I N D E X

JJG
10:30 a.m.

H. R. 6400

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

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WEDNESDAY, JUNE 30, 1965

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House of Representatives,

Committee on Rules

Washington, D.C.

The Committee met, pursuant to adjournment, at 10:30 a.m., in Room H-313, The Capitol, Hon. Howard W. Smith (Chairman) presiding.

PRESENT: Representatives Smith (Chairman), Colmer, Madden, Delaney, Trimble, Bolling, Sisk, Young, Pepper, Smith, Anderson, Quillen.

The Chairman. The Committee will be in order. We shall resume hearings on H. R. 6400.

We shall be happy to recognize the gentleman from North Carolina, Mr. Whitener.

STATEMENT OF HON. BASIL WHITENER, REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Whitener. Mr. Chairman and members of the Committee on Rules, the bill, H. R. 6400, which you have before you, came out of the Committee on the Judiciary, of which I am a member, and in the report of the Committee I filed Minority views,

along with Mr. Dowdy, of Texas and Mr. Ashmore, of South Carolina, in which some of my objections to the legislation were set forth.

The Committee on the Judiciary dealt with this legislation at some length. There were some 70 amendments tendered. There were a few adopted.

I think it is significant that originally we were told, at a meeting at the Justice Department, that a product had been arrived at as the result of a consensus of thinking on the part of members of both of the major political parties, the Executive Department, and the leadership in the Congress.

Well, if you gentlemen will look at the end product of the Judiciary Committee you will find that apparently there had not been a very sound consensus reached because the product which finally evolved was quite different from the one which was sent up to the Committee originally, or sent up to the Congress by the Executive Department.

Another interesting thing, and I don't know whether any one else has mentioned this in their testimony or not, another interesting thing that evolved was that the majority of our Committee placed upon the Civil Service Commission responsibilities which the Civil Service Commission sought to avoid, and said that they did not feel that they were in position to assume these responsibilities.

Notwithstanding this, the Committee in its final

decision determined that the Committee knew best what the Civil Service Commission should do.

I shall point out to you in a brief way just what the Civil Service Commission will wind up doing under this legislation.

In Section 6 of the bill it is provided that under certain circumstances the "Civil Service Commission shall appoint as many examiners or sub-division as it may deem appropriate"--, and so forth.

Then in Section 8 it is provided that "The Civil Service Commission, at the request of the Attorney General, is authorized to send observers to any election"-- held in any political subdivision where an examiner has been appointed pursuant to the Act.

Then section 9 states that "Any challenge to enlisting on an eligibility list"--that is of a prospective voter-- "shall be determined by hearing officer appointed by and responsible to the Civil Service Commission under such rules as the Commission by regulation shall prescribe."

Then it gives the Civil Service Commission the right to subpoena witnesses, require attendance of witnesses, and so forth.

It is fairly apparent to anyone who understands the judicial process to see why the Civil Service Commission would object to being put in the position they are being

placed in with this legislation, to wit, the appointment of observers and the setting up of procedures, the appointment of examiners, and then the Commission determining whether their own agents have done what should have been done under the circumstances.

We lawyers, if we were interested merely in winning lawsuits, if we were to ask for such a situation as that I am sure that any other lawyer would question our ethics if we were to go into court with that type of procedure.

I pointed out in our minority views, and I want to point out here, that I believe just as strongly as anyone in the Congress that nothing could be more deplorable than depriving a qualified voter of the right to vote. That is unheard of in the area of North Carolina from which I come, and I daresay it is unheard of in the area which would fall under this bill because of the phony formula which has been created.

I have here with me the IBM information which our Board of Elections has in nine precincts in my home town. This is the only information one can have about the Civil Service Commission or anyone else. In one of these precincts, number 7, I would say that 96 percent of the voters are members of the Negro race, and I might say parenthetically we Democrats usually have about a 1800 lead when we come out of that box, and I am very appreciative of that.

However, you can look at any one of these precincts

and you will find that the only thing you have is the precinct number, the name, and the party affiliation indicated by the D, the R or the I, and the street address, and I suppose after that is the state.

I say this formula is phony. I think I have some basis for it because if you will look at the evidence before our Committee and the evidence which the Civil Rights Commission usually sends to us, and the Attorney General sends to us, you will find they have no accurate basis for making this determination in any state.

If you will look at the hearings commencing on page 128, under Alabama, starting at page 135 and going down to page 142, you will note that these figures are unofficial figures from the Birmingham News of May 3, 1964. That is the number of white and colored registered.

Footnote 3, which is the percentage of total voting-age registered, they say "If the estimated total population of November 1, 1964 published by the Census Bureau in a news release, dated September 8, 1964, were used as a base this percentage would be 53.7."

When you go to Arkansas, going down to page 151, on the number registered it states "These are official figures. Arkansas has had no permanent registration prior to 1965. County registration figures represent sales of poll tax receipts as reported by the State Auditor as of October 1963."

Then when they get to the percentage of total voting age population registered they say this: "1964 figures show 63.8 percent of the voting age population registered. This is based on 1,124,000, the estimated total population as of November, 1964, published by the U. S. Census Bureau in a news release dated September 8, 1964, and 717,537, the official 1964 registration figure reported by the State Auditor as of October, 1964."

Of more interest to me was the fact, and I will skip over some of these, was North Carolina. I note they say the figures on the number registered of white and non-white, the footnote states "Unofficial figures. Published by Voter Education Project of Southern Regional Council showing registration as of 1964. Registration figures for other counties are not available."

Gentlemen, this is the type of information that the Attorney General and the Civil Rights Commission bring to us as the basis for this formula, and then they write into the bill, our Committee does, these words: "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 of the Federal Register."

So if I read this bill correctly, the Attorney General can clip an article out of the Birmingham News, he can take

take a report from the Voter Education Project of the Southern Regional Council, this organization that many of us are familiar with down our way, or --

Mr. Colmer. It is biased, is it not?

Mr. Whitener. It has been so alleged over a period of several years.

Or he can take a story out of the Washington Post, or any other source he wants, and once he publishes that as the fact, in his opinion its being a fact, in the Federal Register, then there is no court in the land that can overcome it. I say that this is just one of the many things in this bill that concerns me a great deal.

Another thing that has been touched upon by Mr. Hutchinson yesterday very ably, and I am trying to move along because I know you gentlemen have other witnesses and other things to do, is this language in section 5, the so-called poll tax section.

In my own state we do not have any property qualification attached to voting in any kind of election. We did not before the Constitutional amendment was adopted, had not for many years had any poll tax requirement as a prerequisite to voting, but I think that this language goes far beyond that when it says that 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.

As Mr. Hutchinson so well pointed out, and I shall not repeat his contention, there is no reasonable relationship between that provision or that language and any discrimination against voters on the basis of race or color.

I have been in public affairs for a long time and I have never heard of a tax collector anywhere refusing to accept taxes from anybody that wanted to pay them. Certainly we should not by this legislation, in my judgment, strike down the law of the State of Michigan, Texas, or any other state which has a requirement that before one can participate in a bond election, or in an election of any sort which increases the public debt of the community, he cannot be required to be a property owner. I shall not dwell on that but I think it is a very material thing and Mr. Hutchinson has rendered a great service in discussing it so ably yesterday.

There is another aspect of this so-called poll tax section. In the last Congress I was one of the enthusiastic supporters of a Constitutional amendment which would outlaw the poll tax as a prerequisite to voting in Federal elections. Some of you gentlemen did not agree with my view at that time, and I have no quarrel with you, but I felt it was the proper thing to do, and I still feel we did the right thing in proposing this amendment to the various legislatures.

At that time some of the same people who are most

active in supporting this bill-- in fact, if I remember correctly the authorship of H. R. 6400 is the same as the authorship of the Constitutional amendment so far as the House is concerned-- took the position that in order to accomplish that purpose which they felt was worthy, and which I agreed was a worthy one, that the only way we could do it was by Constitutional amendment. That is now in our Constitution.

But these same gentlemen, and many other people, seem to contend now that we can strike down the poll tax as a prerequisite to voting in state and local elections merely by statute.

Gentlemen, I do not agree with that.

In the recent case of Lassiter against North Hampton County which came up in our State of North Carolina the Supreme Court said, among other things, the following: "The states have long been held to have broad powers to determine the conditions under which the right of sufferage may be exercised, so while the right of sufferage is established and guaranteed by the Constitution it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its Constitutional powers, has imposed."

And they go on and say that when the 14th Amendment speaks of the right to vote, the right protected "refers to

the right to vote as established by the laws in the constitution of the state."

Then in March of this year in Carrington against Rush our Supreme Court of the United States said "There can be no doubt either of the historic function of the states to establish on a non-discriminatory basis and in accordance with the Constitution other qualifications for the exercise of the franchise. Indeed, the states have long been held to have broad powers to determine the conditions under which the right of sufferage may be exercised."

Mr. Colmer. May I interrupt the gentleman to emphasize that that decision of this so-called liberal Court--

Mr. Whitener. The present one.

Mr. Colmer. -- was rendered in March of this year?

Mr. Whitener. That is correct. They say this: "In other words, the privilege to vote in a state is within the jurisdiction of the state itself to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

Gentlemen, that is what the Supreme Court has consistently said, as the gentleman from Mississippi points out has said so recently as March of this year.

The Chairman. What was the name of that case?

Mr. Whitener. Carrington versus Rush.

PUBLISHER'S NOTE:

Page(s) missing in original.

So we see that this language in section 10 seems to be heading right against the philosophy of the Constitutional Amendment which we had in the 88th Congress and directly in the eye of the Constitutional storm, if we may refer to it that way, set forth here in Carrington against Rush and Lassiter against North Hampton County.

Here is another thing that bothers me a great deal about this legislation, and perhaps more because I am a North Carolinian than it would another member of Congress--but this bill would give to the Attorney General of the United States a power which the people of my state have been unwilling from the day that our Constitution was written to give to the Governor of the state, and that is the power of veto of legislation. Yet in this bill we see that because, under this phony formula, there are a few counties in eastern North Carolina that may fall under it, that our legislature cannot change the qualification, prerequisite to vote, standards, practices or procedures with respect to voting unless they first submit that all to the Attorney General, who has 60 days to think about it, and then if he doesn't approve it the only way they can get out from under his decision is to run up here to Washington and go into the District Court here and have the door to the three Federal Districts in North Carolina closed to them.

I say that this is a power that no non-judicial officer

should have, no non-judicial Federal officer should have.

I think we have the courts to determine the constitutionality of these actions by the legislature and the actions of the administrative agencies, and that this is creating in the Attorney General a position of being a partial governor of the states which might become involved in this situation.

Another thing which has been discussed at great length, I am sure, is the fact that this does not apply to everyone alike, it is apparently deliberately written so as to affect only certain areas which will be affected on the basis of newspaper articles, the Southern Regional Educational organization, and people of that sort, so I will not dwell on that. But gentlemen, as I conclude, may I re-emphasize that I feel so strongly that this legislation as written should be considered by every Federal judge in the United States other than the Federal judges in the District of Columbia as an expression of Congressional contempt for the Federal judiciary, because it is in effect saying that no state or no county can have their cause, if they want to come to the court and get out from under an adverse ruling by the Executive Department, the only place they can come to is here to a handful of judges in Washington; that the six fine district judges in North Carolina are unfit to pass upon this; that the five members of our Circuit Court of Appeals in our circuit, even though the chief judge comes

from Maryland, a little bit north of the District of Columbia, is unfit to pass upon a contest between a state and local government and the Attorney General or the Federal government in these cases.

I said this in the Committee and I shall say it on the floor of the House-- I think that any of us who vote for this type of legislation with this provision in it are in effect casting a reflection upon every friend or every acquaintance that we have on the Federal bench unless they are here in this particular jurisdiction.

Unless there are questions that is my statement.

The Chairman. The gentleman from Mississippi?

Mr. Colmer. Mr. Whitener, I read your minority report and I have listened to your testimony with great interest. I want to express as one member of this body my appreciation for the effort you put into and the consideration you have given to this monstrous legislative proposal.

You covered the ground so well in a brief time that it is difficult to do anything but to emphasize the points you made.

You referred, Mr. Whitener, to observers, supervisors, and Federal registrars. Is it not a fact that back in a similar hysterical period back following the war that Congress did pass a law providing for these Federal supervisors and that the result was a political manipulation not only

in the South but in other sections of the country, particularly in the great urban centers of the country, and that there was so much political corruption in it that it was repealed? Is that not factual?

Mr. Whitener. I don't know about the legislative history but I do know from my study of history that that was done and it was not in vogue when I became aware of elections in our youth. I hate to trespass upon your time but may I point out one other thing which perhaps is true in the District--

Mr. Colmer. I think it is worth emphasizing here because it might affect some other people than those which this gun is aimed at.

Mr. Whitener. If I may, in defense of my own state, and this is something I had overlooked, say this: I am told by members of the House who represent those areas that there are at least six counties in this bill which would be covered under this bill according to this information we get which would not be covered except for the presence of families of military personnel and their dependents. I meant to mention that to you gentlemen.

We tried to get an amendment in the bill which would provide that dependents and military personnel would not be counted in making up this 50 percent formula because they are not eligible to vote necessarily in the area where they

are counted. The same thing may well be true in an area where you had a large university, where university students are counted as population within the community where the school is located but yet they would not be qualified voters, so we do have some figures on that. I shall not bore you with them.

The Justice Department took the position that it would be cumbersome to get those figures from the Department of Defense. I suppose it is more cumbersome for them to do that than to clip the newspapers, but that is their position.

Mr. Colmer. What you are saying there in effect is, is it not, that the information upon which this is based is not reliable information, that this so-called census does not have the sanctity of approval of some responsible government agency.

Mr. Whitener. I think that is indicated in the basic material upon which they are basing their conclusion when we go to your own State of Mississippi.

On the number registered they say that these are unofficial figures furnished by the Department of Justice showing registration as of a median date, January 1, 1964.

Here is the Department of Justice saying what those figures are, and the Department of Justice under the Attorney General is the one who will say whether this formula applies to your state.

As to the percentage of total voting age registered they say that in Mississippi this is based on unofficial state-wide registration figures as of November 1, 1964 furnished by the Voter Education Project of the Southern Regional Council, so when I say that the formula is phony their own evidence proves the point, that they are basing it on all sorts of hearsay, unreliable evidence which would not be admissible in any court in the country.

Yet once the determination is made by the Attorney General and it is printed in the Federal Register no court in the land can look beyond it under the very language of the bill.

Mr. Colmer. That within itself is a rather unusual legislative gimmick, is it not?

Mr. Whitener. It certainly is, and I certainly would express the hope that it will be the last time that we will ever go this far if this is enacted.

Mr. Colmer. I might gratuitously suggest to my friend that that will largely depend upon the emotional and hysterical pressure that is brought to bear upon the Congress unfortunately. I hate to make that indictment but I cannot get away from it.

Under this formula, Mr. Whitener, one of the things that bothered me is why they came up with this formula of 50 percent as it applies in this bill without spelling it

all out. They could just as well have set up an arbitrary figure of 60 percent or 20 percent, could they not?

Lushin fls

Mr. Whitener. Yes, and may I point out what the gentleman from Mississippi did yesterday to support his position that he took when Mr. Willis was before the committee.

If you look at the counties, 30-some counties in North Carolina which are included, you will find that they are in an area unlike mine where we have nip and tuck elections in the fall between the Republican Party and the Democratic Party; as a matter of fact, three neighboring Members of Congress, the gentleman from Tennessee, Mr. Quillen, Mr. Jonas of North Carolina and Mr. Broyhill.

Up our way our folks get out and vote in the general election. These counties that would fall under this phony formula in North Carolina you will find are down in eastern North Carolina where until recently they would not have known a member of the other political party, what he was, unless somebody mentioned it. They did not vote and they have a record of not voting in general elections, whereas up our way we get a big participation.

Mr. Colmer. That has been historically true in the so-called deep South for many years because we have been a one-party system.

Mr. Whitener. Unfortunately we have not been in my area. It is quite an expensive thing. Mr. Anderson visited my district.

Mr. Colmer. I do not expect the gentleman to agree with me but since he has made that statement, I am going to make one. I wonder if we would have been in the position in the so-called deep South that we are in now if we had a two-party system all these years. No comment on that, please. Just let me proceed.

In other words, there seems to be a question of a little politics involved in this thing and where the votes are to be gained by the enactment of this type of legislation. In his section that has always been just taken for granted by the party --

Mr. Whitener. I think there is more to it than that, Mr. Colmer, if you permit me to say so.

Mr. Colmer. I am sure I will have to permit you to say so. I do not care to belabor that.

Mr. Whitener. I do not think this Congress would pass legislation applicable to the great metropolitan centers.

Mr. Colmer. I do not get that.

Mr. Whitener. I do not think the Congress would ever pass a bill like this applicable to New York City, Chicago, and the great cities, because of political opposition that you would find in those which are not emotional but just cold-blooded hardheaded politics.

Mr. Colmer. Right.

Mr. Whitener. The emotion would go out the window in a hurry if you had some of those cities involved. Imagine a federal registrar in Chicago, or examiner.

Mr. Colmer. Go ahead. I think you are making some good progress here.

There is no question, is there, but what this bill is like a loaded pistol aimed at one section of this country?

Mr. Whitener. Well, I think so, but I would not maybe agree with the gentleman that maybe something ought to be done in some sections of the country about voting. I think that what we have done in North Carolina is to permit all qualified voters to vote. I think our skirts are clean and we are caught up in a phony formula in some of our areas but I think aside from how it affects North Carolina or any other state, the thing we ought to be concerned about most is what it does to our system of government. The Supreme Court even -- as the gentleman refers to it as this liberal Supreme Court we have -- has said that this is a matter strictly within the province of the states so long as there is no discrimination, that under the Constitution that is a power and authority of the states.

Gentlemen, I think that the thing that we ought to be

concerned about is whether we are going to permit the Federal Government to move into every school board, county board of commissioners, sheriffs elections or any other elections you have locally. That is the thing.

I would be just as concerned if this bill applied to California and did not apply to North Carolina as I am now. If I want to be provincial it does apply to North Carolina and it does not apply to the area of North Carolina in which I live. It is 200 miles from here it applies. I think we are moving in a direction that -- and I do not want to sound like an extremist -- but I think that anyone who has read the history of extreme movements taking over countries knows that the first thing they try to do is get charge of the election machinery and educational system.

This is the thing that bothers me. If they can do it under a phony formula and take in what these gentlemen refer to as parts of the old Confederacy, then who knows but what emotion may be running in other directions ten years from now and we will bring in under the federal supervision other areas of the country. Then you will have a Civil Service Commission and an Attorney General who will be the Supreme Court in the matter of conducting elections and the Attorney General making arbitrary decisions which are not subject to

review by any court, the Civil Service Commission appointing observers and examiners and then the appeal being to them and the Civil Service Commission telling them how to run their job.

Under this bill, there is so much in it that we can talk about. Under this bill, unlike the one that Mr. McCulloch has offered, those illegal votes count just like the legal votes. It does not matter if two weeks after the election they found that this individual had no right to vote. That vote still must be counted under H.R. 6400.

Gentlemen, I hate to talk so much about it but this is just such a bad thing, not just for us in the South but for the nation and for constitutional government, every one of us regardless of where we come from should be gravely concerned about it. I think we ought to try to be objective about it and not think about how it affects us.

They can send registrars into my state from now until doomsday and they will be just wasting the taxpayers' money because there is no discrimination in voting in North Carolina. Just because of some fool formula that somebody thought of, that does not make it so. But we should be concerned about the basic issues. Excuse me for --

Mr. Colmer. I am glad you got on to that. As a matter

of fact, you anticipated me. I certainly agree with the distinguished gentleman from North Carolina that this crosses sectional lines. This thing is an assault upon the Constitution of the United States.

As I pointed out here yesterday, upon the Magna Carta of our liberties. It is just another step, I am sure the gentleman will agree, with the concentration and centralization of government here in Washington at the expense of the liberties and the rights not only of the states but of the people.

Mr. Whitener. This is the first time we have seen one bill undertake to concentrate both the judicial and the executive authority properly in the states and local communities right here in one little piece of real estate called the District of Columbia. The courts are closed except when the Attorney General wants to use the local courts for his convenience.

Mr. Colmer. Of all of the objectionable features of this bill so far as centralization of power, control of the liberties of the people and so on are concerned, can the gentleman conceive of anything more repulsive than the fact that the people from all other sections of the country that might be aggrieved, or thought they were aggrieved, have to come

here to the District of Columbia to one group of selected judges to attempt to get relief?

Mr. Whitener. It is absolutely unconstitutional. Let me explain this to you. When I say Attorney General I certainly do not mean to be casting any aspersions on the present Attorney General because I think he is a very splendid gentleman. As you know, in the short time I have been in Congress we have had four Attorneys General. We have no way of knowing who we will have in the future.

I am sure some of you gentlemen on this committee have seen as many as ten or more. So that I want to make clear that I am not attacking Mr. Katzenbach because I think he is a very splendid man.

Mr. Colmer. One other thing I want to say. I do not want to take too much time here myself on the poll tax situation. I would just like to state my agreement with the gentleman's position as I have indicated here before.

My state has had a poll tax prior to the Civil War when Negroes were slaves and yet this bill says that the Congress has found that the poll tax is used as a discrimination device, a vehicle of discrimination against Negroes.

Surely they were not discriminating against them voting back prior to the Civil War when they were slaves. I do not

know, but the gentleman said he was glad Mr. Hutchinson brought out this provision yesterday about this bill covering other taxes than poll taxes and the qualification of voters.

I think that that is a very serious matter and will affect other sections of this country. I am wondering if that would not be stricken out on the Floor.

Mr. Whitener. I would hope it would be because I do not think that we who feel that maybe this is directed at us, at our areas, should fail as I say in the minority views which we wrote. We ought to do what we can to make the bill less unconscionable.

Mr. Colmer. I agree with the gentleman. Of course, my question was directed, if it was a question, to the fact that you possibly find more votes for striking that provision out since it does affect other states than down in the South.

Mr. Whitener, I think we are agreed -- at least you and I and maybe some others here -- that this is an assault upon the Constitution, upon the American way of life that we have known. There is another bill that is going to be offered on the Floor that the gentleman is possibly more familiar with than anyone on this committee. While that may be objectionable to some of us -- and of course I refer to the McCulloch

bill -- would the gentleman care to express an opinion as to whether or not that is less obnoxious from a constitutional point of view than H.R. 6400?

Mr. Whitener. I think that it is. The McCulloch bill is not as bad a bill as this one. I do not think there is much to recommend it either but for instance, on the poll tax situation, H.R. 6400 would strike down poll taxes or other taxes as a qualification for voting. The McCulloch bill just makes some provision whereby you could test the constitutionality of it.

Let me say this, too, if I may go back to the original bill which was introduced by the Attorney General and his group. To show you how far afield the committee went as compared to what the Administration asked for, in Subsection C of Section 5 of the original H.R. 6400, which was the Administration bill, we found this language: "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 re-

ceive such payment under state law together with the name and address of the applicant."

While there may be a part of that we would not agree with, this business of suspending the state law as to when the payment shall be made, you get there the comparison between what the Administration asked and what the committee bill provides. So frankly, I think that the Administration would be not out of line to absolutely reject this present H.R. 6400 because it bears little similarity to the original bill we had.

I have sidetracked the gentleman again. Basically on your question, I imagine you have had testimony as to the comparison between the two bills.

Mr. Colmer. Right.

Mr. Whitener. But I find that the McCulloch bill is more palatable because of these among other reasons. One is that it gets away from this phony formula and makes the law applicable, the bill applicable throughout the country. It also would permit federal courts throughout the land to have jurisdiction to permit a local political subdivision or a state to purge itself of the accusation of guilt. It would not, as I pointed out, do what the committee bill does on poll tax and importantly, I think, it would not permit the counting of

votes simply because an examiner permitted the individual to come in and register and vote. The votes would not be counted until a determination had been made that that individual was qualified to vote.

I do not know whether you gentlemen have had any close elections or not but in my city once there were 10,000 votes cast and there were two groups running and the control of the city turned on a one vote margin for a two-year period. I have seen similar occurrences.

There have been many Members of Congress here who would not have been here if 30 or 40 illegal votes could have counted for the other man. It is an important thing that votes not be counted unless they are validly cast.

Mr. Colmer. Mr. Whitener, on the --

Mr. Whitener. There are other differences in the bill.

Mr. Colmer. On the whole, we can dispose of this in about threee minutes. I am afraid I will never get around to it otherwise.

Going back to the history of the 15th Amendment, and I am sure the gentleman is more familiar with that than I am because of the devotion he has given to the study of it, this question of literacy tests, education, all of that was discussed in that atmosphere that I referred to earlier,

immediately following the war, and the literacy tests were rejected, the question of education, as shown by even that what might be referred to as a radical Congress that was legislating in this atmosphere of hysteria. Is that not true?

Mr. Whitener. Yes. I would say to the gentleman that in my own state the Constitution of 1868 was written by carpetbaggers. It was the work of a man named Judge Tourgee. We think it is one of the finest constitutions to be found anywhere in the country. It has been amended very seldom and it has in one point some language which I think the Congress might well reflect upon as we deal with this type of legislation.

Judge Tourgee wrote this into our constitution: "A frequent recurrence to fundamental principles is essential to the preservation of the blessings of liberty." I think that if this Congress is looking at this type of legislation, which as the gentleman has suggested may be motivated either by emotion or political considerations, that we might well heed the advice of that distinguished North Carolina carpetbagger and return to some fundamental principles.

Mr. Colmer. Thank you, Mr. Whitener. I think you have made quite a contribution to this.

The Chairman. Mr. Smith, any questions?

Mr. Smith. No questions, Mr. Chairman.

The Chairman. Mr. Madden?

Mr. Madden. No questions.

The Chairman. Mr. Anderson?

Mr. Anderson. I just wanted to make this observation to my friend from North Carolina. He referred to the visit which we paid to his district. It never occurred to me he thereby stimulated sufficient bipartisan rivalry to increase the voter turnout and we were really helping to mitigate any possibility that the gentleman's area would come under what he describes as the onerous provisions of this bill.

Mr. Whitener. I would not detract from the effect of the gentleman's visit but I would just say that if he slipped over across the line to my friend Mr. Quillen's district, and stirred up some Democrats, because Brother Quillen had the biggest majority in the Republican Congress, his people's kinfolks are down there murdering me. Better get somebody over there to stimulate him.

Mr. Quillen. I would say they get stimulated quite often.

The Chairman. Is that all?

Mr. Anderson. Yes.

The Chairman. Mr. Delaney.

Mr. Delaney. No questions.

Mr. Martin. No questions.

Mr. Bolling. I take it from your testimony and motivations behind this bill, you do not believe anybody supports it in good faith?

Mr. Whitener. I would assume that there are some people who would not knowing the facts --

Mr. Bolling. In other words, the gentleman attributes to himself the capacity to read and others the incapacity?

Mr. Whitener. I would say that I have that capacity if anyone contends by a formula my state should be tarred with the brush of discrimination then those people are lacking in knowledge and information. I would say that any juror or any Member of Congress who would blacken the reputation of a community or a state based upon newspaper clippings estimates of the Justice Department as to voting statistics, and the report of the Southern Regional Council voting education project, would not be interested in knowing the facts but would be willing to accept hearsay and unsupported testimony, bringing about a discrediting of people who should not be discredited.

Mr. Bolling. The gentleman has a very good right to his view and I admire his defense of the state but he has a short memory of recent history.

Mr. Whitener. I can say to the gentleman that I am sure that the history of politics in North Carolina would shine as a beacon light as compared to those of some other states with which I am familiar.

The Chairman. Mr. Sisk, any questions?

Mr. Sisk. I believe not, Mr. Chairman.

Mr. Whitener. I apologize to you for my length.

Mr. Young. No questions.

Mr. Pepper. No questions.

Mr. Bolling. Thank you.

The Chairman. Mr. Whitener, I intended to ask you some questions. I do not know whether it is worthwhile. There are two or three things that struck me very strongly about what happened in your committee. It is a committee of lawyers and lawyers are supposed to study the Constitution of the United States. I just wondered how in the world some of the features of this bill could have gotten past a committee of lawyers.

Mr. Whitener. I am afraid if I answered that I would be doing what my colleague here suggested I have done, impugning the brethren on the committee. Let us just say they do not see it the way we do.

The Chairman. I asked your chairman about it when he was on the stand. How do you get by with a bill -- as con-

scientious lawyers presumably who have read the Constitution of the United States -- with a bill that virtually repeals a state law?

Mr. Whitener. Judge, if you --

The Chairman. How do you get by with a provision that prohibits a state from enacting laws to take the place of those laws that are prohibited?

Mr. Whitener. Of course, we can talk about this all day. You will remember that there was a great wealth of legal talent in the country who signed a joint statement in which they said in effect, if I understood what they were saying, that under the 15th Amendment, 14th Amendment, the Federal Government can do anything it wants to in elections. This was the net effect of the one signed by many law school deans and others. So, we do find, as we find on the Supreme Court, a lot of things that would seem abundantly clear to us as five and four matters before the court. I suppose the only answer to your question would be that folks just have different views and I wish that they all had mine but they do not.

The Chairman. You spoke of the present Supreme Court which Mr. Colmer described as a liberal court and you referred to the recent decision of that court holding the rights of

states to make their own election laws. I wonder what would be your guess as to what would happen if this becomes law, whether the Supreme Court would ever stretch their conscience, which is long enough to sustain these provisions that we were talking about.

Mr. Whitener. Judge, if you want me to be completely candid with you, I would not make a wager that they would not find some way to hold it constitutional. I do not say that just to be criticizing the court.

The Chairman. The only answer I could get out of your chairman when he was on the witness stand was that this was a bad situation and they could not fool around with the laws. They had to give it antibiotics, whatever that was supposed to mean.

Mr. Whitener. Strong medicine was the term he used.

The Chairman. He also used the term strong medicine. As a matter of fact, you have strong medicine on the statute books that you put on there last year, that the very people who are insisting upon this law said it was going to kill all the evils. Yet they have not even waited to try that law before they started to bring on what your chairman described as a dose of antibiotics.

The other law had not been tested, has it, has not been tried?

Mr. Whitener. They have been very reluctant apparently to go into court. They want statutes and not --

The Chairman. Do you reckon they would be afraid the Supreme Court is not as liberal as they think it is? Why do they not try the law they say will do the job or said a year ago would do the job? They have not tried it. Why put this dose of antibiotics down the throats of a few states in the union?

Mr. Whitener. Well, of course, the number of cases brought under the existing law has been rather small, so I am informed, and I agree with you that it seems to me there ought to be a reasonable test of the existing law before we just keep piling statutes on statutes. Finally have a barn full of wood and no stove to burn it in, it looks like.

You have the Constitution. This is a thing that as long as we are representing a democracy, the majority will, regardless of what we put on the books, come out all right. It is the minority that is going to suffer in the final analysis from bad law or disruption of the Constitution. So it may be that some day those people taking the position today, which the majority does not agree with, will not be

looked upon as anti but will be pro-constitutional and pro-civil liberties.

The Chairman. I would not pursue this much further but another thing which you might call a small feature of the thing, the carpetbagger days. These examiners that would be selected by the Civil Service Commission, which is very reluctant to undertake the job, they can be selected from California and brought to Virginia. There is no limitation on their being local people who know the situation. I asked the Chairman about that.

Mr. Whitener. They can be federal employees, nonfederal employees or residents of any area.

The Chairman. They can be residents of any area. I asked him why he felt that because the bill provides that these examiners shall be chosen from the area. His answer was that they were afraid they could not find anybody. I asked him if he might not try looking around the southern states with a lantern, maybe they could find one honest man in each community. He did not seem to think so.

Bringing back the old carpetbagger days of 100 years ago, as everybody on both sides regrets so much, is so unnecessary, so punitive and so malicious that I just wonder how anybody could stand for it. I am sorry that I took your time.

That is all with Mr. Whitener.

Mr. Whitener. Thank you, Judge Smith and gentlemen of the committee for your patience.

The Chairman. Thank you.

Mr. Andrews, I believe you have been waiting. Do you wish to testify?

STATEMENT OF HON. GEORGE W. ANDREWS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Andrews. Mr. Chairman and members of the committee, I feel like I have been at law school listening to Professor Whitener. He is a very able lawyer and possibly knows as much if not more about this bill than any Member of Congress. I have enjoyed his testimony and I think he is just as right as rain.

I am opposed to this bill, Mr. Chairman, because in my opinion I think the bill is unconstitutional. The 15th Amendment to the Constitution of the United States, upon which the current federal proposal to alter voting rights is based, provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude."

I want to say that my State of Alabama is one of the states against which this bill is triggered. I would like to say categorically that any person of any race, creed, or color can register today in Alabama regardless of what you read in the paper, if he can pass a simple literacy test that is given to all applicants for registration.

The record shows that during the last several years

Negroes have registered in ever-increasing numbers and in my congressional district today there are two counties, one of which is my home county, where there are more registered Negro voters than white voters; Macon County and Bullock County, my home county.

Recently in Tuskegee the Negroes elected two members of the city council and they elected the Mayor, who is a white man but they supported him. Some of the most intelligent Negroes in America are found in Tuskegee, Alabama and it was their decision to run only two members of their race for the first time for the city council. They also elected in that county two members of the Court of County Commissioners and some county officer, I do not recall, a member of the Board of Education, if I remember correctly.

Neither in the 15th Amendment nor elsewhere in the Constitution is there any limitation upon the right of the states to determine the qualifications of voters, so long as they do not discriminate on account of race, color or previous condition of servitude, the 15th Amendment, nor on account of sex, the 19th Amendment, nor on account of failure to pay any poll tax or other tax in the case of federal elections, 24th Amendment.

On the contrary, the Constitution expressly provides that qualifications of voters shall be determined by the states, subject of course to the provisions of the 15th, 19th and 24th Amendments which I have just mentioned.

Then there is that long-forgotten 10th Amendment to the Constitution which says in language that is as clear as the noonday sun, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

How long has it been since you have seen that amendment mentioned in a Supreme Court decision or discussed on the Floor of the House?

As a result the states have various requirements for voting, such as length of residence within the state. Is that unreasonable? Age limitations. Ability to read and write. This bill would destroy that requirement. This bill, in my opinion, could well be referred to as the moron voting bill of 1965. If my information is correct any person who can stagger up to the registration office and make an "x" where he is supposed to sign his name is eligible to vote under this bill once that pattern of discrimination has been established and once these referees or superintendents, or whatever you want to call them, go down and take charge of the state elections.

This bill can well, Mr. Chairman and Members of the committee -- I want you to think about it seriously -- this could well bring about governments of incompetents and incompetency.

Under the current proposal, all of these requirements in certain states may be swept aside by the Federal Government and federal voting examiners appointed by it to register people in federal, state, and local elections with no literacy or other tests permitted. This, I submit Mr. Chairman and members of the committee, is a clear violation of the Constitution which the Members of Congress have taken an oath to support.

Reference has been made to the case of LASSITER against NORTHAMPTON COUNTY, decided June 18, 1959, wherein the Supreme Court of the United States, quoting from the opinion of the court in the earlier case of GUINN against THE UNITED STATES, decided in 1915 said: "No time need be spent on the question of the validity of the literacy test. Considering the laws since, as we have seen its establishment, was but the exercise by the state of a lawful power vested in it not subject to our supervision and indeed its validity is admitted."

If the Federal Government has the power to abolish all voting requirements, why was it necessary to adopt the 15th

Amendment and the 24th Amendment?

Of course, the amending process is a very slow one requiring a two-thirds vote of Congress and ratification of the legislature and three-fourths of the states.

Mr. Chairman, in my opinion, Article 1, Section 2 of the United States Constitution clearly gives the states the right to determine qualifications of voters. This has been the American way since the Constitution was ratified by the states but if this pending registration bill is enacted into law, the Constitution will be gone with the wind.

You asked Mr. Whitener about what this court might do in passing judgment on this pending bill if it becomes the law. In view of the fact that there is a clear line of decisions going back through the years holding categorically that the states have the right to prescribe the qualifications for electors in those states. I do not know of any living human who knows what this present court will do in any case. It has been said that a lawyer can not tell from day to day what the law is.

This court has destroyed the doctrine of stare decisis which in my opinion was the doctrine which preserved for us through the years the system of government of laws rather than a government of men.

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To me that was one of the most sacred doctrines in the law. It has been a long time since I have studied law, but in certain cases recently decided the old doctrine of stare decisis has been thrown out the window, the doctrine that preserved for us the system of a government of laws rather than a government of men. And in my opinion we are today living under a government of men rather than a government of laws, and the laws of this nation are whatever the members of that Court think they should be.

Many people, including this witness, were frightened -- and I have been unhappy since that night -- when the President came to Capitol Hill, in an unprecedented appearance before a Joint Session of Congress, to advocate the enactment of this legislation, and to see the members of the Supreme Court headed by the Chief Justice sitting in the front raw applauding and leading the applause when the President advocated enactment of this legislation. You can draw your own conclusions from what the members of that Court did that night as to what they will do if and when this bill becomes the law and is tested before the Supreme Court.

Thank you, Mr. Chairman, for permitting me to appear before you as a witness in opposition to this bill.

The Chairman. Thank you, Mr. Andrews.

Mr. Pepper. A good statement.

The Chairman. Are there any questions of Mr. Andrews?

Thank you.

Mr. Waggonner.

STATEMENT OF HON. JOE D. WAGGONNER, JR.,
A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF LOUISIANA

Mr. Waggonner. Mr. Chairman and Members of the committee:

Let me express my appreciation to you for allowing me to appear before your committee as you consider the rule in sending H.R. 6400 to the Floor of the House for consideration. It sure comes as no surprise to any of you that I appear in opposition to this proposed legislation. I have no prepared text, but I would like to talk to you, perhaps repetitiously, as others, I am sure, have done, about certain aspects of this bill. Before I am through I hope I can cause you to think upon voting rights and the privilege of voting in a manner none of you have ever heard it discussed before, because I think I have a suggestion which, when I compare it with one facet of this bill, will be impossible.

I am not here to argue that qualified people should not be allowed the privileges of voting; I am here to argue the merits of who in the future will determine who will vote and who will not vote. I found an interesting discussion in one of the news items, or syndicated columnists, this morning in this morning's Post, wherein Novak and Evans discussed the effect of this proposed voter bill on the politicians of my State of Louisiana. It was their conclusion that some of the Members of my delegation

would support this legislation and some would oppose it, and I assume they are right because that is the privilege of every man who serves in this Congress -- to follow his own conscience.

But these people, in their discourse on this proposal, said that the losers in the end would be those who were not politically minded enough to support this legislation because they could not see far enough into the future to determine for themselves that the end result would be their own defeat at the polls, because Louisiana and some other areas of the country the Nigra vote would become a preponderant block vote; those who oppose this legislation, whether or not they oppose it in good faith, would be swept from office.

They used, as an example, one of the Senators from my State, Senator Russell Long, who I think in good conscience would have supported this legislation in the United States Senate which was not discriminatory. I think he opposed and voted against the measure which the Senate considered only because it was discriminatory. But they cited the fact that he had had correspondence from certain Civil Rights leaders, namely, certain leaders of COREgroup who had told him that never again would he or anybody they controlled vote for him in any election because of his having opposed this discriminatory proposal in the United States Senate.

So I do not at the outset attempt to provoke any argument that there is nothing but politics in this measure or in this

proposal, but I say, without reservation, there is some politics involved. But I have no concern for the politics involved. I have but one person I am accountable to while here, and that is myself, and I must in good conscience do what I believe to be right because I am still guided by an age-old admonition that right is still right if nobody does it, and wrong is still wrong if everybody does it. So I am not swept up with the argument that, because something will probably become law, I ought to go along with it.

I had the privilege, before our Easter recess, of appearing before the Young Democrats here in Washington on Capitol Hill and entering into a debate with one of my colleagues, the gentleman from Michigan, Congressman Conyers, who serves on the Judiciary. And here we debated before the Young Democrats the voter proposasl. This was before the Judiciary Committee had acted, and there had been some revision since that time. But I asked at the outset of this group if I could see a show of hands from those in the group that night who had ever read the Constitution of the United States, and, of course, they were all willing to admit they had read the Constitution of the United States, and I believe that every one of them had because I do not think there was a young man or a young woman there without a reasonable degree of eduction.

After I had this complete show of hands from everyone present, I asked another question. I asked how many of them,

having confessed to reading the Constitution, would raise their hand who believed, as I did and as, in this instance, the Supreme Court to this point has expressed, that the framers of the Constitution originally provided that the States would have the right to prescribe voter qualifications for their State and for their political subdivisions if they administered the qualifications they did prescribe without discrimination. Every hand in that group of five came up again.

And I asked one other question. I asked if there was anyone there who could cite me an Amendment to the Constitution which took from the States the right to continue to prescribe voter qualifications for the voters in their State. Amazingly enough, no one raised their hands.

This was in the form of a debate, and a good debater would have ended the argument there and resumed his seat, because there was really nothing left to debate.

The discussion that I have on this bill today, I want you to consider in that light.

Now, I am not arguing the fact that maybe some changes are not desired by the majority of the people of this country, but I am saying that there is a due process described by the Constitution of the United States, and, if we are going to make changes, we ought to make them in view of the constitutional process.

I say to you, without any reservation, that this legisla-

tion, as proposed, is discriminatory against a few of the States in the United States, and there is not a man that sits around this table today, or an individual who sits in this room, there is not an individual who is privileged to serve in the United States Congress who, if faced with the matter of considering a legislative proposal which was discriminatory in nature against their State, as this proposal is against mine, would not take a poistion similar to the one I take today. If, for example, we were not considering a voter proposal in the Congress and we were considering a proposal which had to do with education and the quality of education in these United States today, and there was some proposal or some part of this educational legislation which would take from the school boards or boards of education in your State or their State the right to control the curriculum of your State in its education, the curriculum which will serve to educate the youth of your State, you would oppose it.

We are considering in H.R. 6400 a voter proposal which does exactly this: it takes away from a few States and a few political subdivisions the right to control, in the end, the election machinery of these respective States. So I say again, if all of you or if any of you were called upon to consider any other proposal, or even this proposal, which discriminated against your State, which had an unequal application towards your people with relation to the other areas, States of political subdivisions

of the United States, you, I think, will admit that you would take the position I take.

Now, on page 14 of the bill, we find, when we consider the judicial process which is set forth in this proposal, that anyone who is brought under the long arm of this proposal, in seeking a declaratory judgment against the United States, that they no longer be allowed to follow what has until this time been the due process of the law -- that we are completely changing the due process of the law, and to gain any relief from the long arm of this proposal, those people, these political subdivisions, must come to the United States District Court of the District of Columbia to seek relief in the form of a declaratory judgment against the United States.

First of all, the assumption is -- and it is one which should constitute an affront to the Judiciary -- the assumption is that the courts in certain parts of the country are without ability and without the integrity to determine impartially whether or not they can administer the affairs of their court without discrimination. And I don't believe that this is the case.

I must say, without reservation, that this has no application in fact to any man who sits on the Federal bench in my State. The man who serves in my District, the Western District of Louisiana, is a man of integrity, completely beyond question, and completely beyond reproach, and I think if anyone would care

to research his actions on the bench he would conclude, as I have concluded, that he is capable of administering the affairs of his bench, and he can be depended upon to render a decision, even though he personally might not like it, which is completely within the framework and precedents and the law.

On page 15 of the bill, we find that "The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General" -- a man not elected by the people but appointed by the President --

2) "determines maintained on November 1, 1964 any test or device, and with respect to which (2) the Director of the Census" -- another appointed official -- "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."

Now, this proposal is considered by some to be the Voting Rights Act of 1965, and I submit to you that there is no such thing as a voting right. There is a privilege of voting which is accorded to some who are considered to be qualified within the framework of what has to now been accepted State law. There are those privileged in Georgia to vote when they reach the age of 18. To my knowledge, you cannot vote in any other State until you are 21. So this is a privilege accorded to some in Georgia not accorded to others in the United States, which is

one of their qualifications for voting. The privilege of voting is not accorded anywhere that I have any knowledge of to the criminally insane. And I do not reflect upon those people by using them as unfortunate examples in this instance. But nobody assumes that the criminally insane, adjudged so by law, should have the so-called right to vote. In turn, they are denied the privilege of voting. There is no such thing as a right to vote in a bond issue election by which taxes are levied against property owners. There is the privilege of voting accorded to those who own property and who can qualify under State law to vote at bond issue elections.

Mr. Colmer. Do you have reference to your State?

Mr. Waggonner. I certainly do. In my State, in bond issue electrions there are two factors: to be successful any bond issue proposal must be approved not only by a popular majority of those privileged to vote but must be approved by a majority of the asxessment in dollars and cents. Neither one of these facets by themselves will pass a bond issue; it is a combination of the two which will allow the passage of a bond issue.

There is no right to vote for a citizen of Louisiana in the State of New York. This is a privilege reserved for the residents of the State of New York who can qualify under the laws of the State of New York. In New York, for example, the privilege of voting is denied to those who cannot read and write

and speak the English language. My State of Louisiana is much more lenient: we allow the privilege of voting to any individual who can read and write and speak their mother tongue. So there is no right to vote; there is a privilege which, in the judgment of any State, certain people can exercise if they can meet certain qualifications. But more important than that, this requirement, this triggering device which is retroactive, and no legislation should ever be retroactive, is discriminatory and is a step completely in the wrong direction, because it is now and always has been my sincere belief that the privilege of voting carries it with it, in turn, the privilege of not voting if you don't want to vote. This establishes, for the first time, a requirement not only for voting but for registering to vote. Other nations have followed this pattern requiring people to vote, and their experience has not been good in light of the democratic process. The privilege of voting carries with it the privilege not to vote. But here, for the first time, we establish a procedure which is going to require people to register and vote. This land of freedom of choice did not grow great and did not reach --

The Chairman. That is what they do in Russia, is it not, make everybody vote?

Mr. Waggonner. It certainly is.

The Chairman. And they are punished over there for not voting, are they not?

Mr. Waggoner. Yes, sir. We are taking a step in exactly that same direction.

On page 16, we find language which says, "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."

Mr. Whitener discussed this at some length with you, but I would point out to you the inconsistency here in this language and this proposal that exists in the mind of some who feel that the United States Supreme Court and other inferior Federal courts should have the right to review cases involving apportionment and reapportionment of State Legislatures, for example. I appeared before the Judiciary Committee the other afternoon in response to their invitation while they are conducting hearings on this Apportionment Amendment. The Chairman of the Committee and other Members of this Judiciary Committee said that the United States Supreme Court and other inferior Federal courts should have the right to review any legislative proposal, but this same committee has reported for the consideration of the House here a proposal which does not provide for any judicial review but gives to an appointed official the right to make a judicial determination -- at least, what amounts in effect to a judicial determination -- without review. It makes the Attorney General a voting czar.

Over on page 17 of the bill, we find that language in section 5 which says that "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."

Here again we are requiring prior approval for any State Legislature or any political subdivision to enact legislation which, in good faith, might be deemed necessary without prior approval of the Judiciary and not through the normal judicial process. The situation to which Mr. Andrews, who preceded me here, alluded with regard to the Supreme Court in effect giving prior approval by applauding the President's proposal can be evaluated.

No State can change their election laws without approval of the Judiciary, and we are changing the judicial process with

this proposal, and what, in effect, has been the UN cry of people here in the District of Columbia to seek relief from the persecution of a disinterested Congress will no longer exist because the District Courts here in the District of Columbia are going to turn out to be the most powerful courts in the land.

Now, I said that before I was through I was going to talk about something that I did not believe any of you gentlemen had ever considered or ever discussed, and I think quite possibly this is the place to do it.

I suggested by telephone, and inviting it to my Governor's attention, Governor McKeithen of Louisiana, quite some time ago that the real argument when we consider this matter of so-called voting rights centered around discrimination, and I did not condone, as I never have, discrimination in the registering of qualified people to vote, and that I thought that there was a way to abolish discrimination in registering people to vote, which in my own mind is beyond any court to find discrimination. I suggested to him a procedure which is simply this -- but the procedure I suggested to him cannot be employed if this legislation is enacted without the approval of the United States Court for the District of Columbia. Briefly, this procedure that I recommended to him for my State to follow is this:

First of all, we would not change any existing qualification for voting which the State of Louisiana presently has, but we would change the administration of this procedure. When I

go in to register or to seek a driver's license or permit to operate an automobile I must be fingerprinted, I must be photographed, I must be identified, and I must carry with me identification that I buy -- and herein enters the poll tax -- to be allowed the privilege of operating a motor vehicle, and I carry that with me. If I don't, I do so under penalty of law. So that I believe it is entirely proper and would abolish discrimination if we followed a similar procedure in qualifying people to vote and in giving to them the privilege of voting if they can qualify. I believe that we can take -- and I recommended to the Governor -- the present voting qualification laws for the State of Louisiana and convert these laws to a qualification test which can be machine graded, a test which can be administered by existing registrars, a test which reflects neither sex nor race, a test which cannot be identified in any way except as to the ultimate score which any participant might attain, a test which can be graded away from the political subdivision in which this test was administered, a test which conceivably could be graded even outside the State, but a test which would be administered fairly and impartially, which in the end would have the effect of denying both Nigras and whites -- and I have no objection to this -- who are not qualified the privilege of voting in elections in the State of Louisiana. But this procedure which I have described to you cannot be adopted for my State if they do not have the prior approval of the United States Court

for the District of Columbia if this proposal becomes law.

The prominent Nigra leadership, the capable, thinking Nigra leaders of my area in Louisiana support such a proposal, and they think it would work without discrimination. This is what we are attempting to abolish, but we cannot do it if we enact this proposal.

Mr. Colmer. May I interrupt just a moment because I am afraid we are going to have to get away from here pretty shortly? We have a quorum call.

Am I correct that your State Legislature is in session considering the revision of your State laws with reference to voting? Is that true?

Mr. Waggonner. No, sir. The Legislature of the State of Louisiana is not in session. There is a committee which has under consideration some changes in qualifications for voting, but nothing to this point has been done.

Mr. Colmer. In my State the Legislature is in session and is considering meeting some of these objections that have been raised up here. Now, if your Legislature should act or my Legislature should act prior to the enactment of this bill, that would conform with this, and they would still be covered, would they not?

Mr. Waggonner. It is my understanding of the proposal that any legislation affecting qualifications to vote which were a part of any State law prior to November 1, 1964 will be covered

by the language of this bill.

Mr. Colmer. Right. In other words, there is no encouragement. On the contrary, here is an ex post facto law. There is no encouragement to the States to do what they want to do. I might point out that certain groups down in my State are now demonstrating, invading the Capitol and otherwise demonstrating against the passage of laws that would remove the things they object to.

That is all. I just wanted to say this.

Mr. Waggonner. Mr. Chairman, do you want me to proceed or do you want to adjourn for the quorum call that is on?

The Chairman. We will go on to the second bell and then we will adjourn.

Mr. Waggonner. Section 6, page 18 of the proposal, says that "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 pomplaints to be meritorious, or (2)"--and et cetera. I want to talk about the word "residents." Who is to be considered a resident?

Mr. Andrews, who appeared before me, said a resident of one State can vote with a period of residence which differs from that in time of another State. Are we going to have now some uniform Federal definition of the term "resident" or not? There is no definition of the word "resident" within the framework of this bill or within the language of this proposal. But now, more important than that, who is to determine the qualification of these examiners who are to be appointed by the Civil Service Commission to go into certain States to tamper with election machinery? What are the qualifications of these people to be? It is not considered that education qualifications are necessary under the language of this proposal for an individual to be a qualified privileged voter. So I must ask the question -- Will educational qualifications be considered when examiners are sent to my State or any other State brought under the scope of this legislation to tamper with the election machinery?

There is nothing to indicate that qualifications will be required. You say they will be appointed by the Civil Service Commission and that normal Civil Service practices will prevail, but I point out to you that every other requirement of the Civil Service Commission is waived in hiring these people. So will qualifications be waived as well.

3) Section 7 says that the examiners for each political subdivision shall examine applicants concerning their qualifications for voting. Well, herein a controversy arises wherein

the proponents of this legislation openly admit that certain qualifications are desirable. This Congress, when it enacted last year the Civil Rights Act of 1964, thought that certain qualifications were desirable for voting in Federal elections, and by its own act wrote into the legislation a requirement that a sixth grade education would be required as one of the qualifications for voting in a Federal election. So there is contradictory language in this legislation.

The Chairman. We will have to suspend now. I want to ask the committee what is their pleasure. We have two other witnesses who have expressed a desire to testify, and you know we have an agreement to close this matter tomorrow. I think those witnesses will not be very long, and we have a very important measure on the Floor this afternoon. It occurs to me we might well adjourn until tomorrow morning and hear those two witnesses and have Mr. Waggoner conclude, and then vote on the bill; some time during the day tomorrow there will be a vote on this bill.

Mr. Waggonner. Thank you, Mr. Chairman.

The Chairman. The committee will stand adjourned.

(Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 10:30 a.m., Thursday, July 1, 1965.)

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