ers participating in primary elections to designate their preference for one of several party candidates for a senatorial seat, and nominations unofficially effected thereby were transmitted to the legislature. Although their action rested upon no stronger foundation than common understanding, the legislatures generally elected the winning candidate of the majority, and, indeed, in two states, candidates for legislative seats were required to promise to support, without regard to party ties, the senatorial candidate polling the most votes. As a result of such developments, at least 29 states by 1912, one year before ratification, were nominating Senators on a popular basis, and, as a consequence, the constitutional discretion of the legislatures had been reduced to little more than that retained by presidential electors.[1]

Very shortly after ratification it was established that, if a person possessed the qualifications requisite for voting for a Senator, his right to vote for the Senator was not derived merely from the constitution and laws of the state that chose the Senator, but had its foundation in the Constitution of the United States.[2] Consistent with this view, federal courts declared that, when local party authorities, acting pursuant to regulations prescribed by a party's state executive committee, refused to permit an African-American, on account of his race, to vote in a primary to select candidates for the office of U.S. Senator, they deprived him of a right secured to him by the Constitution and laws, in violation of this Amendment.[3] An Illinois statute, by contrast, that required that a petition to form, and to nominate candidates for, a new political party be signed by at least 25,000 voters from at least 50 counties was held not to impair any right under the Seventeenth Amendment, notwithstanding that 52 percent of the state's voters were residents of one county, 87 percent were residents of 49 counties, and only 13 percent resided in the 53 least populous counties.[4]

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[1] 1 G. HAYNES, THE SENATE OF THE UNITED STATES 79–117 (1938).

[2] United States v. Aczel, 219 F. 917, 929–30 (D. Ind. 1915) (citing *Ex parte* Yarbrough, 110 U.S. 651 (1884)).

[3] Chapman v. King, 154 F.2d 460 (5th Cir. 1946), *cert. denied*, 327 U.S. 800 (1946).

[4] MacDougall v. Green, 355 U.S. 281 (1948), overruled on equal protection grounds in Moore v. Ogilvie, 394 U.S. 814 (1969). *See* Forssenius v. Harman, 235 F. Supp. 66 (E.D.Va. 1964), *aff'd on other grounds*, 380 U.S. 529 (1965), where a three-judge District Court held that the certificate of residence requirement established by the Virginia legislature as an alternative to payment of a poll tax in federal elections was an additional qualification to voting in violation of the Seventeenth Amendment and Art. I, § 2.