# REMARKS

BY

# HON. W. C. P. BRECKINRIDGE,

OF KENTUCKY,

## In the House of Representatives,

*Tuesday, July* 1, 1890.

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The House having under consideration the bill H. R. 11045) to amend and supplement the election laws of the United States, etc.—

Mr. HEMPHILL. Mr. Speaker, I desire to offer the amendment I send to the desk.

The Clerk read as follows:

Strike out sections 15, 16, 17, and 18, and insert the following:

"SEC. 15. From the returns of the supervisors the chief supervisor shall tabulate and forward to the Speaker of the House of Representatives, to be by him submitted to the House, the results as they appear therefrom in each Congressional district under his jurisdiction in which this act has been enforced."

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Mr. BRECKINRIDGE, of Kentucky, said:

Mr. SPEAKER: The provisions of these four sections when taken in connection with section 29 and with the section under which the chief supervisors are appointed, create a system which puts it in the power of the courts of the United States and of non-residents of the States where the elections are held to substantially control the House of Representatives.

I am not now speaking as a Democrat, but as a citizen and a Representative of the people of the United States, looking to the future without regard to the animosities of the past. We are legislating for a common people for that great future, and these sections, give to the circuit judges of the United States (of which there are but nine) power to appoint the supervisors and boards of canvassers in States in which the judges do not reside, which boards of canvassers have the power to make certificates which are to be sent to the Clerk of the House, and by those certificates the Clerk is to make up the roll of this House.

We are the representatives of the people of the States. We speak in a representative capacity; we represent those whose commission we bear. We bear the commission of those who choose us. No district can be a part of two States. We are collectively the representatives of the people of the United States; individually we are representatives of our districts. For a hundred years the certificate of the governor of the State has been *prima facie* evidence of our title to our seats. Under this bill a non-resident circuit judge, appointed because of his political affiliation, goes into a State and chooses a board of canvassers whose certificates, made up from the certificates of the lower supervisors, is final upon the Clerk of this House. So that the number of men put by these certificates into this House may control the House of Representatives. The gentleman from Massachusetts [Mr. LODGE] says this is a bill to give publicity. It is no such thing. It is a bill to give secrecy and power to the supervisors of the elections, appointed by a judge who is a non-resident of the State.

Under the domiciliary visits of the supervisor from house to house the voter and that officer are alone. Every bribable man is brought into direct and secret contact with the officer, who is appointed by the party in power, whichever party

that may happen to be. That officer stands by when that voter goes to the polls. That officer certifies the list to the chief supervisor; that chief supervisor certifies it to the board of canvassers; those canvassers certify it to the Clerk of this House, and that Clerk puts the name upon the rolls of this House. The men upon this floor may hereafter be no longer the representatives of the people. They will become the representatives of the party that happens to be in power, provided this bill shall pass and shall be obeyed in every section of the States and of the country.

I can understand the gentleman from Michigan [Mr. ALLEN], whose frankness outran his discretion when he said that he was not willing to have this bill made applicable to his district because fifty or one hundred unscrupulous men might be tempted to petition to have it apply there. It is that which makes gentlemen vote for it. They are willing to subordinate the certificate of State officers, they are willing to make this stab at the purity of elections, because it does not apply to their States. They would not do it, they would resent another doing it, if it did apply to their States. Gentlemen on the other side vote for this bill because they believe that they will not have to live under it, that they will not have to be chosen under its provisions, that their people will be free from this enginery, that their States will not be subjected to the horde of mercenaries that this law may turn loose.

But the future is uncertain. The exigencies of the future may put this power into the hands of other parties. I have seen the Whig party go into history. I have seen the Know-nothing party destroyed. I have seen the Democratic party using force in Kansas to make the elections a lie, lose power by the very means which it took to perpetuate its power. Therefore I am not to-day pleading merely as a Democrat, but I am pleading for every section of the country, for every district in the country, that the House of Representatives may continue to be the representatives of the people, chosen by a majority of the voters, at a ballot-box not controlled by mercenaries. [Loud applause on the Democratic side.]

Mr. Speaker, I take advantage of the permission of the House to submit more fully some observations on this measure.

It may be that Congress has the right under the Constitution to enact a Federal election law, and that it is expedient to exercise that power in the present condition of the country, but it does not by any means follow that the proposed election bill is either constitutional or expedient. It may be possible that all which has been so earnestly, if not generously and accurately, urged by gentlemen on the other side as to the condition of the negro in the South, and as to frauds heretofore committed in some of the larger cities of the North is true, and yet it may be also true that this proposed bill is unconstitutional, unwise and iniquitous.

It devolves upon gentlemen who advocate and vote for this measure to demonstrate not only that Congress has the power to enact an election bill and that the condition of the country requires its enactment, but that the particular provisions of this bill are wise, impartial and necessary. I beg to impress this upon the members of this House and upon the country. The real contest between us and the gentlemen on the other side is not only as to the power of Congress to pass an election law, or as to the possibility that there are frauds committed at the election of certain Representatives, but that this proposed measure is obnoxious to the provisions of the Constitution, is unwise in its general scope, and is iniquitous in its particular provisions.

This bill has fifty-seven sections, some of them containing as many as fourteen subdivisions; it re-enacts twenty-nine, repeals ten, and amends six other sections in the Revised Statutes; twenty-one sections create crimes and misdemeanors and fix penalties. It is seventy-three pages in length. It was introduced into the House on Saturday, June 14; was reported to the House on June 19, and was taken up for consideration on the 26th. Of course, such a bill can not be thoroughly digested in so brief a time even if Representatives were able to devote their whole time to its consideration.

This mode of legislation necessarily produces vicious results; necessarily must the grave and important interests of the people be imperiled, and their rights be in danger. This House ought to refuse to consider such a bill in such haste, and its duty to itself requires that it will not be forced by the decree of caucus, by the exigencies of party, or by the fear of party censure, to pass a measure so long, so complicated, so revolutionary, without ample time, careful deliberation, and full opportunity for amendment.

But as the House has ordered the consideration of the bill it is forced upon us to examine its provisions.

THE CONSTITUTIONAL POWER OF CONGRESS.

The first section of the Constitution is:

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.

SEC. 2. The House of Representatives shall be composed of members chosen every second year 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.

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SEC. 3 The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

It is perfectly evident that the phrase in the second section, "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," and the phrase in the third section "chosen by the Legislature thereof," are precisely equivalent. They describe the electors who shall choose the Representatives in the first instance, and the Senators in the second instance. In neither case did the Constitution undertake to select these electors, but solely to indicate those who should be qualified by the several States, in the one case by the proper action of the State through its constitution or laws, to wit, the "electors of the most numerous branch of the State Legislature," and in the second those chosen under the constitution of the State and by the people at the prescribed times and in the prescribed mode, as members of the Legislature.

SEC. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

It is demonstrable that the power of Congress to "make or alter" the regulations as to "the times" and "manner of holding elections for Senators and Representatives" is precisely the same. It has constitutionally exactly the same power to prescribe the times and manner of holding elections for Senator that it has for Representative; no greater and no less. Its power is limited so that it can only "make or alter" regulations as to the "times and manner of holding elections" of Senators, and of the times, places, and manner of holding elections for Representatives.

It can no more hold the election for Representative than it can for Senator. It can no more create offices of its own and provide the officers to superintend and conduct and certify the election of Representatives than it can hold, conduct and certify the election of Senators. It has the same power to prescribe how the members of the Legislature shall be elected, qualified, and perform their duties as it has to prescribe how the electors of Representatives shall be selected, qualified, and perform their duties. I want to make this point perfectly clear, because I think that if it is once distinctly understood that the broad claim made by the gentlemen on the other side applies in the future to an election bill ousting the lieutenant-governor and speaker of the house and other officers of the State, and turning over the election of Senators to appointees of the Federal judiciary and depriving the State officers of the power to certify the election, and giving it to a board of canvassers, it may be that a halt will be called.

The election of Senators and Representatives was to be by the States. As to the Representatives, by the voters at the polls; as to the Senators, by the Legislature; but in each case each was to be chosen by the people of the State. It must be remembered that the power of a State to choose its Representatives in any legislative body which might have been formed by that convention was necessarily anterior to the formation of the convention and its adoption of any constitution. The particular form of Legislature which might be created, whether it should be bicameral or composed of a single house, did not abridge this anterior right of the State, but simply rendered some prescribed mode necessary. If that Legislature was to consist of but one house, then that convention might be at a loss to decide whether the Representatives should be chosen by the people of the respective States at the polls, by the Legislatures of those States, or in such mode as each State might determine.

As a bicameral Legislature was determined upon by a convention composed of delegates from large and small States, a compromise was made by which the

States as States, by their Legislatures, without regard to population, chose their Representatives in one House, which was called the Senate, and chose by popular election, in proportion to numbers, their Representatives in the other House, which was called the House of Representatives; but the right of the State in each case was precisely the same "to choose their Representatives." The mode of choosing, the electors choosing, and the basis of representation were different.

For the purpose of self-preservation the Federal Government was given the power, through Congress, in case the States failed to provide a manner of thus choosing its Senators or Representatives, to provide that manner, and as incidental to the providing of the manner it was given the power to provide the times and places of election, except as to Senators; it could not change the location of the capital of the State. And the language of the fourth section must be construed in the light of the anterior power of the States to choose their Representatives, and of the duty imposed under the second and third sections that they should choose their Senators and Representatives.

To have power to prescribe the manner of holding elections does not include the right to hold the election. The word "manner" is synonymous with mode. To prescribe a mode of doing an action does not give power to do the action. It does not invest him who has the mere right of regulation limited in terms to the manner of doing a thing with the power of actually performing the action. The power to prescribe how a thing shall be done is generically different from saying who shall do it or from the power to do it.

It is, no matter how plausibly presented, an extremely shallow claim, utterly unjustified either by the rules of the language or by any rule of construction, much less by the nature of our Government and the relation between the General Government and the States, to hold that the power, even if it were a primary and original power, to prescribe regulations for the manner of holding elections conferred upon Congress the power to prescribe who should hold the elections, who should vote at such elections, and give to Federal officers the authority to decide challenges as to the qualifications of the electors, open and hold the polls at precincts, and issue certificates which would give *prima facie* title to seats on this floor.

It is not true that the Supreme Court has ever decided that Congress had this power. Neither in the Siebold case (100 United States), nor in that of Yarborough (110 United States), was such a decision either necessary or possible. It was not necessarily involved in either, and the dicta of the distinguished judges who pronounced those opinions are entitled only to the weight which the character and learning and virtues of those particular gentlemen give to what they might utter from the bench. I deny that that court is committed to the monstrous proposition that the Congress of the United States has the power to hold through Federal officers elections for Senators representing the States as States, or for Representatives who represent the people of the States respectively; nor can I believe that under any circumstances will that court ever so hold.

That the Supreme Court, in cases properly made up by litigants, has the power to pass upon the constitutionality of acts of Congress as affecting the private rights and interests of those litigants as involved in that litigation is undeniable; but there resides in it no power to declare what is the duty of the Congress of the United States, its co-ordinate branch of the Government, in any given matter submitted to its legislative action. I protest against the sentiment pronounced on this floor that the dictum of any judge uttered in an opinion and announcing the decision of that court in a private litigation between private citizens can bind the consciences and judgments of the members of Congress. Where the power sought to be exercised is doubtful, it is a weighty argument against the adoption of a law that the Supreme Court has held that such a law or one analagous to it was not within the provisions of the Constitution, but this is wholly different from the argument in such doubtful cases that Congress ought to exercise that doubtful power because eminent judges in *obiter dicta* have made utterances which seem to construe the Constitution favorably to the exercise of the power.

I do not hesitate to aver that this proposed bill is beyond the power of Congress; that it is in violation of the fundamental principle announced in the second and third sections of the Constitution; that the Representatives and the Senators shall be "chosen" by the people of the States and the Legislatures thereof. But I will not pursue this line of argument, simply desiring to put on record this opinion.

IT IS ANTI-REPUBLICAN.

The fundamental principle of a republican, as distinguished from a democratic government, is that all laws shall be enacted by legislative bodies composed of representatives chosen in some prescribed mode. Great jurists have held that it is not within the power of Congress or the Legislatures of the various States to enact any law dependent for its efficiency upon the subsequent vote of the people.

I have always held this view; but there are some exceptions to it so weighty and so well established as to render the general principle subject to exceptions; but as a rule, all will agree that statutes should be enacted by the representatives of the people. That the wisdom and expediency of passing a certain law and subjecting the people to its operation and requiring of them obedience to its provisions ought to be the act of a legislative body composed of the representatives chosen by the people, will be admitted by all. So all will agree that, as a rule, all laws should be general in their operation, universal in their application, and uniform.

This act violates not only this general principle, but also that which lies at the foundation of all democratic and republican governments—that in a given community the majority therein shall rule as to its local affairs. This act does not take effect by its passage through Congress and its approval by the President, nor by its adoption by the majority of the voters of any given city, county, or Congressional district. The precedents for such an act ought not to be enlarged. It is not seemly that in two Congressional districts lying side by side in the same State there should be different election machineries; that in one fifty or one hundred persons—not a larger number than might expect to receive appointment under this act—who do not have to be, but only claim to be, citizens of the district, should have the power against the will of a very large, if not unanimous desire of all the voters save these fifty or one hundred to impose upon that district an obnoxious, arbitrary, and fraudulent election machinery, while on either side of that particular district the contiguous districts hold their election free from these obnoxious and fraudulent provisions. Of course the purpose of this is well understood, but it is one that does not justify the act.

The central committee of either of the great parties could issue from Washington or any Eastern city an order to a particular district, which would be obeyed by the fifty or hundred who are by this bill made the legislative power to enact this provision into efficient law, that would put under its operation such a district as in the opinion of that committee could be carried under this law. This provision makes the central committee of either party the Congress of the United States for the election laws under which Representatives in Congress must be chosen. It is an intentional conference of the power by Congress upon the party managers to examine the returns and conditions of every Congressional district in the United States and to decide whether the exigencies of the party require that this law shall or shall not be enacted as to each particular district.

I am not now speaking as a Democrat denouncing this bill as a weapon forged by Republican committees and brought out of a Republican caucus into a Republican House by orders which that caucus dare not disobey, but I am speaking as an American citizen looking to the future. The present operation of the law in the pending election will be, or it is supposed that it will be, for the benefit of the Republican party. But, in a broad sense of the word, parties are not permanent. I have lived to see the Whig, the Know-nothing, and other parties go to pieces. I expect to live to see the Republican party pass into history. I have seen the Democratic party lose power by division. The changes and fluctuations of the future are to be taken into account by those who legislate for a free people, and this act is not merely a temporary transference of Congressional power under the Constitution, but it may be a permanent transference of power; so that that party which can obtain control of this machinery may secure Congress.

Under this bill the election of the President will be in the hands of the officers appointed in accordance with its provisions. That this is one of its purposes seems to be clear; and it may be that the States may be driven to change the time, if not the mode, of choosing Presidential electors. This can not be accomplished before the election of 1892; and those who have forced this measure on Congress hope to secure the Fifty-second and Fifty-third Congresses and the next Presidency; and these prizes would repay them for all done and expended to enact this law.

Any Federal election law, in my judgment, is unwise. Any Federal machinery is inexpedient. With the States controlling their elections there can be only local frauds and only temporary mischief. In the give and play of counteracting forces these frauds will generally offset each other. The average result in a series of years will about be equal on either side; but if there is but one machinery applicable to all elections in every part of the country, and that machinery falls under the control of a single will and it desires to perpetutate power by the use of that machinery thus given to its control, it will see that the control is perpetuated; that that machinery is prostituted for that purpose; that it is used to accomplish that end, and then there can be no way of destroying that power thus arbitrarily and fraudulently perpetuated save either by an overwhelming revolt of the people or by an appeal to extra-legal means.

It is a step in the wrong direction. It is not only unwise in that it turns over the elections to a single machine dominated by the will of the party in power, but it is iniquitous in that it directs that party to go into any community and by the bribery of office and the pay attached to those offices use "the lewd fellows of the baser sort" who exist in every community, to corrupt the elections of the people and really take from them the right of choosing their Representatives. It is in another mode the old Roman idea by which the Emperor preserved power by false elections. It is the Napoleonic idea put into American politics, that the Emperor controlling a universal plebiscitum controlled the government.

The bribes that can be given may control the election, and where it does not happen to turn out as is expected, the officers who hold their office at the will of that party and are its creatures and subservient to its purposes will see to it that the counting of the ballots is made to utter the voice which it desires the ballot-box to proclaim. Under this act, with its multitudinous army of officers, none of whom are responsible to the people; all of whom are appointed by partisans; all of whom are tempted by the pay; most of whom must necessarily come from those most easily corrupted, there is danger.

I will not say that that danger is certain, for I believe that it will be averted by a revolt of the American people, but I repeat, there is danger of the power at Washington selecting such districts as can be won by fraudulent means, by a conspiracy between the appointing power and those who are corrupted by the bribes offered by this bill, and then such number of Representatives may be chosen as will make in point of fact the House of Representatives selected by the machinery of this bill, and not by the voters at the polls. It is true that when the three hundred and thirty Representative districts are examined, a shrewd and well-informed politician can calculate that a certain number of districts will undoubtedly go Democratic, and a certain number will go undoubtedly Republican. The residuum put down as doubtful is the prize of contending parties. This bill gives to the party in power the opportunity to select through the machinery that it creates the Representatives from those doubtful districts, and thus control the House of Representatives.

SUPERVISORS.

By the twenty-second section the chief supervisors hereafter to be appointed must be selected from the circuit court commissioners. As for the last twenty-five years the circuit judges of America have been, with scarcely an exception, Republican, it is not unnatural that almost without exception the circuit court commissioners are gentlemen who agree in opinion with the judges, and are Republicans. This is not unnatural, for it is to be expected that a judge would be most apt to appoint out of persons who are equally well qualified, those with whom he is most thrown into contact, with whom he has most intercourse, and between whom and himself there are the most points of agreement. This is not, however, an accidental provision. This is intentional. It may be that there are Democratic circuit judges who have not taken the trouble to change the commissioners, and who are by this act compelled to appoint a Republican as the chief supervisor.

We may therefore assume that as a rule the chief supervisors—some seventy in number—will be Republican. They substantially control the appointment of the districts supervisors, for the courts may only appoint from lists furnished by the chief supervisors; so that two-thirds of the officers under the chief supervisors will be Republicans chosen by him. The other third will be nominal Democrats, and in the main only nominal Democrats. They will be chosen for reasons that

do not include their Democracy. We have seen in the action of the present Administration what the Republicans construe as the meaning of laws which require the appointment of Democrats, or such appointments as good taste dictates shall be from the Democratic party; and with very few exceptions it is well known that those appointees are not such Democrats as a Democratic President or convention would have chosen.

But these Democratic supervisors are absolutely without any power. The whole power is granted to the majority of the board, so that in a board of three composed of two Republican and one Democrat, the Democrat has no power whatever except to file, if he chooses to do so, a certificate reciting a state of fact different from that recited in the certificate signed by the majority, which certificate signed by the Democrat is given no validity anywhere and is of no effect.

The deputy marshals are appointed by the marshal, every one of whom is or will be Republican before this bill goes into effect, either of his own selection or at the direction of the chief supervisor, and the chief supervisor has unlimited power of suspension from office and of control over his subordinates. His warrant in the shape of a certificate of estimate of the necessary expenses to the Attorney-General is made by the twenty-third section of this bill a compulsory order to the Attorney-General, without delay, to cause to be deposited in a subtreasury or in a Government depository in the judicial district from which the estimate shall be sent, to the credit of the marshall of the United States of said district, the sum of money he so estimates; and to pay these estimates the law makes it a permanent appropriation, so that if the next House or any House should be by Providence Democratic, the Treasury of the United States is absolutely without any protection by that House.

He is also made an officer for life, so that no changes that may occur, except his death, would relieve the district of which he is chief supervisor from his domination. Under his orders his subordinates have the power—it is made their duty, in fact—to make a canvass from house to house of every city and obtain a perfect list of the voters residing therein, so that at the expense of the tax-payers he may have for the benefit of his party absolutely accurate knowledge of the views and circumstances of every voter, and thereby be enabled to bring to bear upon every voter whatever corrupt means may be thought best suited to his condition.

Under subdivisions 6, 11, and 14, of section 8, every city, town, and village may be subjected to these domiciliary visits. In these visits the officer and the voter are alone; this secret conference affords the opportunity for bribery or intimidation, and the tax-payer contributes the pay for this chance to debauch the suffrage and demoralize the voters of America.

The enormous power of corruption thus put into his hands is beyond calculation. There is a widespread suspicion that in the last canvass the Presidency of the United States was substantially purchased by contributions supplied by those who expected to secure from legislation under a favorable administration many times the sums contributed. This puts into the hands of organized capital a complete list of all doubtful voters in every doubtful district in America, and furnishes this list at the public expense, and furnishes the willing tools paid out of the public Treasury to see to it that the means adopted shall be properly applied to the voter selected. It is absurd for any advocate of this measure to pose as a ballot reformer.

There may be some gentlemen so ignorant of its provisions, so innocent of the political methods employed in the last canvass, so unfamiliar with the means employed to debauch the voters, as to be enabled to conscientiously vote for this bill without believing that its end, if not its object, its effect, if not its purpose, is to corrupt the ballot-box and to furnish the cheapest mode of purchasing elections.

It is disingenuous in any one who has read this bill to proclaim that its object is supervision and its effect publicity, and that these are its only objects. These domiciliary visits are necessarily secret if the supervisors choose to make them so. No one accompanies these officers in these visits.

No one is present at the examination of these citizens by these officers, and a shrewd politician, clothed with Federal authority, going from house to house, ascertaining exactly the condition and environments of each voter, has the very best opportunity in the most secret way free from inspection or surveillance, of ascertaining who can be corrupted, and of corrupting those who can be purchased. He also has the best possible opportunity to know who can be intimidated and of

bringing the necessary pressure to bear. It is a bill framed to accomplish in secrecy the utter demoralization of the ballot-box, and its pretended publicity is purely a sham used to cover the possibilities of its secret use.

It is also disingenuous to say that the power granted is only supervision and watchfulness. Not only is the chief supervisors charged "with the enforcement of the national election laws and with the prevention of frauds and irregularities in naturalization," but the subordinate supervisors under the seventh subdivision of section 8, not only have the power to require the State officers to immediately put to the voter whose right to vote shall be challenged the statutory oath or oaths and to require the State officers to at once pass upon the qualifications of any challenged person, but to decide whether that State officer has neglected or refused to obey his order and upon his decision to perform that State duty of putting the proper oaths and passing upon the qualifications of a voter; and if he decide that the voter be a lawful voter his decision is final. Under section 14 they are required to open the polls and hold the election in the precincts which may not be opened within one hour; and the certificates of the supervisors are practically conclusive of the right of a Representative to have his name placed upon the roll of this House by the Clerk, for their certificates pass to a board of canvassers and are by those canvassers used as the basis of their certificate, which certificate controls the Clerk of this House in making up his roll; so that, instead of the mere duty of supervision being put upon these officers, chosen as we have pointed out heretofore, the control of this House is placed in their hands.

They may so perform their duties as to necessitate the board of canvassers to grant a certificate which the Clerk of this House must recognize and make up his roll in accordance therewith. It is therefore not ingenuous for any one to attempt to mislead this House by the plea that this is giving to the Federal elections merely a proper publicity. And by section 52, willful disobedience of any command given by a supervisor under the provisions of this act is made a misdemeanor punishable by fine or imprisonment, or both, so that the power of oppressive and expensive prosecution in distant courts is put in the hands of every supervisor, to be used for intimidation and outrage.

### CLERK OF THE HOUSE.

I can not imagine the state of mind which would permit a Representative from any State to turn over to a board of canvassers appointed by a circuit judge who may not be a resident or a citizen of his State, the power to grant a certificate which would be superior to that certificate which the authorities of the State, under the great seal of the State now by law transmit to this House, and which compels the Clerk of this House to place upon the roll of the House the names of those who hold this bastard certificate and probably put them in actual possession of the power of deciding the complexion of this House.

The circuit court judge who appoints the chief supervisor and the board of canvassers may not be a citizen of the State. If the judiciary bill which passed this House some months ago, and which now is in the proper committee of the Senate, becomes a law it may be possible that this act may be construed to mean that these chief supervisors and boards of canvassers are to be appointed by the district judges, upon whom, under that law, all the powers of the circuit court are conferred; but if this is not so, then it is absolutely certain that the circuit judge must be a non-resident of most of the States whose elections he helps to control, for we have forty-two States and only nine circuit judges.

The power, therefore, which brings into operation the machinery of this act is vested in non-residents of thirty-three of the States of the Union—I mean the nominal power; of course the real power is the chief committee of the party at whose dictation this bill is introduced; that that non-resident judge, wholly irresponsible to the people of the State, ambitious possibly to succeed to the next vacancy on the Supreme Bench, appointed to his present position because of his party affiliations, should be given authority to appoint those who can grant a certificate superior to the certificate issued by the authorities of the State under the great seal of the State, is an outrage upon the State which to me is inconceivable when committed by a citizen of any State; and the only possible reason for it is that the majority of those who are going to vote for this bill do not expect it to apply to their States, and vote for it because they do not expect it to apply to their States.

It is a blow aimed by them at other States which they would not dare to aim at their own, and would resent if any other Representative dare so to do. I venture the assertion that there will never be different certificates issued by any board of canvassers based upon returns of the supervisors of elections except in cases when the authorities of the State certify to the election of a Representative belonging to an opposite party to those supervisors and boards of canvassers.

It is intended to grant a fraudulent certificate to defeated candidates, whereby they may be enabled to exercise the representative power to retain the seats to which they have no just title and to prevent the control of the House from passing from their party friends. It is a travesty upon the relations between the State and Federal Government to enact a provision by which the certificate of the authorities of the State that that State has chosen by its people, the requisite number of Representatives is held for naught, in comparison to a certificate filed by three canvassers appointed by a non-resident circuit judge, basing their action upon the certificates of officers whose source of appointment is the judicial power of the Federal Government operating through those who do not live within the boundaries of the State to be represented.

THE JUDICIARY.

Besides, it is an utter confusion of the principles upon which our Government rests to confer this power upon the judiciary at all.

I have listened in vain for any explanation of section 29, which confers upon the circuit court the power to order "either national, State, Territorial, county, or other local board" to correct "errors" and to issue a mandamus. Does section 15 confer semi-judicial powers upon the board of canvassers and authorize a contest before that board as to the certificate it can issue and section 29 authorize another and wider contest before the circuit court as to both certificates? If so, what are the powers conferred, the forms of procedure, the rules to be applied?

These are new and extraordinary functions to be executed by the circuit courts of the United States, that the officers of the States can be compelled by the order of the Federal judge to issue certificates of election which they believe to be false. Let us pause before we grant such tremendous powers to our courts, and render probable, if not certain, frequent collisions between the Federal judiciary and the authorities of the State. If we will not halt, then let us make absolutely unambiguous the grant of power.

Upon whose "affidavit" must the court act, and at what time must this extraordinary litigation be inaugurated? What is the effect upon the rights of the Representative if the order of the court is disobeyed?

Surely this House was entitled to have from the committee which reported this bill further explanation of its provisions.

Our fathers in framing the Constitution believed that the three great co-ordinate departments of the Government should be independent of each other. Free institutions probably require the separation of the executive, the legislative, and the judicial functions. This truth was not as distinctly apprehended in that day as now, but even then the principle was carried out substantially in the Constitution, and I submit completely so as to the judiciary. There are conjoint functions of Government imposed upon the President and Congress. With the consent of the Senate the President makes treaties and appointments to office. With both Houses he concurs by his approval in legislation or requires of Congress a reconsideration of their action and a reaffirmation by the constitutional two-thirds.

To both Houses he is required to submit his recommendations for legislative action; but the judiciary was kept entirely separated, entirely independent of its co-ordinate branches. I believe that even that clause which gives to Congress the power to vest the appointment of such inferior officers as they think proper in the President, in the courts of justice, or in the heads of the Departments must be construed to limit this power to vest the appointment of inferior officers in courts of law to such officers as are properly under the control of the courts and necessary to the transaction of their business; and such decisions as do not make this distinction are ill-considered.

The power to make law, the power to declare law, the power to administer or execute law, embrace all the functions of government. These exhaust all governmental powers. They ought to be kept separate. He who has the power to make the law ought never to be allowed to exercise the right to construe or to enforce

that law, and he whose duty it is to enforce it ought to do it by authority vested in him by the law-making power, and they who are to declare what that law is ought not to have had any hand in its enactment nor to be charged with its execution. These are elementary principles. They are utterly obscured and confused in this act.

We have boasted of an independent judiciary, and in a certain sense of a non-partisan judiciary. It is true that men do not become translated when they are appointed from private life to the Supreme Bench; nor do they change their convictions by exercising judicial functions; and so the Federalist Secretary of State, John Marshall, remained the Federalist Chief-Justice; and so in later times the decision of the Electoral Commission was precisely on the line of the party opinions of its members; but the mere partisan struggles for party supremacy at any given time have not been carried, as a rule, to our courts.

We have tried to keep our ermine from becoming spotted with the mud of our fierce struggles and with the stains of party corruption. We ought not to make it the enginery for the destruction of free elections; we ought not to make it the source of power to mercenaries to debauch the ballot-box. We ought not to require of our judges to sit in chambers to pass upon questions of contested party struggles. We ought not to give to supervisors of election the power to require of our judges to open their courts and to hold themselves ready to do business at the beck and call of partisan election officers. Already the suspicion of the people that our courts are not as pure as they once were is becoming unpleasant and widespread.

Gentlemen have said that it is not only important that the elections should be fair, but that they should be known to be fair. It is infinitely more important that our courts should be pure, and that they should have the confidence of the people. They are the last barrier between freedom and her assailants. It is not too much to say that the splendid tribute paid by Johnson in the dedication of his play, Every Man out of his Humor, to "The noblest nurseries of humanity and liberty in the kingdom, the Inns of Court," was as just as it was superb. The battle for English freedom has been fought before the courts and juries of Great Britain by the lawyers of Great Britain; and for the last thirty years the battles for the preservation of our peculiar system of government and of the constitutional rights of minorities have been before the Supreme Court of the United States. That battle is not yet over.

Amid the passions of that great war, amid the temptations which those passions necessarily produced, drunk with blood and inflamed with the hate which grew out of the contest, it is not strange that there were encroachments upon the rights of the people, that there were doubtful statutes, that there were unconstitutional acts. In the courts of the United States year by year has the unending struggle gone on to reconquer what was lost of liberty. Some of the decisions made by that august tribunal have been monuments not merely of their patriotism, but of their power to subordinate the partisan to the judge and to decide grave party questions in the realm of judicial fairness instead of the atmosphere of party animosity.

Every citizen is interested in keeping these courts free from temptation to participate in our party struggles, in preserving the confidence of the people in the purity of those courts; in not subjecting the incumbents of the benches to the terrific pressure of such temptations that this bill puts before them; of not convincing a great party, in numbers larger than its adversary, though it has not the possession of power, that the judiciary is the chiefest engine of mischief, and a debauched and corrupt bench the implement wisely chosen for the destruction of a free ballot-box. If gentlemen of the majority feel themselves compelled to pass an election law, remodel this proposed bill.

Strike out from it the provisions which give power of appointment to the courts. Let it be political in all its parts—I mean political in the true sense of political. Let the officers be appointed directly by the President, or by some one who is responsible to public opinion. Let us maintain the separation of the judiciary from the legislative and executive departments of the Government. Let us hedge about that judiciary with every possible barrier, so that in its holy chambers there may not come these unscrupulous partisan contests. In its halls let us be obedient to the law, trying to find precisely what the law means, and administering public justice from motives of justice and under a sincere desire to reach an honest judgment. As long as we have pure, non-partisan, and independent courts there is

hope of the preservation of the liberties of the people. Do not let us take any step in the direction of prostituting the power that these courts derive from their independence.

THE BILL IS SECTIONAL—IT IS UN AMERICAN.

This measure is based on a false conception of the nature of this House and its relations to the Federal Government, and of the relations of the States and the Federal Government to each other. This is a Union of States and of the people thereof; this House is composed of the Representatives of the people of the States; our commission must come solely from the citizens of a single State; there can be no district composed of parts of different States. We represent the wants, wishes, opinions, convictions, and aspirations of our respective constituencies. This is the essence of representative and Federal Government. Through us each district makes known its wants and obtains consideration therefor. It must not be obscured that we are only Representatives; that we act only in a representative capacity; that we speak in the name of those by whom we are chosen, for them and in their stead we act.

Collectively we represent all the States and the people thereof; individually each represents his respective district, and with his colleagues from his State, that State. The gist of representation is that the representative be freely chosen by those he is to represent; that there shall be no interference with the exercise of this supreme and sovereign right.

In Congress the true relations of the Federal Government and the States practically result in wise and cordial legislation. Its members, chosen by the Legislatures and the people of the respective States, compose the Legislature of the United States, jealous of the honor of the General Government, yet zealous to preserve the autonomy of the States and the rights and equality of the people thereof.

It is only by such a Congress that our duplex system can be preserved. A Congress chosen by Federal officers must soon become a body subservient to central power, and in its rank and file would soon lose its representative character. Insensibly the relative and constitutional rights and powers of the States and Federal Government would undergo radical and disastrous change.

American institutions mean a Federal Union composed of States governed by a written constitution, in which a Congress chosen by the States and the people thereof exercise all legislative powers as the representatives of the governed, on whose consent the Government rests and by whose sovereignty all power is delegated to their representatives. This measure humiliates the States, sets aside its certificates, and surrounds its ballot-boxes with irresponsible officers charged with the duty of packing this House.

It is a measure modeled after the force bills passed by an English Parliament for Irish constituencies and defended on precisely the same grounds. Mendacious slanders of the people of the weaker sections; exaggerated and sensational reports of occasional acts of violence; passionate appeals to the people of other sections; petty persecutions and irritating annoyances by an unscrupulous constabulary; offensive and insulting charges thrown at the representatives; urgent party persuasion characterize in common those who pass force bills there and press force bills here.

Grievances do not justify either change of institutions or destruction of them. Reform ought not to be revolution. This changes the customs and laws of a century, it inaugurates a new system, it is revolution, and that towards espionage, intimidation, irresponsible powers, the building up of clashing tribunals, the vast accretion of the central power, the impairment of the dignity of the States, the diminution of the independence of the Representatives of the people.

Now, a Representative may assert his independence of party decrees and appeal to his constituents; then he must meet in fierce contest this powerful and compact machinery. There is nothing in the condition of any part of any State which justifies any Federal election law; but I aver that there can never be palliation, much less justification, for such a measure as this.

No one who has listened to this debate needs any further assurance that its real purpose is to secure the return of Republican Representatives from certain of the Southern districts. In this debate much has been said of the North and of the South; of the slaveholding and of the non-slaveholding States; of the States

in rebellion and the loyal States. I represent a district somewhat peculiarly circumstanced. The State of Kentucky was a border slaveholding State. It is therefore classed with the Southern States and erroneously grouped with the disloyal States, as they are called.

At the beginning of the war it was divided, having elected a Democratic governor in 1859, but through the division of the Democratic party it cast its electoral vote in 1860 for Mr. Bell. It remained loyal to the Government during the whole of the war. It furnished fully and generously its quota of troops. The General Government, before or since the admission of Kentucky as a State, has never called upon it for any sacrifice that has not been given. It had no Tories during the Revolution. It had no secret traitors during the war of 1812. It furnished more than its quota in the war with Mexico, and when the late war came upon us, while it was divided, and many of her sons went into the Confederate army, she did her full duty to the Federal cause, and she has asked less for it than any State of the Union. She has not been clamorous about pensions. She has not debauched her public men by organized raids on the Treasury, and she to day yields precedence to no State in her undivided loyalty to the Constitution, in her faithful obedience to all the laws enacted by the Government and her generous affection for the entire country. There has not been a contested election from any of her districts for more than a score of years, and her elections have been absolutely fair. No Federal supervision is needed at her polls. Her Senators are chosen without regard to their wealth. No scandal attaches to her Legislature in its act of choosing her Senators; and her Representatives on this floor in this and in preceding Congresses hold unsullied commissions. She has treated her colored citizens not only with justice, but with generosity; without any pressure brought to bear during reconstruction times, by her own voluntary act she distributes her school fund per capita without regard to race, and her people are getting along peaceably and prosperously.

The animosities of the war could not be kept alive even for the sake of party office, and by the steady but powerful influence of daily good-fellowship and neighborly, mutual interest her people have become one. She accepts with good-natured complacency the Phariseeism of those good people who thank God that they are not as that poor publican, and she feels that there is no system of law which any other part of the United States can live under that she can not also bear. Her mountain region, where the Republican party has been and is powerful, is becoming richer every day. Those feuds which grew out of the peculiar nature of society and civilization in those sections, pass away as railroads penetrate the fastnesses of her mountains and develop the richness of her resources. Yet interference in her elections by such a law as this will be full of mischief.

The grave problem of the races is to her not of danger, but only of gravity. But it is to other parts of the country full of danger, and the very first requisite to its proper solution is non-interference. The absolute necessity of home rule never was so complete as in those States. No community can afford to permit itself to permanently do wrong, to permanently commit injustice, to permanently be poor. If left to itself it will make the most out of the conditions which surround it and of the elements which constitute it. It best knows the evils and the remedies for those evils. It feels the grievances most and is most interested in the removal of those grievances. It is most deeply involved in the development to the highest degree of the money-earning power of its citizens, and this must rest finally upon content. There can be no permanent prosperity based on discontent.

No people know this so well as the Southern people. No thinkers more clearly apprehend this truth, and no communities more intensely understand and appreciate it than those mixed communities. For twenty-five years those people, white and black, have been living together trying to reach the very best possible results, and if man is capable of self-government, and if Christianity is in truth from God, the ultimate result is certain. But there must be internal peace; there must be mutual good-will; there must be a sense of complete dependence of each upon the other and of security from all outside interference.

This is a truth which the Republican party will not understand; will not try to understand; do not seem to desire to understand, that the Southern white people are the most interested of all the white people in the world in the highest possible development of the colored people; that the Southern colored people are the most interested of all people in the world in securing the friendship, the kindness

and the good-will of the Southern white people. Any state of society produced by outside interference is unnatural and must be temporary. There can not be a permanently unnatural condition of society any more than there can be a permanent storm. The subsidence of passion must restore the people to their normal condition, to their natural status.

Therefore, in the end, intelligence must prevail, even if in the meanwhile it is wholly disarmed, and to ignorance and to brute force is given every possible weapon. War and all violence must be temporary, and every special enactment, every law thought to be called for by an exceptional exigency, every unusual system or special machinery must equally be temporary, for it is exceptional and abnormal. This has been illustrated since the war. In 1865 there was not a Democratic organization in the land that had any power. The South was bankrupted; her public credit gone; her private credit destroyed; every institution or corporation blotted out; her houses burned; her fences destroyed; her fields devastated; her system of labor reversed; her civil governments obliterated, and military authority made dominant; Congress passed exceptional statutes applicable only to the South; troops were billeted upon her people; military officers usurped governmental and legislative functions; Legislatures were dispersed by the order of the soldiery; courts-martial took the place of civil tribunals; Representatives sat on this floor with commissions signed by generals: the people had no real Representatives in Congress. Necessarily such an abnormal and unnatural condition could not last. When the Republicans controlled every State, had possession of both Houses of Congress, possessed the Executive, with the Army in command, with the South utterly prostrated, the experiment was tried. There were annoyances, embarrassments, bloodshed, and unhappy occurrences; there were thefts, public demoralization, and many transactions which were deplorable. These are the necessary concomitants of a system of force and of fraud. They accompany the domination in Ireland and India, as well as in the Southern States of America. No thinker was surprised at such occurrences, no student of history believed that this condition could continue.

Now, this is the use of *statutory force* instead of *military force*. It is as unnatural and as abnormal as that experiment. It is less violent. It is less public. The forces are concealed under the forms of law. The persons are called marshals and supervisors instead of generals and soldiers; but the system is as abnormal and as unnatural and as illegal; and the result must be precisely the same. Temporarily the good feeling in the South will be suspended. Suspicion will take the place of friendship. Race passion will take the place of a desire for the general good. Hostility will be substituted for kindness. The desire for party advantage will take forms of violence. To the operation of oppressive and iniquitous laws will be put the resistance of intelligence. Extravagance will mark the execution of the law. The venal will be attracted by it. The purchasable will be temporarily seduced by its bribe. Those who expect gain in any form by it will give to it the most violent and unscrupulous construction. Northern capital that is invested there will become alarmed, and there will be a temporary arrest of the industrial progress which has marked the last ten years, which is now so pleasant to any lover of his country. Trade will be disturbed. The Southern market, which now takes so much of Northern products, will become straitened. The men who sell in the South will have a limited market. It will be followed by bankruptcies, both North and South. There will be a temporary suspension of progress. It may be that in certain localities, under the rude and unscrupulous execution of the harsh and iniquitous provisions of this bill, there may be a resistance which will produce collision.

But all this will be but temporary. As in March, 1877, the Republican party turned the colored men of the South over to the white men of the South; sacrificed Packard in Louisiana and the representatives of the Republican party in South Carolina and Florida, paying the returning boards who fraudulently gave the votes of those States to Mr. Hayes by the bestowal of Federal offices and Federal honors, so the day will come when the Republican party can no longer carry this bill and be responsible for the outrages committed under it, and will again turn over the colored people of the South to the white people of the South. That problem must be solved, gentlemen of the North, by the people resident within those States, and you who do not live there postpone the day of permanent peace and give to the colored man the burden of that postponement every time you undertake to interfere with it.

Gentlemen from Massachusetts may talk in eloquent terms of the luminous ideas of Massachusetts, and gentlemen from Iowa may declaim about a killing bullet to secure a pure ballot; but stripped of rhetoric and passion, of declamation and hypocrisy, it means simply in plain English that the negro shall be used to enact laws which will give certain industries private aggrandizement out of the public Treasury, and that he shall then be turned over to the mercies of the people among whom he resides; and I charge those gentlemen and their associates who vote for this bill under the solemnity of my oath as a Representative of the American people, and with a profound consciousness of the issues involved in this debate, that all the violence that this act, if passed, will produce in justice will lie at their door: safe in their homes they will be the guilty, and from their act will proceed all the evil consequences which this bill may produce.

They at the bar of God will be responsible, and if I had the power I would appeal from those Representatives of Massachusetts to the people of Massachusetts. I would appeal to the descendants of the Adamses, the Quincies, the Warrens, the Otises, who know that power, either by the sword or by statute, can only retard, and not prevent the development of human ideas and of free institutions. I would appeal to the culture of Harvard; to the men who work in the factories of Lynn and Lawrence; to those who are the real Massachusetts, to protest against an act which is based upon distrust of the people; which violates the fundamental principle of home government, which puts into the hands of from fifty to one hundred the whole election machinery of a great Congressional district; which brings into the arena of partisan contests the judiciary of the country; which destroys the relations between the states and the General Government; which takes from the people of the State the control of the ballot-box when they are in the act of choosing their Representatives in Congress; which spits upon the certificate of the State officers under the great seal of the State, and which loots the public Treasury by the employment of a vast horde of mercenaries to perpetuate a party in power; and I not only appeal to the people of Massachusetts, but to every State of the Union.

Is there no better contribution that Scandinavian exiles who come among us for broader homes and ampler freedom can bring to the prosperity of their adopted country than destruction to the freedom of the ballot-box and the liberty of the citizen to select his Representatives without supervision or oppressive and impertinent interference? I appeal from those Southern Republicans who profess to represent great States like Maryland and Tennessee and who show their distrust of the States which bore them to the people whom they represent to say whether it is true that they can not be trusted without the supervision of Federal officeholders and without domiciliary visits from deputy marshals. I know Maryland, Tennessee, and Kentucky, and I protest that their Republicans do not deserve this humiliating distrust, and their Democrats have secured to all free and pure elections and wise and generous governments, and those States are happy, contented, prosperous, and growing. Can it be that in the week which is made sacred by another Fourth of July, as a result of a hundred and odd years of American liberty and of the American Constitution, the people have become so corrupt and violence has become so nearly universal and fraud so brazen that the power which those States control is sufficient for all other objects and purposes in life but is powerless to secure a free and pure ballot? If this be so, then, indeed, is American liberty a failure and our particular form of government a disaster.