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# MEMORIAL

FROM

# CITIZENS OF TEXAS TO CONGRESS.

We present in the form of a memorial to your honorable body the following facts, embodying as they do questions of law and government, which we ask you to consider and let your consideration be followed by appropriate action.

## THE CONDITION OF TEXAS.

We of Texas may possibly overestimate our own importance in the great aggregate of humanity and human institutions, but we claim that it would be well and just, if our condition as a State and people could be examined into with calm deliberation and without prejudice.

To this end we make our appeal to the Congress of the United States and to the deliberate second thought of the President and his Cabinet. Texas was one of the insurgent States, she was pointed to by the most malignant Confederates as the "last ditch"—and hither at the close of the war flocked many of the most unquiet and desperate men who had engaged in the Confederacy.

A short review of our previous history will show that within a quarter of a century the government of Texas was changed from a Mexican Province to a Republic, from a Republic to a State, and from a State in the great American Union she shortly afterward joined in the rebellion against the General Government—was conquered, and found to be without a Republican form of government. She resisted to the last the various well meant and liberal schemes of reconstruction; finally in November, 1869, by a vote of her people, which showed a majority in favor of upward of sixty thousand, she adopted her present constitution, which was accepted by Congress on the 30th March, 1870.

At the previous November election which in pursuance of the reconstruction acts had been ordered by the President, the time having been postponed from July until November, she elected a Governor, Lieutenant Governor, Legislature, and certain other State officers.

The only power which could be exercised by any of these officers, so elected, until after the adoption of the constitution by

1874

Congress was derived from the reconstruction acts, and from November, 1869, until the 30th March, 1870, no attention whatever was paid to the State constitution, it not yet having become the paramount law, and it may be well said here, that the courts of the State, as well as the legal profession generally, have hesitated and doubted as to the true date of the constitution, but no one has hesitated in the opinion, that whether the constitution must date from the election in 1869 or the adoption of the instrument by Congress by 1870, it had no binding force until the latter period; no officer in the State was inaugurated under it, no business whatever was conducted in pursuance of its provisions—the reconstruction laws furnished the only legal guide.

General J. J. Reynolds, commanding the Fifth Military District, had full and complete power to appoint to the various offices those gentlemen who had been elected to them, or any others whom he might prefer acting; however, in the spirit of courtesy he appointed such of those gentlemen who had been elected to fill provisionally the offices *ad interim* as could take test oath of 1862. These officers were installed under the constitution on the 28th day of April, 1870. Speaking only of the Governor in this connection, we refer to the 4th section of the XIV Article of the constitution; the clause applicable reads thus:

"The Governor shall hold his office for the term of four years from the time of his installment and until his successor shall be duly qualified."

The annals and archives of the State furnish the date of the Governor's installment, and that date is the 28th of April, 1870; and now will it be contended by anything short of blank and distorted idiocy, that Governor Davis' term of office expires before the 28th of April, 1874?

What possible bearing can the reconstruction laws or the election declaration have upon this question. That declaration, so called, provided for an election on the first Monday in July, 1869, and it may here be said if it were ever binding on the President of the United States, Congress, the people of Texas, or any body else, it was binding then, and the President would have no power to postpone the election from July until November, but this he did as authorized by the act of Congress of April 10, 1869. When the constitution was submitted to the people for their adoption, this election declaration or ordinance, so called, not being regarded as a part of the constitution any more than numerous other void acts and ordinances, was never submitted to the people of Texas; how then are they bound by it? But hereby, after all, is the main question in this controversy, and if these so-called ordinances of the convention are to be held valid, then is the State of Texas bargained and sold, held and bound to certain railroad companies and other shyster schemers. This accounts for the active exertions of railroad lawyers and the evident misrepresentation of our condition here which has caused a number

of the great newpapers of the country to speak against us; the truth is the railroads appealed this case to certain newspapers in the North, which, from their great influence, were expected to mould public sentiment and impress the minds of those in power; but we have not lost our faith either in the Executive or in Congress, nor in the Constitution of the United States. The 4th section of the IV Article of the Constitution reads thus:

"The United States shall guarantee to every State in this Union a Republican form of Government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive when the Legislature can not be convened, against *domestic violence.*"

Now we ask, has Texas a Republican form of government to-day? We say *No*, and lawyers and statesmen must say no; many of the best lawyers in the State of Texas, of both political parties, *say no;* many of the most distinguished Democratic lawyers in the State say so, but they say it in bated breath and in confidence to their friends:

"The decision of the Supreme Court in the Rodriguez case is sound law, and and that court, as the case was presented, was bound by oath and honor to decide the case and declare the law."

But we need not go beyond the report of the conference between Governor Davis and those distinguished Democratic lawyers and gentlemen, members of the pretended 14th Legislature and others, who, as a committee, consulted him about recognizing that body on the 13th ultimo. The phonographic report of that interview, together with Governor Davis' address to the people of Texas and the accompanying documents, which appear in the State Journal of the 20th ultimo, we refer to and make a part of this memorial, and it will be observed that these Democratic lawyers and gentlemen do not attack the decision of the Supreme Court; they are willing that it shall be regarded as the *law*, so that it shall effect nobody but Rodriguez; but they say, the learned committee, this decision must not affect the Legislature, the Governor, and State officers, the constitutional amendments, &c. And they fall back upon the undoubted rule, which, however, of late has become a very trite maxim here in Texas, that the Legislature must be the judge of the election and qualification of its members; but we would ask, does this apply to the aggregate body? Can a Legislature override the decisions of the Supreme Court upon a question which has no reference to the qualification and election of its members, as individuals, but applies to the body in its aggregate capacity? But let us go further. Are the powers of government shifted here in Texas from the judiciary to the legislative branch? Is the Legislature to pass on the constitutionality of a law which has had the effect to introduce a new order of things entirely? This is upon the supposition that a Legislature has acted, clothed with legal powers and functions; we can not apply it to a body of men who have no legal existence

as a Legislature; but it is such a body which has assumed to override the decisions of the Supreme Court in declaring an act of a previous Legislature constitutional and binding when the Supreme Court, with perfect unanimity and acting under the responsibility of an oath, has declared the same law unconstitutional and void. But has this so-called 14th Legislature stopped at determining the qualification and election of its members? O, no! It has assumed to inaugurate State officers; it has sent its own so-called officers to force the legally constituted officers out of their respective departments of governments, after failing to get from Governor Davis the recognition it entreated; it has had the impudence to turn about and depose him from office three and a half months before the completion of his conceded term; it has gone through the farce of declaring certain supposed amendments to the constitution as having been passed. No legally constituted Legislature could have done this under the 50th section of the XII Article of the constitution. These amendments have not been passed. No effort was made at the polls of the late so-called election to comply with this section. The clause applicable reads thus:

"And it shall be the duty of the several returning officers at the next general election which shall be thus holden to open a poll for and make return to the Secretary of State of the names of all those voting for representatives *who have voted on such proposed* amendments."

Nothing of this kind has been done or attempted, yet these amendments are declared to have been passed, and an effect given to them which never was intended by a majority of the members of the 13th Legislature or by the people. We apprehend that very few lawyers of respectable standing in the profession would claim that the amendments relating to the Supreme Court were ever intended to displace the judges of the old court, yet they are forced from the bench and the chambers of the court occupied by persons who claim to be their successors in office, and all this is done by the assumed right of a body of men calling themselves the 14th Legislature. Now who are the usurpers? Was it the Supreme Court while in the discharge of its sworn duty passed upon the constitutionality of a law which did not effect the tenure of the judges? But it is this body of men, clothed with no judicial or legal right whatever, that usurps the power to displace the legal Governor, the legal officers, and the legally constituted court. These are but a few of the facts, and we make no comment upon the fact that this has all been done by armed violence and in violation of the Federal Constitution, by "*domestic violence.*"

We thought we had a right to ask for assistance against this species of violence. We have done so—the accompanying documents will show how our appeal has been met. But perhaps we did not ask in the right way; there may have been some want of formality in our appeal, or we may have been forestalled by interested slanderers, but we still have an abiding confidence in

the virtue of the American press, the people, Congress, and the President.

But what is to be done? The question is answered in that section of the Federal Constitution already quoted. We ask Congress for a committee of both houses, of impartial minds, to consider the propositions we make, to consider the facts we state, and that committee and the country may look a little further if they please. Here are 270,000 square miles of territory, a territory as vast as all the other six original seceding States together, embracing every variety of agricultural, mineral, and pastoral wealth, now occupied by more than a million of people, with a capacity to support in comfort and wealth the whole present population of the United States. We are without a government, we look across the line where pronunciamentos and revolutions have been chronic for half a century. What better are we off than they? Is our General Government too weak or too far detached from us, like the Central Government of Mexico, that it can not afford protection to the people of its States? Or must we, too, be overrun and trampled under foot by chiefs and despots, who happen to head the mob of the day? What can you expect a few years hence, when Texas numbers her population by millions, under such a domination as we now have? Is it not a concealed boast of those men who are laboring to get up another war that in ten years time Texas shall dictate the political status of the United States? These men do not make this boast in mere idle bravado; they are laying the foundation of the next rebellion broader and deeper than that inaugurated in 1861. But the United States has abundant power if she but have the wisdom to lay at rest in due time all these wicked devices. Will it be done? If so, now is the time to begin it. It will not do for the United States to become the vindicator of mob law, the support and prop of usurpation. But we are told that peaceable submission is the better policy, and that because forsooth Governor Davis signed the act of March 31, 1873, we should be bound by his action, and that he should not resist being deprived of his unquestioned rights under his election in 1869. This is the first time in the history of our country that such an argument has been put forth. Every law that ever was declared unconstitutional and set aside by the courts of the country had precisely the same argument to support it. Had the Governor vetoed the act its constitutionality never could have come before the courts.

But suppose that, under pretense of a peace-imploring equity, it should be said the Governor ought to be bound by this official act, it would apply to him and none other; but we must go further, and say, because he signed an unconstitutional act he shall be treated like a felon, the keys of his office violently seized upon, and he, threatened by the violence of an armed mob, compelled to abandon his office and his home. But the Secretary of State, the Attorney General, the Commissioner of Schools and the Land

Office, the Comptroller, Treasurer, Supreme Court, and many of the district judges are all compelled to submit to similar outrage and wrong, simply because Governor Davis signed an unconstitutional act. We apprehend this would be considered a hard rule if applied to all like cases. The danger of adopting such a precedent as that which has been applied to us is too apparent to require allusion or comment. Under it the courts of the country are set aside by the Legislature, or that which may assume to call itself a Legislature; constitutions are trodden under foot, and minorities have no longer a vestige of protection against the unjust exactions of majorities. But in Texas it goes further: there may have been a majority of the votes cast on the 2d day of December in favor of the Democratic candidates; though, as the usurpers have never published the returns of the election, this can not truly be known. What would have been the result of the election had the provisions of the constitution been complied with and the polls kept open for four days? It is a well-known fact that many thousands of legal voters who were registered in the different counties did not reach the polls on the second day of December, and of those who did—take the State throughout—a very large per cent. were elbowed off, and kept away from the ballot-box by one device and another. It was not merely the purpose of the framers of the constitution, when they provided for a four days' election, that those living at great distances from the polls might have time to make the journeys necessary to reach their respective places of voting, but it was intended that every legal voter should have time and opportunity to deposit his ballot.

It is a much easier matter to keep a ballot-box surrounded by a mob for one day than it would be for four, and those who understand how these matters are managed too often can readily discover the real object and purpose of the change from four days to one.

In presenting these facts to the Congress of the nation and the country we ask no more than a simple right, and one which we conceive we are justly entitled to; that we will be heard and our prayer acceded to we can not doubt.

It has been the proud boast of every American citizen that the arm of the United States Government was long enough and strong enough to protect him in his rights at any point upon the face of the earth.

[Signed by many citizens of Texas.]

*February* 20, 1874.

# ADDRESS

OF

# The Republican Central Committee

AND OTHER REPUBLICANS OF THE STATE OF TEXAS.

*To the Congress and People of the United States:*

It is the theory, under our system of government, that the rights of all classes of citizens are to be respected, and that there is a remedy somewhere, if those rights are infringed. Believing that this is the correct theory, the Republicans of Texas authorize us to prepare and present this address and statement of grievances.

It is known that the officers of the late State government were violently expelled before the expiration of their terms of office as fixed by the constitution of the State. It being pretended as an excuse for this violence that their terms of office had commenced to run before, under the reconstruction acts, they could have been legally installed, especially that of the 30th of March, 1870, which forbade that any officer of the State should "enter upon the duties of his office" before taking and subscribing a certain oath set forth in that act, which those officers all, in fact, did take before they were installed.

A memorial setting forth the circumstances of this violent change has heretofore been sent to Congress.* As no redress of that wrong followed, the revolutionists accepted this as a guarantee that they might with impunity proceed to any extreme of wrong-doing and oppression toward those of their fellow-citizens who have disagreed with them politically, and might plunder the public treasury and destroy the prosperity of the State.

They commenced by an assault upon the independence of the judiciary, removing the legitimate Supreme Court, under the pretext that an amendment of the constitution (which had not, in fact, been legally adopted, but which, if adopted, only authorized the addition of two judges to the three already seated) gave them

* The memorial herein published is the one referred to.

authority to establish an entirely new court. They continued by putting out the district judges by impeachment and addresses, &c. One of these was attempted to be impeached, and addresses for the removal of twelve others of the thirty-five district judges were inaugurated. This number embraced all that were considered by them too independent to be intimidated; and in the addresses moved in each case the gravest charge was that the judge had been a Republican partisan. But, to show that this was only a pretense and as indicative of their malicious and unfair proceedings, we may mention that two of the district judges who had gone so far as to attend as partisan delegates the Democratic convention that nominated the present State officers were unmolested in any way, and two of the judges proceeded against, Chambers and Cooper, having boldly attacked those who defamed them, defeated the proceedings against themselves by showing their flimsy and prejudiced nature so clearly that even the large Democratic majority present did not have the face to convict; yet, after a unanimous acquittal, the same Legislature, as if to be revenged for their acquittal, destroyed their districts. These measures may be said to have extinguished the independence of the State judiciary, and it can no longer, we fear, be looked to to protect the rights of the people opposed politically to the party in power.

As a further measure toward expelling from office all of opposite political sentiments in this State, acts were passed with a view to the summary removal of city and county officers without a trial or hearing, which acts have, as was their manifest purpose, only been enforced against Republicans.

The public free schools which, a year ago, under a just and liberal administration, instructed a hundred and thirty thousand children of the State, have been suppressed. There are, accordingly, not now exceeding 20,000 of the 270,000 children in the State enjoying any advantage of education, either public or private. So far from this, these lawless men who have seized power show unmistakably, by their acts, a determination to evade the force of the educational provisions of our State constitution, and defy the guarantee of our public school system contained in the act of Congress of March 30, 1870, accepting the State constitution. The constitution forbids emphatically the appropriation of the school fund to any other purpose than the maintenance of public

free schools, but these men have unhesitatingly drawn the cash belonging to the school fund in the treasury to pay their own expenses and extravagances. Acts have been passed also to squander the magnificent public domain belonging to the public school fund. This amounts to many millions of acres, and a complicated system has been devised for the sale of it at a low price, numerous officers being provided to carry it out so that the expenses must eat up the proceeds. An earnest of this purpose is seen in the act selling off the University lands, an act which was not called for by the necessities of that institution. These lands, now about 130,000 acres, are among the most valuable in the State, and are certainly worth, on a average, $6 an acre, gold, but the act for their sale authorizes the commissioners, who are to be appointed by the person acting as governor, to appraise them at $1 50 per acre in currency.

The taxes and expenses of the State government under the present administration have been greatly increased, and even excessive as are the appropriations made by that legislature, amounting to a half million more than the actual necessities of the State require, yet it is proposed, and an effort is now being made to dispose of an extra million dollars worth of bonds, the proceeds of which are not needed for the honest support of the government, and can only be squandered. They have postponed indefinitely the payment of all warrants for debts of the State prior to the 15th of January, 1874, the date of their usurpation, providing that their own claims for services shall take precedence over those of the previous government, and their extravagance has been such that even with this species of repudiation of all previous indebtedness the warrants issued since the 15th of January are already below par.

In carrying out their purpose of oppressing those who differ with them politically, and depriving them of all rights guaranteed by the Constitutions of the United States and of this State, these men have laid off the Congressional districts with the avowed purpose of making it impossible to elect any Representative to Congress who is not of the dominant political faction, thereby depriving their opponents of their just representation in Congress from those parts of the State where they have a majority. The act of Congress of February 2, 1872, section 2, on this subject, provides that Congressmen " shall be elected by districts composed

of contiguous territory, and containing as nearly as practicable an equal number of inhabitants, and equal in number to the number of Representatives to which the State may be entitled in Congress." This act was passed to prevent the very frauds which these men, who assume to act as a legislature, have boldly perpetrated in defiance of it. Texas is entitled to six Representatives. Her population, by the census of 1870, which governs in this apportionment, was 818,564, and the ratio was, therefore, 136,427 for each Congressional district, but the following description of the districts and table of population shows how unfairly the act was complied with. The fourth commences at Harris county, and winds around, cutting into other districts here and there, Navarro county on one side and Fort Bend on the other, till it reaches Comanche county, by its meanders, nearly 340 miles long, with about an average of 55 miles wide. This district was twisted to suit these unfair schemers, but the fifth district shows their peculiar talent in that line to best advantage. This commences at Galveston, runs along down the coast a hundred miles to Matagorda county, thence starting to the northwest it goes out to the counties of Runnels and Concho opposite the Pan-Handle, gouging Lavaca county out of the sixth district on the way, a distance by meanders of nearly 500 miles, with an average width of 60 miles. The following table shows the relative population of the districts as laid off:

| Districts. | Whites. | Blacks. | Total. |
|---|---|---|---|
| 1st | 87,139 | 49,194 | 136,333 |
| 2d | 92,415 | 42,275 | 134,690 |
| 3d | 87,906 | 11,769 | 99,675 |
| 4th | 93,084 | 60,373 | 153,457 |
| 5th | 101,094 | 62,439 | 163,533 |
| 6th | 107,378 | 23,498 | 130,876 |

It therefore appears that the fifth district has 63,858 more inhabitants than the third, the fourth 53,782 more than the third, the fourth has 17,026 and the fifth has 27,104 more than the ratio, while the third has 36,754 less than its quota.

As persons out of the State may be curious to know why the fourth and especially the fifth district are thus favored, if favor it may be called, at the expense of the third and other districts,

we will explain that the third is composed politically, according to the late election, nine in ten of Democrats. They have more Democratic voters than they want, so they lent eleven or twelve counties, with 37,000 people, and over 7,000 voters, to the Democrats of the fourth and fifth toward smothering the Republican voters which are concentrated in the lower counties of those two districts.

The sixth lends her strongly Democratic county of Lavaca, with upward of nine thousand inhabitants, for the same honest purpose. This, with the additional contribution of the Democratic county of Navarro, with 8,000 inhabitants, jointly from the third and second, which latter also has Democratic votes to spare, handsomely equalizes things all around, according to Democratic ideas of justice, and a Democratic majority is assured in each district of from three to six thousand.

To oppress the poor and laboring class, and to establish here, as nearly as possible, a system of peonage similar to that of Mexico, which may compel the forced labor of the tenant class, they have passed an act in relation to landlords and tenants, under the name of "Rents and Advances." This act is the same that had been vetoed under the previous administration of Governor Davis. It deprives the tenant class, as against the landlord, of all advantages of homestead and household exemptions heretofore guaranteed by the laws of the State to all the people. It gives the landlord a lien on everything that the tenant has, even to the clothing of his wife and children.

Another act toward re-establishing forced labor is that which has passed the House of Representatives and is now pending in the Senate to authorize the hiring out of all persons charged with petty offenses.

As a necessary consequence of the example set by those now in power, in thus defying all restraints of constitution and law, a spirit of lawlessness and violence, which had been kept under restraint during the previous administration, has arisen all over the State, and it is a matter beyond contradiction that since the 15th of January there have been over three hundred deaths by violence in Texas. Highway robbery, burglary, and breaking of jails are every day occurrences. As an instance of the tendency of affairs: on the 26th instant a mob of about a hundred men broke open the jail in Belton county and murdered all the prisoners confined

therein—nine in number. Whole districts of country, such as that of the counties of Goliad, De Witt, and Karns, are in the possession of hostile mobs, and officers of the law are powerless. These instances are only mentioned as specimens, for space will not permit any detailed accounts.

In closing this address we wish to remind the people of the United States that they can not, with safety to the future political welfare of the whole country, overlook the wrongs which are perpetrated within the limits of Texas. It is often forgotten, in speaking of our State, that it is as large as any six of the States east of the Mississippi, containing an area larger than the whole of the New England States, together with the States of New York, Pennsylvania, New Jersey, Delaware, and Maryland, and could, without inconvenience, contain all the population of the United States. If lawlessness becomes chronic here, with our rapidly-increasing population, it may leaven the whole body-politic.

In behalf of those we represent and all lovers of law and order we appeal to Congress and the people of the United States for the re-establishment and enforcement here of a form of government that will secure to all our people equal rights and the protection of life and property.

SAM. M. JOHNSON, Calhoun county.
PHILIP HOWARD, Bosque county.
SAML. T. CARTER, Fannin county.
W. J. PHILIPS, Wharton county.
BOULDS BAKER, Travis county.
G. A. ALLEN, Washington county.
ROBERT ZAPP, Fayette county.

Committee appointed by the Republican State Executive Committee and citizens generally, assembled at Austin, to represent grievances to Congress and the people of the United States which have transpired since the organization of the present existing government of Texas.

AUSTIN, TEXAS, *May* 28, 1874.