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266. VETO OF THE SECOND RECONSTRUCTION ACT

March 23, 1867

(Richardson, ed. *Messages and Papers*, Vol. VI, p. 531 ff.)

WASHINGTON, *March 23, 1867.*

To the House of Representatives:

I have considered the bill entitled “An act supplementary to an act entitled ‘An act to provide for the more efficient government of the rebel States,’ passed March 2, 1867, and to facilitate restoration,” and now return it to the House of Representatives with my objections.

This bill provides for elections in the ten States brought under the operation of the original act to which it is supplementary. Its details are principally directed to the elections for the formation of the State constitutions, but by the sixth section of the bill “all elections” in these States occurring while the original act remains in force are brought within its purview. Referring to these details, it will be found that, first of all, there is to be a registration of the voters. No one whose name has not been admitted on the list is to be allowed to vote at any of these elections. To ascertain who is entitled to registration, reference is made necessary, by the express language of the supplement, to the original act and to the pending bill. The fifth section of the original act provides, as to voters, that they shall be “male citizens of the State, 21 years old and upward, of whatever race, color, or previous condition, who have been residents of said State for one year.” This is the general qualification, followed, however, by many exceptions. No one can be registered, according to the original act, “who may be disfranchised for participation in the rebellion”—a provision which left undetermined the question as to what amounted to disfranchisement, and whether without a judicial sentence the act itself produced that effect. This supplemental bill superadds an oath, to be taken by every person before his name can be admitted upon the registration, that he has “not been disfranchised for participation in any rebellion or civil war against the United States.” It thus imposes upon every person the necessity and responsibility of deciding for himself, under the peril of punishment by a military commission if he makes a mistake, what works disfranchisement by participation in rebellion and what amounts to such participation. . . .

The fourth section of the bill provides “that the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons.” The only qualification stated for these officers is that they

must be “loyal.” They may be persons in the military service or civilians, residents of the State or strangers. Yet these persons are to exercise most important duties and are vested with unlimited discretion. They are to decide what names shall be placed upon the register and from their decision there is to be no appeal. They are to superintend the elections and to decide all questions which may arise. They are to have the custody of the ballots and to make return of the persons elected. Whatever frauds or errors they may commit must pass without redress. All that is left for the commanding general is to receive the returns of the elections, open the same, and ascertain who are chosen “according to the returns of the officers who conducted said elections.” By such means and with this sort of agency are the conventions of delegates to be constituted.

As the delegates are to speak for the people, common justice would seem to require that they should have authority from the people themselves. No convention so constituted will in any sense represent the wishes of the inhabitants of these States, for under the all-embracing exceptions of these laws, by a construction which the uncertainty of the clause as to disfranchisement leaves open to the board of officers, the great body of the people may be excluded from the polls and from all opportunity of expressing their own wishes or voting for delegates who will faithfully reflect their sentiments.

I do not deem it necessary further to investigate the details of this bill. No consideration could induce me to give my approval to such an election law for any purpose, and especially for the great purpose of framing the constitution of a State. If ever the American citizen should be left to the free exercise of his own judgment it is when he is engaged in the work of forming the fundamental law under which he is to live. That work is his work, and it can not properly be taken out of his hands. All this legislation proceeds upon the contrary assumption that the people of each of these States shall have no constitution except such as may be arbitrarily dictated by Congress and formed under the restraint of military rule. A plain statement of facts makes this evident.

In all these States there are existing constitutions, framed in the accustomed way by the people. Congress, however, declares that these constitutions are not “loyal and republican,” and requires the people to form them anew. What, then, in the opinion of Congress, is necessary to make the constitution of a State “loyal and republican”? The original act answers the question: It is universal negro suffrage—a question which the Federal Constitution leaves exclusively to the States themselves. All this legislative machinery of martial law, military coercion, and political disfranchisement is avowedly for that purpose and none other. The existing constitutions of the ten States conform to the acknowledged standards of loyalty and republicanism. Indeed, if there are degrees in republican forms of government, their constitutions are more republican now than when these States, four of which were members of the original thirteen, first became members of the Union.

Congress does not now demand that a single provision of their constitutions be changed except such as confine suffrage to the white population. It is apparent, therefore, that these provisions do not conform to the standard of republicanism which Congress seeks to establish. That there may be no mistake, it is only necessary that reference should be made to the original act, which declares "such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates." What class of persons is here meant clearly appears in the same section; that is to say, "the male citizens of said State 21 years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election."

Without these provisions no constitution which can be framed in any one of the ten States will be of any avail with Congress. This, then, is the test of what the constitution of a State of this Union must contain to make it republican. Measured by such a standard, how few of the States now composing the Union have republican constitutions! If in the exercise of the constitutional guaranty that Congress shall secure to every State a republican form of government universal suffrage for blacks as well as whites is a *sine qua non*, the work of reconstruction may as well begin in Ohio as in Virginia, in Pennsylvania as in North Carolina. . . .

ANDREW JOHNSON