

nor prohibited by it to the States, are reserved to the States respectively, or to the people."

When over a century later, an amendment to the Constitution (amendment 17), was added providing for the election of Senators by the people of the States, that amendment contained the same language as to Senators as was in the original Constitution as to Representatives, to wit: The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

The States by the law prescribed those qualifications.

The States by law determined how its officers should ascertain who possessed those qualifications.

That such was indisputably the plan of the Constitution can also be demonstrated in another manner.

Originally under the Constitution—prior to the adoption of the 17th amendment—it was provided (art. I, sec. 3), that the Senate of the United States should be composed of two Senators from each State chosen by the legislature thereof. Article I, section 2 provided that the House should be composed of Members chosen * * * by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Now, article I, section 4 applies to Senators and Representatives—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 time of choosing Senators.

If under those sections, the Congress had the right to prescribe and administer qualifications requisite for the electors choosing Members of the House, then by the same token the Congress had the right to supervise and prescribe qualifications for the members of the legislature who chose the Senators. Congress had exactly the same power over the times and manner of holding elections for Senators, as it had over the times and manner of holding elections for Representatives.

What the States did do in their delegation of power to the Congress has been well illustrated by what the courts have decided over the years.

Guinn v. United States, 238 U.S. 347, was one of the first cases in which the National Association for the Advancement of Colored People appeared before the Supreme Court. Perhaps it was the first. Mr. Moorfield Storey appeared for it. The grandfather clause in the Oklahoma constitution was held to violate the 15th amendment. In so holding, though, Chief Justice White speaking for himself, and Justices McKenna, Holmes, Day, Hughes, Van Devanter, Joseph Rucker Lamar and Pitney, said:

"(a) Beyond doubt the amendment does not take away from the State governments in a general sense the power over suffrage which had belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the Nation and the State would fall to the ground. In fact, the very command of the amendment recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals.

"(b) It is true, also, that the amendment does not change, modify or deprive the State of their full power as to suffrage except of course as to the subject with which the amendment deals and to the extent that obedience to its command is necessary. Thus the authority over suffrage which the States possess and the limitation which the amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both" (op. cit., p. 362, p. 34).

And further at page 366: "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen, its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted."

In *Pope v. Williams* (193 U.S. 621), the Court said: "While the right to vote for Members of Congress is not derived exclusively from the law of the State in which they are chosen, but has its foundation in the Constitution and laws of the United States, the elector must be one entitled to vote under the State statute."

Pope v. Williams refers to *Wiley v. Sinkler* (179 U.S. 58), and *Swofford v. Templeton* (185 U.S. 487).