

VETOES

S. B. No. 6—(Committee on Elections)

PROXY VOTING, ARMED FORCES

An Act to amend and re-enact Sections 992, 993 and 995 of the Compiled Laws of North Dakota for 1913 as amended by Chapter 148 of the Session Laws of 1941 to amend and re-enact Sections 1002a3 and 1002a4 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, repealing Sections 1002a1, 1002a2, 1002a5 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, relating to absent voters, and permitting electors engaged in the defense of their country or members of the American Red Cross, Merchant Marine or United Service Organizations outside the territorial limits of the United States of America as a result of any war in which the United States of America may be engaged and until six months after the termination thereof, to vote by proxy during the emergency of any such war, defining the duties of the county auditor, providing a savings clause, and declaring an emergency.

April 6, 1944.

Honorable Thomas Hall
Secretary of State
Bismarck, North Dakota

Dear Mr. Hall:

I transmit herewith Senate Bill No. 6, an act to amend certain sections of the absent voter laws of this State, and to permit members of the armed services and certain service organizations outside the territorial limits of the United States to issue proxies for voting purposes during wartime, without my approval.

Following are the principal reasons by which I am impelled to veto this bill:

(1) The Amendments to the absent voter laws which are contained in S. B. 6 are substantially the same as those contained in House Bill No. 3, which I have approved, and are therefore duplications and unnecessary.

(2) The proxy voting procedure provided in S. B. 6 is, in my opinion, contrary to good public policy.

(3) Proxy voting, in my opinion, violates both our State Constitution and the Constitution of the United States, and is repugnant to certain fundamental principles upon which our democratic form of government is based.

The bill provides that any qualified elector who is a member of the armed forces, or of the Red Cross, the Merchant Marine, or the United Service Organizations, and who is outside the territorial limits of the United States may delegate his right to vote at any State-wide election held during wartime, by issuing a written proxy appoint-

ment to his mother, father, brother, sister, husband or wife. The proxy thus appointed would present his appointment to the Election Board of the proper precinct, receive a ballot therefor, and vote such ballot for the elector who issued the appointment unless it appears that such elector is then deceased.

It should be noted that the number of proxy appointments which might be held and voted upon by any one person is not limited by the act, but would be limited only by the number of eligible relatives such person might have in the war services. It should also be noted that the absent voter is not required to instruct his proxy holder how or for whom to vote, nor is the proxy holder obligated to vote in accordance with any instructions he might receive from such absent voter. The net result would be that many ballots thus cast would express, not the will of the voters for whom they were cast, but the will of the persons appointed by such absent voters to vote in their stead. In other words, the proxy holder would acquire an additional vote, and the proxy issuer would deprive himself of his right of franchise.

To my mind, this procedure is politically unsound and morally inequitable, and if followed it would produce serious consequences and introduce many evils into our governmental system. Our government is founded upon two basic principles; first, the principle of majority rule—the rule of government according to the expressed will of a majority (or plurality) of our qualified electors, such elector, for himself and without interference, expressing his own individual will or choice; second, the principle of equality in voting rights as between individual voters. Proxy voting clearly violates both of these thoroughly fundamental American principles.

The elective franchise is a personal right of the elector. It is an attribute of personal sovereignty, an incident of his citizenship. It is at once a privilege and a duty, and it can no more be assigned, delegated or transferred by the individual citizen than can any other right or duty of his citizenship. To my mind, the idea that an elector may confer upon someone else his right and his duty to vote is as violently opposed to all our fundamental concepts of responsible government as is the idea that he might confer upon another his right and his duty to hold an office in that government to which he himself had been elected.

It seems equally certain that a procedure which permits an elector to vote more than his own vote would completely destroy the principle of equality in voting rights as between citizens. This would be the result under the provisions of S. B. 6, because certain proxy holders would cast more ballots than other proxy holders, and all proxy holders would cast more ballots than non-proxy holders. Thus, a candidate could be elected, not by the majority of the voters who actually cast their own ballot, but by the majority of ballots cast, even though that majority might actually have been cast by a minority of those voting at the election.

The situation resulting from this multiplication of voting powers in favor of voters who have qualified relatives in the service can readily be anticipated. Such voters would be importuned to urge their sons, daughters, brothers or sisters in the service to return their proxy appointments instead of casting their own ballots under the absent voter laws as amended by the Special Session of the Legislature. No one, I am sure, believes that this practice would produce a desirable result in our governmental system, and I submit that it is a wiser policy to encourage all absent voters to register their own choices and their own decisions by marking their own ballots.

Furthermore, I believe that the proxy provisions of the bill violate the Constitution of North Dakota and the Constitution of the United States. Our constitutional system of government, both State and National, rests upon the principle of equal suffrage by a majority of qualified voters, not upon the theory of the largest number of ballots cast by a minority of voters through some scheme devised by law to permit duplication or multiplication of votes. This principle was recognized by the Supreme Court of North Dakota in the case of *State v. Thompson*, 131 N. W. 231, involving the construction of a city commission law which appeared to authorize a procedure under which one elector could cast two or more votes for one candidate instead of distributing his votes among the number of candidates to be elected. In its decision the court said:

"The fundamental idea underlying the elective franchise has always been one of the exercise of a privilege of *choice*, as well as the exercise of individual power incidental thereto; that each voter is privileged to make his *single choice* for each elective official, that each voter should have *equal rights* under the law, not only to exercise an equal power, but to manifest equally his choice that the election reflect the will of the majority, whose will so exercised to that extent is law. *No double right of suffrage is granted to any one individual, but that every voter have the privilege of exercising his ballot in the same manner, with the same effect, under the same plan for the same purpose, with no greater power than that of any other qualified voter.*"

In a concurring opinion in the same case, Justice Spalding said:

"The placing of marks upon the ballot is *only a method of enumerating persons*, and if the number of persons desiring election of a named candidate can be *multiplied by two* by the fiat of the Legislature, it can, by the same means, be *multiplied indefinitely*. Our system of government is based upon the doctrine that the majority rules. This does not mean a *majority of marks*, but a *majority of persons* possessing the necessary qualifications and the number of such persons is ascertained by means of an election."

Justice Fisk, in his specially concurring opinion in the same

case, adopted the views expressed in the Michigan case of Maynard V. Board of Canvassers (47 N. W. 756, 11 LRA 232) from which the following pertinent statement is taken:

"The constitution does not contemplate, but by implication forbids any elector to cast more than one vote for any candidate for any office. This prohibition is implied from the system of representative government provided for in that instrument . . . When he has expressed his preference in this manner (that is by voting), he has exhausted his privilege; and it is not in the power of the Legislature to give to his preference or choice, without conflicting with these provisions of the constitution, more than a single expression of opinion or choice. . . . No reason can be given why, under our constitution, one elector should be entitled to vote twice or seven times for any particular person to represent him in the Legislature when any other elector who desires to exercise the right which the constitution gives him to vote and every person allowed by law to represent him in the Legislature is entitled to vote but once."

A single example demonstrates how easily this basic constitutional principle of majority rule through equality in voting privileges could be nullified under S. B. 6. If 90,000 electors voting for one candidate for office cast 10,000 proxy ballots for the same candidate, they could and would outvote 99,000 electors voting for another candidate without proxy ballots, or 94,000 such electors casting 5,000 proxy ballots for the same candidate. I am convinced that no such election, depending as it would on the number of proxy ballots cast, would be sustained in North Dakota, and I think it is neither wise, safe nor just to jeopardize the validity of our State elections by incorporating such a principle into our absent voter law.

I am also convinced that the proxy voting principle violates the Constitution of the United States for substantially the same reasons that it violates our State Constitution. Our Federal government is founded upon the same democratic principles as our State government, and any device that permits duplication or multiplication of voting rights is completely at variance with those principles. In this connection, it should be borne in mind that Congress, and not the States, is the final judge of the validity of election of members to that body, as well as of Presidential electors. I am sure that if any member of the United States Congress, or any Presidential elector were to be elected by less than a majority (or plurality) of the voters actually voting at a National election, through the use of proxy voting, the validity of such an election would most certainly be challenged, and would probably be declared void by Congress.

Our absent voter law, as amended at the Special Session, is sufficient to provide opportunity for every voter in the armed services, who can be reached by the military mail service, to cast his own ballot in the manner contemplated by our constitutional principles.

Senate Bill 6 adds nothing to that opportunity except the questionable privilege of permitting a voter in the service to allow someone else to do his thinking and make his decisions for him. I am firmly convinced that such a dangerous privilege can have no place in our democratic system of government, and that Senate Bill 6 should not become a part of our absent voter system.

Sincerely yours,
JOHN MOSES,
Governor

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 992 of the Compiled Laws of North Dakota for 1913 as amended by Chapter 148 of the Session Laws of 1941 is hereby amended and re-enacted to read as follows:

§ 992. ABSENT VOTERS' BALLOT. WHO MAY VOTE.] Any qualified elector of the State, who is absent from the county in which he is an elector, or who by reason of physical disability, is unable to attend at the polling place in his precinct to vote at any general or primary election, may vote an absent voters ballot at any such election as hereinafter provided.

§ 2. AMENDMENT.] That Section 993 of the Compiled Laws of 1913, as amended by Chapter 148 of the 1941 Session Laws is hereby amended and re-enacted to read as follows:

§ 993. APPLICATION FOR BALLOTS. MADE WHEN.] At any time within seventy (70) days next preceding such election, any voter expecting to be absent on the day of the election from the county in which his voting precinct is situated, or who by reason of physical disability is unable to attend at the polling place in his precinct to vote at such election, may make application to the county auditor of such county for an official absent voters ballot to be voted at such election.

§ 3. AMENDMENT.] That Section 995 of the Compiled Laws of North Dakota for 1913, as amended by Chapter 148 of the Session Laws of 1941, is hereby amended and re-enacted to read as follows:

§ 995. APPLICATION FOR.] Application for such ballot shall be made on a blank to be furnished by the county auditor of the county of which the applicant is an elector and must be substantially in the following form:

I, _____, a duly qualified elector of the township of _____ or the village of _____ or of the _____ precinct of the _____ ward of the city of _____ of the county of _____ of the State of North Dakota, to my best knowledge and belief en-

titled to vote in such precinct at the next election, expecting to be absent from said county on the day for holding such election, or by reason of physical disability being unable to attend and vote at such election, hereby make application for an official absent voters ballot to be voted by me at such election.

Date-----

Signed -----

Postoffice -----

Provided, that if the application be made for a primary election ballot such application shall also give the name of the political party with which the applicant is affiliated.

Provided that when such application is made upon the ground of physical disability it shall be accompanied by the certificate of the superintendent of a hospital in which the applicant is actually confined or by the certificate of a licensed physician who is attending said applicant to the effect that said applicant is under such physical disability by reason whereof he is confined to such hospital or other place of confinement (stating location thereof) and is unable to attend and vote at such election.

§ 4. AMENDMENT.] That Section 1002a3 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 1002a3. ABSENT VOTERS BALLOT.] It shall be the duty of each county auditor upon receipt of an application for an absent voters ballot immediately to mail such absent voters ballot to such elector in the manner provided in Section 997 of the Compiled Laws of North Dakota for 1913; provided, however, that the enclosed envelope shall be duly stamped with return air mail postage and the affidavit endorsed thereon may be made by such elector before his immediate commissioned commanding officer, or any commissioned officer, non-commissioned officer not below the rank of a sergeant or petty officer, in the armed forces of the United States and any member of the merchant marine of the United States designated for this purpose by the Administrator of the War Shipping Administration is authorized to administer and attest such oaths as are required by this Act; and provided further that such affidavit need not have any venue. Provided, however, that it shall be the duty of such county auditor, at least sixty (60) days before any primary or general election, of his own accord and without application, to send such absent voters ballot to every elector in the manner provided in Section 997 of the Compiled Laws of North Dakota for 1913, who is a member of the armed forces of the United States of America, in every case wherein the address of such elector is furnished such county auditor.

§ 5. AMENDMENT.] That Section 1002a4 of the 1925 Supple-

ment to the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 1002a4. BALLOT AND CANVASSING.] Such absent voter shall make and subscribe such affidavit before his immediate commissioned commanding officer or any commissioned officer, noncommissioned officer not below the rank of sergeant, or petty officer, in the armed forces of the United States and any member of the merchant marine of the United States designated for this purpose by the Administrator of the War Shipping Administration is authorized to administer and attest such oaths as are required by this Act, and shall thereupon, in the presence of such officer and of no other persons, mark such ballot or ballots in the manner provided in Section 998 of the Compiled Laws of North Dakota for 1913; and the county auditor, upon receipt of such envelope, shall proceed in the same manner as provided in Section 999 of the Compiled Laws of 1913 relating to absent voters ballots; provided, however, that if any such envelope is received by such county auditor too late to be forwarded to the proper voting precinct in time to be canvassed, the same shall be retained by him and canvassed by the canvassing board of the county of such auditor at any time prior to the meeting of the state canvassing board or any adjourned meeting of said board where the same has been received by such auditor in time to canvass and transmit the results to the state canvassing board. In all other respects such absent voter ballots of electors engaged in the military service or merchant marine of the United States shall be treated in the same manner as now provided for the absent voter ballots.

§ 6.] That during any National emergency arising out of the United States of America being engaged in war and until the expiration of six months after the termination thereof, the duly qualified electors of the State of North Dakota, men and women, who may be serving in the armed forces of the United States, the American Red Cross, the Merchant Marine or the United Service Organizations outside the territorial limits of the United States, may delegate his right to vote and shall be permitted to vote by proxy at all statewide elections, primary and general.

§ 7.] (a) Every qualified elector coming within the provisions of Section 6, desiring to vote by proxy at any such election, shall name in writing either his mother, father, brother, sister, husband, or wife, if any he has in the county of his residence as his proxy to cast his vote at any such election.

(b) Such proxy appointment shall be in substantially the following form: I _____ a duly qualified elector of the township of _____ of the village of _____ of the _____ precinct of the _____ ward of the city of _____, and of the county of _____, of the state of North Dakota, to my best

knowledge and belief entitled to vote at such precinct at the next election, and now serving in the defense of the United States of America outside the territorial limits thereof, do hereby name _____ of _____ County, North Dakota, who is my _____ as
(father, mother, brother, sister, husband, or wife)
my proxy to vote for me in my name at the _____ election to be held in the State of North Dakota on the _____ day of _____, 19_____.

X _____

We as witnesses to the signature of the above named elector hereby certify that we know such elector and know that his signature thereto is genuine.

Witnesses.

(c) Such proxy appointment shall be signed in his own hand by the elector on the line of which the letter X appears, in the presence of two of his comrades who shall sign as witnesses to the signature of such elector on the blank line therefor.

§ 8.] Each county auditor in the state of North Dakota, shall, for every such election held during any such national emergency:

(a) Provide such proxy appointment, with a reprint of subdivisions (a) and (c) of Section 7 of this Act on the back thereof.

(b) Any relative or friend of any such elector, having the information, is required to furnish the name and military address and each change in such address as same may occur of such elector to the county auditor of the county of the residence of such elector and such county auditor shall make and preserve a permanent record in his office of the names and addresses so furnished him and the date of mailing each proxy appointment and shall keep such record concealed from the public.

(c) Each county auditor shall include with each absent voters ballot or ballots sent by him to each of the electors coming within the provisions of Section 6 of this Act, who is without the territorial limits of the United States of America, one such proxy appointment and a letter in the following language:

“LETTER

You may fill out the enclosed proxy appointment and mail it to the one you appoint or if you prefer to vote by absent voters ballot, fill out the enclosed absent voters ballot and return it to this office.

County Auditor, _____ County, _____ North Dakota.”

(d) Such county auditor shall include with each such proxy an unaddressed envelope with the postage thereon fully prepaid by

air mail, to be used by the elector in returning the proxy appointment to his proxy.

§ 9.] Such proxy appointment must be presented by the proxy to the Election Board of the precinct wherein such elector is qualified to vote, whereupon such proxy shall be furnished such ballot as the elector would be entitled to receive if personally present, and shall be permitted to vote such ballot for and on behalf of such elector unless such election board shall have theretofore received evidence it deems sufficient that such elector is deceased.

§ 10.] The proxy appointment shall be filed with the election board and shall, by it, be returned to the county auditor with the other election returns, and by him kept and preserved for the period of two years after the expiration of the emergency.

§ 11.] Any elector coming within the provisions of Section 6 of this Act, may at his option vote personally or by his absent voters ballot or by a proxy at any such election, and if he shall vote personally or his absent voters ballot shall have been filed with the election board before his proxy offers to vote, the vote of the proxy shall be rejected. However, if a duly appointed proxy shall have voted before the elector offers to vote personally or before his absent voters ballot shall be presented, his personal vote shall be rejected.

§ 12.] The proxy must be a duly qualified voter of the county of the residence of the elector in the State of North Dakota, but need not be a resident of the precinct wherein the elector resides. If he is not a resident of such precinct, he shall file with the election board an affidavit stating of what precinct he is a resident.

§ 13. REPEAL.] That Sections 1002a1, 1002a2, 1002a5 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, are hereby repealed.

§ 14. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

§ 15. SAVINGS CLAUSE.] If any part of this Act shall be declared invalid, such invalidity shall not be held or deemed to impair the operation of the remainder of this Act.