I N D E X

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H. R. 6400

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TO ENFORCE THE FIFTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

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THURSDAY, JUNE 24, 1965

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House of Representatives,

Committee on Rules

Washington, D. C.

The committee met, pursuant to call, at 10:40 o'clock a.m., in Room H-313, The Capitol, Hon. Howard W. Smith (chairman of the committee) presiding.

Present: Messrs. Smith, Colmer, Madden, Delaney, Trimble, Bolling, O'Neill, Sisk, Young, Pepper, Smith, Anderson, Martin and Quillen.

The Chairman. The committee will be in order.

We are here this morning to begin the hearings on the bill H. R. 6400, to enforce the fifteenth amendment to the Constitution of the United States.

We had a schedule of hearings which the leadership has broken up this morning. I understand they have changed the hour of meeting to 11:00 o'clock, and I will have to discuss with you what we will do to make up that time.

(The bill, H. R. 6400, follows.)

Union Calendar No. 202

89TH CONGRESS
1ST SESSION

H. R. 6400

[Report No. 439]

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1965

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 1, 1965

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To enforce the fifteenth amendment to the Constitution of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act shall be known as the "Voting Rights Act of 1965".~~

~~SEC. 2. No voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color.~~

~~SEC. 3. (a) No person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which (1) the Attorney Gen-~~

eral determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the Presidential election of November 1964.

(b) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(c) Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the petitioner nor any person acting under color of law has engaged during the ten years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court deter-

mines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this Act shall, after judgment, be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this Act, determining that denials or abridgements of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

SEC. 4. (a) Whenever the Attorney General certifies (1) that he has received complaints in writing from twenty or more residents of a political subdivision with respect to which determinations have been made under section 3(a) alleging that they have been denied the right to vote under color of law by reason of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the

Civil Service Commission shall appoint as many examiners in such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such appointments shall be made without regard to the civil service laws and the Classification Act of 1949, as amended, and may be terminated by the Commission at any time. Examiners shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act). An examiner shall have the power to administer oaths.

(b) A determination or certification of the Attorney General or of the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register.

SEC. 5. (a) The examiners for each political subdivision shall examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote, and that, within ninety days preceding his application, he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law: *Provided*, That the requirement of the latter allegation may be waived by the Attorney General.

(b) Any person whom the examiner finds to have the

qualifications prescribed by State law in accordance with instructions received under section 6(b) shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 6(a) and shall not be the basis for a prosecution under any provision of this Act. The list shall be available for public inspection and the examiner shall certify and transmit such list, and any supplements as appropriate, at the end of each month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State. Any person whose name appears on such a list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person appearing on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) he has been successfully challenged in accordance with the pro-

~~cedure prescribed in section 6(a), or (2) he has been determined by an examiner (i) not to have voted at least once during three consecutive years while listed, or (ii) to have otherwise lost his eligibility to vote.~~

~~(c) No person shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.~~

~~SEC. 6. (a) Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if made within ten days after the challenged person is listed, and if supported by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and such challenge shall be determined within seven days after it has been made. A petition for review~~

of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the moving party, but no decision of a hearing officer shall be overturned unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, and procedures for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing.

SEC. 7. No person, whether acting under color of law or otherwise, shall fail or refuse to permit a person whose name appears on a list transmitted in accordance with section 5(b) to vote, or fail or refuse to count such person's vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote under the authority of this Act.

SEC. 8. Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on

November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the fifteenth amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

SEC. 9. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2 or 3 or who shall violate section 7, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot cast in such election, or (2) alters any record of voting in such election made by a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, or 7, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 7, or 8 or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them to honor listings under this Act.

(e) Whenever a person alleges to an examiner within twenty-four hours after the closing of the polls that notwithstanding his listing under this Act he has not been permitted to vote or that his vote was not counted, the examiner shall forthwith notify the United States attorney for the judicial district if such allegation in his opinion appears to be well founded. Upon receipt of such notification, the United States attorney may forthwith apply to the district court for an order enjoining certification of the results of the election, and the court shall issue such an order pending a hearing to determine whether the allegations are well founded. In the event the court determines that persons who are entitled to vote under the provisions of this Act were not permitted to vote or their votes were not counted, it shall provide for

the casting or counting of their ballots and require the inclusion of their votes in the total vote before any person shall be deemed to be elected by virtue of any election with respect to which an order enjoining certification of the results has been issued.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether an applicant for listing under this Act shall have exhausted any administrative or other remedies that may be provided by law.

SEC. 10. Listing procedures shall be terminated in any political subdivision of any State whenever the Attorney General notifies the Civil Servic Commission (1) that all persons listed by the examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision.

SEC. 11. (a) All cases of civil and criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declara-

~~jury judgment or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.~~

~~(c) The term "vote" shall have the same meaning as in section 2004 of the Revised Statutes (42 U.S.C. 1971 (c)).~~

~~(d) Any statement made to an examiner may be the basis for a prosecution under section 1001 of title 18, United States Code.~~

~~SEC. 12. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.~~

~~SEC. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.~~

That this Act shall be known as the "Voting Rights Act of 1965".

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if it finds by a preponderance of evidence that any incidents of denial or abridgment of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose

or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of such test or device in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appro-

priate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that the Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose and with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after

the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per

centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, it may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that the Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or pro-

cedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections.

Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: Provided, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

SEC. 7. (a) The examiners for each political subdivision shall examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 9(b) shall promptly be placed on a list of eligible voters. A challenge to such listing

may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. Any person whose name appears on such a list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure

prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

SEC. 8. The Civil Service Commission, at the request of the Attorney General, is authorized to send observers to any election held in any political subdivision for which an examiner has been appointed under this Act. Such observers shall observe all aspects of the vote in all elections conducted by State and local officials within such political subdivision, including the casting and counting of ballots. Observers shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

SEC. 9. (a) Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification

that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, and procedures for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) The Civil Service Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States

court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

SEC. 10. (a) The Congress hereby finds that the requirement of the payment of a poll tax as a prerequisite to voting has historically been one of the methods used to circumvent the guarantees of the fourteenth and fifteenth amendments to the Constitution, and was adopted in some areas for the purpose, in whole or in part, of denying persons the right to vote because of race or color; and that under such circumstances the requirement of the payment of a poll tax as a condition upon or a prerequisite to voting is not a bona fide qualification of an elector, but an arbitrary and unreasonable restriction upon the right to vote in violation of the fourteenth and fifteenth amendments.

(b) No State or political subdivision thereof shall deny any person the right to register or to vote because of his failure to pay a poll tax or any other tax.

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any record of voting in such election made

by a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11 shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any person alleges to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) his listing under this Act or registration by an appropriate election official and (2) his eligibility to vote, he has not been permitted to vote in such election, the examiner shall forthwith

notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith apply to the district court for an order declaring that the results of such election are not final and temporarily restraining the issuance of any certificates of election, and the court shall issue such an order pending a hearing on the merits. In the event the court determines that persons who are entitled to vote were not permitted to vote in such election, it shall provide for the marking, casting, and counting of their ballots and require the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever

the Attorney General notifies the Civil Service Commission (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section.

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The term "vote" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast

with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

SEC. 15. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 17. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 18. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Amend the title so as to read: "A bill to enforce the fifteenth amendment to the Constitution of the United States, and for other purposes."

Union Calendar No. 202

89TH CONGRESS
1ST SESSION

H. R. 6400

[Report No. 439]

A BILL

To enforce the fifteenth amendment to the Constitution of the United States.

By Mr. CELLER

MARCH 17, 1965
Referred to the Committee on the Judiciary

JUNE 1, 1965
Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

The Chairman. Mr. Celler, Chairman of the Judiciary Committee, is the first witness this morning.

Mr. Celler, we will be glad to hear your explanation of H. R. 6400.

STATEMENT OF HON. EMANUEL CELLER
A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK, AND CHAIR-
MAN OF THE HOUSE JUDICIARY COMMITTEE

Mr. Celler. Thank you, Mr. Chairman and members of the committee.

I appear before you on behalf of the bill, H. R. 6400, the Voting Rights Act of 1965, and for the purpose of getting a rule.

In our system of government no right is more central or more precious than the right to vote. In his message to Congress on March 15th this year, President Johnson eloquently stated the purpose of this measure:

"Many of the issues of civil rights are complex and difficult, but about this there can be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty that weighs more heavily on us than the duty to insure that right."

The purpose of H. R. 6400 is to eliminate illegal barriers to the right to vote. Primarily it is designed to enforce the 15th amendment to the Constitution which prohibits racial discrimination by any state in the voting process.

The bill is also designed to enforce the 14th Amendment and Article I, Section 4.

The basic question before the Congress in considering the Act of '65 is whether it wishes to have the 15th Amendment of the Constitution enforced. This amendment forbids the denial or abridgement of the right of citizens of the United States to vote "on account of race, color, or previous condition of servitude." It was ratified in 1870, now 95 years ago, and under Section 2 gives Congress "power to enforce this Article by appropriate legislation."

Congress passed the Enforcement Act of May 31st, 1870. This was followed the next year, 1871, by law making it a federal crime to prevent citizens from voting by threat or intimidation and established this system of federal supervision -- federal supervisors of elections. In the quarter of a century which followed certain of the former Confederate States resisted successfully enforcement of the legislation and in 1894 Congress itself repealed most of the legislation enforcing the 15th Amendment.

In my humble opinion, this was a mistake, and those who do not appreciate or acknowledge the errors of history must live those errors all over again.

In the quarter of a century -- to make sure that whites could vote and Negroes could not, a number of states, beginning in 1895, enacted so-called grandfather clauses. This

allowed citizens descendent from anyone who had voted on January 1, 1867, when, of course, no former slave could as yet vote, to be registered and voted, even if they could not pass the literacy test -- if they could not pass a literacy test.

The grandfather clause which the Supreme Court struck down in 1915 was followed by laws excluding Negroes from the real elections, which were the primaries. This, too, was struck down by a court in a number of decisions handed down in the 1940's during and after the Second World War.

Nevertheless, the resisting states in the Deep South persisted and continued by various subterfuges and various kinds of intimidation to keep the Negro voters down to a small minority.

In 1964, of the eligible Negroes, by standards applied to whites, the Negro voters actually registered were less than seven percent in Mississippi; in Alabama they were less than 20 percent; in Louisiana they were less than 32 percent; as against the eligible whites for Mississippi, 80.5 percent; Alabama, 69.2 percent; for Louisiana, 80.2 percent.

Anyone who wishes to argue for the preservation of the existing system of discrimination and against federal intervention must argue that as a matter of public policy which they deem to be high in the language of the Constitution itself, the 15th Amendment is wrong and should be nullified. They must argue that for the present and for the indefinite future

it is not safe that more than a minority of the Negro citizens should be enfranchised.

It is not unlikely that a reputable and compassionate historian could say that in 1970, voting by the mass of new freemen of the South, then illiterate and wholly inexperienced because of their former condition of slavery, might have perpitrated really irreparable violence in the old Confederacy, but when an interpretation of the South does not apply to conditions as they are today, a century after the Civil War. The Negroes in spite of the cruel handicaps they suffer have produced a generation of leading men such as Martin Luther King, Ralph Bunch, Thurgood Marx, Roy Wilkins, who would be a credit to any race, and the great grandchildren of the Southern Rebels are no longer preoccupied with an effort to reverse the outcome of the Civil War.

In 1957, 1960, 1964, the Congress enacted legislation designed to provide strong, effective remedies to the systematic exclusion of Negroes from the polls that characterized certain regions of this nation. That progress has been painfully slow. In part, because of the intransigence of the state and local officials, in part because of repeated delays in the judicial process, judicial relief has had to be gauged, not in terms of months, but in terms of years. Following the message of the President on March 15th, the proposed legislation, H. R. 6400, submitted by the Administration, was introduced by me in the House of Representatives on March

17, 1964. Hearings were held by a Judiciary Subcommittee on some 122 bills dealing with Voting Rights. Thirteen sessions of hearings were held. Testimony was received from the Congressional sponsors, the Attorney General of the United States, the United States Commissioner on Civil Rights, the Bureau of the Census, the United States Civil Service Commission, state and local officials, as well as members of various organizations interested in the proposed legislation.

The subcommittee thereafter met for four days in Executive Session and recommended an amended bill to the full committee. The full committee considered the bill for 10 sessions and after its deliberations it reported out H. R. 6400 favorably to the House, after adopting an amendment in the nature of a substitute.

I shall now briefly summarize the major provisions of the bill now before this committee.

This bill would suspend state literacy tests and other devices in certain areas where they have been used to deny Negroes the right to vote. The bill provides for the appointment of federal examiners by the Civil Service Commission, upon a certification of their need by the Attorney General. The bill would automatically suspend such tests and devices in those states or political subdivisions which (1) maintained such tests on November 1, 1964 and (2) had less than 50 percent of the voting population registered or voting in the Presidential election of 1964.

The appointment of examiners would not be automatic; however, in those areas where the bill suspends literacy tests, upon certification by the Attorney General of their need, such examiners would be appointed.

Federal registration envisaged under this bill would apply to state law except insofar as it was suspended -- excepting insofar as it was suspended and would include enrollment of persons eligible to vote in state, local and federal elections.

The bill, as amended, eliminates any requirement that an applicant for registration by a federal examiner must first have applied to a state election official.

Any state or political subdivision with respect to which determinations have been made, as a separate unit, causing the suspension of their literacy tests under the bill can remove itself from the provisions of the bill by obtaining a declaratory judgment in a three-judge court in the District of Columbia, that no such tests or devices have been used during the preceding five years for the purpose of denying the right to vote because of race or color. But no such declaratory judgment shall issue within five years after a final judgment in violations of the 15th amendment have occurred. In order to avoid future state or local circumvention of the policy of the Act, the bill provides that no state or political subdivision in which tests are suspended may enforce any voting

practice or standard different from that in effect on November 1, 1964, unless and until a three-judge court in the District of Columbia determines that such change will not violate the 15th amendment: Provided that if within 60 days after notifying the attorney general of such change he fails to object, such new voting standard can be enforced."

On the basis of the findings that poll taxes violate the 14th and 15th amendment to the Constitution, the bill abolishes the poll tax in any state or political subdivision where it exists today, namely Alabama, Mississippi, Texas, and Virginia.

The bill also provides that in any action instituted by the Attorney General to enforce the guaranties of the 15th Amendment the Court may authorize the appointment of federal examiners as provided for there in this Act, pending or after determination of the suit. In any such case where the Court does find that violations of the 15th Amendment have occurred, the bill authorizes the Court (1) to suspend tests or devices that have been used to deny the right to vote and (2) to determine the validity of any voting standard or practice different from that which was in force and effect when the suit was instituted.

Under the bill the appointment of federal examiners would be terminated, either by the authorizing court in Section-3 cases, or when the Attorney General notifies the Civil Service Commission that all persons listed by the Federal Examiners

have been listed in the state rolls and that there is no reasonable likelihood that violations of the 15th Amendment will reoccur.

In addition political subdivisions may petition the Attorney General for such determination.

In addition, there is a challenge to eligibility to vote and review of any federal examiner's decision, to a hearing officer, appointed by the Civil Service Commission. And then appeal may be had to the Circuit Court of Appeals on the challenge.

Civil Service Commission authorities may appoint observers or watchers at the request of the Attorney General to observe elections in any political subdivision in which a federal examiner has been appointed. Criminal penalties are provided for intimidating, threatening or coercing any person for voting or attempting to vote or for urging or aiding any person to vote or attempt to vote. Additional criminal penalties are provided for interference with the operation of the Act.

Federal district court has authority to enjoin election results in any subdivision where federal examiners have been appointed whenever the court determines that persons eligible to vote were not permitted to vote. The Court is authorized to provide for the casting and counting of such ballots before the results of any such election may be given final force and effect.

The term "vote" is defined to include any action necessary

to vote in a primary, special, general election for candidates for public or party office, and propositions submitted to the electorate. The term "political subdivision" is defined to mean any county or parrish except that where registration is not under county supervision, and it also includes any other subdivision which conducts registration.

Finally, the bill would also make Title I of the 1964 Civil Rights Act apply to all elections by repealing any limiting reference therein to federal elections.

H. R. 6400, as amended, I believe is sound, effective and necessary. I ask that this distinguished committee promptly grant a rule so that the House can consider this legislation. I ask that we be granted an open rule providing for say six or eight hours general debate, and making it in order to consider the substitute amendment recommended by the Committee on the Judiciary now contained in the bill, and providing that such substitute for the purpose of amendment shall be considered under the five minute rule as an original bill and thereafter that the Minority be privileged to offer its substitute.

The rule should also provide that after the passage of the bill, H. R. 6400, it shall be in order in the House to take from the Speaker's Table the bill S. 1564 and move to strike out all after the enacting clause of the said Senate bill and to insert in lieu thereof the provisions contained in H. R. 6400 as passed by the House.

That concludes my statement.

The Chairman. Can you leave that memorandum with us concerning the rule that you desire?

Mr. Celler. I have some notes. May I have another copy?

The Chairman. I didn't mean your notes.

Mr. Celler. I will leave that with the clerk.

The Chairman. I mean the terms that you wish to go in the rule if you get one.

Mr. Celler. I will supply that.

The Chairman. One thing in it that I noticed was -- you and I had some little informal discussions about this unfortunate situation, and I believe we understood that you would not object to 10 hours of debate?

Mr. Celler. I don't know if we need ten hours, but if you feel ten hours is proper, that is all right with me.

The Chairman. This is a matter that concerns a great many people on both sides, and when you begin to think of the opportunity to discuss it on the Floor in general debate, there are really four groups who would like to have the opportunity to be heard. That is, those pro and con on your side of the House, and those pro and con on the other side of the House. They would all like to have an opportunity to speak.

I understand you will distribute the time on your side.

Mr. Celler. For the opposition?

The Chairman. For everybody.

Mr. Celler. I have always done that, and I will do that again.

The Chairman. I assume Mr. McCulloch will divide the time on his side.

If we are going to have anything like a reasonable amount of debate on the Floor, ten hours will not be too long. I hope the gentleman will agree to that.

The House is meeting at this hour, much to my dismay, because we had certain understandings about the hearings we were going to have and I imagine we will be broken up in a few minutes with a quorum call. I have quite a few questions I want to ask because I am anxious to get straightened out on some of the bills.

I will go ahead for the time being, with as much time as we have.

Mr. Celler, to begin with, I have had a good deal of difficulty in finding out what is the difference between two of these sections. Now, Section III and Section IV are referred to. It seems to me they are duplicates. In other words, you can accomplish under Section 3 the same thing you can accomplish under Section 4. Would you give us an explanation of what is the difference between Section 3 and Section 4?

Mr. Celler. Section 4 applies in the case where there is what is known as massive, hard-core discrimination and sets up a formula --

The Chairman. I am not able to hear you, there is so much confusion.

Mr. Celler. Section 4 provides for a formula in so-called

massive discrimination areas, states or political subdivisions. It provides for a formula in these hard-core discriminatory areas.

The Chairman. I still can't hear you.

Will you close that door, please? Close the door, Tom.

Now, Mr. Celler?

Mr. Celler. And it provides where this formula applies -- it provides this formula applies in any state where, in the election, the presidential election of 1964, less than 50 percent of the voting population either were registered or voting. And where that formula applies, any test or device that may have been used, like a literacy test or any other device, is abrogated; suspended.

In Section 4, the court provides for a judicial process and application is made by the Attorney General, who institutes the proceedings to enforce the guaranties of the 15th Amendment and then the Court, if it finds that the 15th amendment has been violated because of discrimination, can suspend the literacy tests or any other device that may have been used for purposes of disenfranchizing the Negro, or for preventing him from registering.

One is a court process which intervenes before the test can be suspended and the other, Section 4, provides for the suspension immediately.

The Chairman. It seems to me, in reading it over, that you can do anything under Section 4 that you could do under

the other section. I would just like to understand pretty clearly just what is the difference between those two sections.

I know in Section 4 you have the bee that triggers up this phony trigger business by which you undertake to determine discrimination by the fact that people don't choose to vote.

Mr. Celler. The reason why Section 4 is put in there is because of the experience of the Department of Justice in endeavoring to prevent the use of discriminatory tests and devices by way of the court, by way of judicial process, has taken inordinant lengths of time. It has not taken months; it has taken years. And in order to shortcut and make an end run around the courst, as it were, this Section 4 device has been set up, where there is no need to go to the courts to provide for the end of these kind of discriminatory devices or tests, if the finding of the Congress -- namely that 59 percent of the people haven't voted, or 50 percent of the people haven't been registered in a particular state or political subdivision in the 1964 election, and there are these literacy tests, ipso facto, those literacy tests are suspended, automatically.

The Chairman. But why? Is this a device to begin the regimentation of voters so that everybody must vote as they do in Russia?

Mr. Celler. No, it isn't that.

The Chairman. It fixes penalties on the state because not a sufficient number of people in the state voted.

Mr. Celler. That has not been the experience.

The Chairman. Is that too far different from what they do in Russia?

Mr. Celler. Oh, I couldn't agree to that, sir.

Mr. Chairman. I beg your pardon?

Mr. Celler. I couldn't agree to that.

The Chairman. I didn't think youwould, but tell me the difference. Here you penalize a whole state and its people, on their right to vote under the Constitution of the United States because certain people did not vote and did not feel like participating in the election.

Mr. Celler. It may be --

The Chairman. Now we have never had anything that compelled people to vote. That has always been their right under the Constitution.

Mr. Celler. I don't think we compell people to vote, but in answer to your question, these states -- like for example Louisiana, Mississippi, Alabama, and others.

The Chairman. Yes -- and Virginia, also.

Mr. Celler. And Virginia --

The Chairman. Which state I represent.

Mr. Celler. Virginia, to a lesser degree -- have had over 100 years to put their house in order, and they have not put their house in order, because --

The Chairman. That means they must get busy and get out and with a shotgun or something, and go around and tell everybody they have got to vote.

Mr. Celler. No. Let's take the facts as they exist. For example, I will give you a few counties in Mississippi. For example, in Holmes County, there are 4,773 whites; 8,757 non-whites. Of the 4,773 whites, 4,800 are registered. They registered more than the number of population. They probably registered too many stones.

Of non-whites, only 20 percent were registered out of 8,858. In other words, there was more than 100 percent registration of whites in Holmes County and only .2 percent -- two-tenths of one percent registered among the non-whites.

In Marshall County, 97 percent of the whites were registered. Only 2.5 percent of the non-whites were registered.

In Tallahatchie County, 87.5 percent of the whites are registered, and three-tenths of one percent of the colored were registered.

The Chairman. Read the figures on Alaska. I understand they are going to be penalized.

Mr. Celler. Alaska is brought within the Act, unfortunately, but Alaska can very readily and easily, without much ado, come to the District of Columbia and ask to be excused from the operation of the Act.

The Chairman. How far is it that those people up in Alaska who are penalized will have to come through the snow

and ice and storms to get to the Court that is going to decide that case?

Mr. Celler. We have no objection whatsoever from anyone in the State of Alaska on this provision.

The Chairman. I don't care about that. They are so far away they probably haven't heard about it yet.

I am speaking of principles of common decency and common law and Constitutional provisions. Now, what right have you got to penalize a state because some of its people don't vote in any proportion?

Mr. Celler. That may be only partially true --

The Chairman. It is just a step, Mr. Celler.

Mr. Celler. I gave illustrations with over 100 percent registered and vote d in some counties. I could give you many more, but in seven --

The Chairman. My friend, that is their business and none of yours.

Mr. Celler. I know, but this is bad, this is the bad antibiotic that we have to give to these states --

The Chairman. I am sorry. We will have to go. We will recess for 30 minutes.

(Whereupon, at 11:13 o'clock a.m., a recess was taken, the committee resuming its deliberations at 11:49 o'clock a.m.)

11:49 o'clock a.m.

The Chairman. Mr. Reporter, will you read the last question?

The Reporter. "The Chairman: What right have you got to penalize a state because some of its people don't vote in any proportions?"

Mr. Celler. We don't seek to penalize anybody. We simply say if you violate the sacred Constitution, particularly its 15th and 14th Amendments, you have to suffer the sanctions of the Act.

For example, in all those cases that the Department of Justice has brought, something like 75 of them, about one-third of them won. And of all the cases that have been one, notably in Louisiana, Mississippi and Alabama, two conditions were always invariably present:

(1) there was racial and rampant discrimination -- I emphasize "rampent." The court said there was rampant discrimination, in all those cases.

(2) there was low registration, plus low voting. Therefore, Congress makes a declaration of finding where there is low voting, low registration and literacy tests -- and there are always literacy tests there -- that the literacy tests have been improperly applied and therefore this formula is next, you might well say.

But the best answer I probably can give is what the President said. The President said the following:

"To those who seek to avoid action by the National Government in their home communities, who want to and who seek to maintain purely local control over elections, the answer is simple: Open your polling places to all your people. Allow menand women to register and vote, whatever the color of their skin. Extend the rights of citizenship to every citizen of the land. There is no Constitutional issue here. The command of the Constitution is plain."

The Constitution which, as you know, Gladstone said was the most wonderful work ever struck off at a given time by the brain and purpose of man, we ask you simply: Abide by the 15th Amendment of that wonderful Constitution and no harm will ever come to you or to anyone connected with any state.

Mr. Pepper. A good statement.

The Chairman. I don't want to get into an argument. I might say I thoroughly agree with you that if everybody abided by the Constitution we might get along better. The trouble we are having here now is that some other folk who are bringing this bill in here won't abide by the Constitution.

Well, now, let's take what you are talking about. You say that you don't penalize the state when you take away their right to legislate and abolish their state laws for some past offense that happened before this law was ever conceived. You remember the expression in the constitution -- I know you know it by heart -- that the Congress shall pass no ex post facto law,

which means a law penalizing for past offenses that occurred before the law was ever enacted. Would you care to comment on that?

Mr. Celler. Yes, sir. I anticipated that you would ask that question and I wrote it out. If you will forgive me for taking about three minutes to read the answer, I would say the argument is baseless that this is ex post facto, that the provisions of the bill violate the constitutional prevision against ex post facto laws. Article I, Section 9, Clause 3. You see, Howard, you and I have been associated so many years I can almost read your mind, and you can almost read mine, and I knew you were going to ask that.

This argument is false in several ways. First, it misconceives the nature of the ex post facto doctrine which has been held to apply only to criminal prosecutions; not to civil matters. The essence of the doctrine is that no person shall be punished for the commission of an act that was not punishable when it was committed.

As the Court said in the United States against Association of Citizens Councils of Louisiana, 187, Federal Supplement, 846, arising under the provisions of the Civil Rights Act of 1960:

"The defendants rely heavily on the contention that Section 301 of the Act violates the ex post facto clause of Article 1, Section 9 of the United States Constitution. We have had no violation of this clause since Section 301 of

that Civil Rights Act operates only prospectively and not retrospectively as to any criminal prosecution. It is well settled, of course, that the prohibition against ex post facto legislation applies only to criminal proceedings and not to civil such matters/as this. We note that Section 302 of the Act covering criminal prosecution for the destruction of records does not permit punishment for the destructions prior to May 6, 1960, the effective date of the Act."

And that is the same situation with this Act. The criminal penalties in this Act only apply prospectively. And the rest of the provisions of the Act are similar.

To the same effect we have the case of Alabama ex rel Gallion vs. Rogers, 187 Federal Supplement, 848, affirmed by 285 federal second supplement. In the Civil Rights Act of 1964, the last civil rights act passed, Congress similarly made judgment that discrimination places of public accommodation, places a burden on interstate commerce. The Supreme Court upheld this remedial legislation saying that such a finding could be made by Congress and that such findings by Congress would not be questioned as long as they were rational. Among other measures, they premised future regulations upon finding of past act, which was the Immigration Act of 1924, which based its quotas on existing populations within the United States.

So, too, the Waggonner Labor Relations Act of 1935, which was expressly premised on Congressional findings that interference by employers with the right of employees to engage

in self-organization had led and intends to lead to major disputes burdening and obstructing our commerce. The court thereupon outlawed such intereference. The constitutionality of this measure was sustained promptly. It must be borne in mind that discrimination in voting based on race or color has been prohibited by the Constitution for 95 years. The present bill is but the latest in a series of measures designed to implement this constitutional provision in accordance with Section 2of the 15th Amendment which gives Congress the power and therefore the duty to enforce the amendment by appropriate legislation. It does not make out punishment of any kind. It merely seeks to assure citizens of the exercise of a right which state and local authorities have failed to secure for them.

The Chairman. That is a pretty long answer to a short question, but I take it, to size it up, what you mean is that "ex post facto" in the Constitution means that you can't penalize an individual for past acts, but that you can penalize a whole state?

Mr. Celler. There is no penalty here. No penalty whatsoever.

If the criminal provisions operate prospectively, it would not be retroactively.

The Chairman. As to the meaning of words, I have a good deal of confidence in Websters Unabriged Dictionary which defines "penalty" somewhat different from what you seem to read that.

That provides for anything that imposes a penalty and this imposes a penalty when you destroy state laws.

I am particularly interested, and I think we all should be, in knowing what this law means. And I was asking you about Sections 3 and 4, which related back to Section 6.

Now, beginning with Section 3(a) it says, "Whenever the Attorney General --" and you will note that the "Attorney General" is all through the bill as the one who may dissolve this situation -- "Whenever the Attorney General institutes a proceeding, the Court shall authorize the appointment of federal examiners."

Then later on, further down it says, "If the Court determined that appointment of such examiners is necessary to enforce such guaranties --" now there are no guide lines laid down here, and all the Attorney General has to do is institute a suit, and then it is up to the Court to appoint examiners and based upon whatever he thinks is necessary to enforce the 15th amendment.

Now, that goes on through and sets out pretty fully the proceedings and so forth for the appointment of the examiners. In subsection (b) it provides that the Court can set aside state laws if the people can't meet the difficult test of being able to read and write. That is all they have to do, and then the state laws are abolished under that section.

Then Section 4(a) --

Mr. Celler. May I interrupt, sir? That is exactly what

the present law permits the Attorney General to do under the previous act.

The Chairman. I never was for the preseh law.

I notice one very important thing about the test, though, that you don't carry the same test provision that you do in the 1964 law, where you provided that a sixth-grade education was prima facie evidence of sufficient literacy to be able to vote intelligently.

Digressing just for that one question, why do you change the law you passed last year which we proclaimed was going to cure all the evils --

Mr. Celler. Because of the experience of the Department of Justice in the cases they brought. It showed the provision was inadequate, and questions of facts were raised which made it very difficult for the Department of Justice to get consummation.

The Chairman. You don't believe in ascertaining the facts about it?

Mr. Celler. All sorts of legal strategies were used by various astute lawyers.

The Chairman. What legal strategies could be used on establishing the fact that a person had passed the sixth grade in common school?

Mr. Celler. That was the proof, and that was the testimony we received from the Attorney General.

The Chairman. Well, don't you think you should have

some facts to go on? What could be a better fact for you than to say anybody actually can vote who has passed the sixth grade? That is what you ordered last year and now you want something else.

Mr. Celler. The thrust of this section is that the use of these tests -- it wasn't the tests themselves -- this law is not aimed at the tests. This statute is aimed at the manner in which these tests are applied. They are applied differently to different persons. Different for the white man as against the black man.

The Chairman. The law you already have says if a fellow has passed the 6th grade, he is qualified to vote and you can't have any other test.

Mr. Celler. This is a rather strong dosage of medicine, but the malady is very serious.

The Chairman. Did you say malady or malice?

Mr. Celler. The malady is very serious and therefore very strong, antibiotics, I would say, are necessary.

This is a part of the strong antibiotics that are necessary to cure this "fever," if I may put it that way, of some of the old confederate states. I dislike to say that, but that is why this law has a good deal of strength attached to it. It is necessary because of the experience Justice has had in bringing these suits. They have been very difficult. All sorts of obstacles have been placed in the way.

The Chairman. Did they ever bring a suit about somebody who wanted to vote and came down and said, "Here is my

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certificate where I passed the 6th grade in the public school of Faquier County, Virginia"? Did they have any test like that?

Mr. Celler. We had testimony those certificates were not even received, not even looked at. They were utterly disregarded by those in charge of the registration apparatus in some of these states so that the conclusion was inevitable that it was necessary to do away with even that.

The Chairman. You had enforcement provisions in that act.

Mr. Celler. Yes, but I am trying to say --

The Chairman. You abolished a lot of state laws under that act. You had enforcement provisions.

Mr. Celler. The Attorney General made this statement: "I can cite numerous examples of almost an incredible amount of time our attorneys must devote to each of the 71 voting rights cases filed under the Civil Rights Act of '57, '60 and '64. It has become routine to spend as much as 6,000 man hours only in analyzing the voting records in a single county to say anything of preparation for trial and almost inevitable appeal."

Therefore, in order, as I said before, to make an end run around all these difficulties, we had to take this short cut and to provide for this rather, I should say, strong language. I admit it is strong language. It is a strong dosage. But the remedy is clear. Let the South and some of these areas cleanse their Aegian stables. That is all. Let these people vote and you won't have to apply this Act.

The Chairman. You don't think they ought to have any qualifications, then?

Mr. Celler. 30 states, sir, have no literacy tests. There is nothing new about having people vote who can't read or wirte. 30 states, sir, have no literacy tests whatsoever.

The Chairman. If a state thinks they do want an intelligent electorate --

Mr. Celler. They can have it.

The Chairman. What right has the federal government to repeal that statute?

Mr. Celler. We don't abolish literacy tests. We simply say where the literacy test has been applied in a discriminatory fashion, in a cavalier fashion, and where there is a violation in the application of the 15th amendment we say, "No, you shall not apply that literacy test."

The Chairman. And all that you have on that, in order to do that, is a certificate of the Attorney General of the United States, whoever he might be, one official, that he believes --

Mr. Celler. I read at the top of page 12: "Whenever the Attorney General institutes a proceeding under any statute to enforce the guarenties of the 15th Amendment." When he seeks to enforce the 15th -- that is the burden upon him to enforce the 15th amendment. Incidentally, the balance of the page gives some criteria for the Court. The Court can dismiss the case -- appoint an examiner -- need not appoint examiners under certain conditions, which you probably have

overlooked, sir, where for example, the violations have been few in number, have been promptly and effectively corrected, and the continuing effect has beeen eliminated and there is no reasonable probability of their recurrance in the future. That is a criteria for the judges.

The Chairman. The determination that those things have or haven't happened is left to the Attorney General.

Mr. Celler. It is left to the Court, sir. Line 14, "Provided thatthe Court need not authorize" and so forth.

The Chairman. You say it is left to the court. Let's look back here at Section 6. That is one of the sections I am talking about that are so confusing:

"Whenever a court is authorized to appoint examiners and the Attorney General recites that he has received --" No. It says, "With respect to any political subdivision, in or included within the scope of the determination of 4(b) and that is the trigger, where the people reserve their American right, which used to exist, to vote or not to vote, as they see fit.

Now, if they don't vote, if the people don't vote, then that triggers this situation.

And then you come on down here --

Mr. Celler. That is not the only reason for the low registration or low voting. Low voting may be due to the fact that they may want to vote and can't vote.

Mr. Celler. May or may not. I know a lot of people who don't vote.

Mr. Celler. That is true. That is true.

The Chairman. And are well qualified to vote.

Mr. Celler. But, as I say, Congress has the right to make the finding where there is low voting and where there is low registration, and a test, Congress makes the finding that in such cases there shall be this trigger. That is the finding Congress makes.

The Chairman. That finding is, one, with respect to people of voting age in the state and the other is with respect to the number of resident people who vote.

As you well know, there are many elections in all areas where there is so little contest and so little political activity that 50 percent of the people don't vote.

Mr. Celler. Yes, but look --

The Chairman. I suppose you will fix th[illegible] the ex post facto thing. You have based it on the Lyndon Johnson election. You say if people didn't come out and vote in the Lyndon Johnson elections, 50 percent, then they are penalized?

Mr. Celler. Just note what states are covered by these provisions.

Mr. Celler. That doesn't make any difference.

Mr. Celler. I think it makes a difference. In New York, in my state, a lot of people --

The Chairman. It does, from your standpoint, because you are prejudiced on one side, and I may be prejudiced on the other side.

Mr. Celler. No, it is like the fellow who holds up a half a bottle of water and one fellow says, "Why, it is half full," and the other fellow says, "No, it is half empty," and I guess that is our case. I say it is half empty and you say it is half full.

The Chairman. However it may be, I certainly don't agree with a lot of your conclusions about what you can do under the Constitution of the United States as it was written.

But to get back to this position with regard to the appointment of the examiners, in section 6, it says that where the Attorney General certifies with respect to any political subdivision that has been caught in this net of people not voting, that he has received complaints from 20 or more residents, and he believes the complaints meritorious and so certifies, and then it has this little crooker in here: "Or, (2) that in his judgment, considering" and so forth -- that in his judgment "the appointment of examiners is otherwise necessary." Now, that is all he has to have. He just has to have his judgment, if he has any. "The appointment of examiners otherwise necessary to enforce the guaranties of the 15th amendment." Then the civil service commission shall go on and appoint examiners and set the machinery in motion.

Don't you think that looks pretty loose?

Rules
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Mr. Celler. I would say it is rather strong. I admit it is strong, sir. As I said before --

The Chairman. Why should that be in here?

Mr. Celler. Because everything under the sun has been tried. We passed three Civil Rights Acts and we haven't made a dent.

The Chairman. You didn't think when you started out to destroy our States rights in the Southern States you were going to have an easy time, did you? If you did, you don't know the people down there.

Mr. Celler. We don't want to destroy a State or a State's rights. We only say if a State will abide by the Fifteenth Amendment and not discriminate they can go on their own.

The Chairman. I do want an answer to this particular question: When you have all the machinery set up in Section 3, Section 4, and Section 6, where you provide after the Court has made the determination of probability of trouble then the Attorney General on his own say-so, whenever he thinks that it is desirable or necessary to protect the rights under the Fifteenth Amendment, ipso facto, after having been the policeman, investigating the case, and after having been the prosecutor in the case, he now becomes the judge in the case, and on his own say-so can put this machinery in motion and do all of these things that the bill provides for. Why do you have to do that?

Mr. Celler. Not under Section 3. That must be done by the

Court. He cannot do that, he cannot set that machinery in motion. Only in Section 4.

The Chairman. The Court shall do it when the Attorney General tells it to do it.

Mr. Celler. Tells them?

The Chairman. Yes.

Mr. Celler. The Court must make a determination or a finding on this.

The Chairman. A finding merely there have been violations of the Fifteenth Amendment. The language is there. I read it to you a while ago.

Mr. Celler. You look on page --

The Chairman. Then after that determination is made the question comes of appointing these examiners and going into action against the States. Under that clause in Section 6 it is provided that he may provide for these examiners and take over the State election machinery if in his judgment the appointment of examiners is otherwise necessary to enforce the guarantees of the Fifteenth Amendment. Otherwise. What does that mean?

Mr. Celler. Let's read the exact language. In Section 3, there can be no examiner appointed unless the Court makes a final judgment. This is on page 12, line 12.

The Chairman. Or an interlocutory judgment.

Mr. Celler. A final or interlocutory judgment. The Court

must find that there are violations of the Fifteenth Amendment justifying equitable relief that have occurred in such State or subdivision. It must make that finding and there must be proof thereof.

When it comes to Section 4, we find the following. This is Section 6. "The Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under Section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the Fifteenth Amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the Fifteenth Amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the Fifteenth Amendment,". If there is compliance with the Fifteenth Amendment, he is out, they cannot be appointed by the Civil Service Commission.

The Chairman. Where does it say that?

Mr. Celler. That is the inference to be drawn. That is one of the conditions precedent.

The Chairman. You are talking about inferences. You are not going to rest on inferences, are you?

Mr. Celler. We say he must make that finding.

The Chairman. What I have been trying to get all the time is why it is necessary to have all of these alternative ways to do it, and why give the Attorney General the arbitrary authority to be investigator, prosecutor, and then the judge of whether he shall do it or not.

Mr. Celler. Because the Judiciary Committee, in its judgment, felt that was the most efficient and most effective way to bring about the compliance with the Fifteenth Amendment of the Constitution, and the language of Section 2 of the Fifteenth Amendment is "appropriate." Appropriate means that the Congress has the right and the Judiciary Committee, in the first instance, has the right to provide for measures that will carry out the Fifteenth Amendment, and those measures can be like a huge umbrella, that is, the Fifteenth Amendment is like a huge umbrella and many things can be protected by that umbrella. And that power is all-embracive, and the Courts have so held, and that is one of the powers we feel are within the words "appropriate legislation."

The Chairman. Then you feel that under the Constitution and under the Fifteenth Amendment the Federal Government has the power to repeal the State's local election laws?

Mr. Celler. Yes, sir.

The Chairman. Thank you.

Mr. Celler. They can, provided those State election laws violate the Constitution.

I anticipated you to ask that question, and if I may answer that, it will be a little shorter answer.

You may say, whatever the power of Congress under the enforcement laws of the Fifteenth Amendment is in other respects, it cannot infringe upon the rights of the State, for example, of qualifications for voting at least for non-Federal elections.

A short answer to this argument was given most emphatically by the late Mr. Justice Frankfurter speaking for the Court in Gomillion vs. Lightfoot, 364 U.S. 339, where he said as follows:

"When a State exercises power wholly within the domain of State interest, it is insulated from Federal judicial review, but such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right."

The Constitutional rule is clear: So long as the State laws or practices erecting the voting qualifications for non-Federal elections do not run afoul of the Fourteenth or Fifteenth Amendment, they stand undisturbed. But when State power is abused, as it is plainly in the areas affected by the present bill, there is no magic in the words, for example, "State rights" or "voting qualifications." This was decided years ago in the so-called grandfather clause cases.

I could cite many, many other cases. States cannot infringe upon the Constitution, whether it is a State Constitution or State law. If it is done within the confines of a State, well and good, but if it slops over onto Federal rights, the State must yield to the Federal power.

The Chairman. Thank you. I never will understand why there are three separate long provisions in here, Section 3, Section 4, and Section 6, which seem to me to conflict, and many provisions of which seem unnecessary for any purpose other than to confuse the reader. I would think you would want to get a bill that was so clear that he who runs might read.

Mr. Celler. You want to read the Senate bill if you want to get confused.

The Chairman. I hope we won't have to read that one.

This business of the State, maybe an existing State like Alaska, having to come to the District Court of the United States to seek relief from this intrusion on its local law, what is the justification for that?

Mr. Celler. I didn't quite get that last part of your question.

The Chairman. When this machinery goes into operation, then in order for a State to show that it has not done all of these things that the Attorney General says they have done, or the twenty complainants say they have done, they have got to come all the way to Washington and bring his machinery and

bring his witnesses and prove his case in the District of Columbia instead of in the District Court of his own State, which is contrary to all our concepts of a person having the right to trial of his cause in his own vicinity.

Mr. Celler. I read from the report --

The Chairman. I would much rather hear your answer to it.

Mr. Celler. There is nothing new in this. There are many precedents for a State or a private corporation to go --

The Chairman. Why in this particular case?

Mr. Celler. Because we want uniformity. We have nine Circuits, and these judges do not think alike, and in order to get a consensus it takes years sometimes, and during these years we have confusion and chaos, as what the law really is, and the matter is of such paramount importance --

The Chairman. That is true in every case, is it not?

Mr. Celler. It is.

The Chairman. And they are going to have to move them all to the District of Columbia and have a central court here that everybody in the United States has got to come to in Washington when they have litigation.

Mr. Celler. You didn't let me finish, sir. There is ample precedent for a State to come to Washington. We did that, for example, in the Civil Rights Act of 1964, Section 709. I heard no objection then, when we had the Civil Rights Act. There they have to come to the District of Columbia likewise.

The Chairman. You say there was no objection to the 1954 Act?

Mr. Celler. The 1964 Act. I don't recall any strong objection to that provision, or any objection at all.

The Chairman. It might have been overlooked. There were so many bad parts in it we couldn't catch them all.

Mr. Celler. This is the case when States come to exculpate themselves in cases under the Interstate Commerce Commission Act, Section 204. There are a number of other Acts I have cited here in the report where the States come in, and there are innumerable Acts where corporations must come in.

The Chairman. It is not a normal thing to do, as you well know. Why do we do it in this case?

Mr. Celler. As I started to say, it is to get as quick a uniformity as possible because we are dealing with human rights.

The Chairman. That would apply to any case, would it not?

Mr. Celler. I beg your pardon?

The Chairman. That would apply to any case in the Federal Courts if you want uniformity.

Mr. Celler. This is a matter of great and paramount importance. This is a matter involving Constitutional voting rights. I think we should do all and sundry to bring about uniform action as speedily as possible, and this is the best way in which it can be done. Let it be settled right in the District of Columbia. There is no hardship in that. It is very

easy to fly from Montgomery, Alabama to Washington or from Tallahassee to Washington. It is very simple.

The Chairman. And bring hundreds of witnesses?

Mr. Celler. No. Declaratory judgments may be decided on papers alone. These are declaratory judgments in the District of Columbia. You don't have to have witnesses there.

The Chairman. You have to have evidence.

Mr. Celler. You can have a bond document, affidavits. Most of these declaratory judgments are decided on mere affidavits. There is no difficulty in that.

The Chairman. Are there any other provisions in here by which you prohibit a State from passing any legislation unless the Attorney General says it is all right?

Mr. Celler. In other words, a State that has been a malfactor repeatedly, and that has been the case in a number of these States, they should not be privileged to repeat their sins all over again unless somebody supervises it.

The Chairman. Of course, you say States that have done all of that, but as a matter of fact this thing is triggered by 20 citizens. Any 20 citizens can go to the Attorney General and swear they have -- not swear, just say they have been discriminated against.

Mr. Celler. That is only for the appointment of examiners. It has nothing to do with the other provisions.

The Chairman. It triggers this election provision.

Mr. Celler. No. No, sir. The 20 persons making a complaint is only in connection with the appointment of examiners.

The Chairman. Then what triggers this other provision?

Mr. Celler. Where there is first literacy tests, and where 50 percent, less than 50 percent of the voting population have voted, and 50 percent or less have been registeredd.

The Chairman. And that is done on the allegation of 20 people who live in the State.

Mr. Celler. No, sir.

The Chairman. It says so anyway. It says you have to have 20 people.

Mr. Celler. Section 4 --

The Chairman. Who complain to the Attorney General.

Mr. Celler. The trigger section is Section 4. There is no mention there of 20 people. Page 14, commencing line 7.

The Chairman. Then, as you understand the bill, that is triggered by the fact all the people didn't rush up and vote like they have to do in Russia.

Mr. Celler. I can't accept that statement, sir. You don't want me to accept that either, Howard. You don't mean that.

The Chairman. That is what it says.

Mr. Celler. No, it doesn't.

The Chairman. It says if the people didn't vote.

Mr. Celler. That is right, didn't vote, but I can't

correlate that situation with Russia.

The Chairman. Maybe you and I might differ about that.

Mr. Celler. I think we do.

The Chairman. We have about some other things, you know.

But, nevertheless, if 50 percent of the people didn't vote, then that abolishes that test. Is that right?

Mr. Celler. It suspends the application of that literacy test.

The Chairman. All literacy tests. And how do they get out from under that burden?

Mr. Celler. They come down to the District of Columbia and show that the application of the literacy test was proper and wasn't discriminatory.

The Chairman. And prove that it wasn't?

Mr. Celler. Prove it was fair and equitable and just.

The Chairman. And that is decided by a distant court.

Mr. Celler. The District of Columbia Court is a three-man Court, not a District Court.

The Chairman. Not District, distant.

Mr. Celler. Two District Judges and one Circuit Court of Appeals Judge.

The Chairman. How long must we suffer with that compulsory voting provision in this bill before we can get relief? Suppose the District Court says, "No, you still don't do that."

Mr. Celler. There is no compulsory voting.

The Chairman. No, they don't take you by the nap of the neck and hold a billy over your head and say come on and go to the polls, they just say if you don't do it we are going to take away your literacy test and repeal your laws.

Mr. Celler. When the discrimination is at an end. That is the answer. There is no longer any coercion or any control by the Federal Government.

The Chairman. They have got to come to Washington and sue in the courts in order to get the State laws restored and enact any other laws.

Mr. Celler. When they go to the three-man court in Washington, we have a provision these cases shall be preferred on the calendar so they should be decided expeditiously.

The Chairman. I don't believe you and I are going to agree about any of this.

Mr. Celler. Beg pardon?

The Chairman. I don't think you and I can reach an agreement on any of this. One or two other things and I am about through.

You know it has always been conceded around here, and I think ever since I have been here there have been moves in Congress from certain elements to repeal the right of the State by Constitutional Amendment for the use of the poll tax for voting -- and it has always been conceded by everybody, apparently, certainly by the courts, that that required a

Constitutional Amendment, that Congress could not act in that field. Why did you change your mind about that?

Mr. Celler. I was one of the authors, with Senator Holland, on the poll tax amendment applicable to Federal elections. My bill originally provided for State as well as Federal elections, but in the interest of compromise I deleted the State election. The matter is not entirely clear. The Attorney General feels that it is better, would have been better not to include a ban on the poll tax by statute. The will of the Judiciary Committee was to put the ban on, and I can support that point of view.. I would say that the Constitution is not a straitjacket. In war --

The Chairman. It is not by any means any more.

Mr. Celler. I would say in war it is sort of a coat of mail. In peace it is like a lounging suit: it should be effective for every moment, especially in a great or sudden crisis.

The relevant Constitutional rule again was established once and for all by Chief Justice Marshall, a very distinguished Southern gentleman who came from your State, I think, Mr. Smith, and reading for the Court in McCullough vs. Maryland, Reporter 4316, he said: "Let the end be legitimate, let it be within the scope of the Constitution, and all means that are appropriate" -- and the word "appropriate" is used in Section 2 of the Fifteenth Amendment --

The Chairman. I remember that quotation very well.

Mr. Celler. All means which are appropriate, which are plainly adapted to that end, which are not prohibited but are consistent with the letter and the spirit of the Constitution are constitutional.

Since the ratification of the 24th Amendment poll taxes can no longer be used as a condition of voting in Federal elections, this bill would abolish poll taxes for the State elections. There are four States where poll taxes still exist. There is your own State of Virginia, Mississippi, Alabama, and Texas. I think Arkansas just completed the process of abolishing the poll tax.

The Chairman. I am very familiar with the clause you read, but you read rather hurriedly and slipped over it very adroitly, one clause in there which says Chief Justice Marshall said "Let it be within the scope of the Constitution."

Mr. Celler. The letter and spirit, he said. I think we have to look at the history of the poll tax to see what the purpose of enacting the poll tax was. The Senate Judiciary Committee in 1942 rendered a report in the 77th Congress which said as follows:

"We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the Constitutional Conventions by which these Amendments became a part of the State laws, will convince any disinterested person that the object of the State Constitutional

Conventions, from which emanated mainly the poll tax laws, were motivated entirely and exclusively by a desire to exclude the Negro from voting."

I recall reading a very admirable speech, a very brilliant speech, by the former distinguished Secretary of the Treasury, Senator from your State, Carter Glass, and the whole tenor of his speech, which was delivered at a Constitutional Convention in the early part of the century -- he explicitly said that the purpose of enactment of the poll tax and inbedding thereof in the State Constitution of Virginia was to prevent the Negro from voting.

It can also be asserted the poll tax has been applied discriminatorily against Negroes.

The Chairman. That was 65 years ago.

Mr. Celler. But that is the purpose of the poll tax.

The Chairman. Everybody, of course, knows that condition prevailed then.

Mr. Celler. Let me go further. I can tell you this: It can be asserted that the poll tax has been applied discriminatorily against Negroes. Three suits had to be initiated, and this is to compel the acceptance of the poll tax: U. S. vs. Cox, Tallahassee County; U. S. vs. Allen, Chickasha County; and the third case, Humphries County. The further basis for concluding that the poll tax contravenes the Fifteenth Amendment lays in the long-term segregation of Negroes and lack of equal

economic opportunity. In these circumstances, the $3 tax in Mississippi means much more to a Negro than to a white person. Abolition of the tax has also been sustained by the arbitrary restrictions and violation of the Fourteenth Amendment, but not that with reference to the grant of power of Section 2 of the Fifteenth Amendment which enables the Congress to pass appropriate laws. That includes not only the power to strike down the strictly illegal but also the power to eliminate any substantial risk of evasion of the Fifteenth Amendment, even to the point of prohibiting conduct that would be entirely legal if it had not once been entwined with the violation of constitutional rights.

I remember, Mr. Chairman, during the period of Prohibition when we passed the Eighteenth Amendment -- and I campaigned against the Eighteenth Amendment. I was an avid anti-prohibitionist. The courts, for example, ruled under the Eighteenth Amendment that Congress had the right to pass a law which infringed upon the right of doctors in the interest of the public health of the nation, that these doctors had no right to prescribe more than 30 prescriptions a month. The Supreme Court said that was a perfectly proper appopriate statute under the Eighteenth Amendment. And the Court went further. There were the so-called soft drink parlors in various States, and the courts held that since there was a tendency or there was an inducement in these soft drink parlors for the proprietors to

purvey to those who wanted hard liquor Congress had a right to pass a statute closing up the soft drink parlors. Now Congress probably could not have had the right to close those soft drink parolors standing alone, but since they were so closely related to what the Eighteenth Amendment prohibited, Congress said, under this huge umbrella of the Eighteenth Amendment, this was appropriate and they could get after that which otherwise would have been legal, namely, close up soft drink parolors. Therefore, I say that under this huge umbrella of appropriateness we have the right to abolish the poll tax.

The Chairman. Could I ask another question, somewhat personal? I believe your record on this question of constitutionality of an Act of Congress to abolish the poll tax has always been, up to now, and I am told that even in the Committee on the Judiciary you took the position you had always taken, that Congress could not constitutionally abolish the poll tax

3) provision, but it has to be done by an Amendment to the Constitution. You have changed your mind?

Mr. Celler. May I put it this way: I think it was Shakespeare that said, do I contradict myself, I largely contain multitudes; I have the right to contradict myself. Sometimes it is essential to contradict oneself in the interest of a compromise, and I compromised in order to get that 24th Amendment. I made those speeches in that regard in order to effectuate that compromise and to get that bill through providing for the

Constitutional Amendment. Of course, I compromised.

The Chairman. Yesterday your opinion was it could not be done, and that has been your opinion all your life, and today you say because of this bill it can be done. You have changed your position on the constitutionality of this Act.

Mr. Celler. In a certain sense, yes, but don't think you have caught me while in bathing and you have stole my clothing. You haven't. I am not embarrassed at all.

The Chairman. It is mighty hard to embarrass you.

Mr. Celler. Even Thomas Jefferson frequently changed his viewpoint depending on the circumstances and background.

The Chairman. And that is what you have done.

Mr. Celler. I will admit it.

The Chairman. All right.

Mr. Celler. Under those circumstances I have related.

The Chairman. This bill --

Mr. Celler. You know --

The Chairman. I was going to change the subject. You have confessed you were wrong either one time or the other time. I confess you are probably wrong both times. So I want to leave that and ask you just one more question.

Don't you think these examiners that you are going to put as commissars over the Southern people ought to be, not carpet-baggers, but people from the area?

Mr. Celler. They are appointed by the Civil Rights Commis-

sion. We put in the Civil Rights Commission as the appointing power -- I beg your pardon. The Civil Service Commission. We gave them the power because the Civil Service Commission is probably the most bipartisan of all of the bureaus and commissions that we have, and we felt we had a right to rely upon them, that they would do the right thing, that it would be nonpolitical and would be fair and just. That is why they were selected.

The Chairman. Now would you care to answer the question?

Mr. Celler. I think that does answer the question. They can appoint those who are from the State or those who may be from outside the State.

The Chairman. I am asking you why you don't have the commissioners in Virginia appointed from people living in Virginia. Surely, you can find an honest man there if you take a lantern.

Mr. Celler. If we limited it to a State we might be forced to appoint those who are imbued with the spirit of discrimination that exists in that State, and therefore we didn't want to make it exclusively outside the State, and therefore we figured that, as a sort of half-way compromise, we would set forth the Civil Service Commission as the agency to duly appoint them. They can appoint all of these officers within the State that they wish. They are not hampered in any regard.

The Chairman. But they are not required to give us local people. They can bring commissars from Hawaii if they want to.

Mr. Celler. They may take somebody from California and put them in Virginia or put somebody from Virginia in California.

The Chairman. That is what I am questioning now.

Mr. Celler. Or they may take all from Virginia; they have a perfect right to do that.

The Chairman. But why don't you have a qualification that they take local people at least from the Judicial District?

Mr. Celler. Because those who are appointed in the locale or the locality would be subject to all sorts of local pressures.

The Chairman. Don't you think you can find an honest man in the South?

Mr. Celler. I beg your pardon?

The Chairman. Don't you think you can find an honest man in the Southern States?

Mr. Celler. We probably can, but they would, nonetheless, be subject to pressures.

The Chairman. I have no further questions at this time. There will be other Members who desire to question you, I am sure.

(Discussion off the record.)

The Chairman. We will stand in recess until 2:00 o'clock.

(Whereupon, at 12:30 p.m., the Committee recessed, to reconvene at 2:00 p.m., the same day.)

The Chairman. The committee will be in order.

Are you ready, Mr. Celler?

Mr. Celler. Yes, sir.

The Chairman. Mr. Smith said he wanted to ask some questions but said he would be detained a little while.

Mr. Madden?

Mr. Madden. I am sorry I missed someof your testimony this morning. I have no questions.

The Chairman. Mr. Delaney?

Mr. Delaney. I pass.

The Chairman. Mr. Bolling.

Mr. Bolling. No questions.

The Chairman. Mr. Quillen?

Mr. Quillen. Mr. Celler, under the bill as you discussed it in your opening remarks, I believe you said it was designed to permit the Negro to vote in the South. Was I correct?

Mr. Celler. It was to permit the Negro to vote so as to avoid some of the obstacles placed in the path to prevent his voting.

Mr. Quillen. I was curious to hear that. I certainly believe every American should have the right to vote, wherever they are. I am also interested to hear you say that under the literacy test that it was banned in these sections in the South, which would permit the Negro to vote, although in your state, which has a literacy test, that it is not done

away with, that it is still permitted in your state.

Mr. Celler. That is correct.

Mr. Quillen. What is the significance? You have in New York, as I understand it, a lot of Puerto Ricans who can't speak English.

Mr. Celler. But there is no discrimination --

Mr. Quillen. And you have a lot of Negro people in New York. I mean, why the discrimination between these states and referring to the South when actually every American should have the right to vote.

Mr. Celler. Under Section 3 there is nothing to preclude the Attorney General from proceeding in New York State if there is discrimination in the application of the test in New York City. It is applicable all over the country.

As far as the literacy test in New York is concerned, we have no evidence whatsoever -- and I can testify from my own experience -- that in the application of that literacy test there is other than every degree of fairness. There is no discrimination between races in the application. In truth and in fact in the Senate bill there is a provision which would waive the literacy test where a person speaks a language other than English. That would mean that the literacy test would not actually be applicable to Puerto Ricans who speak Spanish.

I anticipate an amendment of that character will be offered on the Floor of the House when we consider this bill, and I would be very glad to accept it.

Mr. Quillen. Specifically, though, why does this measure exclude certain sections of the United States from its authority?

Mr. Celler. Section 3 is applicable all oer the United States.

Mr. Quillen. Yes, but the literacy test, such as exists in New York State, is not under the bill.

Mr. Celler. There is no discrimination in the application of the test. Where you have this triggering device under Section 4 there has been ample proof that the literacy tests in and by themselves are perfectly proper, but the application of those literacy tests, according to the evidence, massive evidence we have, clearly indicates discrimination in their application.

Mr. Quillen. Well, "indicates." I am from Tennessee and we have no problem in Tennessee.

Mr. Celler. I think Tennessee has no literacy test.

Mr. Quillen. We have requirements by state law as to the voting qualifications.

Mr. Celler. But you have no devices or literacy tests --

Mr. Quillen. Would it be fair to exclude one state as against another state? You say, though, there is nothing to indicate there is an unfair test given in New York State. Is there an indication that in these Southern states that this bill is aimed at that the literacy test is given in an unfair manner?

Mr. Celler. Not at all, because many laws are passed which are applicable to one state and not to another.

For example, the doctrine of equality of the states is defined in Coyle against Oklahoma, 221 U.S. 559. That is not abridged because the bill is operative in some states and not in others. It is not an objection of a constitutional standing that is chosen by Congress cannot reach all areas under the 15th amendment. There is nothing to militate against the statute just because it may be operative in one state and not in another, due to the conditions that prevail in that state. There is nothing unconstitutional. It doesn't impinge upon what is known as the equality of treatment.

Mr. Quillen. I have a feeling there is discrimination in the bill. Specifically let me ask you this: Why should the bill discriminate amongst the states by applying the brutally harsh penalty to some and a more traditional procedure for a remedy to others?

Mr. Celler. Because in those states where the formula applies we have massive, very severe, irrepressible, as it were, discrimination, of a very rampant and pervasive characteristic. The testimony is clear on that subject. Therefore, we apply this trigger in Section 4 to those particular states.

Mr. Quillen. Well, I think you will admit --

Mr. Celler. There may be, theoretically, inequality, but legally there is not. For example, tomorrow Tennessee embarks upon massive discrimination in the case of Louisiana

and Alabama and Mississippi. Then the law would be applied to Tennessee.

Mr. Quillen. Since the voter discrimination is wrong wherever it is practiced, why shouldn't it be treated equally wherever it occurs?

Mr. Celler. We do. We say in Section 3, if there is discrimination in any pocket or any area in the United States under Section 3 the Attorney General proceeds before the District Court and seeks the appointment of registrars to register. The same thing applies all over the country.

Mr. Quillen. That isn't so when it applies to your state in relation to these states which are covered.

Mr. Celler. It would absolutely apply to my state. If, for example, there is discrimination and the Attorney General brings an action and indicates the discrimination, Section 3 applies to my state. It would apply to Tennessee, Florida, California, any state.

Mr. Quillen. If what you say is true, why isn't it applicable to all 50 states?

Mr. Celler. Section 3 is applicable. In addition we have this very severe remedy in those particular states where there is massive discrimination, to meet that malady, to meet that illness. But that does not say that that is a violation of the equal treatment. If any state follows the example of those three states that I have mentioned, they would be subject to Section 4.

Mr. Quillen. I come back to your opening remarks. You said the bill is designed so that the Negro shall have the right to vote. I likewise agree with you that he should have the right to vote, but on the other hand, I say very strongly that all Americans should have the right to vote.

Mr. Celler. We have tired everything thus far. We have tried so many different ways by which we could get the Negro to vote. We have failed.

Mr. Quillen. That is not true in all states, because they do vote.

Do they all vote in New York?

Mr. Celler. No, but nothing precludes their voting. There is no discriminatory practice in New York to prevent them from voting as there is in those states where the trigger provision applies.

Mr. Quillen. How many states are applicable under this bill we are discussing today?

Mr. Celler. That is Section 4 -- Section 3 would apply all over the country.

Mr. Quillen. We realize that.

Mr. Celler. Section 4 would apply to Alabama, Louisiana, Mississippi, Virginia, Georgia, South Carolina. It would apply to 34 counties in North Carolina. It would apply to one county in Arizona, one county in Maine and one county in Idaho, and Alaska.

Mr. Young. Do you list those in the bill?

Mr. Celler. It wouldn't be in the bill. It is in the report.

Mr. Quillen. According to the bill Mr. McCulloch introduced which was considered by your committee -- and agreement has been reached to offer it as a substitute -- how many states does that bill cover?

Mr. Celler. It covers them all.

Mr. Quillen. I have been sitting here, and as you know, I am a freshman member of this committee, but it occurs to me that if we really want to be helpful to all the people of the United States that the bill would be all-embracing. When you design legislation in my opinion to discriminate, then you are defeating your purpose.

Mr. Celler. We need a remedy, an administrative remedy for the hard-core areas under Section 4. We need an administrative remedy for the hard-core areas. That is what Section 4 is. The judicial remedy, Section 3, applies all over the country.

Mr. Quillen. Under Section 4(b) of your bill if it is found a literacy test is being made in a discriminatory manner by one county registrar, why should that literacy test, if not invalid on its face, be struck down throughout that county?

Mr. Celler. It isn't. The literacy test need not on its face be invalid. It is the way that literacy test is applied. That is what we are getting after; not the

literacy test, itself.

Mr. Quillen. But the Court would have no choice but to do so?

Mr. Celler. Yes. Insofar as the appointment of examiners is concerned. That is correct. But there must be a finding. On page 12, line 25, there must be a finding by the Court, under Section 3, that the test or device has been used for the purpose and with the effect of denying or abridging the right of the citizens of the United States to vote on account of race or color.

Mr. Quillen. In other words, if there is a discrimination in any one area in that county, the matter cannot be corrected on its own, the whole county must be penalized?

Mr. Celler. No.

Mr. Quillen. That is under Section 3(b), now?

Mr. Celler. For example, if the violations are only few in number and they have been promptly and effectively corrected, and the continuing of such instances has been eliminated and there is no reasonable probability of recurrance, then Section 3 doesn't apply.

Mr. Quillen. Similarly if this trigger is activated, as is possible, by no more than the wrong-doing of a single local registrar, local power to change election laws or procedures can only be exercised upon approval or consent of the Attorney General. This is required if every other county or state official has carried out his duties without the slightest

violation of the 15th amendment. What justification is there for such a provision?

Mr. Celler. They can get out by coming to the District of Columbia and if they feel their new statutes or their practices are of such a character, and there is assurance there will be no discrimination, they can come to the District of Columbia and be excused and be freed from the operation of the statute.

Mr. Quillen. Does that justify -- that is the recommended remedy, but what is the justification for the provision in the bill?

Mr. Celler. Because if they are in this area of this massive discrimination, they should be under some form of duress, shall we say, because of thier conduct. "Once bitten, twice shy." If they want to have a new statute and it is clear on its face that new statute is proper, they can get out from under, very easily.

Mr. Quillen. That is the remedy, but what is the justification?

Mr. Celler. The justification is that experience has shown, Congress makes a finding that where there is less than 50 percent of the voting population voting, less than 50 percent of the voting population registered and that is accompanied in those states by literacy tests, uniformly there has been massive discrimination and therefore there must be, shall we say, a drastic remedy. This remedy is drastic. And therefore

we provide that this whole process shall be triggered. The Examiner shall be automatically appointed. They go in there and supervise the elections, because of the past conduct of these states.

Mr. Quillen. Under Sections 4 and 5, in your hearings hasn't the Attorney General himself admitted that the 50 percent test has nothing to do with the ratio of Negro to white voters?

Mr. Celler. That is correct.

Mr. Quillen. That is on page 91 of the hearings.

Mr. Celler. As much as statistics were available, that is correct.

Mr. Quillen. How does this arbitrarily connived formula even purport to show a pattern of discrimination?

Mr. Celler. That can be determined from the facts because of experience. These cases that have been brought have shown clearly that where these conditions exist, questions of registration, questions of voting, less than 50 percent -- and in others, literacy tests, the law would find Congress has a right to conclude there is this massive and very rampant discrimination which warrants Section 4.

Mr. Quillen. Even though the Attorney General admits that the 50 percent test has nothing to do with the ratio of Negro and white voters?

Mr. Celler. That is right. That is a question of statistical analysis and they have come to that conclusion. And

also the Civil Rights Commission has come to that conclusion. They have made very exhaustive studies on the subject and they have come up with the same point of view.

Mr. Quillen. Mr. Celler, at various times during the hearings the Attorney General concluded -- and you seemed to agree -- that a factual Congressional finding of present abuse of poll taxes was required in order for Congress to ban poll taxes by statute, but that such a finding was not justified on the evidence available.

Mr. Celler. Mr. Katzenbach has taken a different position than the Judiciary Committee of the House has taken. Mr. Katzenbach wanted merely a declaration by the House in the nature of an admonition to him or a direction to him that he should forthwith bring an action in the federal courts to test the state poll tax law. Well, we disagreed with him on that. The majority of the Judiciary Committee -- not all of us -- felt there should be an absolute ban.

Mr. Quillen. I refer you to the transcript of the sub-committee hearings, page 22 to 24. The Attorney General, pages 672-673. I believe that was your testimony on those pages. What evidence was introduced to change your opinion -- and the Chairman asked you that, today -- of the validity of the statutory abolition on the abolishment of the poll tax in the various states?

Mr. Celler. I tried to answer the Chairman as best I could about the abolition of the poll tax by statute as

best I could about the abolition of the poll tax by statute as embodied in this bill. There may be those who don't agree with me. The Attorney General doesn't agree with me on it.

Mr. Quillen. There is a difference there.

Mr. Celler. There is a difference.

Mr. Quillen. I won't persue that. I think you answered that fine.

But why is it necessary to ban poll tax or any other tax in view of many states which condition eligibility to vote in special elections such as bond issues, ad valorem taxes, on ownership of property and payment of taxes thereupon?

Mr. Celler. It would cover all those kinds of elections.

Mr. Quillen. I say why is it necessary to ban them?

Mr. Celler. I beg your pardon?

Mr. Quillen. Why is it necessary to ban these poll taxes or any other taxes?

Mr. Celler. Why is it necessary?

Mr. Quillen. Yes.

Mr. Celler. Because it is a weight on the right to vote. We want to free the right to vote from any weights, any obstructions. We want it free and untrammeled. And particularly because wherever the poll tax existed -- it only exists in four states -- in those states we have evidence, and the Civil Rights Commission confirms that, to the effect that there has been discrimination in the carrying out of the poll tax law. In many instances, for example, they refuse

to take the poll taxes when offered by the Negro. They will take it from the white, but they won't take it from the colored man. Now, that is certainly a discrimination which shouldn't exist. That is an absolute violation, and a flagrant violation of the 15th Amendment involving the poll tax.

We have evidence to the effect that publication would be to the effect that poll taxes could be paid at such and such an address on such and such hours on a certain day, and there would be a long que of white men and colored men lined up. The while men would be pulled out of line and given the right to pay their taxes. The colored men would have to wait, and then suddenly the office would be closed, and they would be told to come back the next day or next month. Sometimes an address would be given and when the Negro went to that address, he would find the address had been changed to another town.

Those practices are discriminatory.

Mr. Quillen. Were these facts brought out in the hearings?

Mr. Celler. Not in our hearings. We were told about them. They are found in Civil Rights Commission testimony.

Mr. Quillen. Mr. Celler, under the state laws in which this condition existed, if it did, and I don't doubt your word at all, isn't there already recourse in the courts under the existing state laws that would permit these people --

Mr. Celler. Don't be so naive to think that the colored man in some of those villages and counties could get redress

from those wrongs.

Mr. Quillen. Let's take this situation as you have described it. Now, under your bill, what would be the relief? Starting at the beginning, what would happen if that situation --

Mr. Celler. We banned the poll tax.

Mr. Quillen. Forget the poll tax, if it is Constitutional, if you will, but forgetting that, if the Negro is denied the right to register and to vote, how would the trigger action occur under your bill? How would he get relief? That individual we are speaking about?

Mr. Celler. In that case the federal registrars would be appointed and the federal registrar would substitute for the state registrar. He would register Negroes who applied for registration. After they are registered, the Negro would vote.

Mr. Quillen. How many have to complain before a registrar is appointed?

Mr. Celler. How many what?

Mr. Quillen. How many violations must occur?

Mr. Celler. In those states where there is so-called massive discrimination, immediately the registrars would be appointed by the Civil Service Commission and the Negroes would be permitted to register. They would be permitted to vote and the voting process would be supervised by watchers also appointed by the Civil Rights Commission. The vote would be tabulated and the Courts would have the right to issue interlocutory decrees to see that the elections were fair.

Mr. Quillen. In other words, you say where there is massive discrimination, and there is no proof to be presented according to what you just said -- in other words, the Federal Registrar would be appointed. I mean, there is bound to be some proof presented before the registrars are appointed.

Mr. Celler. What more proof do you want, for example, than the following as to whether or not there is discrimination: The story of the Negro voting rights in Dallas County, Alabama, could, until February 4th, be told in three words: intimidation, discouragement and delay. There has been blatant discrimination against Negroes seeking to vote in Dallas County at least since 1952. How blatant is evident from simple statistics.

In 1961 Dallas County had a voting age population of 29,000 of whom 14,400 were white persons, 15,115 were Negroes. The number of whites registered to vote totalled 9,194, namely 64 percent of the voting age total. The number of Negroes totalled 156, 1.03 percent of the total. Between 1954 and 1962 the number of Negroes registered had mushroomed exactly 18 -- 18 in seven years were registered.

Now, that story could be duplicated in scores of counties in those states that I have mentioned.

Now, what more proof do you want that there is discrimination than that?

Mr. Quillen. In other words, the federal registrars would be appointed, the machinery would be set into motion and

everybody then would not only have the opportunity but to some degree would be forced to register and forced to vote.

Mr. Celler. No, sir. There is no coercion at all. If the Negro doesn't want to vote, or the white man doesn't want to vote, nothing can compel him to vote. If he wants to vote, he should have the rightto vote.

Mr. Quillen. It keeps reoccurring in my mind -- and as I say, in Tennessee we encourage everybody to vote.

Mr. Celler. You have a good record.

Mr. Quillen. I am a neighbor of Virginia, and I have never known any discrimination in that state, and also in these states that are under this bill.

But it just keeps occurring to me as we go through this testimony, that the federal government is projecting itself and taking over the powers of the states, and that the voting qualifications should be established by the various states in the conduct of its own business.

Mr. Celler. Only when voting qualifications and the application of those voting qualifications violates the 15th amendment.

Mr. Quillen. Well, then, Mr. Celler, let me ask you if you have any figures of the number of Puerto Ricans voting in your city or in your state in comparison -- I mean those voting and those not voting, percentagewise, as you have read here in some of the Southern states. Do they all vote?

Mr. Celler. Pretty much they all vote. They come to New York and they learn English very quickly and they pass the so-called literacy test without any difficulties, but I repeat again, there is no discrimination whatsoever as between a Puerto Rican and a non-Puerto Rican in the application of the literacy test. None whatsoever in New York. But if there is -- let us assume there is. The Attorney General could come in and he could go into the Court under Section 3, here, and apply for federal registrars and they would be stationed in New York and they would supervise the registration of the Puerto Ricans as well as the whites.

Mr. Quillen. I had the privilege of going to New York on the Congressional tour and had a wonderful visit through Chinatown. Many of those people are Americans and eligible to vote.

Mr. Celler. There is no discrimination among the Chinese because most of those Chinese speak English.

Mr. Quillen. I mentioned Puerto Ricans; I mention the Chinese; I mention the Negro. I think that all Americans irrespective of race, creed or color, that everybody who is American should have the right to vote.

Mr. Celler. Well, suppose they haven't got the opportunity, what are we going to do; sit on our horns and do nothing?

Mr. Quillen. No, I think they have a bill, here, that is in your committee.

Mr. Celler. Which bill?

Mr. Quillen. Mr. McCulloch's bill.

Mr. Celler. Oh.

Mr. Quillen. Which makes the triggering action applicable to all the 50 states.

Mr. Celler. I don't see any point in arguing Mr. McCulloch's bill. I don't agree on it. I will be glad to speak to it on another occasion. When Mr. McCulloch offers his substitute, I shall have to oppose it, with all the dignity in my power, because I have the highest respect for Mr. McCulloch.

Mr. Quillen. And I have for Mr. McCulloch, and for you, too. But I think all Americans should have the vote, whether it is in Mr. McCulloch's bill or whether it isn't. I think the discriminatory legislation designed to cover only a few states, when it should cover all 50 states, is a little bit leaning the other way.

Mr. Celler. I have tried to give you an answer.

Mr. Quillen. Mr. Chairman, I have finished temporarily.

Mr. Pepper. Mr. Chairman, I was very much interested in hearing the able chairman making the comment he so forcefully made about Section 10 of the bill on page 23, providing for the abolition of the poll tax, on the ground that it was a restriction upon the voting rights of the people. The able chairman read in his statement from a report of the Committee on the Judiciary in the other body. It happened to have been that that report was presented by one of the greatest men whoever sat in the Congress, Senator Norris of Nebraska, and

it happened that it was upon my bill that the report was made to abolish the poll tax.

The purpose of that bill was to abolish the poll tax in federal elections. I think Congress possesses the power -- I never had any doubt about the ability and power of the Congress under the Constitution to abolish the poll tax in federal elections. The classic case I think was a clear authority expressed by the Supreme Court toward that end. I am gratified now that the same principle has been extended under the 15th Amendment to the abolition of the poll tax in local elections. I can attest that the legislature of Florida -- and I am glad a lot of my friends had a part in it -- abolished the poll tax in 1937. In the immediate election following, in 1938, after the abolition of the poll tax, the number of voters participating in that election jumped up many thousands, and many of the beneficiaries of the elimination of that restrictive burden were not the Negroes but the white people to whom the payment of that $2.00 was a burden of sufficient moment to discourage their participation in the franchize. So I am gratified that this great committee presided over by the distinguished chairman who has so well spoken here today, has put this provision in this bill. It is right, and it will do much to promote citizen participation in the elections of our country, in which they should take part.

I want to assure him of whatever little contribution I can make to the bill with this provision in it, I shall certainly do.

Thank you, Mr. Chairman.

The Chairman. Mr. Celler, I would like to clear up many confusing parts of this bill to me.

You have it so that a county is treated just as a state undercertain conditions.

Now, what is the difference between the treatment of a county where they vote less than 50 percent and a county that votes more than 50 percent?

Mr. Celler. If the state as a whole votes less than 50 percent, or registers less than 50 percent, the whole state is embraced in so-called section 4. The county has to go as the state goes.

The Chairman. You mean the 50 percent does not apply to a political subdivision within a state?

Mr. Celler. It does provided the state is not embraced as a whole.

The Chairman. I am speaking of the treatment of an individual county. Forget about the state. An individual county is included in this 50 percent just like a state?

Mr. Celler. Right.

The Chairman. Here is one county that has been found guilty of something that does vote more than 50 percent. What is the difference between the treatment of that county and the county where they have voted less than 50 percent and come under section 4-B?

Mr. Celler. Let's take North Carolina and Alabama. North Carolina as a state would not come into the formula. The totality of the voters in the state are more than 50 percent registered. But there are individual counties in North Carolina where that does not prevail, so the individual counties would be under the provision. In Alabama or Louisiana the whole state is involved.

The Chairman. I think everyone understands that.

What I am trying to get at is where there is discrimination established in a county, what is the difference in the treatment?

Mr. Celler. I am trying to give you an illustration in Louisiana.

Some of the parishes in Louisiana do not come under the formula. More than 50 percent of some parishes in Louisiana vote. But the state as a whole has a voting population of less than 50 percent of those who can vote.

No single county, regardless of condition of that county, can excuse itself. You would have lawsuits and what have you.

The Chairman. Every county in Louisiana comes in under this bill?

Mr. Celler. Yes.

The Chairman. I think some people down there would be glad to know that. Could there be an amendment in here that could exclude Louisiana?

Mr. Celler. In the Southern part of Louisiana there is pretty good compliance with the fact that Negroes vote. In most of the southern parishes the record shows that more than 50 percent of the people vote and are registered and a goodly portion of the Negroes vote. It is only in the northern parishes of Louisiana that you have the difficulty.

The Chairman. But as a whole, the state as a whole comes under the trigger provision, and every county is triggered?

Mr. Celler. Yes.

The Chairman. I want to know whether the reports that I have received are true that some amendment was hidden away in here that would exclude certain areas of Louisiana.

Mr. Celler. An amendment was offered in the committee along those lines, but it was rejected.

The Chairman. It was rejected?

Mr. Celler. Yes.

The Chairman. Louisiana does not have any special exemption in this bill?

Mr. Celler. That is right.

The Chairman. I think that will change a few votes.

Mr. Celler. Thank you very much, and I appreciate your patience.

The Chairman. I think I have not made myself clear.

I want to know the difference in the treatment of two counties in two different states. In one state the trigger provision has occurred and we know how that is treated. Those laws are repealed. The other county has voted more than the 50 percent, but it has been found that certain conditions prevail there that would require the appointment of examiners.

Mr. Celler. The Attorney General has testified to the effect that in the southern part of Louisiana where some of those parishes allow Negroes to vote without hindrance, where more than 50 percent of the population vote, he would not seek to appoint registrars. There would be no need to because those

elections are proper and the registration is proper. He would not interfere.

The Chairman. I thought the law said you had to appoint them if they do not vote 50 percent. Did you not just tell me that?

Mr. Celler. The appointment of examiners is not automatic. There is no automatic appointment of examiners.

The Chairman. I apologize, but I cannot make myself clear.

Here is a county, let's say in New York, that is just as guilty as sin. All sorts of things occur there and it is brought within the normal provisions of this bill. That county is going to be taken care of, is it not?

Mr. Celler. If that county comes within section 3 and there is discrimination, the Attorney General could apply to the courts for an appointment of examiners who would displace the state election machinery.

The Chairman. What is the difference between the treatment that county gets and the county that comes under the trigger arrangement?

Mr. Celler. In the first case, the thing would be as a result of the judicial progress.

The Chairman. I am trying to eliminate the state from the question. Forget about the state.

Say there is a county in New York where there is rampant discrimination. How is the remedy applied in that county?

Mr. Celler. In that county application is made to the court for the appointment of an examiner.

The Chairman. And they are appointed?

Mr. Celler. They are appointed.

The Chairman. How long do they operate?

Mr. Celler. Until the discrimination is removed, or there is reasonable assurance there will be no more discrimination.

The Chairman. The adjoining county, however, which is also sinful, has voted less than 50 percent and comes under the trigger provision. How is it treated?

What is the difference between the treatment, whether they vote 50 percent or less? Counties now, not the state.

Mr. Celler. In that second county where there is massive discrimination, the tests would be suspended automatically and the examiners would be appointed as a result of the administration of the Attorney General without the court.

The Chairman. Who would determine the county had sinned?

Mr. Celler. The Attorney General.

The Chairman. The Attorney General in that case would investigate the case and he would try the case and he would decide the case; is that correct?

Mr. Celler. If the county feels it is innocent, it can go to the District of Columbia.

The Chairman. So, having been investigated, tried and convicted by the Attorney General of the United States, the county's only chance of getting out is to travel to Washington and plead to the District Court?

Mr. Celler. That is unfortunate, but hard cases make hard law.

The Chairman. Would you tell me the states that come under the 50 percent trigger- Louisiana and Virginia, I know.

Mr. Celler. Virginia, Louisiana, Alabama, Mississippi, Georgia, South Carolina and Alaska. Thirty-four counties in North Carolina. One county in Idaho. One county in Arizona. One county in Maine.

The Chairman. If in the next election they still vote less than 50 percent, are they automatically convicted?

Mr. Celler. If the conditions remain the same, the remedy remains the same.

The Chairman. Supposing in the next election they vote over 50 percent?

Mr. Celler. If there is a court decision branding that particular county or state as being guilty of discrimination, there will be no change in five years.

The Chairman. If you come up here to Washington and get a court decision?

Mr. Celler. No. If there is a court decision, District Court decision, branding that state or that county as discriminatry, for five years they cannot be excused.

The Chairman. What if 90 percent vote in the next election?

Mr. Celler. It is still five years.

The Chairman. There are seven states that come under the trigger provision?

Mr. Celler. That is correct.

Mr. Quillen. Mr. Celler, what provisions do you have in this measure to protect the vote after it is cast?

Mr. Celler. The court. You have in your statement various statutes which give the court certain powers over the ballot.

On page 24, section 11, would take the place of your state law. It would protect the ballot and the counting of the ballot. The court shall have that right. The examiners would supervise.

Mr. Quillen. The counting of the ballot?

Mr. Celler. They are what they call watchers.

Mr. Quillen. Would they be federal watchers?

Mr. Celler. Federal watchers. The whole machinery is

taken over by the federal government.

Mr. Quillen. I have been reading that the District Court here in the District is some 28 months behind schedule. In other words, a case filed today is not disposed of for some two years.

Mr. Celler. We give preference to these cases under this bill. They will be expedited.

Mr. Quillen. To the point of immediate hearing?

Mr. Celler. Yes, sir.

Mr. Anderson. As I understand it, the automatic trigger in this bill does not operate in a state unless there is a literacy test provision.

Mr. Celler. That is right.

Mr. Anderson. So in Texas where there is no literacy test involved under state law, you would not trigger in the whole state, no matter how low the percentage was of people participating in the November 1, 1964 election?

Mr. Celler. Except there would be no poll tax. We would elimimate the poll tax.

Mr. Anderson. The poll tax does not trigger this procedure that the literacy test does?

Mr. Celler. No.

Mr. Anderson. In other words, if a state wanted to make

sure it never came under the automatic trigger in this bill after the passage of this legislation, assuming it passes, could they then immediately proceed to repeal any literacy test law they have? Would that wipe out the possibility of them coming under the trigger?

Mr. Celler. We provide the formula goes back to November 1964.

Mr. Anderson. In other words, they could not take any action after the passage of this law that would affect the situation in that regard at all?

Mr. Celler. Not as far as the trigger is concerned.

Mr. Anderson. It is section 3 that is the pocket trigger as opposed to the automatic trigger?

Mr. Celler. Yes.

Mr. Anderson. As I read section 3-B, even though in the proceeding that was brough by the Attorney General a case was established with respect to only a single county, or a single political subdivision within the state, a case was established showing there had been voting discrimination, the court could still enter an order that could trigger in the whole state, could they not?

Mr. Celler. I do not think so. The court would have no jurisdiction over anything other than the representative of

the county.

Mr. Anderson. It says in lines 4 and 5, page 13:

"It shall suspend the use of such test or device in such state or political subdivision as the court shall determine is appropriate."

Mr. Celler. The court cannot go beyond the defendant before it. It must be limited to the defendant.

Mr. Anderson. Your position would be if the county were a party defendant as opposed to the state, they could not grant relief beyond that?

Mr. Celler. That is right.

Mr. Anderson. There is no provision under this bill which would take care of the situation where a state did have a literacy test on the books and had always fairly applied that literacy test in a nondiscriminatory manner, but let's suppose last November 1, 1964, because of bad weather or because it was one of those states where we unfortunately have a one party situation, 49 percent instead of 51 percent of the people voted?

Mr. Celler. There is no such case. That is an "iffy" case. If there was such a case, they would go to Washington and excuse themselves.

Mr. Anderson. If there were such a county?

Mr. Celler. The county would go to Washington and cite the facts and they are excused.

Mr. Anderson. They would have to file a suit in the District Court of the District of Columbia?

Mr. Celler. Yes.

Mr. Anderson. Would it not be better to provide for that kind of a situation by triggering this on the basis of a certain number of meritorious complaints being filed rather than this artificial 50 percent?

Mr. Celler. That is the substitute amendment of Mr. McCulloch. It would be very easy for malcontents, political opponents, or just cantankerous ones to gather the number of complaints and start action. There would be a gigantic proliferation of suits all over the country. There would be an endless number of suits.

I offered a bill at the suggestion of the Judicial Conference for 45 new judges. I would have to have 545 new judges to handle the situation.

Mr. Anderson. Do you not think there are going to be quite a few lawsuits anyway filed under section 3, the pocket trigger section of the bill?

Mr. Celler. Not where you would have 20 or 30 persons complaining.

Mr. Anderson. A lot of us around the table want to attack the problem of discrimination, but we have the feeling as we read the language here you are using a blunderbuss instead of a rifle.

You admit it is harsh. I believe that is the word you employed this morning.

Mr. Celler. When you are suffering from political acne, and you have to use certain antibiotics to get rid of the acne --

Mr. Anderson. Sometimes if you use the wrong antibiotic a reaction can set in and the patient ends up in worse condition than before the use of the drug. Perhaps we are encouraging that situation.

Mr. Celler. I suggest you vote for Mr. McCulloch's substitute and vote this down.

Mr. Anderson. Thank you for giving me that option. I think there is a lot to be said for that position.

The Chairman. I am interested in Alaska.

Why does Alaska get in under this? Is there discrimination up there?

Mr. Celler. In Alaska, less than 50 percent of the population vote. In the last presidential election, less than 50 percent voted.

The Chairman. Does that automatically make them come to Washington to get excused?

Mr. Celler. If they want to get out, yes.

The Chairman. I think this is pretty harsh on Alaska.

Mr. Celler. Representatives from Alaska have no objection to this. They feel they can come to Washington and get excused without any difficulty, both senators and representatives.

The Chairman. Mr. Smith wants to ask you a few questions. Will you come back if we ask you to?

Mr. Bolling. I do not think we ought to assume he will come back. He will be available.

The Chairman. That is what I meant.

Mr. Celler. Thank you, sir.

STATEMENT OF HON. WILLIAM M. McCULLOCH,
A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OHIO

Mr. McCulloch. Mr. Chairman, I have been before this distinguished committee as long ago as 1957, and was here again in 1960, and was here in 1964 and again today.

It has long been my opinion that a government which is a representative republic cannot long endure if qualified citizens are denied the right to vote, so I am here today to present legislation which we believe will give the right to qualified citizens to vote in accordance with the Constitution and which will be, we hope, acceptable to a majority of the people.

I should like to say at the very outset, for fear the question might not be asked of me, that the Ford-McCulloch bill, H. R. 7896, will not take the Attorney General, or will not take any political subdivision into innumerable federal court cases.

There is no quick triggering provision in the Ford-McCulloch bill. It is a simple triggering device which provides that if 25 complainants with meritorious complaints complain that they have been discriminated against in the

exercise of their voting rights solely by reason of race or color, they may make these complaints to the Attorney General, and if he finds them meritorious he may forthwith request and see that federal examiners are appointed to examine the complainants and vote them if they are qualified to vote under state laws.

Mr. Chairman and members of this committee, I am pleased to say that we do not seek to nullify state requirements whether of a poll tax, or of literacy tests, if they are applied in a manner that does not discriminate contrary to the Constitution of the United States.

I noted with interest a question of the Chairman of this committee of why the 1964 Civil Rights Act, and particularly the title thereto with respect to voting, had not met the situation.

Of course, you will recall that the Civil Rights Act of 1964 has not yet been in effect one year, and the suits, if any, I repeat -- and the suits, if any, under the Civil Rights Act of 1964 have been negligible. They have not been brought by the Department of Justice.

There has been no fair time test of the Civil Rights Act of 1964. But we are in a great hurry to extend the right to vote to qualified citizens of this country, and I am one who

is in favor of seeing that qualified citizens are given the right to vote and do have the right to vote and have their votes counted and reported in the way that they are cast, so that is the purpose of the bill which we hope this committee will make in order as a substitute for the Celler bill, 4600.

I should like to summarize, if I may take some ten minutes, or 15, the major features of the legislation which I mentioned, that is, H. R. 7896, to indicate what we feel is an urgent necessity to present to the Congress a choice of legislation guaranteeing qualified persons the right to vote.

This bill which we hope will be in order as a substitute and which we hope will be accepted by the Congress, by the House, has, as I have indicated, a single simple trigger whereby citizens in a voting district -- and note I limit the territory involved -- who have been denied the right to register and vote on account of race or color may invoke a federal remedy to remove the practices and patterns of discrimination by which their right to the elective franchise is denied.

Mr. Chairman, I should like to say that we are not looking backward. We are looking forward. We want at the next election every qualified person in America to have the right to vote if he or she desires. We have no desire to penalize

any state or political subdivision thereof by reason of past sins of omission, or commission. We want to make it easy for political subdivisions to cleanse themselves of the errors of their ways and take on a new approach to this problem.

As I briefly indicated at the beginning, upon the receipt of 25 or more meritorious complaints, the Attorney General directs the appointment of federal examiners.

By the way, Mr. Chairman, they will not come from Alaska under our proposed legislation. They will not come from Washington, or New York to Virginia. These federal examiners will be selected from the state where the illegal discrimination has been alleged to take place.

If the examiner determines that 25 or more persons have been denied the right to vote by reason of their race or color, a pattern, or practice in that political subdivision is presumed to exist. The examiners are then authorized to list other applicants, and other applicants who assert they have been discriminated against and list them as eligible to vote.

The chief remedy of the bill, the provision of federal registration machinery, is thus directed at demonstrated discrimination at the voting district level.

Federal protection of the right to vote can be rapidly and effectively brought to bear anywhere in the 50 states if voter discrimination on account of race or color presently exists.

I should like to say, Mr. Chairman, that in the exercise of state rights in accordance of what we have determined or thought to be state rights for 175 or 177 years of our existence need not be brought to Washington to a three-judge district court on bended knee to have that legislation validated before it is accepted.

I have great respect for the Chairman of the Judiciary Committee, but I would want to seriously question if there are many, if any, precedents where states or political subdivisions thereof had first to come to a district court in Washington before legislation of a state or political subdivision was enforceable in the courts of that state.

I am sure the Chairman knows that if a state or a political subdivision thereof enacts legislation which is alleged to be contrary to the Constitution of the United States, that it is tested in the courts in accordance with the best traditions of our country and the test does not start in Washington; it starts in the district where the legislation was enacted.

Mr. Chairman, and members of the committee, there was directed to the very able Chairman of the committee questions concerning corrupt practices in the election process. It is regrettable in recent years in many of the states, or some of the states of the Union, there have been corrupt practices so that in some instances all votes that were properly cast were not counted, and in some cases not announced, and in some cases there were votes cast by phantom people, or tombstones as it has been described earlier today by one of the witnesses who was testifying.

It seems to me there is nothing more frustrating, or nothing that is more disillusioning, to an honest citizen than to feel that his or her vote is not counted or tabulated or reported in accordance with the way the vote was cast.

There was evidence, as the members of this committee know, submitted in the other body during the long debate over there where in at least one of the states of the Union there was undisputed proof that there were citizens who voted in more than one election district and their votes were counted and were reported in determining the results of the election.

The Chairman. Is that one of the states put under the trigger operation?

Mr. McCulloch. It is not under the triggering device,

Mr. Chairman. I think that was the State of Delaware. It is not under the triggering device.

You know, if a person voted two or three times, that state or political subdivision would not have to be cut by the arbitrary percentage of less than 50 percent of the people registering, or voting in a given election.

The Chairman. I have heard of such occurrences in some of the more populous areas of the country that happen to be north of the Mason-Dixon Line. There is nothing in the Celler bill to take care of these situations in New York or Chicago.

Mr. McCulloch. In my opinion, there is nothing, sir.

I think these states to which the Chairman refers were involved in instances which were well documented in the press and by the most reliable magazines in this country over a period of a decade or more.

I should like to touch on one other matter that I think is of the utmost concern in this bill and then I shall not go into further detail.

Under the Administration bill, under the automatic triggering, or under the triggering under section 3 (a), a citizen, an applicant may be registered to vote by an examiner

And although, if challenged by the State's Attorney General or anyone authorized to challenge that vote, that person is permitted to vote at the ensuing election, have that vote counted which may determine the outcome of the election pending the challenge and after the challenge has been determined, either by a hearing examiner, by a three-judge federal court, a court of appeals, or the Supreme Court of the United States, the vote still stands and a Member of the United States House or a Member of the United States Senate, or indirectly the President of th United States might be declared elected by illegal votes.

I do not like to use aggravated, harsh, or colorful language in describing a matter as important as this is. But I am sure, Mr. Chairman and members of the committee, you will agree upon proper analysis of what I said therein lies the seeds of possible revolution.

Let me say this to you, Mr. Chairman: In a time of great emotion, in a time when elections are determined by five, ten, or one thousand votes, if the Chief Executive of the United States is determined to have been elected by that many illegal votes, what could be the results?

The bill which was reported out by the Judiciary Committee has no provision -- and I say this without qualification -- the bill which was reported out by the Judiciary Committee has no provision for provisional voting and for impounding the votes. The Ford-McCulloch bill does, and if it had no merit other than that except in its most general features, we would be justified in accepting the substitute for that reason alone.

The Chairman. I thought the committee bill, the Celler Bill, provided that the results of the election were not to be announced until the challenge was settled.

Mr. McCulloch. Mr. Chairman, that is only in the reverse of the example which I have given. I repeat,

without using all the words that I used before, that an applicant may be registered, his registration challenged, and while the challenge is pending, before being determined by any one or all of the three places where the appeal or challenge can be heard, the hearing examiner, the United States Court of Appeals, or the Supreme Court, when the Federal examiner registers that applicant and election day comes and he casts his vote, the vote is counted, and there is no provision for provisional voting or impounding that vote. I challenge anyone to show where such a provision can be found in the bill.

The Chairman. I must have been reading your bill.

Mr. McCulloch. I think you were reading my bill, Mr. Chairman.

The Chairman. I thought, of course, it was in both bills.

Mr. McCulloch. It is not in both bills, Mr. Chairman.

The Chairman. And it is possible for these challenged votes to be counted?

Mr. McCulloch. Yes, Mr. Chairman, and determine the results of the election.

Mr. Quillen. Mr. Chairman, I asked Mr. Celler a direct question as to what happened to the votes after they were

counted and he answered in his bill provisions were included to see that they were counted, tabulated, and announced.

Mr. McCulloch. And affected the results of the election.

Let me read to you from this report, page 40 of the official report on this bill, and so that you may know it is not the opinion of only the Member from the Fourth District of Ohio, I would like you to look carefully at who signed this report.

Mr. Quillen. I had the same feeling when I asked the question.

The Chairman. What page are you reading from?

Mr. McCulloch. Page 40 of the report under the title "Provisional voting." It reads:

"Republican disagreement with the approach taken by the majority can be exemplified in analysis of but one of the many serious deficiencies in the committee-Celler bill: no allowance is made for provisional voting.

"Section 9 would give the right to vote to all of those who have been listed by Federal examiners, and would allow their votes to be counted and election results certified even though challenges to their listing, pending on appeal at the time of the election, could subsequently result in a finding that they are

not qualified to vote (subcommittee transcript, p. 59). There is no disagreement that Federal examiners must be made available to assure listing of citizens discriminatorily barred by State officials in violation of the 15th amendment. But to rush in and recklessly distribute the franchise in disregard of its integrity is a disservice to those citizens who have waited so long and trusted us to act wisely in assuring a full measure of representation.

"The united purpose of Congress should be to assure the integrity of the elective process by assuring a vote to each qualified citizen. The casting of a vote by a person who is in fact not qualified to do so may be viewed as an undesirable aspect of a plan to end voter discrimination."

I want to stress this next sentence:

"But to count such votes and certify the election of officials on the basis of such illegally cast votes is shocking. An end to voter discrimination need not be bought at the cost of corruption of the vote itself. The confusion, bitterness, and possible social upheaval that could result after a close election where the change of a few votes could have altered the final

outcome would destroy respect for the very process we here seek to preserve. It is no answer" --

I repeat, it is no answer --

"to leave such chaos to State process. Where Federal law creates such serious problems in State affairs, that same law, where it can be so easily done, should provide a solution."

We have an entire section devoted to just this provision, Mr. Chairman.

The Chairman. Was that an inadvertence on the part of the committee or did they consider that?

Mr. McCulloch. Mr. Chairman, that amendment was offered in the committee.

The Chairman. And voted down?

Mr. McCulloch. It was voted down, I regret to say, Mr. Chairman.

Mr. Pepper. Mr. Chairman, will the gentleman yield?

The Chairman. I would think so.

Mr. McCulloch. Yes.

Mr. Pepper. On that point, I notice on page 20 of the bill, sub-paragraph (d) at the bottom of the page:

"A person whose name appears on such a list (that is, a list certified by the examiner) shall

be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States."

In Section 9 on page 21 provision is made for the challenge of a voter listed to be eligible by the examiner before the Civil Service Commission. And then on the next page it is provided that:

"Such challenge shall be determined within fifteen days after it has been filed."

And then it says:

"A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court."

So there is a procedure for challenging including judicial review, is there not?

Mr. McCulloch. Of course there is so far as it goes, but it does not protect the right to have the vote impounded and provisional voting if the decision be by either the court of Appeals or by the Supreme Court after the vote has been cast, counted, and has determined the result of the election.

Mr. Chairman, I want to say this: I have such a deep feeling about this and I am so concerned about it that I have tried to make sure that my statement is absolutely correct. While we are not bound by what the Senate does or what the Senate does not do, the press of the country was almost two to one in believing there was a provision for provisional voting and impounding the ballots. I called the Senate several days after the bill had passed the Senate and talked to one of the major architects, if not the major architect, of the bill and he said it was not in the bill. He said it had been in the bill in committee but it had come out. If the Chairman were here today I am sure he would say my statement is right, and it could be varied only, Mr. Chairman, by this equivocal statement which I make.

Of course a court of equity has great power and if it chose to do so, if the case on appeal got to the court of appeals before the vote was cast and counted and used to declare the result of the election, the court might order the impounding of the ballots if it were not too late, because then they probably could not be identified.

Mr. Pepper. If the gentleman will yield, may I call attention to the bottom of page 24, a provision with which I am sure the able gentleman is familiar, beginning on line 21:

> "Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any record of voting in such election made by a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

Would not the ordinary election laws, which provide, as I understand it in the States, for reasonable safe-keeping of the ballots after an election, apply to these ballots, and would not the local law apply to the preservation of these ballots just like other ballots? And you have the

additional safeguard of this statute that says anyone who destroys, defaces, mutilates, or otherwise alters the marking of a ballot or alters any record of voting shall be subject to fine and/or imprisonment. It seems to me there is a clear implication there.

Mr. McCulloch. I am very glad to answer both prongs of your question.

In the first place, this provision beginning on line 21 of page 24 is a simple provision preventing the alteration, destruction, or mutilation of the ballot. It does not go to the casting, counting, tabulating, and using as a result of the election these ballots which go into a box without being marked. Therein lies the difficulty.

Furthermore, to answer the other prong of the question, this legislation, if it passes, will supersede State legislation in the matter of the election of the President, the Vice President, a United States Senator, a United States Member of the House of Representatives.

I have an able staff man with me. By the way, Mr. Chairman, I drafted him from the office of the District Attorney, Mr. Acheson, here in the District. I will ask him: Is my statement completely accurate?

Mr. Hoffmann. I believe it is, sir.

Mr. Pepper. Do you mean the local election laws regarding the impounding of ballots would not apply to the ballots of the people certified by the examiners?

Mr. McCulloch. It is my opinion this supersedes State laws, but it provides for no provisional voting or impounding of the ballots.

Mr. Pepper. Does the gentleman assume there is no law now for the impounding of ballots cast in an election? I mean other than this bill, State law?

Mr. McCulloch. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court. There is no provision for impounding of the votes.

Mr. Pepper. To show this law does contemplate being integrated in with the local law, is there any place that defines where the election will be held, who shall conduct the election, the time, and everything else? Does this not prove that this is simply imposed on the local law and would not supersede the local law except when in conflict with it? This just is superimposed on the State law? Is that true?

Mr. McCulloch. This law says the vote shall be cast. In any event, Mr. Chairman, --

The Chairman. Suppose 50 ballots are put in there that are challenged. There is no provision to impound or to mark them and suppose the court very promptly comes in and says, "Let us look into this thing" and the court opens the ballot box, what can it tell after it is opened? The court cannot tell if the challenged votes were cast one way or another.

Mr. McCulloch. The Chairman has put his finger right on the crux of the matter. I want to say this: If what I said is already encompassed within the State law, why then should there be opposition to having a section doing just this or, as said in the report, since we have created even at best this wilderness where some minds cannot agree, why should we put the burden back upon the State when we have created the burden?

Mr. Pepper. Mr. Chairman, I have, as a lawyer, as I am sure other lawyers have, conducted some election contests and, at least in my State, you always have to show that the ballots that were illegally cast influenced the result of the election.

The Chairman. When a person gets in the voting booth he has a right to vote any way he wants to and you do not know if he voted one way or another.

Mr. Pepper. You do not know that in any election.

Mr. Young. Do you mean you cannot identify the ballot? In the State of Texas you have a corresponding number that this man signs.

Mr. Bolling. You certainly do in Missouri.

Mr. Young. You can identify it.

Mr. McCulloch. Mr. Chairman, I think I can bring some of the discussion to an end by quoting from the hearings before our committee, page 59, and I should like anyone interested in this to take this citation. The Attorney General was on the witness stand in the House and the Chairman said this to the Attorney General, Mr. Katzenbach, on this very subject:

"The Chairman. In other words, the vote could be counted although it may be found later that he did not have the right to vote.

"Mr. Katzenbach. Yes, that is true. This follows in that respect the normal State procedures. If there is a challenge and the challenge is heard and disposed of by a hearing officer as it can be under the act and the hearing examiner decides the person offering to vote is properly on the voting lists, then if the court should fail to make a decision by the

time of the election -- which is an unlikely event, the hearing examiner having made the decision of eligibility to vote -- the person would vote and his vote would be counted."

I rest my case on that.

Mr. Young. Mr. Chairman, I think we should recognize the distinguished Governor of the State of Kansas, a former member of this committee.

Mr. Madden. I think he should come and take his seat.

Governor Avery. You never were anxious for me to take it before.

Mr. McCulloch. Mr. Chairman, I will be glad to submit to any questions.

The Chairman. Mr. Bolling.

Mr. Bolling. The thing I am not clear on, I take it other States do not have provisions that make it easy to detect fraud. My first involvement with politics was an investigation of frauds perpetrated by my own party in Kansas City, so I have some awareness of the problem, but I can see no difference in the circumstances you describe and those which exist with any fraudulent vote casting. In my State we do have a law which provides for a proper official, in the case of an election contest, to be able

to identify who allegedly cast a ballot. This is a violation of the secrecy of the ballot and if abused it would be, but the only way a person can say a vote is fraudulent is by identifying who cast it, and I cannot imagine any State that cannot identify who cast a ballot.

Mr. McCulloch. Some States have no way of identifying who cast a ballot, and in a State like New York -- and I am a poor person to be talking about New York laws -- they have provision for challenging right then, but if it be appealed and the challenge is sustained you can see where this leads in this legislation, Mr. Chairman.

The Chairman. I certainly do not see how anybody could object to impounding the ballots so you could know. Why did not you put it in the bill?

Mr. Pepper. Judge, I would say this, if you will allow me. One of the criticisms about this bill is that it is intruding the Federal power in State elections. I thought Federal authority would be exercised only in cases where it was necessary, and primarily to prevent discrimination. I would be surprised if there is any State that does not have laws providing that the ballots shall be preserved for a certain length of time after the election. The able gentleman overlooked something, it seems

to me, when he said votes can be cast and counted although challenged. When I look at page 22, line 10, it says: "Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court."

If a challenge is made after an examiner certifies a name and the election intervenes before the decision by the examiner or the court, that ballot can be declared invalid and subtracted from the result. That is true in every case.

Mr. Quillen. How will you do that?

Mr. Pepper. You would have to subtract the illegal vote and try to do it by affidavit and the like.

Mr. McCulloch. Mr. Chairman, only part of the discussion has been on the illegality of the casting of the vote, not the initial registration, which is that which is the primary thrust of this legislation.

In any event, I have made my presentation. I think it is a matter of very great concern.

Mr. Pepper. Is it not a fact all this deals with primarily is to protect the right of a person to be registered and, in accordance with law, to vote. What type of illegality does the gentleman contemplate in voting?

Mr. McCulloch. There could be several. There could be nonresidents, there could be non-age.

Mr. Pepper. This is not designed to impair those provisions of State law?

Mr. McCulloch. You missed the point entirely, Senator Pepper. If a person seeks to register and gives his age as 22, and the voting age is 21 and he is really only 20, and he gives his residence as Podunk, Florida, when his residence is in Ohio, he is disqualified to vote, and if he is registered by the Federal examiner and then casts a vote, he has cast an illegal vote, has he not?

Mr. Pepper. Are you assuming he was not challenged before the election?

Mr. McCulloch. No, he was challenged immediately after he was registered.

Mr. Pepper. Then this decision of the court would subsequently determine he was disqualified.

Mr. McCulloch. In the meantime, the vote would have been cast, tabulated and counted.

Mr. Bolling. What does the gentleman's substitute provide for curing the situation? Does the provision of the gentleman's substitute provide that if a person in an area where there is no question of any discrimination

lies about his age or his residence in such a manner that he qualifies when he should not be qualified, could you bridge this gap under all State laws?

Mr. McCulloch. If you cured this in all cases, not only where it might be alleged discrimination, --

Mr. Bolling. If I understand what the substitute is, it seems to me you are curing in an area where there will be the least likelihood of the event taking place where there is, I suspect, a vast amount of this in every State.

Mr. McCulloch. My answer to that question is we attack the problem by reason of the fact a Federal examiner was going to register a person and if he were not entitled to be registered the bill went on to provide that he might cast his vote even while under challenge, and if before final determination the election came on, the vote was cast, counted and affected the results thereof.

Mr. Bolling. This is just limited to this? There could be other frauds that are not attempted to be cured?

Mr. McCulloch. Not except under the general approach to fraudulent election practices which are covered by a complete title in this bill.

Mr. Pepper. Just what does your provision do? You do not let the man vote?

Mr. McCulloch. Certainly, let the man vote and his vote is a provisional vote and his ballot is impounded pending the final determination of the challenge.

Mr. Bolling. Where is it impounded?

Mr. McCulloch. It is impounded in the registrar's office. That is a technical detail.

Mr. Bolling. A highly important technical detail, depending on who the registrar is.

Mr. McCulloch. We have provisions as to the destruction, defacing, mutilation or alteration, and so forth.

Could I read this section? Here is a paragraph on page 9 of the Ford-McCulloch bill, sub-paragraph (d):

> "Any person who has been placed on a list of eligible voters shall be entitled and allowed to vote in any election held within the voting district unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with section 10. If challenged, such person shall be entitled and allowed to vote provisionally with appropriate provision being made for the impounding of their ballots, pending final determination of their status by the hearing officer and by the court."

You see that point, "pending final determination of their status by the hearing officer and by the court."

Mr. Bolling. Mr. Chairman, will the gentleman yield?

Mr. McCulloch, you know I have the greatest respect for your judgment in these matters from practical experience I have had over a period of time, but what I conclude from this is that it is entirely possible we could decide a Presidential election in March when the President should have been sworn in in January. I assume the process would be quite rapid, but it would seem to me there could be delaying tactics that would leave us in a horrifying situation.

Mr. McCulloch. You know, in a limited way there was this very question in the case of Minnesota following the 1964 election. That was a close election and the votes were impounded and the question of who was Governor of Minnesota was not determined until the 4th of April.

Mr. Bolling. You have a better example in a Presidential case.

Mr. McCulloch. It seems to me this could affect the Presidency only if the election was so close that one or two States were the pivotal States, and certainly the court of appeals and the Supreme Court of the United States,

with the country in such a condition and with its unlimited power to schedule cases for determination, would have decided it long before the January following.

Mr. Pepper. What if millions of challenges were filed?

Mr. McCulloch. And what kind of chaos would there be in this country if McCulloch was elected over Bolling and I would be elected by 100 illegal votes as later determined?

Mr. Madden. In that case there would not be chaos until later.

Mr. Pepper. That is what happened in the Tilden-Hayes contest.

The Chairman. The committee will recess until Tuesday at 10:30.

(Thereupon, at 4:10 p.m. on Thursday, June 24, 1965, the committee recessed until Tuesday, June 29, 1965 at 10:30 a.m.)