

In *Ex parte Young* (209 U.S. at p. 175), Justice Harlan dissenting, used cogent words which are so apt when we read what is being attempted in this bill.

Said he there: "This principle, if firmly established, would work a radical change in our governmental system. It would inaugurate a new era in the American judicial system and in the relations of the National and State Governments. It would enable the subordinate Federal courts to supervise and control the official action of the States as if they were 'dependencies' or provinces. It would place the States of the Union in a condition of inferiority never dreamed of when the Constitution was adopted or when the 11th amendment was made a part of the supreme law of the land. I cannot suppose that the great men who framed the Constitution ever thought that time would come when a subordinate Federal court, having no power to compel a State in its corporate capacity, to appear before it as a litigant, would yet assume to deprive a State of the right to be represented in its own courts by its regular law officer."

And say I here: The principle of this legislation if established would destroy our governmental system. It would inaugurate a new era in the American system of government and in the relations of the National and State Governments. It would enable three subordinate Federal officers to supervise and control the actions of elected officials of the States as if the States were dependencies or conquered provinces. It would place the States of the Union in a condition of inferiority never dreamed of when the Constitution was adopted or when the 10th amendment was made a part of the supreme law of the land. I cannot suppose that the great men who framed the Constitution and the Bill of Rights ever thought the time would come when it would be seriously proposed in the Senate of the United States that three men appointed by the President of the United States might go into a State and conduct its elections after having determined who might vote in those elections, superseding all of its elected and selected officials.

Only once in our history have any such proposals crystallized. After Sherman had burnt and pillaged the States of the South, they became military districts. Now it is proposed to convert us into voting precincts without going through the process of subjugation.

The chief law questions which arise in a discussion of these various bills are:

1. Does the Congress have the constitutional power to establish a commission, and delegate to it the powers to conduct elections for the purpose of selecting and electing members of the Senate and the House of Representatives?
2. Does the Congress have the constitutional power to establish a commission and empower it to regulate registrations for voting in congressional elections?

I limit the real law questions presented to the field of congressional elections for there are no elections for President or Vice President, and presidential electors are State officers as to whom the only power of Congress is that which may be conferred by the 14th and 15th amendments.

Both of these questions must be determined by a study of article I, section 2 and of article I, section 4, clause 1 of the Constitution, which provides:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

Prior to the adoption of the 17th amendment, this section was the only source of power which Congress possessed over elections for Senators and Representatives, *Newberry v. United States* (256 U.S. 232; 41 S. Ct. 469; 65, L. Ed. 913).

The effect of the 17th amendment is to give to Congress the same breadth of power over the election of Senators as it previously had over the elections of Representatives.

The policy of Congress for a great part of our constitutional life has been, to leave the conduct of the election of its Members to State laws, administered by State officers. Whenever it has assumed to regulate such elections it has done so by positive and clear statutes, *United States v. Gradwell* (243 U.S. 476, 485).

In that case, decided in 1916, the Court, at page 482, after stating that the power of Congress to deal with the election of Senators and Representatives was derived from section 4, article I of the Constitution of the United States, said:

"Whatever doubt may at one time have existed as to the extent of the power which Congress may exercise under this constitutional sanction in the prescribing of regulations for the conduct of elections for Representatives in Congress or in adopting regulations which States have prescribed for that purpose has been