

12-18-1948

Correspondence, John C. Stennis, Jesse F. Orton, December 18-28, 1948

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Jackson Heights, N. Y.
December 18, 1948

DeKalb, Miss.

Dear Senator Stennis:

I received your letter of November 29, stating that you had referred the question mentioned in my letter to one of the constitutional lawyers of your State, and I shall be very glad to have his views on the subject.

Since I wrote you, and quite recently, I have consulted [redacted] work "The Supreme Court in U. S. History," and I find in Volume 3 of the first edition (1926), and Volume 2 of the revised edition (1935), an extensive treatment of the Reconstruction period. He shows how the Court in numerous cases was expected to rule on the constitutionality of the acts of Congress, but for various reasons never did make any such decision. In *Texas v. White*, 7 Wallace, the Court finds it "unnecessary" to go into that matter but does decide, with finality, that the Southern States never ceased to be States in the Union.

So one might argue that any agreement made by them in regard to suffrage was made under a mistaken view and belief as to the facts, entertained by both the Federal government and the States. They did not need to be readmitted.

An excellent authority (non-judicial) is Prof. [redacted], in his brief work, "Reconstruction and the Constitution," (1866-1876), New York, Scribner's Sons, 1902. He finds the act of Congress requiring an agreement on suffrage unconstitutional, but that this did not invalidate the ratification of the 14th and 15th Amendments by the required number of States. He was eminent at Columbia U. in Pol. Sci. and Law.

Another very excellent authority is Prof. [redacted] "Constitutional History of the United States," (Pulitzer prize in 1936), Chapter 47 on Reconstruction, especially pages 680-681. His conclusion, at these pages, is:

"These conditions were intended to fasten negro suffrage permanently on the reconstructed States; but the terms of the conditions were so sweeping and comprehensive that, if enforced, they would prevent any and every alteration in the qualifications for voting. Though the 14th Amendment allowed the States to decide what the basis of suffrage should be -- subject to a contingent reduction of representation -- the States thus restored were to be perpetually restrained from exercising that very right of determination. Amid all the

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unnecessary and intemperate measures passed during this dismal decade, no other measures seem so unnecessary or so absurd as these so-called conditions. If Congressmen did not know they were both unjust and unconstitutional, their ignorance is not a very satisfactory excuse."

[REDACTED] was Professor of American History at the University of Michigan, one of my teachers there. In 1906 he went to the University of Chicago, where he was Professor of History and Head of the History Department, Emeritus after 1929. He took a Law as well as Arts course and made a very extensive use of it in connection with History.

In view of the present political situation, since November 2, what do you expect with reference to the poll tax bill? Is it likely to come up in January, as Senator Morse threatened? I hope you are having a good rest between sessions.

Sincerely yours,

James F. Orton

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United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION

December 28, 1948

[REDACTED]
Jackson Heights, New York

Dear [REDACTED]:

Thank you for your letter of December 18. The interpretations of [REDACTED] certainly seem a strong answer to the theory that re-admission barred the right to set qualifications for voters on the part of the states concerned.

I was familiar, in general terms, with the Texas v. White decision, and had considered it as a possible reply to the whole re-admission argument. This opinion, you may recall, has been quoted in the perennial argument as to whether the war should be called Civil War, War Between the States, etc.

Even though the session is virtually upon us, it is still impossible to know exactly what course the anti-poll tax proponents will follow. I believe that the best guess is that the bill will not be pushed in the early part of the session, unless Senator Morse and certain of his Republican colleagues try this in an effort to force amendment of the Senate rules by the threat of embarrassing the Administration. There has been considerable talk of an agreement to accept an anti-poll tax constitutional amendment. Senator Hayden, who will be chairman of the Rules Committee, is sponsor of this plan. I shall keep you informed about all developments.

With kind personal regards and all good wishes for the coming year, I am

Sincerely yours,

U. S. Senator

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Anti-poll tax
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