

January 30, 1975

reason I make this point is because during the committees deliberations neither Senator Marvel, Senator Warner, or any other member of that committee objected. None of them objected when a member of the Attorney General's staff told them there are certain of these statutes related to election contests which that committee can ignore. He told them that they are not bound by these statutes, and not one member took issue because such an interpretation expanded the authority they had. As a matter of fact, that representative from the Attorney General's office told them that if the committee decided to ignore these statutes and deviate they need not even come back to the Legislature for additional direction because our direction to them initially, to consider this contest, authorized them to do whatever was necessary to handle this contest. Handling it did not mean to find a method to avoid or to evade it. Wrapped up in all of our considerations is not just the right of Mr. Nichol to sit in that chair or Terry Carpenter to sit in that chair, but the fundamental right of citizens of this state to vote. The right to vote is a constitutionally protected right. When our non-lawyer authorities on that committee sought to interpret statutes and say how they could modify requirements of the Constitution, I tried to point out to them that the only statutes that could be enacted would be those that would facilitate the operation of a constitutional provision, not to defeat it. I gave examples of attempts by legislatures to regulate the right to vote. Some states felt a poll tax was a proper regulation and the Supreme Court stopped it. Others said that if you had an ancestor who voted prior to 1861, which would effectively bar all people of my complexion from ever voting. Those legislatures adopted such a provision and the Supreme Court stopped them again. They felt that if you could read and interpret the Constitution to the satisfaction of a voting judge, who did not want you to vote anyway, that was a reasonable regulation, but again the Supreme Court said no. What we are dealing here with is a fundamental right of a citizen and one around which all of the rights of a democracy spin. This is the center and all the other rights are the planets. You know the center of this universe, of this solar system, is the sun. It sheds light. The moon reflects the light of the sun. The Constitution is the sun of this state and the statutes are the moons which are to properly reflect the Constitution. Any time a statute becomes violative of the Constitution, the statute can be disregarded.

The representative from the Attorney General's office told this committee that you have such a solom charge on you in handling this contest for this legislative seat that you can disregard certain statutes. The citizens have a right to choose whom they want to represent them. There was case before the U.S. House of Representatives where certain members did not like the attributes of a man who'd been elected by his constituents to come sit in the House, so they chose not to allow him to be seated. The Supreme Court told the House of Representatives that when you are authorized by the Constitution to judge members qualifications it means only those specific items set down in the Constitution. To allow you more would be to allow you to nullify the desires of people who have a right to send whomever they choose to represent them. What you are thinking about doing in adopting Senator Warner's motion is substituting the judgement of members of this Legislature for the majority of voters in Scotts Bluff County, in the 48th Legislative District. You