

ISSUE BRIEF

“Information to Action”

Topic: State Sovereignty

Title: *WAS THE 17TH AMENDMENT A GOOD THING?* by Joshua Charles

The original wording of the Constitution on the election of Senators was as follows (Article I, Section 3):

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years...

This provision was changed by the adoption of the 17th Amendment in 1913, which reads as follows:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

In short, states retained control over who could vote for Senators, but the election of Senators was now in the hands of the people directly, rather than the state legislatures. Senators would now be elected by a statewide popular vote in the same way Congressmen were elected in their respective districts.

At the time of the founding, James Wilson was the only Framer who advocated popular elections for Senators. In general, it was the Anti-federalists—those suspicious of centralized federal power—who insisted on state legislatures selecting their own Senators. Federalist No. 62 seems to support this point when it says:

Among the various modes which might have been devised for constituting this branch of the government [the Senate], that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

In other words, this power belonging to the state governments emphasized that they too were sovereign entities in their own sphere, just as the federal government was.

At the time, advocates of the 17th amendment largely relied on two assertions. The first was that the selection of Senators by state legislatures often turned into a form of legalized corruption, with the office of Senator being “bought and sold.” However, exceptionally few elections of Senators

were ever contested on these grounds. The second assertion was that various state legislatures had been bogged down in gridlock because they could not agree on who to appoint. On various occasions, this actually resulted in some states temporarily lacking representation in the Senate.

At the time, the uproar over the election of Senators was a largely populist phenomenon. It was contended that their selection by state legislatures was too “aristocratic,” and prevented them from being held accountable by the people themselves. But this was in fact one of the reasons the Senate was designed the way it was by the Founders, who saw the House of Representatives as the more “populist” house of Congress, and the Senate as the intentionally more deliberative, cool-minded, and conservative (small “c”) house. The House was meant to incorporate the passions of the people, whereas the Senate was meant to be a check on them. Thus it was appropriate that each house’s mode of election reflect their different roles.

So, was the 17th Amendment a good thing? After more than a century of experience, that question is certainly open for debate.