

unanimous¹ in 1892,² the legislatures of the several States have exclusive power to direct the manner in which the electors of President and Vice President shall be appointed.

"In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. They are, as remarked by Mr. Justice Gray in *In re Green* (134 U.S. 377, 379), 'no more officers or agents of the United States than are the members of the State legislatures when acting as electors of Federal Senators, or the people of the States when acting as the electors of representatives in Congress.'"³

As I read this bill, phrases learned long ago ran through my mind. "He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance * * * He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws; giving his assent to their acts of pretended legislation. For taking away our charters, abolishing our most valuable laws and altering fundamentally the forms of our government; for suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever."⁴

For those indictments so bitterly stated by the colonists in 1776, complaining of George III, appear again in this bill.

Purporting to act under the 15th amendment and under article I, section 4 of the Constitution, these Senators would have the Congress enact and the President approve a bill establishing "an agency of the legislative branch of the Federal Government, a Congressional Elections Commission, as an authority to conduct primary, special, and general elections for Members of the Senate and the House of Representatives."

That Commission would be composed of three members appointed by the President by and with the advice and consent of the Senate. They shall each receive a salary of \$20,000 per year, except that the Chairman shall receive \$20,500. Their terms would be 9 years, except that the first three members would have terms expiring December 31, 1963, 1966, and 1969 respectively.

The Commission would be authorized to make and maintain temporary and permanent registers of voters qualified to participate in primary, special and general elections in the various congressional districts (title III, sec. 301).

No person shall be registered as a voter under that section who does not have the qualifications requisite for electors of the most numerous branch of the legislature of the State in which the congressional district is situated (sec. 302).

But, apparently, the members of the Commission, and its agents appointed by them pursuant to title VI, section 601, determine whether an applicant is qualified to vote under the laws of the State with no right of appeal except to the Federal courts (title VII, sec. 701).

No State or local laws governing the time, place, or manner of the registration of voters shall be applicable to or limit the power of the Commission to conduct registration of voters, but the Commission must endeavor, as far as in its judgment is conducive to uniform and orderly election procedures, to conform its conduct of the registration of voters to the procedures governing time, place, and manner of registration, prescribed in the State or local laws or ordinances in effect in the congressional district (sec. 303).

Thus far, S. 2535 coincides in purpose with the bills seeking to regulate registration for voting in so-called Federal elections.

But in title 4, the kangaroo really leaps. That title is "Conduct of Elections by the Commission."

It seeks to authorize the Commission to conduct primary, special, or general elections for the purpose of selecting and electing Members of the Senate and the House of Representatives in any congressional district whenever "the Commission is officially requested so to do by the duly empowered official of the State in which the congressional district is situated," or whenever "the Commission determines that unless such election is conducted by the Commission, persons having the qualifications requisite for electors of the most numerous branch of the legislature of the State in which the congressional district is located are likely to be denied their right in such primary, special, or general elections to cast their votes and to have them fairly counted."

¹ Chief Justice Fuller writing; Associate Justices Field, Harlan, Gray, Blatchford, L. Q. C. Lamar, Brewer, Brown, and Shiras concurring.

² *McPherson v. Blacker*, 146 U.S. 1.

³ *Ibid.*, 146 U.S. at p. 35.

⁴ Declaration of Independence.