

No. 15,225, Woods, circuit judge). It is the elector qualified by State laws who may be protected in that right under section 4 of article I (ibid).

Congress, under article I, section 4, can no more abridge the powers of the States under article I, section 2 and the 10th amendment, than it can abridge the freedoms guaranteed by the first amendment. *United States v. Congress of Industrial Organizations* (77 F. Supp. 355, 357, affirmed 335 U.S. 106).

Has the extent of the power of Congress over congressional elections been broadened since 1916?

Congress has no more power now to prescribe the qualifications of voters in congressional elections than it had in 1916, when *Gradwell* was decided.

The only change in the principles of constitutional law which we have stated is that there has been a broader definition ascribed to the word "elections" in article I, section 4.

In *United States v. Classic* (313 U.S. 299), Mr. Justice Stone said: "The questions for decision are whether the right of qualified voters to vote in the Louisiana primary and to have their ballots counted is a right 'secured by the Constitution'" (op. cit., p. 307). (See also p. 315.)

Justices Stone, Roberts, Reed, and Frankfurter held that "a primary election which is a necessary step in the choice of candidates for election as Representatives in Congress, and which in the circumstances of the case control that choice, is an election within the meaning of article I, sections 2 and 4 of the Constitution and is subject to congressional regulation as to the manner of holding it" (313 U.S. 300 (6)).

Justice Douglas dissented, joined by Justices Black and Murphy. (See, also *Smith v. Allwright* (321 U.S. 649).)

So, the extent of the congressional power today is just as it was in 1916 except that the word "elections" is to be construed to include "primaries" of the described in the *Classic* case.

Does the sweep or extent of that power show any constitutional right in Congress to enact legislation such as that which confronts us?

The legislation embraces two attempts in general.

1. There is an attempt in S. 2535 to empower a Commission composed of three members appointed by the President to conduct the congressional election in any congressional district whenever:

(a) The Commission is requested so to do by the official of the State in which the congressional district is situated; or

(b) The Commission determines that unless it conducts such election, 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 to cast their votes and have them counted.

2. There is an attempt in all of the bills to provide for registration of voters in congressional elections by Federal registrars.

Is the provision in S. 2535 for a Commission to conduct congressional elections valid? Clearly it is not.

If for no other reason, it is not because it would constitute a flagrant attempt by the Congress to delegate its legislative power.

Article I, section 1 of the Constitution provides that "all legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives."

Under article I, section 4 of the Constitution, Congress may at any time "by law" fix the times, places and manner of holding elections for Senators and Representatives.

The phrase "by law" has a meaning in the field of constitutional law. It is not a phrase haphazardly used. It occurs many other times in the Constitution, e.g.:

- (a) In article I, section 2, paragraph 3;
- (b) In article I, section 4, paragraph 2;
- (c) In article I, section 6, paragraph 1;
- (d) In article I, section 9, paragraph 7;
- (e) In article II, section 1, paragraph 6;
- (f) In article II, section 2, paragraph 2;
- (g) In article III, section 2, paragraph 3;
- (h) In the third amendment;
- (i) In the sixth amendment;
- (j) In the 14th amendment, section 4;
- (k) In the 20th amendment, section 4.