

UNITED STATES SENATE
ELECTION, EXPULSION
AND CENSURE CASES

 1793-1990 

by
Anne M. Butler and Wendy Wolff
U.S. Senate Historical Office

Prepared under the direction of
Sheila P. Burke
Secretary of the Senate

COMMITTEE
Collection

Washington: Government Printing Office, 1995

Case 36

James M. Mason and Robert M. T. Hunter

(1798–1871)

(1809–1887)

Virginia

Thomas L. Clingman and Thomas Bragg

(1812–1897)

(1810–1872)

North Carolina

James Chesnut, Jr.

(1815–1885)

South Carolina

A.O.P. Nicholson

(1808–1876)

Tennessee

William K. Sebastian and Charles B. Mitchel

(1812–1865)

(1815–1864)

Arkansas

John Hemphill and Louis T. Wigfall

(1803–1862)

(1816–1874)

Texas

Expulsion Case

July 10, 1861 to July 11, 1861

Chronology:

Resolution introduced: July 10, 1861

Senate vote: July 11, 1861

Issues

Disloyalty to Union

Result: Expelled

Background

In April 1861 any hope of reconciliation between the North and the South evaporated when the Confederates fired upon Fort Sumter and President Abraham Lincoln called for 75,000 volunteers to suppress the insurrection. No longer could the United States Senate hope that the southern legislatures would appoint new senators to fill the vacant seats in the chamber. Following Lincoln's 1860 election, most senators from southern states had not returned to Washington. Many of those who were in the capital had, in varying ways, withdrawn from the Senate during January and February of 1861. At the beginning of the Thirty-seventh Congress in March, the new Republican-dominated Senate voted to declare their seats vacant and to omit reading

their names on the roll (See Case 34). No action was taken regarding those whose terms had just expired at the end of the previous Congress. One Tennessee senator, Andrew Johnson, a staunch Unionist, refused to follow the secessionists and served in the Senate until he resigned in 1862 to become the military governor of the state at President Lincoln's request.

In March, Louis Wigfall of Texas declared to the Senate that he understood that Texas had seceded from the Union and that, if this was the case, he was now a foreigner and owed no allegiance to the United States. He announced his intention to remain in Washington to carry out his duties in the Senate until he received official confirmation of the secession. This announcement sparked an effort to expel him. In the ensuing debate, a number of the southern senators who remained in Washington contended that expulsion was a punitive action created to deal with actual wrongdoing and that it should not be taken against a member simply for expressing the political opinion that secession was possible. Led by Thomas Clingman of North Carolina, the southerners claimed that, if Texas had indeed seceded, the proper approach would be to adopt a resolution stating that, since Texas was no longer one of the United States, "she is not entitled to be represented in this body." They also pointed out that none of the senators who had already withdrawn had been expelled, but the Senate had simply declared their seats vacant.

The debate over expelling Wigfall highlighted the conflicting views held by senators regarding the nature of the Union, with southerners asserting that they owed their allegiance to their states, and to the Union as a whole only through their states. Once their state seceded, they had no further obligation to the United States. On March 12, 1861, the Senate referred the matter to the Judiciary Committee, which returned no report on its deliberations.

By the time Congress reconvened in July 1861, open warfare was in progress, and the Senate faced the unresolved problem of the remaining southern senators, who had now left Washington but had not formally withdrawn their membership. Still murky was the status of William Sebastian and Charles C. Mitchel of Arkansas, Thomas Clingman and Thomas Bragg of North Carolina, South Carolina's James Chesnut, Tennessee's A. O. P. Nicholson, Texas' John Hemphill, and James M. Mason and Robert M. T. Hunter of Virginia. Also included in this group was Louis Wigfall of Texas.

Statement of the Case

In order to clarify the status of the ten southern senators who had not been dealt with during the March session, Daniel Clark (R-NH) on July 10, 1861, submitted a resolution asking for their expulsion from the Senate. Clark cited the failure of these senators to appear in the chamber and their active involvement in the Confederate government as evidence that they had participated in a conspiracy against the peace and union of the United States government. The resolution he introduced stated:

Whereas a conspiracy has been formed against the peace, union, and liberties of the people and Government of the United States; and in furtherance of such conspiracy a portion of the people of the States of Virginia, North Carolina, South Carolina, Tennessee, Arkansas, and Texas, have attempted to withdraw those States from the Union, and are now in arms against the Government; and whereas [the senators from those states] have failed to appear in their seats in the Senate and to aid the Government in this important crisis; and it is apparent to the Senate that said Senators are engaged in said conspiracy for the destruction of the Union and Government, or, with full knowledge of such conspiracy, have failed to advise the Government of its progress or aid in its suppression: Therefore,

Resolved, That the said Mason, Hunter, Clingman, Bragg, Chesnut, Nicholson, Sebastian, Mitchel, Hemphill, and Wigfall be, and they hereby are, each and all of them, expelled from the Senate of the United States.

Response of the Senate

As he had in the March debates, James A. Bayard, Jr. (D-DE) rose to the defense of the southern senators and urged moderation. Bayard opposed the expulsion measure, arguing that the southern senators followed the directions of their states and that no senator individually had conspired against the government. Bayard suggested that the expulsion rule should be reserved for individual acts of misconduct, since formal expulsion of the southern senators would only exacerbate an already inflamed situation. Milton S. Latham (D-CA) supported Bayard because he believed expulsion implied moral turpitude, a stain upon the personal character of the individuals that most would agree was unjust.

But the passions of war produced more fervent arguments from their opponents. Daniel Clark retorted that he failed to admire the "openness" of the absent senators, and he hoped the Senate would not repeat its action of the March session. Clark declared, "They have taken up arms against the Government; . . . their guns are now within sound of your capital; and shall we sit here in the Senate and deliberate and doubt whether we shall turn out of this Senate the very men who are ready to explode those guns against your capital? . . . let them be ejected from the councils of the nation." Near the conclusion of the arguments, James A. McDougall (D-CA) derided the cautions of his California colleague Latham when he dryly noted that there might be no moral turpitude in their actions because, "Treason was always a gentlemanly crime. . . . However, it is none the less a crime. . . . No man has a right to a place on this floor who espouses a cause adverse to the Government."

The angry mood prevailed, and on July 11, 1861, the Senate voted 32 to 10 to expel the ten senators.

Conclusion

The wholesale expulsion of ten senators represented but one in a series of events unique to the Civil War. For such an extraordinary decision, the Senate debate lasted a remarkably short time. The brevity of the discussion reflected the intense acrimony generated in a war where friends and neighbors became bitter foes. The firing upon Fort Sumter had dashed any lingering leniency among senators toward their opponents in the Confederacy. On some occasions the Senate might be in a tolerant and forgiving humor, but not in the heat of civil conflict.

Nine of the expelled senators participated actively in the Confederacy as senators, military officers, or diplomats. Most returned to private life after the war, although James Chesnut and Thomas Clingman attended the National Democratic Convention in New York in 1868. Robert M.T. Hunter, a delegate to the Hampton Roads peace conference with Abraham Lincoln in 1865, was imprisoned briefly at the close of the war. After the end of Reconstruction in 1877, he secured positions in the Virginia state government. A.O.P. Nicholson served as chief justice of the Tennessee supreme court from 1870–1876.

Only William K. Sebastian did not engage in confederate politics or military service. He returned to his home in Arkansas, resumed the practice of law, and did not support the Confederacy. Shortly before his death in 1865, Sebastian moved to Memphis, Tennessee. In 1877, the Senate, convinced by Sebastian's passive demeanor before and during the Civil War that he was not an active conspirator against the Union, revoked the expulsion order and gave full compensation to his children.

Sources

U.S. Congress. Senate. *Congressional Globe*. 36th Cong., 2d sess. (See pp. 1447–51.)

———. *Congressional Globe*. 37th Cong., 1st sess. (See pp. 62–64.)

Mason, James M. *The Public Life and Diplomatic Correspondence of James M. Mason*. Roanoke, VA, 1903.

McPherson, James M. *Ordeal by Fire: The Civil War and Reconstruction*. New York, 1982.