

MEMO ON CHALLENGE TO SEATING OF
MISSISSIPPI CONGRESSIONAL DELEGATION

As to grounds upon which the Notice of Challenge is based--other than the act of 1870--there is no question but that the House has ample authority under the 14th and 15th Amendments to contest and challenge this seating of the alleged Mississippi delegation. In my judgement the statute of 1870 may be used as a Congressional affirmation of the principles set forth in those Amendments. My view of the Act of 1870 is as follows.

Each ambiguity in the statute of February 23, 1870, should be resolved in favor of that reading which will at once preserve the statute's constitutionality and sustain its utility. The enactment has sometimes been read to impose upon Mississippi a permanent rule of universal manhood suffrage--a rule, that is, quite different from that which governs other states. Such a reading undeniably presents constitutional questions of some gravity. It might seem to violate the principle announced in Coyle v. Smith, 221 U.S. 559--the principle, that is, that Congress cannot condition a state's admission to the union upon its permanent acceptance of political disabilities greater than those to which other states are subjected. I therefore find it easy to give the Act of 1870 a less radical reading--an interpretation which sees the objective of Congress as that of making it clear that Mississippi, like all of her sister states, must thenceforth preserve the republican form of government fixed in her constitution of 1868 by making the assurance of the 15th amendment a solid reality. From the standpoint of the forty-first Congress, the essential commitment in the state's constitution was that the franchise was made available, without racial discrimination, to all the male citizens of Mississippi. The fact that this was the crucial consideration

in the mind of Congress is conclusively shown by the fact that it had insisted that Mississippi should ratify the 15th Amendment before she could be restored to statehood.

The reading of the Act of 1870 seems to me to be clearly justified. If it is thus interpreted, the statute provides Congressional endorsement of the commitment of the civil war amendments. That endorsement signified the legislative desire to have the standards of the 15th Amendment serve as a guide not only to the state itself and to the federal court but to each House of Congress as well--to inform the House of Representatives, in other words, that it may test the qualifications of any of its alleged members from Mississippi by asking whether he comes to the Congress by virtue of electoral processes that satisfy the requirements of the constitution or by methods that violate those requirements which the state of Mississippi had solemnly undertaken to respect. The statutory specification of Mississippi's commitment would also serve to make it clear that other sanctions for the abandonment of a republican form of government than those specified in the second section of the 14th Amendment might be utilized by the House of Representatives.

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