

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

Phillip F. Thomas

(1810-1890)

Maryland

Election Case

March 18, 1867 to February 19, 1868

Issues

Reconstruction: qualifications: ability to honestly swear to test oath

Chronology:

Credentials presented: Mar. 18, 1867
Referred to committee: Mar. 19, 1867
Committee report: Dec. 18, 1867
Senate vote: Feb. 19, 1868

Result: Not seated

Background

Phillip Thomas, son of a prominent Maryland Whig family, abandoned his family's political affiliation and joined the Democratic party. A lawyer who was active in both state and national politics, Thomas served as governor of Maryland and in the United States House of Representatives. He was secretary of the treasury under President James Buchanan for one month before resigning in January 1861 at the outset of the Civil War. A Confederate sympathizer, he spent the war years in retirement at his farm on Maryland's Eastern Shore. Thomas was elected to the United States Senate for a term to begin March 4, 1867.

Statement of the Case

The presentation of Thomas' credentials on March 18, 1867, launched the Senate on a year-long controversy. Jacob Howard (R-MI) spearheaded the Republican attack, demanding that the Senate send Thomas' credentials to the Judiciary Committee before permitting him to take the oath of office. He feared that Thomas could not truthfully swear the so-called ironclad test oath, required by the act of 1862, that he had not provided "aid, countenance, counsel or encouragement" to the enemy during the war. Reverdy Johnson (D-MD), who was frequently at loggerheads with the Republicans on Reconstruction issues, denounced Howard's challenge to his Maryland colleague and long-time friend as incomprehensible. It could not, Johnson hoped, be because Republicans gave any credence to "unfounded rumors" that surrounded Thomas' tenure as secretary of the treasury.

Radicals, in a barrage of accusations, quickly made it clear that this was but one of the many charges they would level at Thomas. There were two principal allegations against the senator-elect: that he had resigned as a member of President Buchanan's cabinet because he opposed the reinforcement of

Fort Sumter; and that, as secretary of the treasury, he had transferred a substantial sum of federal money from New York to New Orleans once he knew rebels controlled the Louisiana bank and could easily seize the funds. Reverdy Johnson, defending his colleague, provided detailed information to refute this latter charge.

Unexpected support for Thomas came from Lyman Trumbull (R-IL), chairman of the Judiciary Committee, who argued that senators were bound by the Constitution to admit members who appeared with the correct qualifications. If the matter were referred to his committee, he inquired, "What is there for the committee to investigate?" He cited precedents in his own case (See Case 28) and that of James Harlan (See Case 29) that in such challenges, the senators were usually seated and then an investigation was conducted into the charges against them. Trumbull told his colleagues, "It will not do to assume the position that every person who disagrees with us politically is an enemy of his country." William P. Fessenden (R-ME) agreed with Trumbull and suggested that Thomas take his oath; then if the Senate had evidence that he committed perjury, he should be expelled through the traditional means. Fessenden recalled only two cases, both involving charges of disloyalty during the war (Cases 41 and 48), when he had urged investigating the serious allegations first.

The objections to Thomas intensified after John Sherman (R-OH) read aloud a newspaper account of a speech that Thomas made to the Maryland general assembly immediately after his senatorial nomination, in which he said, "The men now assembled at Washington, before the war occurred, were bent upon dissolving the Union . . . and were now bent upon the establishment of a military despotism." According to the report, he had declared that those in the Congress "are now and always were traitors to the Union." Democrats questioned the accuracy of the newspaper story, but the damaging impression remained. In response to these objections, the Senate sent Thomas' credentials to the Judiciary Committee on March 19, 1867.

Response of the Senate

On December 18, 1867, the committee returned a report without recommendation. After examining the evidence it had collected, the committee found no reason to prevent Thomas from taking his seat, with the possible exception of the fact that his son served in the Confederate army. For a judgment on whether that circumstance should disqualify him, the committee referred all the evidence to the full Senate.

On January 6, 1868, the Senate began debating the matter. Reverdy Johnson led the effort to seat Thomas, defending his Maryland colleague at length. Thomas, he said, had spent months unsuccessfully trying to dissuade his young son from joining the Confederate army. Once the young man was actually leaving to cross into southern territory, Thomas gave him \$100 in case he was captured and needed money in prison. After the son left, the

father refused to communicate with him again. Republican senators opposed to seating Thomas focused particularly on the \$100 gift to the soldier-son as evidence that Thomas had given aid and comfort to the rebel cause.

Again, there was considerable procedural discussion over the recurring issue of whether the Senate should seat a challenged senator and then investigate the charges or should conduct the investigation first and, if appropriate, deny him his seat. If after a senator was sworn in an inquiry substantiated the charges, or the senator was found to have committed perjury when swearing the loyalty oath, the Senate could later expel him through a two-thirds vote. Judiciary Committee Chairman Trumbull, who—based on previous precedent—had urged seating Thomas when his credentials were first presented, changed his position and suggested that in the future it would be preferable for the Senate to conduct the investigation first, since there had been occasions in the past when a senator had been seated and served for a year or more before the Senate finally decided he was not entitled to a seat. In fact, he suggested adopting a Senate rule that “no person about whose right to a seat there is a question should be admitted to be sworn until that question is settled.”

Charles Sumner (R-MA) expressed the continuing fear of many Republicans that the Senate was in danger of being overrun by former Confederates. “Everywhere in the rebel states,” he said, “disloyal people are struggling for power; and now at the door of the Senate we witness a similar struggle. . . . Disloyalty must be met at the door and not allowed to enter in.” Many of the Radical Republicans believed that Thomas’ lack of active support for the Union was in itself evidence of disloyalty, but other senators considered that mere sympathy for the rebels should not be disqualifying as long as Thomas had taken no overt action on their behalf. Trumbull, for example, did not believe that Thomas’ gift of \$100 to his son constituted “encouragement” to the enemy in the meaning of the oath. He therefore concluded that Thomas should be seated.

After several more days of debate, the Senate on February 19 concurred with Sumner’s view and voted, 27 to 20, to deny Thomas his seat. The resolution as adopted read that Thomas, “having voluntarily given aid, countenance, and encouragement to persons engaged in armed hostility to the United States,” was not entitled to be seated as a senator.

Conclusion

The lengthy, heated debate in this case helped to weaken the unity among Senate Republicans. On the day of the final vote, Jacob Howard and Lyman Trumbull hurled at each other angry charges of “perverting the evidence.” Trumbull, Fessenden, and several other Republicans broke with their colleagues and voted in favor of Thomas, a symptom of the deep-seated differences among Republican senators, some of whom could not shake the

uneasy feeling that the required loyalty oath was an unconstitutional device, designed to limit political opposition.

Phillip Thomas was elected to the U.S. House of Representatives in 1875 and served one term. In 1878 he won a seat in the Maryland general assembly. Thomas died in Baltimore in 1890.

Sources

U.S. Congress. Senate. *Congressional Globe*. 40th Cong., 1st sess. (See pp. 171-180, 821-824.) 2d sess. (See pp. 320-30, 632-35, 653-62, 678-86, 1144-56, 1165-77, 1205-10, 1232-43, 1260-71.)

———. Senate Report No. 5. 40th Cong., 2d sess., 1867.

Hyman, Harold M. *Era of the Oath: Northern Loyalty Tests During the Civil War and Reconstruction*. Philadelphia, 1954. (See pp. 127-28.)

Malone, Dumas, ed. *Dictionary of American Biography*. Vol. 18. New York, 1946; reprint of 1935 edition. (See p. 443.)