treated similarly: The Statute of Limitations. *Girard Bank v. Bank of Penn. Township*, 39 Pa. 92 (1861) (by holder); *Smith v. Hubbard*, 205 Mich. 44, 171 N.W. 546 (1919) (by drawer). Stop payment orders. *Sutter v. Security Trust Co.*, 96 N.J.Eq. 644, 126 Atl. 435 (1924) (by holder); *Carnegie Trust Co. v. First Nat. Bank*, 213 N.Y. 301, 107 N.E. 693 (1915) (by drawer). And at least one court has felt that the situation presented by the principal case does not require different treatment because the certification was secured by the drawer instead of the holder. *Schlesinger v. Kurzrok*, 47 Misc. 634, 94 N.Y.S. 442 (1905). Cf. *McQueen v. Randall*, 187 N.E. 286 (Ill. 1933). See also, *Walker v. Sellers*, 201 Ala. 189, 77 So. 715 (1918); *Stevenson v. Earling*, 213 Ill. App. 395, affd. 290 Ill. 565, 125 N.E. 322 (1919); *Olsen v. Bankers' Trust Co.*, 205 App. Div. 669, 199 N.Y.S. 700 (1923). But see *Bathgate v. Exchange Bank*, 199 Mo. App. 583, 205 S.W. 875 (1918).

GERALDINE W. LUTES

Constitutional Law—Control of Selection of Presidential Electors by Congress—[Federal].—The Federal Corrupt Practices Act, 43 Stat. 1070 (1925), 2 U.S.C.A. §§ 241–256 (1926), provides that voluntary political committees must make a public statement of amounts received and expended in influencing the selection of presidential electors. Defendants were indicted for violation of the act, and demurred on the ground that the statute contravened U.S. Const., Art. II, § 1, providing for state regulation of the selection of presidential electors. *Held*, the act was a legitimate exercise of the implied power of Congress to preserve the federal government from the danger of corruption. *Burroughs v. United States*, 54 Sup. Ct. 287 (1934).

The power of Congress to regulate federal elections has been upheld on two theories: First, reliance is placed on the express power to regulate the manner of holding congressional elections granted by U.S. Const. Art. I, § 4. *United States v. Gradwell*, 243 U.S. 476, 481, 37 Sup. Ct. 407, 61 L. Ed. 857 (1917); cf. *Smiley v. Holm*, 285 U.S. 355, 52 Sup. Ct. 397, 76 L. Ed. 795 (1932). Second, the power to regulate may result as one "necessary and proper," under U.S. Const. Art. I, § 8, Cl. 18, for executing some other power vested in Congress by the Constitution. 1 Willoughby, The Constitutional Law of the United States (2d ed. 1929), 77–94, §§ 46–59.

Reliance cannot be placed on an express power for the present case, inasmuch as the power to regulate the manner of appointing presidential electors is specifically vested in the states by U.S. Const. Art. II, § 1, Cl. 2. Cf. *In re Green*, 134 U.S. 377, 10 Sup. Ct. 586, 33 L. Ed. 951 (1890); *McPherson v. Blacker*, 146 U.S. 1, 13 Sup. Ct. 3, 36 L. Ed. 869 (1892). Furthermore a broad construction of the phrase "shall appoint, in such manner" in Art. II, § 1, Cl. 2 would seem to exclude federal regulation. A broad construction would be consistent with the treatment given the term "manner of holding" an election contained in U.S. Const. Art. I, § 4, Cl. 1, which has been interpreted by the courts to include matters not a part of the actual election. Thus under Art. I, § 4, Cl. 1, Congress may provide for punishment of election officials for neglect of duty or for fraud. *Ex parte Siebold*, 100 U.S. 371, 25 L. Ed. 717 (1879); *Ex parte Clarke*, 100 U.S. 399, 25 L. Ed. 715 (1879); *In re Coy*, 127 U.S. 731, 8 Sup. Ct. 1263, 32 L. Ed. 274 (1888); *In re Cohen*, 62 F. (2d) 249 (C.C.A. 2d 1932). Corporations may be prohibited from contributing to campaign funds. *United States v. United States Brewers' Assn.*, 239 Fed. 163 (D.C. Pa. 1916). Candidates may be required to file sworn statements of campaign expenses. *United States v. Cameron*, 282 Fed. 684 (D.C. Ariz. 1922). The

court in the present case, however, construes "shall appoint, in such manner" narrowly so that it does not negative an implied federal power. The result of this construction, if not the construction itself, is consistent with the effect of the interpretation given Art. I, § 4, Cl. 1, since both tend to increase congressional power.

Implied powers, inferable from the existence of one or more of the express powers of Congress, may occasionally be exercised to regulate matters incidental to federal elections. Cf. *Legal Tender Cases*, 12 Wall. (U.S.) 457, 532–533, 20 L. Ed. 287 (1871); *United States v. Gettysburg Electric Ry. Co.*, 160 U.S. 668, 16 Sup. Ct. 427, 40 L. Ed. 576 (1896). Thus Congress may prohibit interference with the right to vote in federal elections in exercising its power to protect the rights of citizens under the Constitution. *Ex parte Yarbrough*, 110 U.S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274 (1884); *United States v. Mosley*, 238 U.S. 383, 386, 35 Sup. Ct. 904, 59 L. Ed. 1355 (1915). Under the power to obtain information as to authorized legislation, Congress may punish for perjury in inquiries before it as to campaign expenditures of candidates for election to the Senate. *United States v. Seymour*, 50 F. (2d) 930 (D.C. Neb. 1931). Congress may prohibit the solicitation or receipt of contributions for political purposes between federal officers, in exercising its power to control such officers. *Ex parte Curtis*, 106 U.S. 371, 1 Sup. Ct. 381, 27 L. Ed. 232 (1882); *United States v. Thayer*, 209 U.S. 39, 42, 28 Sup. Ct. 426, 52 L. Ed. 673 (1908); *United States v. Wurzbach*, 280 U.S. 396, 50 Sup. Ct. 167, 74 L. Ed. 508 (1930). Several cases indicate that such implied powers over matters incidental to federal elections may be derived from the express power to regulate the election itself. See *Ex parte Yarbrough*, 110 U.S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274 (1884); *United States v. U.S. Brewers' Assn.*, 239 Fed. 163 (D.C. Pa. 1916).

The existence of an implied power has been denied, however, on the ground that it is unnecessary inasmuch as the police power of the states may be used to protect the purity of elections. *Newberry v. United States*, 256 U.S. 232, 41 Sup. Ct. 469, 65 L. Ed. 913 (1921), criticized in 22 Col. L. Rev. 54 (1922); 19 Mich. L. Rev. 860 (1921). The weakness of this argument lies in the fact that it ignores the well established principle that it is not the court's function to consider the actual necessity of the power. *McCulloch v. Maryland*, 4 Wheat. (U.S.) 316, 4 L. Ed. 579 (1819); *Juilliard v. Greenman*, 110 U.S. 421, 4 Sup. Ct. 132, 28 L. Ed. 204 (1884); *Fairbanks v. United States*, 181 U.S. 283, 21 Sup. Ct. 648, 45 L. Ed. 862 (1901).

The present case in finding an implied power to keep presidential elections free from corruption would seem to show a definite change in attitude on the part of the court since the *Newberry* case.

FRANK E. LEE

Constitutional Law—Definition of Phrase "Prima Facie Evidence"—Disorderly Conduct Statutes—[Michigan].—The defendants were convicted of being disorderly persons because of having engaged "in an illegal occupation or business." The statute under which they were convicted made "Proof of recent reputation for engaging in an illegal occupation of business . . . . prima facie evidence of being engaged in an illegal occupation or business." Michigan Acts (1931), No. 328, § 167. *Held*, the statute is unconstitutional as denying "due process of law." *People v. Licavoli*, 250 N.W. 520 (Mich. 1933), North, Weadock, Sharpe, JJ., dissenting.

The majority of the court defined the statute to mean that evidence of reputation of being engaged in illegal occupation, unexplained or uncontradicted, would alone be sufficient to warrant the jury in convicting. The minority, however, took the view that