

Wayville N. Y.  
April 8<sup>th</sup> 1840

Hon. Henry Lubat Lodge  
Chairman

Dear Sir:

I will forward to you on to the Clerk of your Committee, which will save you trouble I suppose, the substance of my remarks on the election bill, greatly condensed and yet considerably extended, as well as adapted to the bill in its revised form.

I would like especially to call your attention to the argument in regard to its constitutionality. It is ~~perhaps~~ perhaps a new view, but I think the later amendments greatly strengthen the deduction to be made from the original reservation in Art. I - Sec. 4.

I submitted the bill to Col. A. W. Shaffer of Raleigh N. C. probably the most experienced man in the South on the defects of election provisions for that region, he having been Supervisor of Elections in that state ever since the laws were passed. He says,

"I think this bill is wonderfully complete and will accomplish the purpose of securing a free election where anything can. In the careful elaboration of details it is almost beyond criticism."

He makes ~~two~~ two suggestions which I concur with him in regarding as of ~~prime importance~~ ~~to~~ its efficiency of importance.

Copy Shufflers 1 + 2

The second of these is of ~~the~~ an importance hardly to be realized by a Northern man. I was for some years counsel for a "syndicate" of moonshiners and often found it advisable to submit to a large fine and ~~stay~~ <sup>let any slight</sup> ~~of~~ <sup>thirty</sup> ~~ten~~ days. swear out as a pauper after ~~ten~~ <sup>thirty</sup> days.

I would suggest this, ~~the minimum of~~  
Sec. — The ~~Minimum~~ of all fines not otherwise fixed, for misdemeanors under this ~~act~~ shall be fifty dollars and of imprisonment thirty days and when a fine only is imposed the party shall be imprisoned until it is paid. All Prosecutions for misdemeanors under this act may be instituted by presentment.

I was greatly surprised at his Col. Shaffer's  
hearty approval as he is a captious critic, and  
because of long established friendship was at  
liberty to indulge his inclination. I would  
send you his letter but much of it is on  
private business. From the notices I receive of  
it from other correspondents I am still more  
strongly satisfied of its timeliness and general  
efficiency -

~~Yours very truly -~~

I do not know how I came to for-  
get to provide that proceedings should be by  
prementment. It is a matter of very great im-  
portance not merely to avoid the utter disre-  
gard of evidence and instructions which some-  
times becomes a dilemma with the Southern Grand  
Jury but also to save costs, ~~because~~ ~~then~~ I do not  
know as you are aware of the fact, but it is  
now the practice of Southern state courts to try  
for misdemeanor at the same term the  
bill is found, if bail is given. This makes  
a double attendance of witnesses. This does not

matter much in a state Court where the witnesses are in the same county as the Court, but in the U.S. Courts, where witnesses are entitled to three and four hundred dollars <sup>often</sup> mileage it is ~~a big~~ makes a big difference. This is the chief reason for the cost of prosecutions in that section under the Ent. Rev. laws, which have seemed so unreasonable to Northern legal minds. I have never known any instance of abuse of the power of presentment and do not believe there is any danger of it. A District Attorney at the South is very shy of anything like an abuse of power - much more than a Grand Jury would be if their prejudices leaned against one indicted, for his conduct is reviewable. The chief difference is that he may act upon the testimony reported by Commissioners, while the Grand jury must have the witnesses personally before them. The difference in cost is practically one-half the witness-fees which are 70 percent of the expense of ordinary criminal prosecutions.

As to the pay of the Commissioner I think the suggestion of Col. Sheffer the best I have heard and would suggest this Amending section:

Sec. - The pay of the Commissioner of Elections shall be \$9,200. for every even numbered year and \$500 for each odd numbered year. On the even-numbered years <sup>during five</sup> he shall be allowed clerical assistance ~~for~~ <sup>for</sup> the months, not to exceed \$100 per month on the certificate of the Judge that the same is necessary to the proper discharge of his duties.

I think this better even than his suggestion.

This will enable him to get two clerks for five months or perhaps three for four as his need may require.

Col. Shaffer also suggests putting the election for districts lying partly in one and partly in another judicial district in the jurisdiction of the Commissioner of Elections of the District having the larger part of it in which the larger population is found. I am afraid of difficulties in accounting, conflicts of jurisdiction, &c, if that should be attempted. You will perceive that it would make a deal of trouble with the accounting officers and there is no trouble now. In the present case the candidate would merely have to pay part of the cost of his tickets to one and part to another Commissioner. The inconvenience is non imaginary there and it renders conflict of jurisdiction impossible and accounting easy.