

settled by repeated decisions of this court, in *Ex parte Siebold* (100 U.S. 371, 391 (1879)); *Ex parte Clarke* (100 U.S. 399 (1879)); *Ex parte Yarbrough* (110 U.S. 651 (1884)); and in *United States v. Mosley* (238 U.S. 383 (1915))."

In the statement of Robert G. Storey, Vice Chairman of the Commission on Civil Rights before this committee on January 18, 1960, he said: "First, by article I, section 4, the Constitution has reserved [sic] plenary power to the Congress to legislate upon the 'times, places, and manner of holding elections for Senators and Representatives.'"

Whatever power Congress has under article I, section 4, was not reserved to it. It was delegated to it by the States. More important, though: Is that power correctly described as "plenary"?

The "extent of the power" was stated in the four cases cited in Gradwell.

(a) What then was the extent of the power in 1916?

(b) Has the extent of the power been since broadened?

To answer the first of these two questions it is necessary to examine the four cases, and one or two others.

The first of the four is *Ex parte Siebold* (100 U.S. 371).

Certain judges of election in the city of Baltimore, appointed under State laws, were convicted in Federal court under certain sections of the Federal statutes for interfering with and resisting the supervisors of election and deputy marshals of the United States in the performance of their duty at an election of Representatives to Congress under other sections of the Federal statutes, taken from the Enforcement Act of May 31, 1870, as amended in 1871.

The gist of the ruling is:

"Congress had power by the Constitution to enact section 5515 of the Revised Statutes, which makes it a penal offense against the United States for any officer of election, at an election held for a Representative in Congress, to neglect to perform, or to violate, any duty in regard to such election, whether required by a law of the State or of the United States, or knowingly to do any act unauthorized by any such law, with intent to affect such election, or to make a fraudulent certificate of the result, etc.; and section 552, which makes it a penal offense for any officer or other person, with or without process, to obstruct, hinder, bribe, or interfere with a supervisor of election, or marshal, or deputy marshal, in the performance of any duty required of them by any law of the United States, or to prevent their free attendance at the places of registration or election, etc.; also, sections 2011, 2012, 2016, 2017, 2021, 2022, title xxvi, which authorize the circuit courts to appoint supervisors of such elections, and the marshal to appoint special deputies to aid and assist them, and which prescribe the duties of such supervisors and deputy marshals, these being the laws provided in the Enforcement Act of May 31, 1870, and the supplement thereto of February 28, 1871, for supervising the elections of Representatives, and for preventing frauds therein."

Clearly, the basis of this ruling was that the acts of Congress were regulations with respect to the "manner of holding elections," and therefore within the very letter of article I, section 4, clause 1.

In *Ex parte Clarke* (100 U.S. 399), there was considered the appeal of an officer of election, at an election for a Representative to Congress in the city of Cincinnati who had been convicted under section 5515 of the Federal Revised Statutes for a violation of the law of Ohio in not conveying the ballot box, after it had been sealed up and delivered to him for that purpose, to the county clerk, and for allowing it to be broken open.

That section 5515 is set out in full in the *Siebold* case (100 U.S. at p. 381), and is as follows:

"SECTION 5515. Every officer of an election at which any representative or delegate in Congress is voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, territorial, district, or municipal law or authority, who neglects or refuses to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory thereof; or who violates any duty so imposed; or who knowingly does any acts thereby unauthorized, with intent to affect any such election, or the result thereof; or who fraudulently makes any false certificate of the result of such election in regard to such representative or delegate; or who withholds, conceals, or destroys any certificate of record so required by law respecting the election of any such representative or delegate; or who neglects or refuses to make and return such certificate as required by law; or who aids, counsels, procures, or advises any voter, person, or