AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 6: The Civil War/Reconstruction Era – Powers of the National Government

United States v. Reese, 92 U.S. 214 (1876)

The Enforcement Act of 1870 provided statutory support for the Fifteenth Amendment, making it a federal crime to infringe an individual's right to vote and authorizing federal courts to use the necessary force to vindicate the law.

A test of the law reached the Court in a case involving city elections in Lexington, Kentucky. City ordinance required that all voters pay a poll tax by a specified date before the election. William Garner, a black resident of the city, offered to pay the tax by the required date, but the tax collector refused him. When Garner later appeared at the polls, he gave the voting inspectors an affidavit stating that he had attempted to pay his poll tax but had been refused on account of his race. The inspectors refused to accept Garner's ballot unless he could provide proof that he had in fact paid the city poll tax. Garner filed a complaint charging that the tax collector and the inspectors were obstructing qualified black voters from fulfilling the prerequisites of voting and from casting their ballots.

CHIEF JUSTICE WAITE delivered the opinion of the court.

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The Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property, or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by "appropriate legislation."

This leads us to inquire whether the act now under consideration is "appropriate legislation" for that purpose. The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment. The effect of art. 1, sect. 4, of the Constitution, in respect to elections for senators and representatives, is not now under consideration. It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.

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This is a penal statute, and must be construed strictly; not so strictly, indeed, as to defeat the clear intention of Congress, but the words employed must be understood in the sense they were obviously used. . . . If, taking the whole statute together, it is apparent that it was not the intention of Congress thus to limit the operation of the act, we cannot give it that effect.

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But . . . we find there no words of limitation, or reference even, that can be construed as manifesting any intention to confine its provisions to the terms of the Fifteenth Amendment. That section has for its object the punishment of all persons, who, by force, bribery, &c., hinder, delay, &c., any person from qualifying or voting. In view of all these facts, we feel compelled to say, that, in our opinion, the language of the third and fourth sections does not confine their operation to unlawful discriminations on account of race, &c. If Congress had the power to provide generally for the punishment of those who unlawfully interfere to prevent the exercise of the elective franchise without regard to such discrimination, the language of these sections would be broad enough for that purpose.

It remains now to consider whether a statute, so general as this in its provisions, can be made available for the punishment of those who may be guilty of unlawful discrimination against citizens of the United States, while exercising the elective franchise, on account of their race, &c.

There is no attempt in the sections now under consideration to provide specifically for such an offence. If the case is provided for at all, it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.

It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power. Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power of the States and the people.

To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty.

We must, therefore, decide that Congress has not as yet provided by "appropriate legislation" for the punishment of the offence charged in the indictment; and that the Circuit Court properly sustained the demurrers, and gave judgment for the defendants.

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JUSTICE CLIFFORD [concurring].

I concur that the indictment is bad, but for reasons widely different from those assigned by the court.

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Citizens of the United States, without distinction of race, color, or previous condition of servitude, if *otherwise* qualified to vote at a state, territorial, or municipal election, shall be entitled and allowed to vote at such an election, even though the constitution, laws, customs, usages, or regulations of the State or Territory do not allow, or even prohibit, such voter from exercising that right. . . .

Evidently the purpose of that section is to place the male citizen of color, as an elector, on the same footing with the white male citizen. Nothing else was intended by that provision, as is evident from

the fact that it does not profess to enlarge or vary the prior existing right of white male citizens in any respect whatever. . . .

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Disability to vote of every kind, arising from race, color, or previous condition of servitude, is declared by the first section of that act to be removed from the colored male citizen; but, unless *otherwise* qualified by law to vote at such an election, he is no more entitled to enjoy that privilege than a white male citizen who does not possess the qualifications required by law to constitute him a legal voter at such an election.

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Enough appears in the second count of the indictment to show beyond all question that it cannot be sustained under the second section of the Enforcement Act, as the count expressly alleges that the defendants as such inspectors, at the time the complaining party offered his vote, refused to receive and count the same because he did not produce evidence that he had paid to the city the capitation-tax of one dollar and fifty cents assessed against him for the preceding year, which payment, it appears by the law of the State, is a prerequisite and necessary qualification to enable any citizen to vote at that election, without distinction of race, color, or previous condition of servitude; and the express allegation of the count is, that the party offering his vote then and there refused to comply with that prerequisite, and then and there demanded that his vote should be received and counted without his complying with that prerequisite.

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Having come to these conclusions, it is not necessary to examine the fourth section of the Enforcement Act, for the reason that it is obvious, without much examination, that no one of the counts of the indictment is sufficient to warrant the conviction and sentence of the defendants for the offence defined in that section.

JUSTICE HUNT [dissenting].

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An examination of the surrounding circumstances, a knowledge of the evil intended to be prevented, a clear statement in the statute of the acts prohibited and made punishable, a certain knowledge of the legislative intention, furnish a rule by which the language of the statute before us is to be construed. The motives instigating the acts forbidden, and by which those acts are brought within the jurisdiction of the Federal authority, need not be set forth with the technical minuteness to which reference has been made. The intent is fully set forth in the second section [of the Enforcement Act, which bars racial distinctions in voting] . . . .

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The existence of a large colored population in the Southern States, lately slaves and necessarily ignorant, was a disturbing element in our affairs. It could not be overlooked. It confronted us always and everywhere. Congress determined to meet the emergency by creating a political equality, by conferring upon the freedmen all the political rights possessed by the white inhabitants of the State. It was believed that the newly enfranchised people could be most effectually secured in the protection of their rights of life, liberty, and the pursuit of happiness, by giving to them that greatest of rights among freemen, -- the ballot. Hence the Fifteenth Amendment was passed by Congress, and adopted by the States. The power of any State to deprive a citizen of the right to vote on account of race, color, or previous condition of servitude, or to impede or to obstruct such right on that account, was expressly negatived. It was declared that this right of the citizen should not be thus denied or abridged.

The persons affected were citizens of the United States; the subject was the right of these persons to vote, not at specified elections or for specified officers, not for Federal officers or for State officers, but the right to vote in its broadest terms.

The citizen of this country, where nearly everything is submitted to the popular test and where office is eagerly sought, who possesses the right to vote, holds a powerful instrument for his own advantage. The political and personal importance of the large bodies of emigrants among us, who are entrusted at an early period with the right to vote, is well known to every man of observation. Just so far as the ballot to them or to the freedman is abridged, in the same degree is their importance and their

security diminished. State rights and municipal rights touch the numerous and the every-day affairs of life: those of the Federal government are less numerous, and, to most men, less important. That Congress, possessing, in making a constitutional amendment, unlimited power in what it should propose, intended to confine this great guaranty to a single class of elections, -- to wit, elections for United States officers, -- is scarcely to be credited.