



Gordon W. Epperly
P.O. Box 34358
Juneau, Alaska 99803

Telephone: (907) 789-5659

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Allen Weinstein

Archivist of the United States National Archives
and Record Administration
700 Pennsylvania Avenue N.W.
Washington, D.C. 20408

In Reg: Purported ratification of U.S. Constitution 14th Amendment

Honorable Allen Weinstein

This is a letter of inquiry that is submitted to the Archivist of the United States in the nature of a quo warranto.^{1/} The purpose of this letter is for the correction of the record regarding the purported ratification of the U.S. Constitution, 14th Amendment.

INTRODUCTION

Over the years, I have brought the question of the ratification of the U.S. Constitution, 14th Amendment before the U.S. Congress and the Federal Courts with

^{1/} In ordinary legal proceedings, the plaintiff/demandant, whether be the state or a person, is bound to show a case against the defendant/respondent. But in quo warranto, as well as in the writ for which it is substituted, the order is reversed. The state/person is not bound to show anything, but the defendant/respondent is bound to show that he has the right to the franchise in question; and if he fails to show authority, judgment must be given against him (4 Burr. 2146, 2147). The franchise in question is the purported ratification of the 14th Amendment to the Constitution for the United States. The judgment is ouster and seizure (2 Kent, Comm. 312).

Any remedy that could have been obtained under the historic writ of quo warranto may be obtained by a civil action of that nature. (Fed.R. Civil P. 81(a)(2); U.S. v. Nussbaum, D.C.cal., 306 F.Supp. 66). For enforcement of ministerial duties, see State of Mississippi v. Johnson, 71 U.S. 475 (1866).

both of these entities declaring that it is a political question to which neither of these branches of government has authority to address.

On June 9th 1997, I sought an investigation into the ratification of the U.S. Constitution, 14th Amendment before John W. Carlin as Archivist of the United States National Archives. On a petition for an Order in the nature of a Writ of Mandamus, the U.S. Justice Department argued before the U.S. District Court for the District of Alaska that an investigation into ratification of Constitutional Amendments is beyond the scope of authority for the Archivist of the United States. The U.S. Justice Department and the Federal Courts ruled that the only authority that may be exercised by former Secretaries of the U.S. Department of State and the Archivist of the United States involving ratifications of proposed Amendments to the U.S. Constitution are purely ministerial. (*see District of Alaska Federal Court Case No. J97-025-CV*).

Black's Law Dictionary, 5th Ed., has defined the term "*Ministerial*" to be when an official's duty is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts.

MINISTERIAL DUTIES

The ruling of the U.S. Justice Department and the Federal Courts raises the question: "*What is the ministerial duty of former U.S. Secretaries of State and the present Archivist of the United States in exercising their duties in the performance of ratification of Amendments to the U.S. Constitution?*" I believe the short answer to the question is that former U.S. Secretaries of State and the present day Archivist of the United States are required to be in compliance with all the laws of the United States that have been made pursuant to the Constitution of the United States of America.

Looking back in the early history of our Nation, we find that the U.S. Secretary of the Department of State was imposed with the duty by the Congress of the United States

to publish proposed Amendments to the Constitution of the United States when those Amendments have been adopted by the States in accordance to the provisions of the Constitution:

“Sec. 2. *And be it further enacted*, That, whenever **official notice** shall have been received, at the Department of State, that any amendment which heretofore has been, or hereafter may be proposed to the constitution of the United States, has been adopted, **according to the provisions of the constitution**, it shall be the duty of the said Secretary of State forthwith to cause the said amendment to be published in the said newspapers authorized to publish the laws, with his certificate, specifying the states by which the same shall have been adopted, and that the same has become valid, to all intents and purposes, as a part of the constitution of the United States.” [*Emphasis Added*]

FIFTEENTH CONGRESS Sess. I, Ch. 80

In the year of 1951, the U.S. Congress delegated this duty of publishing the U.S. Constitutional Amendments to the General Service Administration of the United States (*see 65 Stat. 710, Sec. 106b*^{2/}) and later to the Archivist of the United States.^{3/}

We also see that the Archivist of the United States is required to perform other duties as imposed upon him by 44 USC 2902 (*Objectives of Record Management*) which includes:

- Accurate and complete documentation of the policies and transactions of the Federal Government.
- Control of the quality of records produced by the Federal Government.

^{2/} SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE; DELEGATION OF FUNCTIONS;
TRANSFER OF PROPERTY AND PERSONNEL

Similar provisions were contained in R.S. Sec. 205; 1950 Reorg. Plan No. 20, Sec. 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1272. R.S. Sec. 205 was repealed by section 56(h) of act Oct. 31, 1951. **Subsec. (l) of section 56 provided that the repeal should not affect any rights or liabilities existing under the repealed statute on the effective date of the repeal (Oct. 31, 1951).** For delegation of functions under the repealed statute, and transfer of records, property, personnel, and funds, see sections 3 and 4 of 1950 Reorg. Plan No. 20, set out in the Appendix to Title 5, Government Organization and Employees. [*Emphases Added*]

^{3/} see 1 USC § 106b.

- Judicious preservation of records.
- Direction of continuing attention on records from their initial creation to their final disposition.

This brings us to the Reconstruction Acts of the year of 1867.

RECONSTRUCTION ACTS OF 1867-68

Prior to the commencement of the Civil War, the United States Supreme Court ⁴ ruled that Congress may dissolve the government of a State if Congress finds that the government of that State was unlawfully organized and/or is absent of being republican in form. ⁵ As the question of lawful governments of a State is a political question to the courts, I have no question that Congress had authority to dissolve the governments of the Southern States under what is known as the Reconstruction Acts of 1867-68. ⁵

The Congress of the United States in the year of 1867 declared that a number of Southern States (*Rebel States*) had no legitimate governments and enacted what is now known as the Reconstruction Acts of 1867-68. ⁶

In the Preamble to the Reconstruction Act of March 2, 1867 (THIRTY-NINTH CONGRESS, Sess. II, Ch. 153), the Congress declares:

“Whereas **no legal State governments** or adequate protection for life or property now exist in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States **until loyal and republican State governments can be legally established**: Therefore . . . “
[*Emphasis Added*]

⁴/ Luther v. Borden, 7 How. 1, 12 L.Ed. 581.

⁵/ Mandate for Congress to guarantee every State a republican form of government (U.S. Const., Art. IV, Sec. 4, Cl. 1).

⁶/ THIRTY-NINTH CONGRESS, Sess. II, Ch. 153; FORTIETH CONGRESS, Sess. I Ch. 30; FORTIETH CONGRESS, Sess. II, Ch. 70.

The above Preamble raises the question: “*On what date did the States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas lose their status of having lawful State governments?*” Nowhere in any of the Reconstruction Acts of 1867 can we locate a date as to when those States lost their lawful State governments:

- We know that those States had lawful State governments when they were admitted into the Union.
- We know that the U.S. Supreme Court has ruled that those States had lawful State governments before, during, and after the Civil War.⁷
- We know that the U.S. Congress recognized that those States had lawful State governments at the time they were engaged in the Civil War when on July 22nd 1861 the U.S. House of Representatives adopted a Resolution and when on July 25th 1861 the Senate adopted a Resolution which both read:

“Resolved, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States now in revolt against the constitutional government and in arms around the capital; that in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institution of those States, but to defend and maintain the supremacy of the Constitution and all the laws made in pursuance thereof, and to the preserve the Union, with all the dignity, equality, and rights of the several States unimpaired; that as soon as these objects are accomplished the war ought to cease.”

- We know that the U.S. Congress recognized those States as having lawful State governments after the Civil War when the U.S. Congress submitted the present day Thirteenth Amendment to the U.S. Constitution to those States for and accepted their ratification votes.

Even though the Reconstruction Acts of 1867-68 failed to state the date when those Southern States ceased to have lawful State governments, we do know that the

⁷/ Texas v. White, 74 U.S. 700.

Congress of the United States has declared that the named Southern States did not have lawful and a republican form State governments from the date of the enactment of the Reconstruction Act of March 2nd 1867 until the people of those States were to be admitted to representation in Congress by an act of law:

“Sec. 6. *And be it further enacted*, That, until the people of the Rebel States shall be by law admitted to representation in the Congress of the United States, **any civil government which may exist shall be deemed provisional only, and in all respects subject to the paramount authority of the United States**”⁸ [*Emphasis Added*]

This Section 6 of the Reconstruction Act of March 2nd, 1867 raises the question: “*What law(s) is the Congress referring to?*”

In the years of 1868 and 1870 we find that the U.S. Congress passed several laws declaring that the Southern States had adopted a State Constitution and upon the President of the United States issuing forth a Proclamation declaring that those States had ratified the proposed 14th Amendment to the United States Constitution, the people of those States would be admitted to representation to Congress:

- see Act of June 22nd, 1868⁹ - Law to admit the State of Arkansas to Representation in Congress.
- see Act of June 25th, 1868¹⁰ - Law with a Presidential Proclamation¹¹ to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to Representation in Congress.

⁸/ Section 6 of the Reconstruction Act of March 2nd, 1867.

⁹/ FORTIETH CONGRESS. Sess. II, Ch. 69 declaring Arkansas had adopted a State Constitution and had ratified the U.S. Constitution, 14th Amendment.

¹⁰/ FORTIETH CONGRESS. Sess. II, Ch. 70 declaring the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida had adopted a State Constitution and are instructed to ratify the U.S. Constitution, 14th Amendment.

¹¹/ Proclamation No. 7 of July 11, 1868 declaring Florida and North Carolina as having ratified the U.S. Constitution, 14th Amendment; and

Proclamation No. 8 of July 18, 1868 declaring South Carolina as having ratified the U.S. Constitution, 14th Amendment; and

Proclamation No. 9 of July 18, 1868 declaring Louisiana as having ratified the U.S. Constitution, 14th Amendment; and

- see Act of January 21st, 1870 /¹² - Law to admit the State of Virginia to Representation in the Congress of the United States.
- see Act of February 23rd, 1870 /¹³ - Law to admit the State of Mississippi to Representation in the Congress of the United States.
- see Act of March 10th, 1870 /¹⁴ - Law to admit the State of Texas to Representation in the Congress of the United States.

In reviewing the Reconstruction Acts of 1867, we find the following:

- The State of Arkansas had no lawful State government from the date of March 2nd, 1867 to June 22nd, 1868, and
- The State of North Carolina had no lawful State government from the date of March 2nd, 1867 to July 11th, 1868, and
- The State of South Carolina had no lawful State government from the date of March 2nd, 1867 to July 18th, 1868, and
- The State of Louisiana had no lawful State government from the date of March 2nd, 1867 to July 18th, 1868, and
- The State of Georgia had no lawful State government from the date of March 2nd, 1867 to July 27th, 1868, and
- The State of Alabama had no lawful State government from the date of March 2nd, 1867 to July 20th, 1868, and

Proclamation No. 10 of July 20, 1868 declaring Alabama as having ratified the U.S. Constitution, 14th Amendment; and

Proclamation No. 12 of July 27, 1868 declaring Georgia as having ratified the U.S. Constitution, 14th Amendment.

^{12/} FORTY-FIRST CONGRESS. Sess. II, Ch. 10 declaring Virginia had adopted a State Constitution and had ratified the U.S. Constitution, 14th Amendment.

^{13/} FORTY-FIRST CONGRESS. Sess. II, Ch. 19 declaring Mississippi had adopted a State Constitution and had ratified the U.S. Constitution, 14th Amendment.

^{14/} FORTY-FIRST CONGRESS. Sess. II, Ch. 39 declaring Texas had adopted a State Constitution and had ratified the U.S. Constitution, 14th Amendment.

- The State of Florida had no lawful State government from the date of March 2nd, 1867 to July 11th, 1868, and
- The State of Virginia had no lawful State government from the date of March 2nd, 1867 to January 21st, 1870, and
- The State of Mississippi had no lawful State government from the date of March 2nd, 1867 to February 23rd, 1870, and
- The State of Texas had no lawful State government from the date of March 2nd, 1867 to March 10th, 1870.

Notwithstanding conditions set forth in the Reconstruction Acts of 1867-68 (including the mandate that the people of those Southern States were required to ratify the U.S. Constitution, 14th Amendment), there were no lawful State governments of any Southern State existing under the Reconstruction Acts which had the authority to issue forth any official notices of ratification of any Amendment to the Constitution for the United States. The U.S. Secretary of State was “*barred*” from accepting any notices of ratification of Constitutional Amendments from any provisional governments of those Southern States that existed from the date of March 2nd, 1867 until the date that Congress admitted the people of those States to representation in Congress as a matter of law. /¹⁵

It appears that the Congress of the United States has taken the position that unlawful State governments may cast votes of ratification on proposed Amendments to the U.S. Constitution. This impression is found upon the mandates of the Reconstruction Acts of 1867-68 that the people of the Southern States shall be required to ratify the U.S. Constitution, 14th Amendment while their States were operating under provisional military governments of the United States and before the people may be represented in Congress. This view of Congress is not supported in the U.S. Constitution and it is in direct conflict with the understanding of the Congress of earlier years:

^{15/} The phrase “*official notice*” that appears in the laws of FIFTEENTH CONGRESS Sess. I, Ch. 80 and 65 Stat. 710, Sec. 106b and 1 USC 106b mandates that the governments of the States are to be recognized as being “*lawful*” and “*republican in form*” by the Congress of the United States of America. (see U.S. Constitution, Article IV, Section 4, Clause 1).

➤ Senate Resolution of December 5, 1866 by Senator Sumner:

“RESOLUTIONS declaring the true principles of reconstruction; the jurisdiction of Congress of the whole subject; the illegality of existing governments, from representation in Congress, **and from voting on constitutional amendments**, . . .

“6. That it is the duty of Congress to proceed with the work of reconstruction, . . . and it must recognize only the States or those States having **legal and valid legislatures** as entitled to representation in Congress, **or to a voice in the adoption of constitutional amendments.**” ¹⁶ [*Emphasis Added*]

PROCLAMATIONS OF RATIFICATION

There are no Proclamations of Ratification for the U.S. Constitution, 14th Amendment. The former U.S. Secretary of State, William H. Seward issued two documents to the newspapers that have the appearance of being recorded as Proclamations of Ratification. The first was issued on July 20th, 1868 ¹⁷ and the second was issued on July 28th, 1868. ¹⁸

In the first purported Proclamation of Ratification, U.S. Secretary of State, William H. Seward, qualified the Proclamation by stating that he had serious questions regarding the “*documents*” of ratification he received from several States. In separate paragraphs, William H. Seward separated the documents that had been received from the Southern States from the documents received from the other States of the Union. He also made a point not to identify the documents from the Southern States of the Union as being “*official*” by leaving off that word as he used in describing the documents received from the other States of the Union.

^{16/} 39th Congress, 2d Sess. - Senate Mis. Doc. No. 2

^{17/} see 15 Stat. Lg. 706.

^{18/} see 15 Stat. Lg. 708.

U.S. Secretary of State, William H. Seward also identified the Southern States as being: “*newly constituted and newly established bodies avowing themselves to be and acting as the Legislatures, respectively, of the States of Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama.*” With the use of the word “*avowing*,” the U.S. Secretary of State expressed doubt as to the legitimacy of the Legislatures of the named States. Another issue of doubt that was raised by the U.S. Secretary of State, William H. Seward, was the conduct of two States, (*Ohio and New Jersey*) to withdraw their consent of ratification on the U.S. Constitution, 14th Amendment.

In concluding, within the purported Ratification Proclamation of 15 Stat. Lg. 706, the U.S. Secretary of State declared that “*if*” the Legislatures of the Southern States are legitimate and the States of Ohio and New Jersey had no authority to withdraw their consent of ratification, the 14th Amendment stands ratified. **But this is also a statement that the U.S. Constitution, 14th Amendment failed ratification if the Legislatures of the Southern States have no lawful standing to cast votes of ratification and/or the States of Ohio and New Jersey were authorized to withdraw their consent of ratification.**

Apparently the U.S. Congress of 1868 was not comfortable with the Proclamation and adopted a Resolution wherein the U.S. Secretary of State was “*Ordered*” to acknowledge the Legislatures of the Southern States as having lawful standing to cast votes of ratification on the 14th Amendment to the Constitution of the United States of America: /¹⁹

“..... *Resolved by the Senate (the House of Representatives concurring,) That said fourteenth article is hereby declared to be a part of Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State.*” /²⁰

^{19/} U.S. Congress, House and Senate Concurrent Resolution dated July 21st, 1868 as recorded within the purported Proclamation of Ratification dated July 28th, 1868 (15 Stat. 710-711).

^{20/} Resolution of the Senate July 21, 1868 as printed in 15 Stat. Lg. 708.

“*Resolved*, That the House of Representatives concur in the foregoing concurrent resolution of the Senate ‘declaring the ratification of the fourteenth article of amendment of the Constitution of the United States.’” /²¹

In response to the above stated Concurrent Resolution of Congress, the U.S. Secretary of State issued forth a purported Proclamation of Ratification /²² wherein he made it clear that he had reservations and the Proclamation was not an issuance of his free will:

“..... Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States in execution of the aforesaid concurrent resolution of the 21st of July, 1868, and in conformance thereto, do hereby direct the said proposed amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States and do hereby certify that the said proposed amendment has been adopted in the hereinbefore mentioned by the States specified in the said concurrent resolution,” [Emphasis Added]

The U.S. Secretary of State’s Proclamation of Ratification of July 28th, 1868 raises questions as to whether the July 21st, 1868 Concurrent Resolution of Congress was lawful and imposed a ministerial duty upon the U.S. Secretary of State of the United States.

CONGRESSIONAL CONCURRENT RESOLUTION OF JULY 21st, 1868

Looking to the Concurrent Resolution, we find that it is an “*Order*” that was never submitted to the President of the United States for his approbation as required by Article 7, Section 3 of the U.S. Constitution. This is not a Concurrent Resolution proposing Amendments which is not required to be submitted to the President of the United States for his approbation /²³ nor is it a Concurrent Resolution that is required to be passed upon by a two-thirds vote of both Houses of Congress. As this Concurrent Resolution is a Resolution/Order that is required by the U.S. Constitution to

^{21/} Resolution of the House of Representatives July 21, 1868 as printed in 15 Stat. Lg. 708.

^{22/} Proclamation dated July 28th, 1868 (15 Stat. 708-711).

^{23/} see Hollingsworth v. Virginia, 3 Dallus 378.

be submitted to the President of the United States for his approbation, it is not a lawful Concurrent Resolution imposing ministerial duties upon the U.S. Secretary of State of the United States. It should be noted that this Concurrent Resolution may not be lawful as it was submitted and addressed directly to the Secretary of State ^{/24} and was not recorded in the Statutes at Large of the United States as required by law. ^{/25}

Furthermore, the U.S. Congress exceeded its authority in adopting said Concurrent Resolution as it ignored the law of FIFTEENTH CONGRESS, Sess. I, Ch. 80 that mandated that the States of the Union were to submit their “*Official Notices*” of ratification to the U.S. Secretary of State of the United States. Under the law, the States had no authority to submit their “*Official Notices*” of ratification to the Congress of the United States and the U.S. Congress had no authority to review any “*Official Notice*” of ratifications that may have been received by the U.S. Secretary of State. The U.S. Congress never repealed or made any amendments to the above said law.

Upon the enactment of FIFTEENTH CONGRESS, Sess. I, Ch. 80, the U.S. Congress openly declared that the receiving of “*Official Notices*” of ratification of Constitutional Amendments is a Constitutional function of the Executive Department of the United States. Under the doctrine of separation of powers, the U.S. Congress has no authority to delegate its legislative functions to any other branch of government, including the Executive Branch. Upon the enactment of the above named law, the U.S. Congress makes the admission that the receiving of “*Official Notices*” of ratification of proposed Amendments to the United States Constitution is not a legislative function.

^{24/} This statement of fact appears in the purported Proclamation of Ratification dated July 28th, 1868.

^{25/} see Section 1 of the law of FIFTEENTH CONGRESS, Sess. I, Ch. 80 (1818).

The Concurrent Resolution of Congress was passed by a simple majority vote of both Houses with a large number of the members of both Houses abstaining from voting. It is obvious that the Congress did not have a 2/3rd vote majority to override a *Veto* of the President of the United States and that is most likely the reason why the Concurrent Resolution was never submitted to the President for his approbation and not being published in the record of the United States Statutes at Large.

We also have an issue of “*Repugnancy*” as the July 21st, 1868 Concurrent Resolution is in direct conflict with Section 6 of the Reconstruction Act of March 2nd, 1867 and the Reconstruction Act of July 25th, 1868. As noted earlier in this letter, the Reconstruction Act of March 2nd, 1867 has declared that several Southern States had unlawful State governments and that the U.S. Congress had, by Resolution, declared that those States with unlawful governments had no authority to cast votes of ratification on proposed Amendments. We also noted that the U.S. Congress declared by Section 6 of the Reconstruction Act of March 2nd, 1867 that the Southern States that had been identified as having unlawful State governments were not to be reinstated into the Union with lawful governments until the people of those States were admitted into representation of Congress by an act of law.

The Congress of the United States reiterated its position in Supplemental Acts of Reconstruction dated June 25th, 1868:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida **shall be entitled and admitted to representation in Congress as a State of the Union** when”²⁶
[Emphasis Added]

with additional stipulations being imposed upon the States of Georgia and Texas.

The Congress of the United States made no repeals or amendments to Section 6 of the Reconstruction Act of March 2nd, 1867 nor has Congress ever made any repeals or amendments to the Reconstruction Act of June 25th, 1868. As the Concurrent Resolution of July 21st, 1868 was enacted after the dates of the enactment of the Reconstruction Acts of 1867-68 and is repugnant to the Acts of Reconstruction, the Concurrent Resolution must be declared “*Void*” and without any effect.

I realize that the Archivist of the United States has no lawful authority to make determinations regarding the constitutionality of Concurrent Resolutions of the

^{26/} Reconstruction Act of June 25th, 1868 (FOURTIETH CONGRESS. Sess. II, Ch. 70)

United States Congress, but when reasonable doubt has been brought to the attention of the U.S. Archivist, the Archivist has a duty and the authority to obtain an Opinion of law from the U.S. Attorney General.

EFFECTIVE DATE OF RATIFICATION / REJECTION OF AMENDMENTS

The Federal Courts of the United States of America have made rulings regarding the effective date as to when a proposed Amendment takes effect. The Courts have ruled that Constitutional Amendments take effect (*whether they have been adopted or rejected*) on the date when the last State Legislature acquired the one-fourth of the States to have rejected the Amendment or when the last State Legislature acquired the three-fourths of the States to have ratified the Amendment. The effective date of passage or rejection of a proposed Amendment to the United States Constitution is not dependant upon the issuance of a Proclamation of Ratification by the U.S. Secretary of State (*or the Archivist of the United States*).²⁷ The records of the House and Senate Journals of the States that were in the Union prior to the enactment of the March 2nd, 1867 Reconstruction Act shows that the Legislatures of the States have cast more than one-fourth of the votes that results in the rejection the 14th Amendment to the Constitution of the United States.

OFFICIAL NOTICES OF REJECTION

The record of the purported Ratification Proclamation of July 28th, 1868 shows that the Legislatures of the Southern States cast votes of rejection on the proposed 14th Amendment to the U.S. Constitution prior to the enactment of the March 2nd, 1867 Reconstruction Acts. We also have the official records of the House and Senate Journals of the States of the years of 1866-67 showing the State Legislatures that cast negative ratification votes. From my past inquiries of the United States Department of Archives, it appears that several of these “*Official Notices*” are not in the possession of the Archivist of the United States.

^{27/} Dillon v. Gloss, 41 S.Ct. 510, 256 U.S. 368, 65 L.Ed. 994; U.S. ex rel Widenmann v. Colby, 265 F. 998, aff. 42 S.Ct. 169, 66 L.Ed. 400.

The 1867-68 Congress of the United States has admitted within resolutions and enactments of laws that the votes of rejection cast by the Legislatures of the Southern States on the proposed 14th Amendment to the U.S. Constitution prior to March 2nd, 1867 were votes cast by lawful governments of those States. No attempt has ever been made by the U.S. Congress to declare that those votes of rejection were unlawful and/or void. If the votes of ratification cast by the Southern States under the Reconstruction Acts of 1867 were votes cast by unlawful State governments, then the votes of rejection must stand and the U.S. Constitution, 14th Amendment fails adoption for being rejected by more than one-fourth of the States in the Union.

The following votes of rejection are recorded in the U.S. Secretary of State's Ratification Proclamation of July 28th, 1868:

- Texas on November 1st, 1866
(House Journal 1866, pp. 578-584 - Senate Journal 1866, p. 471);
- Georgia on November 13th, 1866
(House Journal 1866, p. 68 - Senate Journal 1866, p. 8);
- North Carolina on December 4th, 1866
(House Journal 1866-1867, p. 183 - Senate Journal 1866-1867, p. 138);
- South Carolina on December 20th, 1866
(House Journal 1866, p. 284 - Senate Journal 1866, p. 230);
- Virginia on January 9th, 1866
(House Journal 1866-1867, p. 108 - Senate Journal 1866-1867, 101);
- Kentucky on January 10th, 1867
(House Journal 1867, p. 60 - Senate Journal 1867, p. 62);
- Delaware on February 7th, 1867
(House Journal 1867, p. 223 - Senate Journal 1867, p. 808);
- Maryland on March 23rd, 1867
(House Journal 1867, p. 1141 - Senate Journal 1867, p. 808).

The votes of rejection that are not recorded in the Ratification Proclamation of July 28th, 1868 but are recorded in the House and Senate Journals of the following States:

- Arkansas on December 17th, 1866
(House Journal 1866, pp. 265-268 – Senate Journal 1866, pp. 212-216);
- Alabama on December 7th, 1866
(House Journal 1866, pp. 208-215 - Senate Journal 1866, pp. 182-183);
- Florida on December 6th, 1866
(House Journal November 14, 1866, pp. 8-17, 74-81, 138-139;
House Journal November 30, 1866, pp. 144-145;
House Journal December 1, 1866, pp. 148-151;
Senate Journal December 3, 1866, pp. 100-105;
Senate Journal December 4, 1866, pp. 114-115;
Senate Journal December 5, 1866, p. 132);
- Mississippi on January 31st, 1866
(House Journal October 16, 1866, pp. 7-8, 27, 201-202;
House Journal October 16, 1866, Appendix p. 77;
House Journal January 26, 1867, pp. 205, 214, 251;
Senate Journal October 1866, pp. 168, 195-196);
- Louisiana on February 9th, 1867
(“*Joint Resolution*” as recorded on Page 9 of the “*Acts of the General Assembly,*”) Second Session January 28, 1867);
- California on ???
(House Journal of 1867-1868, p. 601).

As to why there is no record of the above States in the record of the U.S. State Department or the Archivist of the United States we may never know. But the fact that several of those State Legislatures went to great lengths to record their objections to the U.S. Constitution, 14th Amendment in their House and Senate Journals leaves no doubt that their votes of rejection were sent to the U.S. Secretary of State.

If the votes of ratification that were cast by the provisional Legislatures of the Southern States (*that existed under the Reconstruction Act of March 2nd, 1867*) were not cast by lawful State governments as proclaimed by the Congress of the United States,²⁸ then the votes of rejection cast by those Southern States on the proposed 14th Amendment to the United States Constitution must be the only votes that can be classified as “*Official*” of which may be accepted by the U.S. Secretary of State (*and the Archivist of the United States*).

^{28/} see Section 6 of Reconstruction Act that was enacted into law on March 2nd, 1867.

Another problem which has been overlooked by the U.S. Congress and the U.S. Secretary of State is that once a proposed Amendment to the Constitution of the United States has been rejected by more than one-fourth of the States in the Union, the ratification process comes to an end. The U.S. Secretary of State (*and the Archivist of the United States*) has no authority to accept any changes of a vote of rejection or ratification once the ratification process comes to an end.^{/29} The votes of ratification by the Southern States, as recorded in the Ratification Proclamation of July 28th, 1868, must be declared “*Void*” and without effect as a matter of law.

STATES CHANGING VOTES OF RATIFICATION

The U.S. Secretary of State, William H. Seward, announced within the Ratification Proclamation of July 20th, 1868 that the Legislatures of two States (*Ohio and New Jersey*) passed resolutions to change their votes of ratification to votes of rejection. U.S. Secretary of State, William H. Seward also announced that he believed he had no authority to determine or decide doubtful questions:

“And whereas neither the act just quoted from,^{/30} nor any other law, expressly or by conclusive implication, authorizes the Secretary of State to determine and decide doubtful questions as to the authenticity of the organization of State legislatures, or as to the power of any State legislature to recall a previous act or resolution of ratification of any amendment proposed to the Constitution;

The Federal Courts of the United States answered the question as to whether a State may change a vote of ratification within a case of State of Idaho v. Freeman,^{/31}

^{29/} Wise v. Chandler, 108 S.W.2d 1024, 270 Ky. 1, certiorari granted 58 S.Ct. 831, 303 U.S. 634, 82 L.Ed. 1095, certiorari dismissed 59 S.Ct. 992, 307 U.S. 474, 83 L.Ed. 1407.

^{30/} The act of FIFTEENTH CONGRESS, Sess. I, Ch. 80.

^{31/} State of Idaho v. Freeman, 529 F. Supp. 1107.

(*involving the ratification of the Equal Rights Amendment*). The Court addressed the question in Section D of the Opinion: ^{/32}

“..... The states are the entity embodied with the power to speak for the people during the period in which the amendment is pending. To make a state’s ratification binding with no right to rescind would give ratification a technical significance which would be clearly inappropriate considering that the Constitution through article V gives technical significance to a state’s ratification at only one time – when three-fourths of the states have acted to ratify. Until the technical three-fourths has been reached, a rescission of a prior ratification is clearly a proper exercise of a state’s power granted by the article V phrase “when ratified” especially when that act would give a truer picture of local sentiment regarding the proposed amendment.” ^{/33}

Notwithstanding U.S. Senator Sumner’s expressed opinion of January 31, 1868 that the attempted withdrawal of Ohio’s ratification was ineffective because the amendment was already a part of the Constitution. ^{/34} The Congress rejected this argument:

“Inasmuch as the Congress did not act to declare the fourteenth amendment part of the Constitution until additional ratification over and above the ratifications of the loyal states had been certified, it is plausible to infer that the view expressed by Senator Sumner and Congressman Bingham that the amendment had become effective before further ratifications or attempted withdrawals were made had been rejected.” ^{/35}

From the Opinion of the Federal Courts and the above position taken by the U.S. Congress, the Legislatures of the States of Ohio and New Jersey had standing to rescind their votes of ratification and as such, their votes of “*rejection*” must be received by the U.S. Secretary of State (*and the Archivist of the United States*) as the “*Official Notice*” of those States.

^{32/} State of Idaho v. Freeman, 529 F.Supp. 1107 @ 1146.

^{33/} State of Idaho v. Freeman, 529 F.Supp. 1107 @ 1150.

^{34/} Cong. Globe 40th Cong., 2d Sess. 877 (1868).

^{35/} State of Idaho v. Freeman, 529 F.Supp. 1107 @ 1143.

UNLAWFUL STATE LEGISLATURES

The Legislature of the State of Oregon gave notice to the Congress of the United States that the Oregon Legislature that ratified the 14th Amendment to the U.S. Constitution was not a lawful Legislature of the State. The State of Oregon Legislature further gave notice that it has, by resolution, withdrawn the vote of ratification as cast by the unlawful Legislature and on December 14th, 1868 voted to reject the Amendment. /³⁶

As the Congress of the United States has already declared by law that no State having unlawful State governments may cast votes of ratification on proposed Amendments to the Constitution of the United States and as the Federal Courts have also ruled that a State may rescind its vote of ratification before an Amendment had been rejected or ratified, the vote of rejection of the U.S. Constitution, 14th Amendment by the Legislature of the State of Oregon sets up a peculiar situation for the U.S. Secretary of State (*and the Archivist of the United States*).

As the Congress of the United States has already declared by law that States with unlawful State governments may not cast votes of ratification, the U.S. Secretary of State had a ministerial duty to withdrawal Oregon's vote of ratification from the record. Whether or not the U.S. Secretary of State may accept Oregon's vote of rejection after the States of the Union have cast more that one-fourth votes of rejection is most likely a political question that may not be addressed by the Archivist of the United States or by the Federal Courts.

Expressing my opinion, I believe the State of Oregon may cast a vote of rejection as being a State that had not cast a vote on the U.S. Constitution, 14th Amendment. I am not aware of any Opinion of the Congress of the United States or the Federal Courts that would bar any State Legislature who has not voted on a proposed Amendment from

^{36/} see Miscellaneous Document No. 12, House of Congress, 40th Congress, 3d Sess. (December 14, 1868).

casting a vote of ratification or rejection after the period of time when an Amendment has been proclaimed to have been ratified or rejected.

STATES CHANGING VOTES AFTER AMENDMENT HAS BEEN REJECTED OR RATIFIED

In recent years, the Archivist of the United States has been in receipt of State Resolutions declaring that the Legislature of those States have changed their votes of “*rejection*” on the U.S. Constitution, 14th Amendment to that of being ratified. The acceptance and recording of those State Resolutions exceeds the authority of the U.S. Archivist and needs to be purged from the record:

“Where a proposed amendment has been rejected by more than one-fourth of the states, and rejections have been duly certified to the Secretary of State, a state which has rejected proposed amendment may not change its position, even if it might change its position while amendment is still before the people.”

Wise v. Chandler, 108 S.W.2d 1024, 270 Ky. 1, certiorari granted 58 S.Ct. 831.

CONCLUSION

On March, 2nd, 1867, the Congress of the United States found the need to enact several laws to reconstruct the governments of the Southern States after the end of the Civil War. Those “*Acts*” of Congress are known as the Reconstruction Acts of 1867-68. The U.S. Congress declared that the Southern States named within those Reconstruction Acts as having no lawful State governments and any governments existing within those States after March 2nd, 1867 were provisional military governments that were subject to the jurisdiction of the United States.

The U.S. Congress went on to declare that those Southern States would be recognized as having lawful State governments only until they have met several stipulations. Among the stipulations imposed by Congress was that no State would be recognized as having lawful State governments until the people of those States were admitted into representation of Congress by an Act of law. To qualify for

Congressional representation, the Southern States had to adopt new State Constitutions that were republican in form which met the mandates of the proposed U.S. Constitution, 14th Amendment. Further stipulations required the Legislatures to ratify the present day 14th Amendment to the United States Constitution.

The U.S. Congress later enacted laws proclaiming that the Southern States had adopted State Constitutions that were republican in form and that many of those States would be qualified to be admitted into representation in Congress after the President of the United States had issued forth a Proclamation, a Proclamation that stated each of the Southern States that ratified the U.S. Constitution, 14th Amendment.

An argument might be made that the Southern States were authorized to ratify Constitutional Amendments when the U.S. Congress declared by Act(s) of Law ³⁷ that the Southern States had adopted State Constitutions which were republican in form. This is an erroneous conclusion as the President of the United States was required by the law of those Acts to publish Proclamations of Ratification for each of those States when they ratified the U.S. Constitution, 14th Amendment (*or when Congress declared by law that a State had adopted a State Constitution and had ratified the U.S. Constitution, 14th Amendment*).

The status of “*lawful State governments*” came *after* the President of the United States or the U.S. Congress proclaimed that the Southern States had ratified the U.S. Constitution, 14th Amendment. We must not forget that the March 2nd, 1867 Reconstruction Act is the controlling law and Section 6 of that Act declared that the Southern States shall have provisional military governments until the people of those States had been admitted to representation in the Congress of the United States, a privilege that would not be allowed to take place until those States had ratified the U.S. Constitution, 14th Amendment.

^{37/} FORTIETH CONGRESS, Sess. II, Ch. 69; FORTY-FIRST CONGRESS, Sess. II, Ch. 10; FORTY-FIRST CONGRESS, Sess. II, Ch. 19; FORTY-FIRST CONGRESS, Sess. II, Ch. 39.

We must ask: “*Is a State that has been declared by the U.S. Congress as having an unlawful State government and that the people of that State shall no longer have representation in the U.S. Congress a State under the provisions of Article V of the United States Constitution?*” The answer to the question must be “NO!” We have to look no further than the last sentence of U.S. Constitution, Article V for the answer to the question: “. . . and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.” Several of the Southern States were original signatories to the U.S. Constitution and others were admitted into the Union on equal footing with the original thirteen States. Each one of those States had representation in the Congress of the United States and they had rights of suffrage in the Senate. The moment they ceased to have the authority of suffrage in the Senate, the States ceased to have the status of Statehood and being a State of the Union. Further evidence that the Southern States did not have the status of Statehood under the Reconstruction Acts is found in the Concurrent Resolution of July 28, 1868³⁸ wherein the U.S. Congress declared that the Southern States had no standing to cast votes in the Electoral College.

What makes a government of a State different from that of a government of a Territory? They both have Legislatures and Governors. The differences that distinguishes one from the other is that a State has representation in the U.S. Congress and a Territory has none and a State exercises sovereign authority to govern itself under a Constitution where a Territory is governed by the whim of Congress. When the 1867 Congress of the United States declared that the Southern States had unlawful State governments and then declared that from March 2nd 1867 the governments of those States are to be governed by provisional military governments that is subject to the jurisdiction of the United States, the U.S. Congress declared that those States no longer had the status of Statehood. The Congress of the United States reduced those States from being States of the Union with sovereign powers to being nothing more than Property or Territories of the United States that were governed in a manner set forth and under the authority of Article IV, Section 3, Clause 2 of the United States Constitution.

³⁸/ FOURTIETH CONGRESS, Sess. II, Res. 58 (July 28, 1868).

Can the U.S. Congress Order a Legislature of a Territory to ratify proposed Amendments to the U.S. Constitution? There appears to be no restriction in the U.S. Constitution that would bar such an Order, but does the U.S. Congress have the authority to issue forth an Order upon the U.S. Secretary of State (*or the Archivist of the United States*) to accept those notices of ratification of a Territory as “*Official Notices*” of a State? The answer is “*NO*” as a Territory is not a State of the Union and Article V of the U.S. Constitution declares that only States of the Union may cast votes on proposed Amendments. The same logic mandates that the ratification votes that are cast by unlawful State governments may not be accepted as “*Official Notices*” of a State. The U.S. Congress of 1867 removed the Southern States of their status of “*Statehood*” and notwithstanding the Concurrent Resolution of Congress Ordering the U.S. Secretary of State to issue forth a Proclamation of Ratification, no authority may be found that authorizes the U.S. Secretary of State to accept any Notices of Ratification from any Southern State during that period in history.

The final question to be presented: “*By what authority did the Congress of the United States rely upon to issue forth the Reconstruction Acts of 1867?*” We know that the war began with the issuance of a Presidential Proclamation ³⁹ and we also know

³⁹/ PRESIDENT'S PROCLAMATION.

WASHINGTON, D. C., April 15, 1861.

WHEREAS, The laws of the United States have been and are opposed in several States by combinations too powerful to be suppressed in the ordinary way, I therefore call for the militia of the several States of the Union, to the aggregate number of 75,000, to suppress said combination and execute the laws. I appeal to all loyal citizens to facilitate and aid this effort, and maintain the laws and integrity of the National Union and the perpetuity of popular government, and redress wrongs long endured. The first service assigned will probably be to repossess the forts, places and property which have been seized from the Union. The utmost care will be taken, consistent with the object, to avoid devastation, destruction or interference of peaceful citizens in any part of the country; and I hereby command the persons composing the aforesaid combinations to disperse within twenty days from this date. I hereby convene both Houses of Congress for the 4th of July next, to determine upon such measures as the public safety and interest may demand.

(Signed) ABRAHAM LINCOLN, President of United States.

By W. H. SEWARD, Secretary of State.

that the war was brought to an end by an issuance of a Presidential Proclamation.⁴⁰ Absence of an Application of a State Legislature or the Executive of a State to put down domestic violence,⁴¹ or the U.S. Congress issuing a Declaration of War,⁴² no authority existed for the U.S. Congress to invade and occupy a State of the Union, especially when the President of the United States had declared that the insurrection was at an end and the States were at peace and being governed by lawful civil authorities.⁴³

MINISTERIAL DUTIES

Each of the points brought out in this letter have been determined either by the Congress of the United States (*through enactment of laws or resolutions*) or has been ruled upon by the Federal Courts. As there are no issues of discretion involved, the Archivist of the United States has a ministerial duty under the law to correct the record.

- First - the Archivist of the United States has a duty to make inquiries of the States as to the votes that have been cast on the U.S. Constitution, 14th Amendment before the enactment of the Reconstruction Act of March 2nd, 1867.⁴⁴
- Second – the Archivist of the United States has a duty to purge the record of those States that have changed their votes from rejection to ratification after the date the U.S. Constitution, 14th Amendment had been accepted or rejected by the Legislatures of the States.

^{40/} “. . . And I do further declare that the said insurrection is at an end, and that peace, order, tranquility and civil authority now exist in and throughout the whole United States of America (*Proclamation of the President dated August 20, 1866 [14 Stat. Lg. 814-817]*).

^{41/} see U.S. Constitution, Article IV, Section 4, Clause 1.

^{42/} see U.S. Constitution, Article I, Section 8, Clause 11.

^{43/} “. . . And I do further declare that the said insurrection is at an end, and that peace, order, tranquility and civil authority now exist in and throughout the whole United States of America (*Proclamation of the President dated August 20, 1866 [14 Stat. Lg. 814-817]*).

^{44/} With the enclosed computer diskette containing photocopies of the House and Senate Journals of the States that cast votes of rejection, probable cause exist that Official Notices of several States were misplaced or lost as they are not in the record of the U.S. Secretary of State or the Archivist of the United States.

- Third – the Archivist of the United States has a duty to purge the record of the votes that were cast by States that have been declared by the Congress of the United States to have unlawful State governments from the enactment date of the Reconstruction Act of March 2nd, 1867 to the date the people of those States were admitted to representation in Congress by an act of law.
- Fourth – the Archivist of the United States has a duty to publish in the newspapers (*that are authorized to publish the laws*) of the corrected vote record of ratification or rejection of the U.S. Constitution, 14th Amendment.

TIME LIMITATIONS

A time limitation of ninety (90) days is imposed upon the Archivist of the United States from the date of receipt of this letter to accomplish the ministerial duties as stated in this letter. If more time is required, please make a request in writing.

COMPUTER DISKETTES

Enclosed are two identical computer diskettes that have photocopies of the law citations cited herein and photocopies of the House and Senate Journals of the States that cast “*rejection*” ratification votes on the U.S. Constitution, 14th Amendment. These files are in both HTML and Acrobat PDF formats.

If you would like to examine a document in an expanded view, you may open the document in HTML format and then place your mouse cursor on the image. Upon clicking the “*left*” mouse button, the image will open in a separate screen with an icon to magnify the image. (*Microsoft Explorer Web Browser*).

If you would like to print hard copies of the documents, you may open the document in the Acrobat PDF format. Place the cursor of your mouse on the image and “*right*” click the mouse button. This will bring up the print menu.

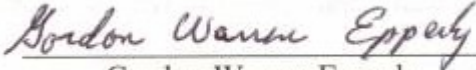
If you choose to send a letter of inquiry to the Legislatures of the States that may have cast a negative ratification vote on the U.S. Constitution, 14th Amendment, I suggest

that you make copies of this computer diskette and enclose it with the letter so that the State Legislatures will have a reference point to make their own investigations.

MAILING COPIES OF LETTER AND COMPUTER DISKETTES

A true and correct copy of this letter and computer diskettes will be mailed to the Legislatures of those States named in the March 2nd, 1867 Reconstruction Act as having unlawful State governments. A cover letter will be enclosed making a suggestion that the Legislatures of those States send the U.S. Archivist a “*Notice*” of their State’s Legislative votes that were cast upon the U.S. Constitution, 14th Amendment before the enactment of the Reconstruction Act of March 2nd, 1867. This cover letter will not be interpreted as a substitute to a letter of inquiry of the U.S. Archivist.

Sincerely Yours


Gordon Warren Epperly

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