.
\textsuperscript{35}Ibid., pp. 16-17.
appointed by a county official charged with conducting the canvass. Names of potential canvassers would be submitted by the political parties. Canvassers would be required to visit each dwelling at least twice during specified hours. Preliminary lists would be prepared and then revised, utilizing procedures similar to those employed in Canada. Registration would also be available year round at the office of the county election officials or with precinct canvassers who would also serve as deputy registrars.  

While the door-to-door canvass has been proven to be the most effective means for reaching the most people it has another built-in advantage over other systems which unfortunately is seldom mentioned in proposals setting forth such a system. The basic premise behind all proposals for universal registration is that by removing the registration hurdle many people who had wanted to vote will. (See Chapter III of this study.) However, little mention is made of that large group who did not care to vote, and subsequently did not bother to register. It would be expected that universal enrollment by means of door-to-door canvassing could have a significant impact on the lack of participation at the polls of the previously apathetic and disinterested.

In Chapter III of this study it was noted that political participation appears to be a direct function of an individual's

sense of political efficacy. Lester Milbrath points out that "get-out-the-vote" campaigns have shown that individuals personally contacted by a canvasser were more likely to feel efficacious than an individual who had not been personally contacted.37

An experiment was conducted in New Haven, Connecticut, to attempt to test the hypothesis that voter turnout was highest in groups of people who had personally been contacted by a canvasser prior to the election. The results of the test showed that the group who had been canvassed turned out to vote at a rate that was twice that of a control group who had not been canvassed. Yet the turnout rate of the control group did not differ significantly from the average turnout vote for that voting district, as the researchers theorized:

> Personal contact breaks the psychological barrier that many citizens see as cutting them off from participation in the political process. This reduction of alienation, along the isolation dimension, therefore, increases the person's likelihood of voting.38

The canvassers in this experiment were conducting a survey and asked the individuals questions about candidates and issues. This undoubtedly heightened the individual's interest in and awareness of the election as do "get-out-the-vote" campaigns.

It might reasonably be expected that canvassing by a deputy registrar would also heighten interest by making the individual aware of a pending election, informing the voter when and where he or she would have to go to vote, and simply telling him or her that he is eligible and entitled to vote. Use of the voter registration identification cards mentioned earlier could conceivably have a reinforcing effect upon the initial interview. Referring to the Canadian system of registration Canada's Chief Electoral Officer, J. M. Hamel said that it was the "... element of personal involvement which seems to lead to greater voter participation on election day."  

One question that will have to be faced by any study commission or state legislature considering registration reform in Montana is the question of costs. It is hardly sound public management to abandon the familiar for the unknown with no idea of the potential expense of such a venture upon the taxpayers of the state. Due to the decentralized nature of voter registration in Montana it is doubtful that an average cost per voter under the present system is readily available. This, of course, would be one of the first tasks of any study commission in Montana on voter registration. 

In a study sponsored by the National Municipal League's Election Systems Project which was funded by the Ford Foundation, Richard G. Smolka compiled the best available data as to the

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costs of administering the various types of voter registration systems.

His study found, obviously, that poll booth registration was the least expensive system to operate. The next least expensive system was that which employed a high number of unpaid deputy registrars. In Multnomah County, Oregon, 90 percent of the registration was conducted at a cost of less than five cents per registrant. A system employing paid deputy registrars could operate effectively at about twenty-five cents per registrant but the cost per registrant usually ranged from twenty-five cents to one dollar or more. Use of postcard registration operated at a minimum cost of fifty cents per registrant but the estimate was based on only limited experience. The cost of the central office type of registration varied depending on the wage scales of the employees. The minimum estimate for this type of registration was twenty-five cents and the costs quite often exceeded one dollar. The door-to-door canvass method is only used on occasion in some states and, therefore, the cost was difficult to estimate. A canvass conducted by paid election officials in Hawaii cost $1.71 per registrant. The cost was inflated as a mobil registration done at shopping markets and schools had significantly cut down the number of potential registrants. Smolka rejected this figure as a valid estimate asserting:

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40 Smolka, Costs of Administering American Elections, pp. 50-61.
There is no reason why the canvass method of voter registration should cost more in the United States than the seventy cents per voter reported by Canada, and there are several reasons why it should cost less.41

In his conclusion Smolka expresses his support for the canvass method of registering votes:

Although the canvass method may appear at first sight to be extremely expensive, comparable to conducting a national census, nevertheless it does produce a relatively low-cost voter registration list because it operates at maximum efficiency for an extremely short period of time. There are no wasted motions, no haphazard efforts to seek out registrants, no difficult and time-consuming purge processes, and no repetitive processing of inactive registrants, all of which add to the cost of election administration.42

A Plan For Montana

While the indications are (see Chapter V of this study) that universal registration through door-to-door canvassing is not widely favored among Montana officials, they would be hard-pressed to suggest a more efficient system for ensuring that all eligible voters are registered. Possibly this attitude might be changed if these officials were presented with a plan designed specifically for Montana. This section is concerned with outlining a reform proposal considered to be the most effective and efficient in keeping with the findings of this study.

Appendix 3 of this study presents a model reform bill for Montana. This bill provides for amending four sections of the

41 Ibid., p. 61.
42 Ibid.
present registration laws, repealing three sections, and adding one new section. The effect of these proposed changes is to require that a door-to-door canvass be conducted once every four years immediately prior to each national presidential election; that canvassers be paid by the county for conducting the canvass; that transfer of registration be accomplished by postcards available from the post office; that registration deadlines be significantly lowered; and that all secondary schools be designated as permanent registration locations.

The door-to-door registration canvass is scheduled for once every four years so as to guarantee maximum registration for the presidential elections. Registration would continue as normal in the interim with virtually all the present procedures retained. A major exception would be that registration deadlines would be reduced to five days before the election with a deputy registrar and two days before the election in the County Clerk and Recorder's office. Changes to the registration lists would be facilitated by the use of postcards for changing address which would be made available at the same time a person picks up his forms to register a change of address with the postal service. Adequate provision for purging the lists already exist by law and new registrations would be facilitated by the designation of a deputy registrar in each high school to register students as they turned eighteen.

The door-to-door canvass would be conducted under the same guidelines employed in Canada. Two paid enumerators, each
representing one of the two major parties, would work as a team in conducting the canvass. Unlike Canada, these canvassers would be making additions, deletions, and corrections to the existing registration list for their precinct. These canvassers would also carry on the normal functions of a deputy registrar between required canvasses.

The cost of the canvass is to be borne by the counties but it might be expected that national (Senate Bill 472) or even state funds would be available to defray the cost. In this regard the efforts of a centralized state authority in securing these funds would be extremely helpful. Of course, centralized state control of elections in general and registration in particular would benefit the entire system but that is beyond the realm of this study.

In implementing the provisions of Appendix 3 a review of sections 23-3014, 23-3015, and 23-3023 will have to be undertaken to insure the consistency of the deadlines specified as they would be affected by the deadlines set forth in the new provisions for conducting the registration canvass. The issue of requiring signatures on registration cards has also not been resolved in the model proposal and sections 23-3010 and 23-3011 would be directly affected by such a decision.

All of the reforms suggested by the model are special adaptations for other systems. As already noted the canvass provisions are a derivation of the Canadian System. The

43See *Canada Election Act*, Section 17.
postcard method of transferring registration has been in use in Allegheny County (Pittsburgh), Pennsylvania, for several years and has operated efficiently at a cost of less than five cents per card. The reduction of the registration deadlines are modeled after those employed in Idaho. In that state, with more registered voters than Montana, it was found that the door-to-door canvassing by deputy registrars virtually eliminated the last minute rush to register before the deadline. The designation of high schools as permanent registration locations was a suggestion made by the Wisconsin's Governor's Task Force on Voter Registration and Elections. With the majority of young people turning eighteen during their senior year of high school this provides an ideal opportunity to register them.

In view of the relative ease with which the reforms set forth in Appendix 3 could be incorporated into the already existing system it would be expected that opposition to the system might hinge on the factor of cost. In this regard, as previously noted, a study must be undertaken to determine the actual costs of the present system, the costs of this projected

44 See Smolka, Costs of Administering American Elections, p. 57.


46 Wisconsin, Report of the Governor's Task Force, p. 16. Presently under the provisions of section 23-3001, R.C.M. 1947, the Montana Highway Patrol is required to submit lists of newly eligible voters to each of the political parties. Use of high schools as registration locations would eliminate the need for this provision.
system, and possible sources of funds to defray the cost of any new system.

Conclusion

This study has attempted to warn, inform, project, and propose. These four purposes are integrally linked and an appreciation of each one is necessary for an understanding of any of the others.

The warning stems from the activities of the United States Congress which prove that voter registration is a problem in the United States and that a solution will be found even if the Congress has to trespass upon a state responsibility which appears to have been neglected. This study has provided information necessary to understand objectively the problem and what needs to be done. By examining the attitudes of those individuals most instrumental in this issue in Montana an effort has been made to project what can be done and how. Finally, a proposal has been made utilizing the information gathered by this study. This proposal has tried to strike the best balance between principle and practicality. The true test of the success of this effort will only come when voter registration reform is considered by the Montana Legislature.

Ideally, any reform effort should spring eternal from Montana's desire to realize the democratic principle of universal voting. Yet from a more practical viewpoint the threat of a nationally imposed system will more than likely be the
major catalyst in any reform effort. In this regard, it may be
forboding to note that on May 9, 1974, the United States House
of Representatives, by a vote of 197-204, defeated a parliamen-
tary measure which, in effect, killed a House bill similar to
Senate Bill 352. \(^47\) On May 13, 1974, David Brinkley, a promi-
nent American journalist, publically chastised the House on
national television for the defeat of the postcard proposal.
He noted that this was but another reason why the Congress was
held in the lowest esteem of all government institutions by the
American people. \(^48\) The seven vote margin in the House has pro-
vided a form of reprieve for the states but at best it can only
be considered temporary.

Voter registration is a problem which Montana must recog-
nize, understand, and solve. Edmund Burke unknowingly posed a
challenge to all state governments in regards to voter registra-
tion reform when over 200 years ago he said:

Government is a contrivance of human wisdom
to provide for human wants. Men have a right
that those wants should be provided for by this
wisdom.

\(^47\) "House Blocks Action on Voter Registration Bill," Con-
gressional Quarterly Weekly Report, XXXII (May 11, 1974), 1254.

\(^48\) "David Brinkley's Journal," N.B.C. telecast, May 13,
1974.
APPENDIX 1

VOTER REGISTRATION SURVEY

1. In 1972, what percentage of the total population of eligible voters in your county were actually registered?_______
   (Best estimate)

2. A person who fails to register is not interested in voting anyway.
   Agree □  Disagree □

3. Many nonvoters would vote if registration procedures were less complex.
   Agree □  Disagree □

4. The state and local governments should take the responsibility to see that all eligible voters are registered.
   Agree □  Disagree □

5. A single, uniform system for nationwide voter registration should be implemented by the National Government.
   Agree □  Disagree □  Undecided □

6. Door-to-door registration should be carried out by local government officials in order to get all eligible citizens on the voter registration lists.
   Agree □  Disagree □  Undecided □

7. The procedures presently employed for registering voters in Montana are adequate.
   Strongly agree □  Agree □
   Strongly disagree □  Disagree □

COMMENTS:

Thank You
April 8, 1974

Dear County Chairperson:

By way of introduction, I am a graduate student in Political Science at the University of Montana and I am in the process of gathering research data for my Masters thesis. My area of interest is the voter registration system in Montana and I am writing to you, as well as to all the members of the 1974 Montana Legislature, all County Clerk and Recorders, and all the County Chairpersons of the Democratic and Republican parties, in an effort to solicit your response to a number of comments on voter registration.

I would greatly appreciate it if you would take a few moments to indicate your responses to the comments on the enclosed post card. This post card has already been addressed and stamped to facilitate a prompt return as to be included in the study I must have the cards by May 1. I want to assure you of the complete confidentiality of your responses. Your name is not required on the card as it will be included in a larger group from across the state. From this survey I hope to get a composite picture of the attitudes of those persons most closely associated with voter registration in Montana.

I would like to thank you in advance for your time and consideration and to say that I would be more than happy to provide you with a copy of the survey results upon request.

Sincerely yours,

Charles A. Brooke
Political Science Department
University of Montana
Missoula, Montana
A HOUSE or SENATE BILL

INTRODUCED BY THE DISTINGUISHED MEMBERS

OF THE MONTANA LEGISLATURE


A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DOOR-TO-

DOOR REGISTRATION OF ELECTORS BY COUNTY ELECTION OFFICIALS;

AMENDING SECTIONS 23-3003, 23-3006, 23-3009 AND 23-3016, R.C.M.

1947; REPEALING SECTIONS 23-3001, 23-3007, AND 23-3013, R.C.M.

1947; ADDING A NEW SECTION TO BE NUMBERED 23-3031, R.C.M.

1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA

Section 1. This act shall be known and may be cited as

the "Montana Universal Registration Act."

Section 2. It is hereby declared to be the policy of the

State of Montana that all registration laws and procedures shall

be established and construed to assist and facilitate the indi-

vidual citizen in the exercise of his right to vote.

Section 3. Section 23-3003, R.C.M. 1947, is amended to

read as follows:

"23-3003. Notaries public as deputy registrars - appointment

of additional deputies - qualifications - duties/ - compensation.

(1) All notaries public are deputy registrars in the county in
which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint a minimum of two (2) precinct deputy registrars who are not notaries public, a minimum of one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint precinct deputy registrars without recommendations from the parties. The number of appointed deputy registrars for each county shall always be equally divided between the two (2) major political parties.

A precinct deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed.

(b) Register electors residing in any the precinct in the county from which he was appointed.

(c) No duly appointed deputy registrar shall register any voter until such deputy registrar shall have been issued a certificate of approval by the county registrar, certifying that said deputy registrar has received instructions on registration procedure from the county registrar.

(3) Within three (3) days after a registration card if filed out, deputy registrars shall forward the card to the registrar. Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for three (3) days
after the deadline.

(4) In addition to taking registrations throughout the year each team of precinct deputy registrars will conduct a door-to-door canvass of all living units within their precinct prior to each general election at which electors for President of the United States will be chosen. Each team of precinct deputy registrars shall:

(a) Upon receiving official notice from the county registrar and no earlier than the forty-ninth day before the election conduct a door-to-door visitation of all living units within their respective precincts for the purpose of making additions, deletions, and corrections to the existing precinct registration lists.

(b) If after the initial visitation both of the precinct deputy registrars are not satisfied that all of the potential voters in a particular household are registered they shall leave a card stating when they shall make a second visit. This card shall contain the names, addresses, and phone numbers of both of the precinct deputy registrars. If two visitations to a particular household are required one shall be during the day (9 A.M. to 6 P.M.) and once at night (7 P.M. to 10 P.M.).

(c) No later than the forty-fourth day before the election have completed their canvass and commenced preparing their corrected precinct registration lists including annotations as to changes and deletions and completed registration cards for
new additions.

(d) No later than the forty-first day before the election have their updated precinct registration lists delivered to the county registrar along with their claims for compensation as provided for below.

(5) Each precinct deputy registrar shall be compensated for conducting the registration canvass at a rate determined by the county commissioners.

(a) This compensation will include an hourly wage to be not less than the minimum wage established by federal law and compensation for each addition, correction and deletion to the precinct registration list not to exceed twenty-five cents (25¢) for each addition and ten cents (10¢) for each deletion or correction.

(b) Each precinct deputy registrar shall make claim for compensation through the county registrar on forms designated by the county commissioners. All claims must be certified by the county registrar before compensation will be awarded."

Section 4. Section 23-3006, R.C.M. 1947, is amended to read as follows:

"23-3006. Method of registering - absent electors in the United States service - felony provisions. (1) An elector may register at times other than the precinct canvass by appearing before the registrar or deputy registrar in the county which he resides or before a precinct deputy registrar in the precinct
Section 5. Section 23-3009, R.C.M. 1947, is amended to read as follows:

"Section 23-3009. Transferring registration to another precinct. If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a precinct deputy registrar of the new precinct, or and the deputy registrar shall not receive compensation for this service; or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state which is available from the United States Postal Service."

Section 6. Section 23-3016, R.C.M. 1947, is amended to read as follows:

"Section 23-3016. Close of registration - procedure. (1) The registrar shall:

(a) Close registration as follows: -(i)- for thirty -(30)- days before any federal election; Accept all registrations made with a deputy registrar up to five (5) days before election; all registrations made in the County Clerk and Recorders Office up to two (2) days before election; -(ii)- at all registrations up till noon the day before election for voters entitled under the provisions of section 23-3724, R.C.M. 1947, to register to
that time.—far-forty—days—before—any—election—other—than—here—above—provided:

Section 7. There is a new section to be numbered 23-3031, R.C.M. 1947, which reads as follows:

23-3031. Designation of all secondary schools as permanent registration locations. (1) All secondary schools shall be designated as permanent registration locations.

(2) The board of education of each school shall appoint a member of the teaching staff to serve as a deputy registrar and will forward in writing the name of the person to the county registrar no later than the end of the second week of September.

(a) The designated staff member will be instructed and sworn in by the county registrar as a deputy registrar.

(b) As a deputy registrar he will be responsible for the registration of all high school students attending that school who turn eighteen (18) years of age during the school term. He will carry out his official duties in accordance with the applicable provisions of this chapter.

Section 8. Sections 23-3001, 23-3007, and 23-3013, R.C.M. 1947, are repealed.

SECTION 9. THIS ACT SHALL BE EFFECTIVE FOR ALL ELECTIONS ON AND AFTER JANUARY 1, 1976.

-END-
SELECTED BIBLIOGRAPHY
SELECTED BIBLIOGRAPHY

BOOKS


DOCUMENTS


Oregon, Revised Statutes.


U.S., Congress. Senate. A Bill to Amend Title 13, U.S. Code to Establish Within the Bureau of the Census a Voter Registration Administration for the Purpose of Administering a Voter Registration Program Through the Postal Service. 93rd Congress, 1st session, 1973. S. 352.

U.S., Congress. Senate. A Bill to Amend Title 13, U.S. Code, to Establish Within the Bureau of the Census a Voter Registration Administration to Carry Out a Program of Financial Assistance to Encourage and Assist the States and Local Governments in Registering Voters. 93rd Congress, 1st session, 1973. S. 472.


ARTICLES


Crotty, William J. "The Utilization of Mail Questionnaires and the Problem of a Representative Return Rate." The Western Political Quarterly, XIX (March, 1966).


Donald, Marjorie N. "Implication of Nonresponse for the Interpretation of Mail Questionnaire Data." The Public Opinion Quarterly, XXIV (Spring, 1960).


Longworth, Donald S. "Use of a Mail Questionnaire." *American Sociological Review*, XVIII (June, 1953).


INTERVIEWS

Baucus, Max S. State Representative, telephone interview, June 17, 1974.

Bears, Ruth P. Meagher County Clerk and Recorder and President of the Montana County Clerk and Recorders Association, telephone interview, June 17, 1974.

Harris, Dale A. Research Coordinator for the Montana Constitutional Convention 1971-72, private interview held in his office at Helena, June 10, 1974.

Harvey, George W. Chouteau County Clerk and Recorder and Past President of the Montana County Clerk and Recorders Association, telephone interview, June 17, 1974.

Murray, Frank. Montana Secretary of State, private interview held in his office at Helena, June 10, 1974.


Woodgerd, Joann. Assistant Secretary of State, telephone interview, June 7, 1974.


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Harvey, George W. Chouteau County Clerk and Recorder and Past President of the Montana County Clerk and Recorders Association, telephone interview, June 17, 1974.

Murray, Frank. Montana Secretary of State, private interview held in his office at Helena, June 10, 1974.


Woodgerd, Joann. Assistant Secretary of State, telephone interview, June 7, 1974.