I N D E X

H. R. 6400

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

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TUESDAY, JUNE 29, 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 (chairman), Colmer, Madden, Delaney, Trimble, Bolling, O'Neill, Sisk, Young, Pepper, Smith, Anderson, Martin, Quillen.

The Chairman. The committee will be in order.

Mr. McCulloch, we will be glad to have you take up where you left off.

STATEMENT OF HON. WILLIAM M. MC CULLOCH
A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OHIO (CONTINUED)

Mr. McCulloch. Mr. Chairman and members of the committee, in large part, if not entirely, I had finished a running description of the Ford-McCulloch bill, and in view of that fact, if it meets with the approval of the Chairman, I would be glad to be interrogated concerning every part of the bill and I will answer as best I can.

The Chairman. Before we do that, I wonder if you would give us a brief summary of the differences between your bill and the committee bill.

Mr. McCulloch. Well, Mr. Chairman, I think that one could summarize the difference between the two bills by saying the bill which was reported out by the committee, the Administration-Celler Bill, has a new triggering device the like of which has never been considered before by the Congress. There are states and political subdivisions thereof, in addition to some six or seven states where there is discrimination by reason of race or color, contrary to the constitution and without any basis other than a voting record, there is a triggering device, the main triggering device of the Administration-Celler Bill which says that if in 1964 less than 50 percent of the people registered to vote, or voted in that election, the Attorney General could immediately go into those states and the political subdivisions there of and at that time, upon a finding that there was this discrimination, could ask for and have the appointment of the federal examiners to proceed to register the voters who claim to have been discriminated against by reason of race or color.

There was finally a second triggering device added to the bill when it became clearly apparent not only in the House committee but in the Senate committee that it did not reach innumerable pockets of discrimination in states, both North and South.

This second triggering device is in large part patterned after what has been the present law of the land.

The Chairman. I don't understand about the second triggering device.

Mr. McCulloch. The second triggering device is the device whereby the Attorney General may say that 20 or more people in a political subdivision have been denied the right to vote by reason of race or color and thereupon is a pattern of practice, and when that pattern of practice appears, federal examiners may be appointed in those political subdivisions to register applicants who are otherwise qualified under the state law to register and to vote.

The Chairman. Now, the first triggering device of which you speak on its face has nothing to do with and no mention is made of discrimination on account of race or color or any other reason.

Mr. McCulloch. There is that presumption, of course, and the triggering device is based on that presumption, Mr. Chairman.

Mr. Smith. As I recall reading that section -- and I believe that was Section 4?

Mr. McCulloch. That is section 4, yes.

The Chairman. There is no mention in there of any determination of discrimination, is there?

Mr. McCulloch. No, but there is that presumption.

The Chairman. The presumption arises by reason of the fact that people did not vote, not by reason of any precedence or discrimination or anything else. It has nothing in the world to do, on its face, with discrimination because of race or color, does it?

Mr. McCulloch. No, that is a correct statement, but I repeat the presumption is based upon the fact that 50 or less percent of the people were registered to vote or did note in 1954.

The Chairman. As a matter of fact, by reason of an unfortunate and untimely storm in Alaska, that state has come under the triggering device and is deprived of its right to have a literacy test?

Mr. McCulloch. That is a logical conclusion of fact, sir.

The Chairman. Now, any county in my state or your state who for reasons of indifference or any other reason, do not poll 50 percent of their registered vote, or did not do so in the Johnson election, then they are automatically deprived of their literacy test?

Mr. McCulloch. I think that is correct, [illegible].

The Chairman. Which means that if a state like yours or mine -- I don't know about yours, but mine -- requires a person to be able to read and write, that qualification under this triggering device, could not be used.

Mr. McCulloch. That is correct, sir.

The Chairman. In other words, it repeals a state law?

Mr. McCulloch. Or at least nullifies or repeals for the time being, the state law.

The Chairman. If you want to get out from under that you have to come to Washington and file a suit in the United States District Court for the District of Columbia?

Mr. McCulloch. That is correct, sir.

The Chairman. That is entirely a new device. There is no precedent for that, is there?

Mr. McCulloch. I would answer with a very limited qualification, there is no precedent for that. There was one or two cited by the very able and loveable chairman of this committee when he was before this committee last week, but the case, if I can use a lawyer's old phrase, in no instance was on all four's with this case.

The Chairman. After this triggering device begins to operate, as it will in six southern states and the State of Alaska, then under Section 6 they will then begin to appoint polling examiners in those states, is that right?

Mr. McCulloch. That is right.

The Chairman. I am primarily concerned with my own state. Under that bill, just what will happen to our election laws? There is no question of discrimination, and just the fact that people may be didn't like either candidate, 50 percent of the voters refrained from exercising their right of franchize in the Johnson election. Now, what happens to us when this law goes into effect?

Mr. McCulloch. Well, under the conditions which the Chairman has described, the federal examiners immediately proceed to register the applicants for registration who are qualified to vote under state laws other than in the matter of literacy tests which would be suspended and poll taxes which would be suspended.

The Chairman. Could they still register under the state law, the state registrars?

Mr. McCulloch. In my opinion they could, sir.

The Chairman. So there would be two systems operating at the same time?

Mr. McCulloch. That is right.

The Chairman. These assistants would use a requirement that a person must know how to read and write?

Mr. McCulloch. I suppose it would be a useless gesture if they did it in the state election system. Certainly the answer would be no, they would not be required to demonstrate an ability to read and write before the federal examiner.

The Chairman. Do you know, Mr. McCulloch, whether any survey has been made, county by county all over the United States, as to what county would fall into this trap?

Mr. McCulloch. I do not know that such a dependable survey has been made.

The Chairman. I have been told that so many counties in this state or that state, amongst the southern states -- I believe there are 20 counties in North Carolina that would

be affected.

Mr. McCulloch. Our staff man advises me that such a survey has been made and that it is reasonable accurate. I do not have the result of this survey before me.

The Chairman. Whomade that survey?

Mr. McCulloch. I think that survey was made by the Civil Rights Commission. Staff refers me to page 129 of the transcript of the hearings in the House, where at least part of that information is set forth, if not all of it.

On page 128 and 129 are some additional records, all of which, if not all of which were furnished by the Attorney General.

The Chairman. The difference between your bill and the committee bill is that you do not have that triggering device?

Mr. McCulloch. No, sir. The Ford-McCulloch Bill is a bill which has universal application in each of the 50 states, wherever there is discrimination by reason of race or color in the amount indicated; 25 meritorious claims in any political subdivision of any of the 50 states. It does not stigmatize any state or political subdivision in advance.

The Chairman. If I recollect the two bills correctly in order to trigger yours, with the 25, the applicants must make their statement under oath?

Mr. McCulloch. They must be meritorious claims and they must be supported in such fashion that the Attorney General can certify in accordance with the law that there are those

number of applicants.

The Chairman. And they have to make that under oath?

Mr. McCulloch. Yes. The attorney General, no. He just makes a certification to that effect.

The Chairman. The 25 who apply, don't they have to make their application under oath?

Mr. McCulloch. Well, I must confess that the word thatwe used is not entirely clear. We used the word "alleged." It probably would not requre the allegation to be under oath.

The Chairman. I notice the committee bill does not require anybody to come in and make a sttement with any penalty for Perjury. I was probably mistaken in my recollection.

In the case of the Ford-McCulloch bill, under these conditions you have described where you determine whether there has been discrmination, when the examiners register under your bill, they do use the same requirement that the 1964 bill has of people with a sixth-grade education shall be presumed to have sufficient educational qualifications?

Mr. McCulloch. That is right, sir.

The Chairman. Mr. Smith, have you any questions?

Mr. Smith. Mr. McCulloch, I have great appreciation for your knowledge of this subject over the years. I have prepared a few questions and I hope your answers will help me to better understand the differences between these two bills.

As I understand it, in your particular bill, under the so-called Ford-McCulloch bill, youhave a sngle trigger,

rather than the double trigger in the other?

Mr. McCulloch. We have a single trigger and we think it is easily understood, and it is an elementary one, and that it has universal application wherever there would be discrimination by reason of race or color.

Mr. Smith. And, of course, in your bill you prefer the single trigger rather than the double trigger?

Mr. McCulloch. We do, sir.

Mr. Smith. Where do we get into the problems on this double trigger?

Mr. McCulloch. Well, of course, the Chairman of your committee has pointed up some of the problems. We started out in the Administration-Celler Bill by taking the arbitrary figure of 50 percent. If 50 percent or less of the people were registered to vote or voted in the election of 1964, there is a presumption arises that there has been discrimination by reason of race or color, contrary to the constitution, and thereupon the Attorney General, by action set forth in that legislation, requests and has the appointment of federal examiners to take the applications of persons who claim that they have been discriminated against by reason of race or color, and those examiners are appointed by the Civil Service Commission, and they proceed to do their duty, and among other things, in testing the qualifications of the applicants and determining whether they are entitled to vote, any literacy test in those states or political subdivisions of other states

are nullified, as are poll taxes -- what is that all-inclusive word -- "the poll tax or any other tax as a prerequisite for voting," I believe, which is of great importance, and a member of the Judiciary Committee will probably testify later on that.

Mr. Smith. Mr. McCulloch, in the triggering device in your bill, is there a possibility under your bill that the Courts will be flooded with litigation before it can be placed into any effect to eliminate discrimination.

Mr. McCulloch. We do not have the slightest idea that that will result, Mr. Smith. The controlling of the situation is this: The federal examiners appointed by the Civil Service Commission proceed to take the applications of those who allege that they have been discriminated against by reason of race or color.

The Attorney General of the United States or his agent or deputies will advise the hearing examiners who are appointed who to proceed to register. Those who are eligible to register under the new rules, including the nullification of the literacy test and poll taxes are registered. Thereafter, if a state or political subdivision thereof wishes to challenge that registration, the challenge is received, a hearing examiner is appointed who is authorized to take evidence and makes his ruling promptly. And only in cases where there would be agreed political subdivision or officials thereof, or where the applicant was aggrieved, would there by an appeal to a

three-judge United States District Court.

The United States District Court could reverse the decision of the hearing examiner only if the decision of the hearing examiner were clearly erroneous. If there was an attempt to bog down this procedure by an unbelieveable number of applications for review, I am sure the members of this committee who are lawyers know that the moment it appeared that the Court would be overweighted by cases, there is inherent equity jurisdiction in that or any other federal court to appoint masters to look into the facts and the law to determine whether or not the registration was clearly erroneous.

As a matter of fact, it would be my opinion by reason of the second triggering device, the afterthought in the Administration-Celler Bill, that there would probably be as much or more litigation under that triggering device than under this all-inclusive primary triggering device which the Ford-McCulloch Bill carries.

Mr. Smith. From the answer you just gave me am I correct in assuming that under your bill you don't think there is any possibility of the subdivisions affected going into Court before the examiner is appointed and seeking a declaratory relief which would in that way slow down enforcement?

Mr. McCulloch. It would be my opinion, Mr. Smith there could be no case or controversy pending at that time and it would be my quick opinion there would be no jurisdiction for the Courts to entertain such a suit.

Mr. Smith. And you don't think it will tie up the Court of Appeals?

Mr. McCulloch. I certainly do not. Mr. Smith, if I had the slightest idea this would slow down the registration of qualified people to vote I would not have submitted it. At the risk of repetition I think my decision in attempting to implement the rights of all people under the Constitution of the United States, beginning with that very strong bill that passed the House in 1957, is clear in this field.

Mr. Smith. As I recall some of the testimony of Mr. Celler, he indicated that the District Court, for the District of Columbia, would be used to assure a certain type of uniformity. Do you think this is necessary?

Mr. McCulloch. I do not only think it is not necessary, I think it creates a precedent which we should accept only under dire necessity. Our system of federal courts in every district in the United States, of course, is subject to the same general complaint. We have an unbelievable record of very quickly settling on a single course of elementary decisions. Of course, the Supreme Court changes its mind occasionally and we start anew, but generally that is the case.

Mr. Smith. As I recall, Mr. Celler stated under your bill it might be irresponsible and dissident citizens who would trigger your bill all over the country in places where its relief was not actually needed.

Do you share that same fear.

Mr. McCulloch. No, of course I do not, because -- take your own state. I have never heard any legitimate claims that anyone had been discriminated against by reason of race, religion, color or national origin. I don't see how this legislation could be used in states that were free from evil in this field. There would be no occasion for it being used in Ohio, for instance, because every person, as I have said before, who is a citizen of the United States under no legal restraint, is 21 years of age and a resident of the state for one year and the precinct for 40 days is registered to vote.

In more than half the counties in Ohio, registration isn't even required.

Mr. Delaney. That is not necessarily so, because we have foreign born citizens who have to pass a literacy test in order to become a citizen and then when they desire to vote, they still have to pass another literacy test.

Mr. McCulloch. In your state?

Mr. Delaney. Yes. Many of them are denied.

It would seem it would be prima facie evidence that a man who is able to become a citizen should be entitled to vote.

I know there is no provision, it is a little bit off, but just in order to correct the statement you just made relative to the citizen in Ohio, that is not necessarily so.

Mr. McCulloch. Well, so far as Ohio is concerned, it is, I believe.

Mr. Delaney. I can't argue about Ohio, but I know we

instances in New York where foreign born citizens cannot qualify to vote. And still they were able to pass the examination for citizenship.

Mr. McCulloch. You will notice I very carefully, in answering the question, said in the State of Ohio.

Mr. Delaney. I know you did.

Mr. McCulloch. In further answer to your question, of course the Attorney General has the right to pass upon the applicants to say whether or not -- or pass upon these applications, to say whether they are meritorious, or not. And if he concludes they are not meritorious there is a --

Mr. Delaney. Well, not unless there is an issue. For instance, in New York there would be no issue.

Mr. McCulloch. Are you talking about the English language requirement?

Mr. Delaney. Yes.

Mr. McCulloch. There is no provision in the Administration bill in the House in connection with that provision, in any event.

Mr. Delaney. I realize that. It is an inconsistancy. If they are qualified and they know enough English to become a citizen, it would seem to me they would then be qualified to vote, but that is not the case.

Mr. McCulloch. The Celler-Administration bill does not attack that problem.

Mr. Delaney. Yes, I know it doesn't.

Mr. Smith. Under your provision, under wholesale challenges just before the election, the election process could be disrupted and the attainment of the bill frustrated? Is that possible?

Mr. McCulloch. No, I am of the definite opinion there is no such danger. As a matter of fact, these challenges must be made long enough before the election that the hearing examiner will have passed upon most, if not all of the cases, and it would result in only those cases that were for review in the United States Court of Appeals that might be temporarily impounded.

Mr. Smith. Under your bill, what will Mr. Citizen allege in order to apply for a federal examiner?

Mr. McCulloch. He would just have to allege that he made an application, for instance, in the first instance, within 90 days, to register and that he was qualified under state law, and that he had been prohibited or not permitted to register by reason fo discrimination on account of race or color.

Mr. Smith. In other words, he first has to apply to register under state laws?

Mr. McCulloch. Yes, that would be my opinion.

Mr. Smith. Why do you include that?

Mr. McCulloch. Well, I do not think that state laws should be nullified at the whim or caprice of anyone in this country, so long as we have full faith in our federal system elections and the qualification of electors, when there has

been no violation of the constitution, has long been regarded as a state function.

I would regret seeing the day come when the federal government would take over these functions that have been so long carried on by states and the moment that they see the error of their ways and sin no more, the authority should go back to them, in my opinion.

I think it is an axiom that the non-use of authority from a township to a state will in due course paralyze the action of those political subdivisions just as the non-use of a muscle -- complete none-use of a muscle will paralyze its use.

Mr. Smith. Well, what is the difference between your bill and the Celler bill, insofar as impact on state law is concerned?

Mr. McCulloch. Well, the Celler bill would nullify all literacy atests under the automatic triggering device, where 50 percent or less of the people voted, or were registered to vote in the 1964 election. In addition, it would nullify all poll taxes or other taxes -- and I stress that again: "Other taxes" -- which are a condition precedent to election.

Mr. Smith. You have taken the sixth grade education as a basis for excluding any state literacy test, as I understand your bill?

Mr. McCulloch. That is right.

Mr. Smith. Why should you do that?

Mr. McCulloch. That was more or less an arbitrary amount

of schooling. It was the language we used in the 1964 Act which received an unbelievable percentage of votes in the House.

Personally speaking, anyone who has completed six grades in an accredited school in this country or in any of the commonwealth of America, certainly has the basic knowledge to vote, if they are ever going to have it. As a matter of fact, being one of those people who come from a state that has been interested in providing the franchize with the least obstacles that could be had, we think that that was an adequate degree of literacy. And I repeat, the Attorney General thought so in 1963 and 1964. The then-President of the United States thought so, both in 1963 and in 1964, and again the House and Senate, by an unbelievable majority, thought the same thing.

And you know that Act did not become effective in the field of voting until July 2, 1964. There have been so few cases brought under that comprehensive legislation that they mean nothing, or practically nothing.

Mr. Smith. I wonder if you would comment on the necessity of including voting fraud provisions in your bill. They are not in H. R. 6400. I wondered if you tried this out in committee or amended it or what the situation is?

Mr. McCulloch. We sought to write into this legislation sanctions that would guaranty the sanctity of a ballot. It has long been the thought of people who are interested in representative government all down through the centuries that

the franchize is the basic foundation of all representative government and when it is prosecuted for personal gain or control, or improperly used, the very foundations of representative government are attacked.

I am sure the members of this committee know of what occurred in Chicago, in Philadelphia and in Arkansas since and including 1960.

It seems to me, Mr. Smith, that there would be nogreater frustration for me if I were a trusting citizen who long had sought the right to vote and was finally told that I could have it, and after I had exercised this, found it had been so corrupted that it was meaningless. To me that would be more of a frustration than being told, "You can't vote."

Mr. Smith. On the poll tax, why didn't you outlaw it as H. R. 6400 does?

Mr. McCulloch. Mr. Smith, I went through the hearings on the resolutions for the amendment to the constitution nullifying the poll tax as a condition precedent to federal elections and there was a substantial, if not majority of good constitutional lawyers who said at the time that it was unsafe to seek to repeal poll taxes by statutory legislation. Although I must say there were some good lawyers, good constitutional lawyers, who did not agree. I might say my late and good friend and member of this committee, John Lindsay, felt that way, but there were enough members of the Judiciary Committee of the House and Senate, and enough members of the

House and of the other body to take the high road, which would, beyond question, nullify poll taxes as a condition precedent to election because it was so well known that for so many years in the past -- and I stress "in the past" -- I have no comment about today -- that the poll tax was used as a weapon for discrimination.

I might say that I had the timerity at that time to suggest that we offer a double-barreled approach to nullifying poll taxes; that at the same time we proposed the resolution for a Constitutional amendment that we likewise pass legislation. But some of the abler and those members of the Judiciary Committee who had more seniority than I did said of course that would be a confession of weakness, of and concerning the statutory approach.

Mr. Smith. What position did the Attorney General take before the committee?

Mr. McCulloch. The Attorney General takes the position that it is a great constitutional questionand he expressed no unequivocal, positive opinion that it couldn't be so repealed, but a careful reading of his testimony, not only in the House but in the Senate, clearly indicates that he does not wish this legislation to turn upon that question. I am very pleased to say that the Ford-McCulloch bill, or the Attorney General's position as reflected in the Ford-McCulloch bill, whereby we made a finding that poll taxes as a condition precedent to voting, have been used for the purpose of discriminating by reason

of race or color, and we direct, in the Ford-McCulloch bill, that the Attorney General forthwith begin a suit in these several states in question, based upon the finding made by the Congress for a declaratory judgment, and, of course, then if the Supreme Court sustains that allegation and issues a declaratory judgment or decree, that the poll tax in each of these states where the suits are filed have been used to discriminate by reason of race or color, then that will solve the problem.

If the deicision be to the contrary, then the direct Constitutional approach must be taken in the field, for state elections.

Mr. Smith. I certainly commend you, Mr. McCulloch, on the tremendous knowledge you have and your able presentation here, and I think you very much.

The Chairman. Have you questions, Mr. Colmer?

Mr. Colmer. Mr. McCulloch, I have listened to your testimony with great interest. I recognize you have given a lot of thought to this matter and directed a lot of energy to it over a period of years. I want to say at the outset that while I very strongly disagree with even your version of this approach to this alleged problem, that I think that your bill is -- well, let's say less obnoxious and less repulsive to the Constitution than the so-called Celler, or Committee bill.

Mr. McCulloch, unfortunately I was detained and did not get to hear your original statement, and I suspect maybe this has already been gone into, but as just one of the ordinary

members of the House who claims no particular constitutional knowledge above that of a country lawyer, there is something that has bothered me basically about this whole thing. I would like for you, even though you might have testified to the point before, but for my education, you might gointo it again: Article I of the Constitution -- Section 2, I believe it is, it is very brief and provides thatthe House of Representatives -- referring, of course, to the federal House of Representatives -- "shall be composed of members chosen every second year by the people of the several states."

And then the second provision: "And the electors of each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

Now, if I understand plain language, that provision of the Constitution simply provides -- and this, of course, is referring to federal elections and not state elections -- which we have gone to, now, in this bill -- that the qualifications shall be those prescribed by the states for the election of the members of the House of Representatives of the State. Now, I hope this will wind up in a question, but I think, rather than stop there, I will just go on and anticipate a little bit.

I understand that it is the contention of those subscribing to this philosophy that this is repealed by the 15th Amendment. Now, my question gets down to this: If that be true, that the 15th Amendment did repeal Article I of the Constitution, then why didn't the 17th Amendment for the election

of United States senators repeal the 15th Amendment provision?

I know the gentleman is a very learned constitutional lawyer and I know he has his version of it, but I would appreciate his comments on that.

Mr. McCulloch. Of course, the gentleman from Mississippi is most modest when he protests his lack, or partial lack of knowledge in this field.

Mr. Colmer. Don't build me up, now, for the crucifiction. Just go ahead with it.

Mr. McCulloch. I think he is very knowledgeable and he has that faculty which so many of us desire, to disagree without being disagreeable.

It is my opinion, Mr. Colmer, that the 15th Amendment at least modified or repealed insofar as necessary, that part of the first amendment, whenever a state proceeded to enact legislation contrary to the 15th Amendment, which is worth repeating here, Section I being "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."

And, of course, you know about Section II where there is a number of such articles: The Congress shall have the right to enforce this article by appropriate legislation.

I think it points out beyond a question of a doubt that states and officials thereof, acting under control of law, have denied or abridged the right of the citizens of the United

States, or any state, by reason of race, color and the like, and for that reason it is my opinion that the Congress of the United States has legislation to prevent such acts under color of state law --

Mr. Colmer. Pardon me. As to the question of discrimination because of race and previous condition of servitude --

Mr. McCulloch. And the denying or abridging the right to vote thereof.

So therefore in my opinion there is no question about the authority of the Congress of the United States to nullify qualifications set up by states or officials thereof acting under color of law, which nullify the 15th Amendment to the Constitution.

Now, aswerning the second part of your question, I think that Article 17, if it were ever used to deny or abridge the right of any citizen to vote, solely by reason of race or color, that we would have prompt authority to move into that field, too.

Mr. Colmer. I come back to the question that if the 15th Amendment, as you suggest, repeals or modifies the provisions of Article I of the Constitution, then when that provision with reference to voting qualifications was restated in the 17th Amendment, under the practice of law as you and I understand it, it being restated there, would certainly effect, if not repeal, anything in the 15th Amendment that would interefere with the right of the States under Article I to prescribe the qualifications for voting.

Mr. McCulloch. My answer to that, Mr. Colmer, is that so far as I know, there is nothing in the legislative history of and concerning the 17th amendment, nor other dependable and like argument or statements which would indicate that there was any intention to repeal that part of the 15th Amendment which we have described.

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11:30

Mr. Colmer. Of course, Mr. McCulloch, that is a matter of opinion, I guess, and there are those who have been making their living and elected to office over hundreds of years by differing on the construction of the Constitution and the law. I am going to pass. I am like the woman who convinced against her will is of the same opinion still. I am sorry that I cannot go along with it, because to me this is a very basic question involved here.

Mr. McCulloch, if the Congress wants to provide by this provision of the law, can do what is attempted to be done here in the committee bill, or even in your bill, they do not have to stop there, do they? Can't the Congress just repeal all qualifications or references of qualifications of the states for voting privileges, do away with registration?

In other words, do just what the President, I think, inadvertently said -- I cannot believe that was even in the script -- that we should have universal suffrage. My question is, if the Congress can do what is attempted to be done here, can it just do away with all of the qualifications of the rights of the states to prescribe qualifications?

Mr. McCulloch. Mr. Colmer, my answer would be no, it could not. The only qualifications that the Congress can nullify or provide sanctions against are those qualifications

which are used to violate other provisions of the Constitution.

Mr. Colmer. Yes, but we politicians can always find reasons and even determine facts to establish that. For instance, as I recall the distinguished gentleman a moment ago referred to the fact, and it has been said by many others, that it has been found to be a fact that the poll tax has been used to discriminate against Negroes. I violently disagree with that. I do not understand how they came to that conclusion. My state, of course, is held up as the whipping boy throughout this whole thing, and the ground where they started all these voting rights to make a show case. I wonder how many people know that the state of Mississippi had a poll tax prior to the Civil War as a matter of implementing its school system for general taxation purposes. Not only my state, but I think if the gentleman from Massachusetts, Mr. O'Neill, will look into it, he will find that the great state of Massachusetts even back in the old days when they were capturing these people over there and bringing them to Massachusetts later to be sent down to Mississippi.

Mr. O'Neill. You know the purpose of that, do you not? It was to discriminate against the Irish in those days.

Mr. McCulloch. I would be against that, too.

Mr. Colmer. And so would I. But I do not think that my friend's very fine Irish wit contributed very much to what

I stated with reference to his state having a poll tax.

Mr. Bolling. It is the truth.

Mr. Colmer. I am sure that Massachusetts never used the poll tax to discriminate against Negroes. So we can always find arguments for what I am pleased to term an assault upon the basic magna carta here of the people's liberties and of representative government, the Constitution of the United States. I would be opposed to universal suffrage, as I think the gentleman from Ohio would be. I hold no brief for the poll tax. I do not care. To me the attack made upon the poll tax in the committee bill and in the gentleman's bill is the least obnoxious provision of the bill. The poll tax in some of these wealthy states has been used largely for educational purposes, to help the very people we are talking about helping in this legislation, qualifying them to become qualified electors and citizens.

Mr. McCulloch, another thing bothers me about this. When I first came to the Congress -- when Mr. Roosevelt and I came up here -- we started farm legislation. We have been having a farm bill every year since then. Apparently we have never come up with a satisfactory one. Are we now going into this field where we are going to have some form of a civil rights bill every session of Congress. Is there no end to it?

Mr. Colmer. That just calls for the expression of an opinion.

Mr. McCulloch. Yes. I am hopeful with the adoption of the Ford-McCulloch bill we will have provided as many implements to guarantee the voting rights to qualified citizens in the United States as can be provided. At the risk of reciting some history of whichthe gentleman is as knowledgeable as I am, I am sure the gentleman remembers the Civil Rights Act of 1957, with the very great authority -- so far as the House bill is concerned -- I want to be concerned.

Mr. Colmer. Would the gentleman pardon an interruption and I should not do it, which was to settle this question of civil rights. That was going to be the all-comprehensive bill.

Mr. McCulloch. Yes, I would like to make some qualifications of my good friend's statement with respect to that bill. When that bill left the House it was probably the strongest approach to the solution of this problem that was ever offered and was ever made even to and including what we did in 1964. That bill, too, passed the House by a substantial vote. But the medicine was too strong and in the august other body that medicine was so diluted that it provided no real relief. Then came the Civil Rights Act of 1960 and in a bipartisan attempt we had that voting referee section which we thought

would go a long way in guaranteeing the right of every qualified citizen in America to vote and we got bogged down in the courts. By reason in some instances, I suppose, the conscientious predilections of some of the judges who have been hearing these cases. Then came the Omnibus Civil Rights Act of 1964, which has not had time yet to function. As I said before, there have been few, if any cases, brought under Title I, the voting rights title of the Civil Rights Act of 1964. There is some rather potent medicine there, if we be not too impatient. But if we be very, very impatient I regretfully would be forced to observe that there will probably be civil Rights legislation before the Congress from time to time for many years to come. Legislation is not going to solve the problems that confront our country in this field. That problem in substantial part is in the minds and hearts of men and until maybe one, two, or three or four generations have come along will all of the prejudices be dissipated, and then even perhaps -- I won't say perhaps -- and then it could be that this problem would not be solved.

Mr. Colmer. Mr. McCulloch, I thank you particularly for that portion of your answer at the last. That is certainly something you and I see eye to eye on.

This matter cannot be settled ever by legislation or by court decrees. If the gentleman will pardon me, and I have been over this before here, but again I would like to re-emphasize it. It has got to be settled by a cooperative Christian effort with good will existing between the races. The gentleman has heard me contend heretofore that you cannot take a race of people who just a few generations ago -- I do not want to use the word but I do not know any other word that would fit it -- what we regard as savages in the jungles of Africa, and capture them and bring them over here, and in a short period of time, as we measure time, bring them up on a parity overnight by the passage of a law by the Congress, or the edict of a court decree.

It has got to be done gradually. Again to sum that up, and this may be a little strong language for some people, the answer to the problem is not revolution but evolution. These people have got to trodd the same path that their white brother trod. It is a slow one. Nobody passed any laws or issued any court decrees back in the early stages of the white man. But I do not mean to get off on that. I have seen this thing work in my own community, I have seen it work in my state, where the racial problem is the greater because it is all relative. You do not have any racial problem where you have five per cent of the people of one race and 95

of the other, and so on down the line. All of this agitation is creating bad will between the races and is withdrawing the strong support that maybe has not been strong enough, but nevertheless has been given to less fortunate colored people.

Mr. McCulloch, I see that my time is about up here. There is another basic matter that I wanted to go into with you but I will reserve it for a later date. Maybe I will have a chance with some other witness to go into, and that is, on the Fifteenth Amendment and the question of qualification of voters. I am going to end with this.

From my brief study of that, the debate back in those days, when the hysteria, somewhat similar to what prevails here today, just after the war in the reconstruction days, when the attempts were made to do what is attempted to be done in this legislation, to destroye the qualifications of voters and rights of the states to make them, even that Congress in those days of emotional hysteria turned it down. I will go into that later. Thank you, Mr. McCulloch.

Mr. McCulloch. Mr. Chairman, could I say only this with respect to legislation? I think legislation has been necessary in the past. I think it has served a good purpose, and it is my studied judgment that legislation in this field and in

kindred fields nudges or pushes us along the road to implementation of the Constitution. One further thing, Mr. Chairman, and if this be improper, I would not be hurt if the Chairman rules it out of order. I know my colleague is not the witness. I am the witness. He is the questioner. I should like to know for my own information, and I do not know, was the poll tax that you mentioned in Massachusetts and in Mississippi before the Civil War a condition precedent for voting, or was it only a tax and revenue raising requirement?

Mr. Colmer. I prefer the Chair would rule the gentleman out of order.

Mr. McCulloch. I will get the answer.

Mr. Colmer. No, seriously --

The Chairman. We better not get too far afield.

Mr. Colmer. Thank you, Mr. Chairman. I think in all fairness I should answer it, particularly after what I have just said, and I will be very brief. Unfortunately I have not done my homework sufficiently to answer the gentleman's question. I am sorry. But the fact remains it was there.

[redacted]. We had one in Ohio, too. It was a day's work or two per year and on the public highways.

The Chairman. Mr. Anderson.

Mr. Anderson. Mr. McCulloch, the testimony has been that if the Celler bill is enacted that there will be this automatic suspension of the literacy test in 7 states in all. Are there any statistics or did the hearings bring out any census figures or any other statistics as to how many illiterate persons that might thereby declare to be eligible immediately as voters.

Mr. McCulloch. I remember no such statistics. The two capable alert staff men who are here tell me that no statistics or testimony was submitted on that question.

Mr. Anderson. The other question I have relates to the section of the majority report that describes and discusses the futility of employing the normal case by case method of adjudicating these voting rights cases, as was attempted under the Civil Rights Acts of 1956, 1960 and 1964. This rather detailed description, I think, of the one case involved in Dallas County, Alabama, where there was four years of litigation before there was finally a decree entered, has the committee either in connection with these hearings or in other hearings undertaken to explore the general question of how effective has been the administration of the Department of Justice with respect to the prosecution of these suits. Do they need more money? Do they need more attorneys? Do they need more help?

Why is it that there is this unconscionable delay in these cases?

Mr. McCulloch. I think the gentleman from Illinois will remember his English Literature and how the law was described from the time he was in school. We are troubled by the same delays and feet dragging as was written about 300 years ago. Clever lawyers, and there is always necessity for clever, able lawyers in the best sense of the word, use law and procedure to delay cases not only in this field but every other field of litigation in America. If one couples that with known facts of predelictions against seeing this relief granted in certain courts, it is not unusual to see this type of delay down there. We have, however, provided plenty of trial judges -- 80 or 79 two years ago, and there is said to be so many more needed now. There has probably been a lack of personnel in the Justice Department. All those things coupled together resulted in this inordinate delay which is a part of the record. While one may put up with delay in civil litigation, particularly if thedoes not involve money and where the person seeking relief really does not need it, delay in an electioncase may result in a loss of a right to vote forever. Success in a law suit brought to determine whether one shall vote in 1964, which

is finally determined in the Supreme Court in 1966 is an empty victory indeed, is it not?

Mr. Anderson. Thank you, Mr. Chairman.

The Chairman. Mr. Madden, do you have any questions?

Mr. McCulloch. Could I interrupt? again, and this is a more authoritative answer than I have given. This comes from Bourke Marshall, who was Chief of the Civil Rights section of the Department of Justice and this very question was being described and I read from page 309 in the hearings, Serial No. 2, of the House Committee. "In sum, some strides have been made in eradicating voter discrimination in Mississippi. But Mississippi cannot be viewed in isolation. The real concentrated effort by federal authorities in this state was begun only relatively recently."

That is what I said earlier today. There has not been time to begin the action which would have produced the results which we invisioned when we were so, I hope, eloquently pleading for the Civil Rights Act of 1964. "Progress has been made and far greater progress may be confidently anticipated. In other states where similar efforts were begun sooner, tangible results are already more visible."

I am sorry for the interruption.

Mr. Madden. How many days or weeks did the Judiciary

Committee hold hearings on this bill?

Mr. McCulloch. We held hearings on March 18, 19, 23, 24, 25, 29, 30, 31, and April 1.

Mr. Madden. Over a period of how long a stretch of time?

Mr. McCulloch. That was in Subcommittee. Then we had two or three days, as I recall, of executive session when we were marking up the bill.

Mr. Madden. Over a period of about a month, then?

Mr. McCulloch. Yes, I would think so.

Mr. Madden. What was the vote on the committee on the Administration Celler bill?

Mr. McCulloch. I am guessing now, 19 to 13.

Mr. Madden. What was the vote on the McCulloch bill?

Mr. McCulloch. That was the vote on the McCulloch substitute. The vote on reporting the bill after the McCulloch substitute, I do not know whether there was a record vote on that or not.

Mr. Madden. It was practically unanimous of the committee to turn out some kind of a voting bill, is that true?

Mr. McCulloch. That is certainly true, Mr. Madden. It is my opinion that we should have adequate yet not departing from the best traditions in this country voting right legislation in this session of Congress.

Mr. Madden. Your committee is made up of lawyers completely, is it not?

Mr. McCulloch. Yes, every member of the committee hopes that he is a lawyer. We are all members of the Bar.

Mr. Madden. The question of constitutionality was thrashed out and rethrashed out by the members of your Committee on this bill.

Mr. McCulloch. It was discussed at considerable length and the Attorney General of the United States testified on the question of Constitutionality at considerable length.

Mr. Madden. I wish to commend both you and your Chairman, Mr.Celler, for the outstanding presentations you have made here on this legislation. Also, our Chairman, and Mr. Colmer and Mr. Smith for the exhausting questions which have been asked, some of them duplications in the last two days or Thursday when we had these hearings. In fact, as the Committee goes on our hearings, we are on the second day of our hearings, and I think about every possible question has been asked and some of them have been asked two or three or four times.

With two members of the Judiciary Committee only having been heard, and only three members of the Rules Committee propounding questions, three out of [illegible] members of the

Rules Committee and only two members out of the 30 odd of the Judiciary Committee, if that percentage continues, we will be sitting here holding these hearings until corn husking time. When is cornhusking time in Ohio?

Mr. McCulloch. September and October.

Mr. Madden. That is all I have.

The Chairman. Mr. Martin?

Mr. Martin. No questions.

Mr. Delaney. No questions.

The Chairman. Mr. Bolling.

Mr. Bolling. No questions.

The Chairman. Mr. O'Neill.

Mr. O'Neill. Mr. McCulloch, I have no questions. This is meant to apply to a group of southern states and rightly so, in my opinion. I had the opportunity of listening in on one of these depositions that a young girl from Mississippi had given who had quite a background. She was a graduate of a state teachers college. She was a graduate of the University of Texas and workgin for her doctorate at Harvard. She had applied or she wanted to register to vote in Mississippi. As I understand it, from the deposition she made that she first had to make an application to register. After she made the application to register, the local newspaper printed her application and they asked whether there was any

objections to her regarding moral turpitude and did she have a recordor a criminal record and things of that nature, or did anybody have any objections. Seven days later she came back and she took a literacy test. Then seven days later she was to return again and she was to find out whether she passed or whether she did not pass. No answers why, just that she was denied. She took it to court and as I understand it, too late the court ordered her to be a registered voter. But of course the election had since passed. As I understand your bill, you want to protect the rights of the states, that the states will have the right that they always have to apply their own particular laws. What do you think with regard to this fact? Don't you think it should be a national law or standard that a man who commits a felony is not entitled to vote? But should anybody have the right to come in and protest for a reason that is known to him and not known to anybody else and a person has never had his day in court and is going to be denied the right to vote on that alone? How does your bill protect, for example, in Mississippi? These are the states we are deliberately aiming at. How does your bill protect the Negro citizens in those states?

Mr. McCulloch. Mr. O'Neill, I will answer the first part of your question. I think it is definitely a question

in two parts. We have no desire in the Ford-McCulloch bill to permit any state to prescribe qualifications and use them for the purpose of discriminating solely by reason of the race or color of the applicant. We provide in our bill that the vouching for character and the like shall be nullified. We provide a simple literacy test, one that had the well-nigh unanimous approval in the fall of 1964, that anyone having completed sixth grade in an accredited school was presumed to be literate. Those nullify the discriminatory practices in the states that we have described, which are so obnoxious to lovers of liberty in a representative republic. In the Ford-McCulloch bill they are reached by a simple trigger, readily understood, which operates quickly and again in accordance with the best traditions of America. It goes from the hearing examiner if there be a challenge, to a three-judge court of appeals, who are expected to give priority to these matters, and the decision of the Federal Examiner is to be sustained by the three judge federal court unless clearly erroneous. I repeat what I have said, we think we have a very good bill that has an elementary effective approach that will see that people who are citizens and qualified within this limitation to vote will be registered, will be permitted

to vote and will have the vote counted.

Mr. O'Neill. Nevertheless, Mr. McCulloch, the applicant will have to go through exactly the same process today as she has had to do in the past in order to register.

Mr. McCulloch. No, she does not. She does not have to have a vouching for character. She does not have to have these two witnesses come. She has to make an application to register, or they must make an application to register, to state authorities for the first establishment of a pattern or practice. But thereafter an applicant needs to do none of those things. All the applicant needs to do is to say that he or she will be discriminated by reason of race or color and the discrimination is brought about by economic sanctions and all of these other things.

Mr. O'Neill. I do not follow you. Ipso factor are you saying you are going to eliminate the present and current law of the State of Mississippi?

Mr. McCulloch. After a pattern or practice is established, yes, sir, for receiving the applications for these people who have been denied the right to register solely by reason of race or color. For instance, you recite the story of the person going back to be rechecked two or three times, and that is very frustrating and we recognized all that.

Here is the provision in the Ford-McCulloch bill. I quote on page 2: "A person is denied or deprived of the right to register or vote if he is, one, not provided by persons acting under color of law with an opportunity to vote, or to qualify to vote within two weekdays after making a good faith attempt to do so, two, found not qualified to vote by any person acting under color of law, or three, not notified by any person acting under color of law of the results of his application within 7 days after making the application therefor.

Mr. O'Neill, it is our studied judgment that the approach of the Ford-McCulloch bill in large part and as near as one can safely do so meets the objections in the case of this young lady who was from your description in my opinion so eminently qualified to vote. You know, I was interested in, and might be even much of this opinion, of the story written by the Editor of the Christian Science Monitor, who had a study made of voting rights and conditions precedent to voting in some of the really progressive and great foreign nations, and in some of them whose experience we have followed. The approach is to make voting as easy as possible, not as difficult as possible.

Mr. O'Neill. In the Celler bill, is the Senator Kennedy

Amendment in there as such, as he offered in the Senate?

Mr. McCulloch. With respect to the prohibition, or I mean, the literacy test, with respect to Spanish speaking students, it is not in the bill in any shape or form.

Mr. O'Neill. I am talking about Edward Kennedy, the poll tax.

Mr. McCulloch. The poll tax is in the Celler Bill in a much more stronger and more comprehensive way. The Kennedy proposal was defeated in the Senate, as I recall, by four votes. In the Celler Administration bill of the House, the poll tax as a condition precedent to voting is unqualifiedly proscribed and nullified as is any other tax.

I repeat this so that it sinks home with everyone, and so is any other tax which is a condition precedent to voting.

Mr. O'Neill. What about in your bill?

Mr. McCulloch. We do not follow either.

Mr. O'Neill. Why?

Mr. McCulloch. Because the Attorney General and a substantial number of the members of the Judiciary Committee of the House felt that that proposal took on an unconstitutional tinge. We therefore were happy to have the Attorney General join with us, or we were happy to join with the Attorney

General in saying that there is a finding by the Congress of the United States that poll taxes, as a condition precedent for voting, with discriminatory views used in these states, contrary to the Fifteenth Amendment. Our bill directs the Attorney General forthwith to bring an action in each of those states in the Federal Courts having jurisdiction for a declaratory judgment or decree implementing ot sustaining the finding which we set forth in the bill. If the Attorney General does that and the Supreme Court of the United States finds and issues a declaratory judgment or decree to that end, then those poll taxes are nullified serially in each of the states where the Attorney General is directed to bring the suit and the decree is to that effect.

Mr. O'Neill. Do you believe that your bill can get the direct and quick action that the Celler bill can get?

Mr. McCulloch. Webelieve our bill in many, if not most, instances can get more direct and more rapid relief than the Celler Administration bill. Furthermore, we think it is much more free from constitutional objection than the Celler Administration bill.

Mr. O'Neill. I have no other questions, Mr. Chairman.

The Chairman. Mr. Pepper.

Mr. Pepper. May I direct the attention of the able

member, Mr. McCulloch, to the provisions of the Celler bill. Let us see if we can simplify a little bit what the questions presented are.

In Section 2 the bill simply forbids the application of any procedural requirement or practice that has the effect of denying or abridging the right of any citizen to vote. That simply in general statutory language implements the provision of the Fifteenth Amendment.

Mr. McCulloch. I think that is the intention of the language.

Mr. Pepper. In Section 3, the Attorney General may apply to the court for a finding as to whether or not tests and devices applied in respect to voting in the several states have the effect of denying the right of citizens to vote in violation of the Fifteenth Amendment. That is a court proceeding, interlocutory or final is entered, unless the Court at the instigation of the Attorney General makes a finding that these tests or devices do have the purpose and do have the effect of denying the right of people to vote in violation of the Thirteenth Amendment. That is a court procedure. That is correct, isn't it?

Mr. McCulloch. Yes, sir. I should like to comment on that. That is the second or afterthought triggering in the Administration-Celler bill. It is a court proceeding. You put your finger right on it. You go to the heart of it. That very fact makes it a process that will slow down registration to a walk in comparison with the Ford-McCulloch bill.

Mr. Pepper. Does your bill provide for any similar procedure?

Mr. McCulloch. No, we provide for registration even without, or we provide for the appointment of examiners without a court finding.

Mr. Pepper. I know. In your case where you provide for registration --

Mr. McCulloch. I should like to say this, Senator. This afterthought triggering device, and I say that kindly, because the original Administration bill in neither the other body or this body had any such thing, is in large part a repetition and a restatement of the law that is now on the statute books.

Mr. Pepper. Will the able gentleman allow me to put these two cases? In your bill, if I understand you correctly, you would allow an individual to vote without these tests and devices prohibiting or barring it and then you would

allow the right of an individual denied the right to vote to have redress of court against these tests and devices.

Mr. McCulloch. We would permit an applicant to register before a Federal Examiner after 25 or more meritorious cases have been submitted to the Attorney General and he had requested federal examiners to register the people. It is that simple and it is that direct, and it is that rapid. Then if any political subdivision or official thereof felt aggrieved by that registration by the Federal examiner, he must file his challenge within ten days thereafter, the Examiner must determine the case within 7 days thereafter, and if the individual or the political subdivision or official thereof is aggrieved and wishes to have judicial review he must file his application for review in the United States Court of Appeals, a three judge court, within 15 days thereafter.

That is the speed and that is the direct approach in the Ford-McCulloch bill.

Mr. Pepper. May I give you one more, Senator? After that pattern or practice is determined in a political subdivision, county or parish or city, if it is a voting political subdivision, individuals thereafterby reason of the pattern or practice having been established can make

their applications to the Federal Examiner to be registered. If there be need for more federal examiners they are appointed by the Civil Service Commission.

Mr. Pepper. May I present the method provided in Section 3 that if the Attorney General brings a suit in a court and shows to the satisfaction of the court that these tests or devices are being used to deny or abridge the right of any citizen to vote on account of race or color, then it shall suspend the use of such tests or devices in such state or political subdivision as the court has determined are appropriate and for such period as it deems necessary. All that machinery that you just described would not be necessary in a case like that, as provided by Section 3. The court would forbid the use of that test or device in the state of political subdivision where it found that it had been used.

Mr. McCulloch. Senator Pepper, I should like to say again in effect we now have this type of legislation on the statute books. The inordinate delay which has been the bain of the existence of these people who have sought the right to vote says that it is so slow that it is practically useless. That, Mr. Chairman, was the reason why it was not a part of the original bill and why it is an afterthought pickup.

Mr. Pepper. Very well.

What I tried to point out is that in Section 3, there is a summary court proceeding possible by which a test or device may be stricken down in a state or political subdivision barring the right of people to vote. In Section 4, if it is found that a majority of the people in the state did not either register or vote in the general election in 1964, then it is forbidden to use tests or devices as conditions to voting in those states where that percentage of failure to vote occurred, is that correct?

Mr. McCulloch. That is right.

Mr. Pepper. That is simply prohibition striking down the use of those tests or devices in those states.

Mr. McCulloch. I should like to comment, Senator, right at this time those prohibitions and those prescriptions against state laws come whether or not there is two per cent non-white or ten per cent or 20 per cent or 50 per cent.

I should like to say, Mr. Chairman, this was such a glaring weakness of the bill for which we seek to have the Ford-McCulloch bill substituted that in the last few days of the go-around in the other body they said, provided at least 20 percent of the people had been found by the

Director of the Census to have been non-white.

Mr. Pepper. Very well. On page 19 the authority of the examiners is prescribed. I want to draw your attention to 7(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 the list of eligible voters. In other words, the Examiners who are the Federal officials are going to apply the qualifications prescribed by state laws, not by this bill or any other federal law. The examiners will use the qualifications prescribed by state law. Isn't that correct?

Mr. McCulloch. Senator, I would like to say this, that language is utterly misleading because we do not know what Section 9(b) says.

Mr. Pepper. Yes.

Mr. McCulloch. Wait just a minute.

Section 9(b) says that after literacy tests and poll taxes in effect have been stricken down, they will apply the other state qualifications.

Mr. Pepper. 9(b) on page 22, if I may draw the able gentleman's attention to it, reads, "The times, places and

procedures for application and listing pursuant to this Act and removal from the eligibility list shall be prescribed by regulations promulgated by the Civil Service Commission, shall, after consultation with the Attorney General, instruct the examiners concerning, one, the qualifications required for listing, and two, loss of eligibility to vote."

Those are the directions to be given to the examiners, and the examiners shall find those who have the qualifications prescribed by state law and they shall put those people on the list -- they shall promptly be placed on the list of eligible voters. Is there anything very wrong about that?

Mr. McCulloch. Mr. Chairman, again my answer is this: That after all literacy tests have been stricken down and the poll tax has been nullified, the Attorney General says follow the rest of the state qualifications. If I can be absurd, you have thinning red hair and you are 60 years of age, and you are a citizen, and you are not under any legal restraint, those are the state qualifications that we recognize.

Mr. Pepper. I will say to my friend, what authority do you have for restricting the clear language on page 19, Section (b) which says any person whom the Examiner finds to have thequalifications prescribed by state law in accordance wt with instructions received under Section 9(b) shall promptly

placed on the list of eligible voters. Then you find 9(b) on page 22, and I find no limitation such as the able gentleman suggests there.

Mr. McCulloch. I refer you to Section (b) on page 12 in the first place. I read it. "If a proceeding institutued 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" -- and a literacy test is a test and a poll tax is a device under the definitions in the bill -- "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," and so on, that is what the Attorney General says to the Examiner.

Mr. Pepper. They are different sections. One of them is simply prohibition against the state authorities using this.

Mr. McCulloch. My answer stands.

Mr. Pepper. Very well. I have only one other question, if the gentleman will kindly permit.

The other salient provision of the Celler bill is that

it does preemptorily forbid the requirement for the payment of the poll tax as a condition to voting in either federal, state or local elections.

Mr. McCulloch. That is right.

Mr. Pepper. The able gentleman's bill finds as a fact, does it not, that the requirement for the payment of a poll tax is a device to deny or abridge the right of people to vote in violation of the Fifteenth Amendment. You find that.

Mr. McCulloch. In some states.

Mr. Pepper. Don't you make a general finding to that effect?

Mr. McCulloch. I say in some states. Therein lies the deep water in which we get.

Mr. Pepper. You have a provision against abolishing the poll tax in some states and not in others.

Mr. McCulloch. No, you misunderstood me, Senator Pepper. Wherever the poll tax is used as a device to deny or abridge a citizen of the right to vote solely by reason of race or color, I am willing and anxious to forthwith call that kind of a discrimination to an end and prohibit it.

Mr. Pepper. But do you specifically find that in certain areas it has been?

Mr. McCulloch. Yes. But not in all. Only in certain states.

Mr. Pepper. But in the cases where you do find that it has been, instead of barring it even though you made such a finding, you require somebody to go into court and have the court simply implement what the Congress has already found. Why go to the extra trouble and delay of having the Court find and implement what the Congress has already directed?

Mr. McCulloch. The Court is not necessarily bound by the finding of the Congress. It is helpful in the extreme but it is not binding.

Mr. Pepper. In spite of the fact that you have found a bar you do not want to abolish it.

Mr. McCulloch. Let me finish my statement.

Mr. Pepper. I am sorry.

Mr. McCulloch. Then we proceed in accordance, again, with what we have been taught is the proper procedure, to go into the court of last resort, to have it determined whether that which is complained of is contrary to the Constitution or not. Now, there is no great delay going to result in that kind of approach, and the committee Celler bill has that kind of approach in the matter of

the right to vote, with the election maybe at least only 45 days away and at most, I think, in one state, 8 months away.

Mr. Pepper. Thank you, Mr. Chairman. I thank the able gentleman.

Mr. McCulloch. Thank you.

The Chairman. Mr. Quillen, do you have a question?

Mr. Quillen. I have a question or two, Mr. Chairman, if you do not mind.

The Chairman. That is the second bell and we will have to suspend for 30 minutes. I would like to make this statement before we do. We have here a list of ten witnesses, members who have requested to be heard on this bill. That is going to take considerable time. Under our agreement we are to hold hearings today, tomorrow and the next day.

We have to conclude them within that time. So it is going to require us to keep our noses to the grindstone for the next couple of days. I hope we can proceed with expedition because we do have a deadline on this bill at which time we propose to vote. I hope that the members will be here and remain here to hear this testimony because it is a matter of great importance. We do have the unusual situation of a deadline on our time to vote on the bill.

Mr. Pepper. You say we are coming back in 30 minutes, Mr. Chairman. Will we go right on through?

The Chairman. Thirty minutes, yes, sir.

Mr. Smith. Then what are we going to do?

The Chairman. We are going on with the testimony.

Mr. Pepper. We won't have any recess for lunch after that.

The Chairman. That is up to the committee.

Mr. Madden. Let us make it 1:30 and we can have lunch.

The Chairman. I have kept Mr. Willis here for some time. I do not want to inconvenience him. It is 12:30; is that the desire of the committee, that we take lunch time now

Mr. Pepper. I would prefer it.

The Chairman. I do not happen to eat lunch.

Mr. McCulloch. Mr. Chairman, the Chairman asked me a question at the very beginning of my testimony concerning the precedent of bringing legislation or authority under legislation to the District of Columbia where there was exclusive jursidction and to ask me the precedent for that. Since that is very technical and involves the finest analysis of cases that are thought somewhere to be a precedent, I ask unanimous consent to supply for the record a memo on that very important question.

The Chairman. Yes, sir, it will be done.

Mr. McCulloch. Thank you, sir.

The Chairman. 1:30, please.

(Whereupon, at 12:31 o'clock p.m., the committee was recessed to reconvene at 1:30 o'clock, the same day.)

The Chairman. The committee will be in order.

Mr. Quillen.

Mr. Quillen. Mr. Chairman, I have a question or two.

Mr. McCulloch, listening to the debate on both bills, or the questions on both bills, in your opinion is it a fact that your bill eliminates discrimination in all 50 states?

Mr. McCulloch. It would apply to every one of the 50 states, yes, sir, and it is an instrument that could be applied to any pocket of discrimination in any of those 50 states if the required number of people were there who had been discriminated against.

Mr. Quillen. Irrespective of race, creed or color?

Mr. McCulloch. Well, it is a bill that goes to discrimination on account of race, creed or color. However, our penal sections in the matter of vote frauds cover both frauds, regardless of whether brought under this bill, and of course our bill applies uniformly in each of the 50 states.

Mr. Quillen. In regard to the triggering device, what would happen in areas, counties or districts where they had swollen, temporary populations?

Mr. McCulloch. Well, that swollen, temporary population would make up part of this 50 percent which would trigger the Celler-Administration bill.

I can think of places where there are swollen populations in given years or at given times of certain times of the year. In the first place, if there is any Army base in a state and

there are 50,000 people there, that entire 50,000 is counted in the census. It is used to help trigger the Administration legislation, or to bring something which is completely normal in our life, in these towns, cities and states where there are large universities -- like the University of Michigan. I think there is well over 30,000 or 35,000 students in that university. In the Ohio State University in Columbus, Ohio, there is someplace between 25 thousand and 30 thousand there. Those figures, even though those students were prohibited from voting in those towns or counties, would be counted as part of this 50,000. It is almost unbelievable.

Mr. Quillen. Well, I don't think that has been brought out here, and I appreciate your bringing it out, because I think it is most important.

Mr. McCulloch. It is in the hearing record. It is in the report, too. I think we have pointed this out in the report which accompanies the bill.

The Chairman. And yet those people who are in the university are eligible to vote in some other state and could have voted, too, but you haven't any record that they voted.

Mr. McCulloch. That is right, sir.

Mr. Quillen. In the hearings did they give any explanation as to why they would allow thisswollen temporary population to be included in the 50 percent rule?

Mr. McCulloch. I think one of the justifications for not taking those conditions into consideration, especially

with respect to Defense bases was that there was no way, now, being used in our census-taking apparatus, to separate this group from the other group; or to determine how many voted on the base and how many voted by absentee ballot.

Mr. Quillen. It seems to me we don't have a clear-cut answer and we are not considering the impact of this matter, at all. Under your bill that would be no problem?

Mr. McCulloch. That would be no problem.

Mr. Quillen. I feel, as I have said before, that I think any measure, any voting rights bill should be applicable to all Americans, and certainly all Americans should have the right to vote. But in comparison with the two measures, the Celler, or Administration measure, it seems to me that it is anti-discrimination in reverse, in that it would actually create discriminatory pockets throughout the United States, and not be applicable.

Mr. McCulloch. Certainly that was the result of the bill as originally introduced both in the House and in the other body.

I have spoken, not disrespectfully, but to pinpoint and emphasize the other triggering proposal which was the afterthought which seeks to have a triggering device applicable to any pocket of discrimination in the United States.

Mr. Quillen. I think you have given this a lot of careful study and thought and come up with some very good solutions, and I want to commend you for the fine job that you have done.

Mr. McCulloch. Thank you very much. We have had unusually able staff assistance, both majority staff and minority staff, in our search for the best way in this important field.

Mr. Quillen. I live in Kingsport, Tennessee, and I represent the first congressional district and we have no problem of discrimination. We encourage everybody to register and vote, and I think that is true in all the state of Tennessee, and I think that is the way we should face this problem, that we should encourage all Americans to register and vote. I like the ide a of making it applicable to all 50 states, rather than excluding some where we know there is gross discrimination. I think that when we consider this matter politically, that we are sincerely offbase, and I think we ought to look at the forest, rather than the trees.

Mr. McCulloch. I certainly agree with your comment that we should make it relatively easy, but have a dependable way for every qualified person to vote in the United States.

Mr. Quillen. Without any force. In other words, a man should not be forced to vote unless he wants to vote. That is a right given to us in our system of government, and I agree with you there.

That is all, Mr. Chairman.

Mr. McCulloch. I should like to say this, Mr. Quillen, since you mention tendency. I think perhaps there may have been an unintentional answer with respect to your state -- and I have noidea that this would ever happen,

but it seems to me if it was decided there was massive discrimination in your state, the administration bill would not reach the masses planned for discrmination.

Mr. Quillen. But-your bill would.

Mr. McCulloch. Yes. It is effective to each new occasion or each new duty, as long as it remains on the statute books.

Mr. Quillen. Thank you, Mr. Chairman.

Mr. McCulloch. I think you very much, Mr. Chairman, for this privilege of coming before your committee.

STATEMENTOF HON. EDWIN E. WILLIS,
A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF LOUISIANA

Mr. Willis. Mr. Chairman and members of the committee, I am delighted to appear before you on this bill.

I find individual views contained in the committee report as a member of the Judiciary Committee. I am going to speak from the statement I made, which is not part of the full report. We are dealing with an extremely important subject. Besides being members of Congress, we are all citizens, all Americans and all voters. I don't think one should brag or pretend that he has a greater devotion to the right to vote than another member. I know I am devoted to the right to vote, and also I am devoted to certain legal concepts. And so my statements are not based on racial considerations.

The fact of the matter is that the people of my congressional district believe in the right of all qualified persons

to vote. The people I represent are against the application of different standards to different people, and the important thing is that they practice what they preach.

In my congressional district, speaking of all parishes or counties, as you would call them, that I represent, 57 percent of all colored people of voting age are registered, and in the last election, if that must be the test, 73 percent of those did actually vote. That means that in the Third Congressional District of Louisiana -- I speak only of that district, now -- percentage wise there are as many or more colored people of voting age who are registered than there are white people registered, of voting age in some other areas.

In my 3rd Congressional district of Louisiana, there is no discrimination in the registration process or in the office of the registrars of voters and there is no intimidation or the denial of the right to vote in the voting booth or the polling places.

Furthermore, where I come from there is no requirement of a poll tax. The poll tax was repealed in 1928, in the time of Hewy Long. I was old enough to campaign and vote for its repeal. What I am now saying is not idle, or self-serving. It is based on cold facts. As a matter of fact, as I shall show, the committee itself, the majority view, in adopting an amendment that I offered, recognized what I am saying specifically, and I will point to that in a moment.

I would like to, in my own way, again review what I think to be the constitutional provisions that are applicable.

Of course, you have Article I of the Constitution which provides that the states have the right to fix the qualifications of voters. The 14th Amendment provides in substance that there shall be no discrimination with respect to the right to vote. Finally, you have the 15th amendment, which provides that no person shall be denied the right to vote. These are the three Constitutional provisions to be considered and to be respected. As a matter of fact, I think it is my duty and I think it is the duty of all members of the Congress to try to reconcile all those three provisions and to give all three the effect intended by the founding fathers.

Having said that, let me say that if the only thing this bill did would be to prohibit discrimination under the 14th amendment, or to prevent the denial of a right to vote under the 15th amendment, it would be carrying out two of the provisions and it would be Constitutional, and I would cheerfully vote for it, as I am sure almost, if not all members from all sections of the country would. But that is not the situation, because as I see it -- I don't pretend that I am right -- I may be wrong, but I think I try to reason things out and to vote my convictions -- under the guise of implementing the 14th and 15th amendments, the bill, any way you look at it, is deliberately -- and maybe some people feel it is necessary, but nevertheless, it is deliberately aimed at only six Southern states: Alabama, Georgia, Mississippi, Louisiana, South Carolina and Virginia. And then with punative effect, anyway,

it strips the powers of those six states only, of their rights to carry out Article I of the Constitution with respect to setting the qualifications of voters. I was present when my good friend and colleague Mr. McCulloch testified, and some member indicated that in a question and said what I said in my statement. In this respect, anyway, the bill itself contains seeds of discrimination.

And what is more, in my opinion, the bill contains provisions which are unrelated to -- certainly go far beyond these three constitutional provisions, or the matter of carrying out the right to vote which is said to be the purpose of the bill.

Now, all of this is not to say that I have any illusion about the probable outcome of a court test of the bill, because many years ago a former Chief Justice, Chief Justice Hughes said the Constitution is what the Supreme Court says it is. I was a young lawyer then, and I was rather shocked at that statement, but I have found it to be pretty accurate. But in my judgment there is no reason why the legislative branch, itself, should not use self-restraint and avoid the exercise of dubious bare-powers, to say the least. For instance, a man on his own would have the bare power, the sheer power to whip and brutalize his child and no one would know about it, but that doesn't make that action right. I think everybody would agree that this is wrong, and so I want to discuss some of the provisions of this bill which in my opinion are equally wrong, besides being improper and unwarranted.

Now, you have heard about the triggering provisions, the formula of this bill. Let me say it in my own way. The bill provides a formula under which any state or political subdivision which used the literacy test in 1964 and in which less than 50 percent of the voting age population -- white and non-white -- were registered or voted in the last presidential election, must discontinue the use of literacy tests and may be subjected to the imposition of federal voting examiners. Now, this is the arbitrary "numers game" formula of the bill which "hooks" six states and six states only while exempting others that do have literacy tests.

Now, I ask you to read that passage in the bill -- that is Section 4, I think, or 4(a), and which is the trigger, the starting point, the heart, the nub, the crux of the bill. You will find no reference to the words "color, or race." It is unrelated to it. When it talks about 50 percent it means 50 percent of whites and non-whites. Now, we come to a point where, of all people, I tried to force the issue on the committee. Let's relate it to race or color. I will come to that point, but I stress it at this time, that the triggering provision does not refer to the words "race or color."

Now, let me illustrate how it would work -- resulting in six states being involved. Now, I wouldn't have any proof of it. One might say that they tried all kinds of formulae and finally came out with this one that "hooks" them. I don't know. I am not saying that, but the net result is

there. This has been how it works: Louisiana has a literacy test. I didn't put it on the books. It has. Way over 50 percent of the voting age in Louisiana -- white and non-white, that is the formula -- were registered in the last election, November, 1964. But because of appathy, indifference or any other reason, less than 50 percent went to the polls, so you have the second element coming in. The bill provides, white and non-white, if less than 50 percent are registered -- that is not true in Louisiana; more than 50 percent are registered of white and non-white -- or, if less than 50 percent of people of voting page -- they don't even refer to the registration polls; people of voting age -- went to the polls, and if the state has a literacy test, it is hooked.

So Louisiana has a literacy test. Over 50 percent of the people were registered, but less than 50 percent went to the polls. Therefore, Louisiana is affected.

Now, take another state. And I am not trying to make any unkind comparison. New York has a literacy test. It has. Many other states, but let's take New York. New York has a literacy test. Like Louisiana, way over 50 percent of the people over voting age in New York were registered last November, but because of a greater interest in the final outcome, or for other reasons, over 50 percent did go to the polls. Therefore, New York is not affected, because it meets that 50 percent numbers game formula. And since over 50 percent were registered and since over 50 percent went to the

polls then, although New York has a literacy test, the literacy test in New York remains, and New York is not affected. Now that, really, is how come six states and six states only are affected, because in those six states, one of these 2 50 percent elements comes into play: Either over 50 percent were not registered or 50 percent did not go to the polls.

That being the case, if there is a literacy test, that state is affected.

Now let me caution you: If in any state over 50 percent of the people were not registered or if actually in any state over 50 percent of those registered did not go to the polls, if that state does not have a literacy test, it is not affected. That is the significance of that language. If you don't believe it, you had better re-read it, because that is it.

Now, furthermore, because of a dragnet gimmick in the bill, the county or parish, which is in one of the six southern states, those to which the formula applies, that county or that parish has no avenue of escape from the bill, regardless of how completely such subdivisions may be in compliance with the law, so far as race or color is concerned. There is no way of escaping by a particular county or parish in there if the whole state is covered. Under an amendment I propose and that I will discuss, some relief is afforded, but there is still no provision in this bill. There was, once. They adopted an amendment of mine, once. They withdrew it on

reconsideration. I will come to it.

I say if a state, statewide, is covered, then, and a county in that state is innocent or in compliance, that district or that congressional district is stuck, and I am in that unhappy position. The bill therefore does not fulfill the promise that the President made to Congress in his Address when he submitted the bill. Here is what he said: "To those who seek to avoid, by their national government in their 'home communities'" -- who want to and who seek to maintain purely local control over elections -- said the President, " -- the answer is simple: Open your polling places to all your people."

Well, in my congressional district the doors have been open. I have quoted you the facts and they are there, and they are in the record of these hearings and no one contests them or can. I should say the county or parish or whole congressional district which is in compliance and wants to do everything possible to protect the right to vote of the colored people, ought to be rewarded. Certainly we apply that in our school system. Perhaps the student may not be the brightest and can't make 100 in his reading, writing and arithmetic subjects, but if he is a good self-applying boy, at least give him "E" for effort, and I was pleased with that passage of the President's address, that at least places trying to comply would be rewarded. We ought to be.

This bill is unneeded and unnecessary where I come from.

Now, a state, parish or county, to which the formula of the bill applies, cannot change or improve its voting qualifications or standards without permission of either the Attorney General or a court in the District of Columbia. Not only does this requirement go far beyond the constitutional principles, but it seems to go out of its way to obstruct local and state government at the very time when they may be making praiseworthy efforts to comply with the 15th amendment. Giving the Attorney General veto power in this area over such efforts -- power over such efforts is, it seems to me, reminiscent of the power invested in colonial regents. You are almost making a governor out of the Attorney General of the United States. Moreover, if Court approval of an action of a legislature or, by the way, an effort to amend the Constitution of a state, if Court approval is deemed to be important, it would basically seem to me that there is no persuasive reason why that court check should not reside in the local courts. I just disagree with my colleagues on the committee, that is all, on this point. They think it is essential. They think there may be feelings of prejudicially local federal judges. I think it is almost a gratuitous affront on these federal judges to bypass them.

But the principal provision in this respect remains, that instead of fostering compliance, instead of helping areas to "get in line" if we must use those words, it places obstacles in their direction.

What is more, this prohibition is made applicable to all changes in voting standards dating back to November 1, 1964. This means that all states and subdivisions covered by the formula of the bill must now come to the federal authorities for permission and approval of any legislative or Constitutional change in voting standards which may already have been enacted and placed into effect long before this bill was conceived of, or introduced. I say this is without precedent.

Now, I tried to offer an amendment to at least strike out this retroactive clause and at least give state legislatures the right, until this bill is signed into law, to adopt the legislative act to bring itself within the law, but it can't do that.

I say that with knowledge, because it happens the legislature of my state has been in session. There has been a lot of talk. I certainly would have advocated, faced with the knowledge of the fate of this bill, the passage of a bill to comply with this. As distasteful as it might have been to some people -- not to me -- to anticipate this and to pass a law meaning relative repeal of literacy tests or anything else -- which would not have been true statewide, but any law to permit the state of Louisiana to be in compliance before this bill is passed. But everything is hinged -- why I don't exactly know -- upon November, 1964. November, 1964. November. This is so far the formula for the two 50-percent tests, for the application of state laws -- that is the inability

of states to correct their laws. It must date back in November, 1964, before this bill was introduced.

Now, the present bill, moreover, does this: While a state as such may not be covered -- this is a funny quirk -- certain counties within the state may be. The result is that if there is a literacy test in a state, the operation of the test is automatically suspended for the counties covered but remains effective for other counties. Somehow this is peculiarly directed or intended, maybe to give relief, anyway you look at it to the state of North Carolina, where some provision is made involving 34 counties in North Carolina. Why, I have never fully understood.

This is the consequence of the committee's refusal to provide for the exemption of a political subdivision which is in a state to which the formula applies, regardless of how completely such subdivision may be in compliance with the law. Now, I would like to discuss very briefly amendments I offered that were adopted and rejected, to this bill.

I, while practicing law, took the position that a good compromise was better than a bad loss, and I always tried to make the best I could out of a bad bargain. Now here, I feel an obligation to offer amendments to any bill, even though I am outnumbered, to try to make it less onerous or less burdensome or less unpalatable. And then after making that fight, if it is not sufficiently improved, vote against it. It was on that basis I offered a number of amendments, some of which

were adopted and others rejected.

One of my amendments which I referred to a while ago, which was adopted, provides that in making a judgment on whether a voting referee should be appointed in any particular political subdivision, the Attorney General shall consider -- that is the amendment -- whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 15th Amendment. I shan't read it, but if you look at the Majority Report you will find a package in that report commenting on that amendment. It looks like someone is trying to look at it so I will read the Committee Report. This is from the Majority Report:

"The committee recognizes that in some cases in which tests or devices are suspended, the appointment of examiners may not be necessary to effectuate the guarantees of the 15th ?amendment. This could be the case where local election officials and entire communities have demonstrated determination to assure full voting rights to all, irrespective of race or color. Accordingly the bill expressly directs the Attorney General, before certifying the need for federal examiners in a particular area, to consider, among other factors --" and this is the language of my amendment -- "whether substantial evidence exists that bona fide efforts are being made to comply with the 15th amendment. The committee contemplates that where such substantial evidence is found to exist, the

Attorney General will not certify the existence of examiners." In short, this amendment, as explained by the full committee report itself, will mean that in my Congressional district, and all other similarly situated parishes or counties where such efforts are being made to comply, the Attorney General shall not certify the need for examiners. That is only a partial exemption. That is not a total exemption. I will come to the other one.

That means this: Since the whole state of Louisiana has a literacy test and since less than 50 percent of people of voting age did not go to the polls, Louisiana as a whole is effected, meaning immediately the literacy test in the state is suspended, throughout the state.

Under this amendment the literacy testhas been suspended. The Attorney General ought not and according to the committee should not, appoint examiners, and the local registrars will still function. But they can't enforce a law in Louisiana with reference to a literacy test. That is not a total exemption. But it is a help for those who are sincerely trying to utilize such local officials and at least not have imposed on them a federal examiner, even though those local officials, however, will not be able to carry out the Louisaiia law on literacy.

Now, on literacy let me say this: I have peculiar notions about literacy and poll tax and anticipating a question, maybe, let me say this: My father, if living, would be we[illegible]

over 100 years old. He never went to school one day in his life. But he voted. I have no shock about this literacy test business. Last year the Congress itself set a six grade education as proof sufficient. I was laughing up my sleeve. You can make it first grade, as far as I am concerned.

I think it is eminently proper to have some intelligence tests in all this stuff so I have no objection to it. The literacy test has never bothered me toomuch, and the poll tax thing has never bothered me too much.

As I say, this amendment which was adopted would apply in all areas where, if the Attorney General can be convinced that bona fide efforts are being made to comply with the 15th Amendment, that he ought not -- he is impowered not to send examiners and according to the committee ought not to, and that is the bet I could get, and that is good enough for me, at least to that extent it is all right.

I went beyond that and I offered other amendments. Let me tell you about another amendment I offered which at one time was accepted and then withdrawn upon reconsideration. I tried to make this bill apply on a parish by parish, or county by county basis. Under the structure of this bill -- and it is hard to get that sense out of it -- Claude, I will be glad to talk to you about your conceived meaning of Section 8 that you talked to Bill McCulloch about. Under the bill, although my area is in compliance numerically and otherwise with the spirit of the 15th amendment, as I say, there is no

avenue of escape. Only the state of Louisiana could come to Washington and file a suit, and prove that it has, according to some version of it, cleaned itself out. But Louisiana can't do it for five years, because Louisiana has been subject to law.

But the counties of the state, who are "clean," if that is the word, can't come. Now, my amendment did say: a formula based on race and color, that such and such a percentage of the people of voting age -- colored people of voting age, are registered. Then let at least the county come to Washington and file a law suit and be out totally from under.

The amendment said that in any basic subdivision, county or parish, where at least 40 percent -- I think that was the one finally adopted -- of colored people of voting age are registered and, as I recall, 60 percent of those voted -- I could have gone to 70 percent; 73 percent -- in the last election, that county can come to Washington, file a suit and be excused from this bill like all other states that are in compliance.

Now, that still would have been troublesome. We still would have had to come to Washington to file a law suit. But I have said, "I hereby volunteer my services free of charge; I will file that law suit, I will win it and free my congressional district in three weeks. I will be the first one to file, just so we can be left alone when we ought to be left alone, when we are in compliance."

The committee approved that amendment and upon reconsideration they balked. That, to me, is remarkable. Here am I, an outsider, so to speak, challenging, pleading, fighting for an amendment to have this bill speak in terms of race and color, instead of the formula which does not do any such thing. The committee adopts it, and then for some reason they changed their minds. I am friendly with them and I am sure we are not going to fall out under it. I regret it.

Mr. O'Neill. Why do you think they changed their minds?

Mr. Willis. I don't know. They thought it ought to be reconsidered. I will find that out on the Floor.

Now, another thing: The bill as introduced in the House and in the Senate -- but let's talk about the House bill -- contained this provision: When the machinery of this bill is in effect, when examiners are installed, when we are receiving the people to vote, registering them, the bill, the Administration position said that, however, before going to the federal examiner, go once more -- or if you have been before, go at least once to the local examiner, and when you are turned down, come to the federal examiner.

I thought that was a wonderful idea. It has been in all the civil rights before. Why not in that? That is at last paying some modicum of respect to the rights of the registering process of the states. Go to the local registrar. Try. And if you are turned down, come and be registered. Someone offered an amendment to take that provision out of

the bill.

Frankly, if I had -- and I can't hide that I was disturbed about this -- if I ever had an idea that I could vote for this bill, with these two provisions couched that way it sure shattered my hopes.

Why shouldn't a local, complying county have the right to escape? In a case where federal examiners will be installed, why shouldn't the people desiring to register take a try at going to register? I think that would be wholesome because if the bill is passed, there would be the last chance, and they wouldn't cost the government too much. I think it would promote an effort. I think a lot of these local registrars might be regretful that for some reason or another they have been turning these people down.

Anyway, I conclude by saying this: I completely realize, I acknowledge the force of the argument that some areas of the country, or some sections have not made sufficient effort to accord all the people the right to vote, and to the extent that that phase is due to any plan to deprive any man of the right to vote, I just think it is wrong. I think, however, it is just as wrong and no more wrong than the provisions that I have referred to. Depriving the state legislatures of acting without the authority of the Attorney General coming to Washington. I could go further and point out that in this bill -- and this was seriously discussed in Executive Session -- the probability of state legislatures

trying to amend their laws, not be subjected to criminal prose-
cution. I say any plan deliberately applied that deprives the
people of the right to vote, don't question me on that, because
my mind is made up: I think it is wrong. But I think it is
wrong also -- I have said what bothers me is that two wrongs
don't make a right, and the end doesn't justify the means, so I
can only say the people I represent do not practice discrimination and
they want no part of recrimination.

Because of these areasons and because of the ultimate impact of the bill as it enters into matters of state concern, I cannot accept this bill. For myself, I believe in the right to vote. I am not peculiar. I know every member feels like I do. But this bill goes too far, it cuts too deep. It is too pointedly directed at certain areas. It is too drawn with provisions deliberately conceived to accomplish certain results without universal application throughout the United States, without application within the same states involved, involving parishes and counties that it really ought not to -- all those things -- I just can't buy that.

Thank you, gentlemen.

fls.

The Chairman. Mr. Willis, you have expressed my philosophy about voting more eloquently and more accurately than I could. My state finds itself in the same position that your state is in, where the colored people in my state have been voting ever since I have been voting. They have always voted in our primaries. Whenever they wanted to vote they have been able to vote. Yet with this tricky trigger that is attached to this bill, the State of Virginia is in the same situation that your state is in. Whatever errors have been made in the past are rapidly being brought into line with what seems to be the national sentiment on this subject. You and I cannot vote for this bill. You and I do not want this bill to pass. We do not want this federal take-over of our election machinery.

Certainly on any such immaterial basis as this trigger business is fixed upon. The question is what are you going to do about it. You know and I know that in the mood of the country and the Congress at this time that any civil rights bill that comes to a final vote is going to be passed. I do not think there is any question of a doubt about that. And passed before there has really been a trial to correct the evils under the bill that we passed in 1964. It never had an opportunity to be tried, or they made no effort to

try it, I do not know which. But it certainly has not had time to determine whether it is going to be as effective as its proponents said it would be effective in correcting these evils. What are we going to do about it? You and I are in exactly the same position. A bill will be presented that does not contain this feature, that is the McCulloch bill. What is the matter with the McCulloch bill? I do not like either one of them. I am a rather obstinate believer in the Constitution and I do not think either one of them entirely squares with it. But here the bill has carefully avoided these things and we will have an opportunity to vote as between the two bills. What are we going to do about it?

Mr. Willis. First, I am going to follow the policy that I have always followed and that I said I did. That will be an issue that has been faced towards the last of the debate or the amendment period or probably in the motion. I do not know what your rule will read. Probably a motion to recommit with instructions to bring it out. It will be in order in some way.

The Chairman. It will be in order as a substitute to the committee bill.

Mr. Willis. Before we reach that bill we will be talking about this one. I am going to renew amendments to this bill when amendments are offered; not necessarily. I suppose they will be offered.

Mr. Pepper. Is your amendment going to make it for the Negro population not voting instead of the total population not voting?

Mr. Willis. Yes. The amendment I offered which was adopted and withdrawn making this applicable county by county, relating to the compliance with the Fifteenth Amendment relating to race or color that I hope will be offered again. Then I am going to play theby ear, Judge, I talked to you about this and we have a habit of saying, I hope we will do in the cloakroom as we do in the open. I am not sure what I am going to do with the McCulloch bill. I do not know too much about the McCulloch bill. I have one little avenue of escape under this bill, that is, at least as far as I see there won't be any voting examiners in my district. I do not think so.

The Chairman. Why not?

Mr. Willis. Because of that amendment I commented on.

The Chairman. Why not Your district is under the law just like everybody else's in that same situation.

Mr. Willis. Yes. It is not wholly exempted, but I do not see that there will be any voting examiners there.

The Chairman. Why not?

Mr. Willis. Because of the amendment I read to you, and because of the committee's treatment of it.

The Chairman. All that amendment says is that the Attorney General in those situations you say your district is in shall take into consideration.

Mr. Willis. That is right.

The Chairman. It does not mean there won't be any examiners in your district.

Mr. Willis. I understand that. It is a calculated risk but at least I have legislative history. I will have plenty on the Floor. However, I am answering you, I do not know what I am going to do about the substitute yet. But you can assume, because I have said it, that I feel a deep sense of obligation to make a bill, if not wholly acceptable, less unpallatable. If I am convinced, and certainly there is evidence to that effect, that the McCulloch bill is in that direction quite like I will vote for it. We are old enough not to kid ourselves that will not happen. So I am going

to try to work on this big bill.

The Chairman. You see the way this may come up will be on a motion to substitute the McCulloch bill, which motion would come at the beginning of the debate instead of at the end. Then we will be confronted with this thing. Shall we vote for the bill that you say we can vote for, or for the milder bill that does not carry the bad features that you have been discussing.

Mr. Willis. That is why I say I will play it by ear because I do not know which is going to come first. You probably can know because you probably have in mind what kind of a rule is coming out. I do not know at what point those things will come up.

The Chairman. We have an arrangement about that.

Mr. Willis. I would not be surprised that you know what you are talking about.

Mr. Bolling. We have an edict accepted by all. I will amend that by saying we have an edict accepted by all.

Mr. Willis. I did not know that, honestly. That may make a difference.

That is why I said I am going to play this thing by ear. I feel a deep sense of obligation and I have also been in the position on all civil rights bills to tone it down, amend, make it less burdensome, and if you do not like

the final version, vote against it. If the McCulloch version comes first, I m ght quite likely vote for it.

The Chairman. Usually we have had these civil rights bills and we have always got along together and we have always asked for a considerable amount of time for the general debate. I had in mind ten hours. Do you think that would be sufficient?

Mr. Willis. General debate? I think so, honestly. I do not know, I forgot the time of the last civil rights bill. We must have ample time and I know Mr. Celler will not oppose it.

The Chairman. I am not sure what he said. Did he say a lesser time than ten?

Mr. Bolling. Six or seven hours. But he also said he would not object strenuously if you wanted ten.

The Chairman. That is what I understood him to say.

Mr. Sisk. Mr. Chairman, could I present a parliamentary inquiry on the subject that you and the distinguished gentleman from Louisiana are discussing, because I am sure there is going to be some interesting approaches on this. Is it correct -- and I am directing this as a parliamentary inquiry -- that assuming the substitute might be offered initially once we start reading the bill, then is it not correct that amendments to either the original bill or to

the substitute would be in order during the consideration and debate on the substitute prior to the time there would be a vote on the substitute itself.

The Chairman. There would to the substitute, that is, perfecting amendments to the substitute.

Mr. Sisk. I think there would be to the original bill, would there not, Mr. Chairman?

The Chairman. I do not know about that.

Mr. Sisk. We went through this one time on a bill, whether we had a peculiar type of rule that afforded that, I am almost certain that --

The Chairman. You mean you offered the amendments to the committee bill.

Mr. Sisk. While there was a substitute pending and vote on it.

The Chairman. Before you voted on the substitute.

Mr. Sisk. It seems to me that is right. Maybe I am wrong but that is the question I am asking.

The Chairman. We can check with the parliamentarian on that. I would not think so, Ed, what do you think?

Mr. Willis. Off hand, I agree with the Chair.

Mr. Sisk. There was one occasion back some years n

a very controversial bill.

Mr. Willis. If you have any doubts about it you can make the rule read that way.

The Chairman. We would really be in a mess. The more mess we get into the better. Somewhere along the line we might trip it up.

Mr. Quillen. Mr. Chairman.

The Chairman. Mr. Quillen.

Mr. Quillen. Mr. Willis, was saying that he thought that legislative history had been made that might exclude the examiners coming into his district. Let me read you what Mr. Celler said in his remarks when he was before the Committee here.

Mr. Willis. I was not here.

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

"Mr. Celler. An aemdnemtn was offered in the committee along those lines but it was rejected."

"The Chairman. It was rejected?"

"Mr. Celler. Yes."

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

"Mr. Celler. That is right."

Mr. Willis. He is absolutely right because that is universal language. His answer is correct. I thought I had made it clear that this is not a Third District or Louisiana Amendment. The broad language telling the Attorney General in considering whether you should install examiners, you must consider local compliance in the political subdivisions. I do not want to get my amendment in trouble by saying it is a special amendment. It is not and was never intended to. Because of this amendment, that did not stop me offering amendments affecting way beyond that or beyond my district. Other amendments I did not talk about were adopted in aid of the general bill.

I did not have my district in particular in any amendments. I know the conditions in my district.

Mr. Quillen. Did I misunderstand you to say that enough legislative history had been created which would prevent examiners not only going into your district, but in other like districts?

Mr. Willis. Yes. That is in the report itself. I do not know what page of the report it is included. But in commenting

on my amendment, the majority report states this, interpreting my amendment. Interpreting the bill which happens to include my amendment. Here is what the majority report states:

Mr. Pepper. What section is this?

Mr. Willis. That is in Section 6, page 18, the parentitical phrase, the concluding part of the parenthetical on page 18. It is not obligatory. Judge Smith is correct. It is not fool-proof, that in recommending amendment he must consider the facts of life of the respect or disrespect of the Fifteenth Amendment. That is all that says.

Mr. Pepper. Didn't somebody testify here that the Attorney General stated in his testimony that it was not his purpose to appoint examiners in areas where they were complying?

Mr. Willis. I hope so.

Mr. Pepper. I thought I heard somebody quote that here.

The Chairman. I do not think we can go by what somebody says he has to do. We have to go by what the law says.

Mr. Quillen happens to be in the same situation, probably, that the witness is, in that according to the testimony,

Tennessee had 22 counties in the same situation that some of us find ourselves.

Mr. Willis. I would say, Mr. Chairman, and Mr. Pepper, that Congressman Pepper's observation or question indicating whether the Attorney General had or had not said it was not his purpose to appoint examiners where unnecessary, I would hope that would follow as a matter of course. But be that as it may, it is in the bill. If you look at page 16 of the committee report, the majority views, you will find this language:

"The Committee recognizes that in some areas in which tests or devices are suspended" -- I told you that -- the devices are suspended in my district, and in all districts similarly situated. They will continue to be suspended. The committee report says, "The Committee recognizes that in some areas in which tests or devices are suspended the appointment of examiners may not be necessary to effectuate the guarantees of the Fifteenth Amendment. This could be the case where local election officials and entire communities have demonstrated a determination to assure full voting rights to all irrespective of race or color. Accordingly, the bill expressly directs the Attorney General before certifying the need for federal examiners in a particular area

to consider, among other factors, whether substantial evidence exists that bona fide efforts are being made to comply with the Fifteenth Amendment. The committee contemplates that where such substantial evidence is found to exist the Attorney General will not certify the existence of a need therefor."

Mr. Quillen. Mr. Chairman, one other observation. I would like to say to the able gentleman testifying that I concur wholeheartedly and I hope that your wishful thinking is true. But what I have listened to here is that there will be no exceptions. When a state comes under it, no county, no parish, no area can be excluded. It includes the whole state.

Mr. Willis. Exactly. My answer to you is twofold. No. 1, certainly if the Attorney General does exercise his discretion not to appoint examiners in areas such as I have indicated, the tests in those areas would still be suspended. So the whole state is still covered in that respect. Now going one step farther, I had introduced an amendment which would have permitted affirmatively parish by parish and county by county law suits to prove to a court these facts, and that the court would issue an order

exempting those counties and parishes completely from under the bill.

Mr. Quillen. Idid not mean to infer that your amendment—

Mr. Willis. That is why I say I will not try to press the broader amendment that was adopted and reconsider it.

Mr. Quillen. I did not mean to infer that your amendment would include only your district or state because it would be applicable to all areas. But on the other hand, when the Chairman of the Committee says that there would be no exclusion, I thought that you should have the benefit of that testimony.

Mr. Willis. That is right.

Mr. Quillen. Frankly, I think we are all bucking up-stream. I share your thinking. All Americans should have the opportunity to vote irrespective of race, creed or color. At the same time, I do not think legislation should be passed which in effect would be discriminatory in its own right. I think you feel the same way.

Mr. Willis. I certainly do.

Mr. Quillen. Thank you, Mr.Chairman.

Mr. Willis. But my Chairman, Mr. Celler, was correct when he said there was not any area in Louisiana or

elsewhere excluded from the bill. It would take that broad amendment of mine that was adopted and then reconsidered and disposed of adversely to accomplish that.

The only hope I might have, or people similarly situated, certainly there are counties in every state of the Union where there is compliance, and I think they should be rewarded, whoever they may be and wherever they may be.

Mr. Quillen. Thank you, Mr. Chairman.

The Chairman. Mr. Smith.

Mr. Smith. Mr. Willis, on the rule itself, you are not opposed to our granting a rule, are you?

Mr. Willis. Of course not. That is regular procedure.

Mr. Sisk. Mr. Chairman, may I make one comment at this point in view of my parliamentary inquiry to you. I have just reread the rules and I think the answer to my question is yes.

Mr. Colmer. Yes what.

Mr. Sisk. Yes, that even in the event a substitute would be offered in the initial phase that amendments to the original bill would still be in order and would be voted on before the substitute would be acted on.

The Chairman. It would still perfect the original bill.

Mr. Sisk. That is correct. The votes would occur on those amendments before thevote on the substitute. That is in Rule 19.

The Chairman. What is the page number?

Mr. Sisk. The fine print is on page 422.

Mr. Bolling. That is the page and not the paragraph.

Mr. Sisk. I am giving you the page. Page 422, down about the 6th or 7th line is the [redacted], "An amendment in the nature of a substitute may be proposed before amendments to the original texts have been acted on but may not be voted on until such amendments have been disposed of." That is one sentence.

Mr. Colmer. Mr. Chairman, I do not know that it is even appropriate to discuss it here now.

The Chairman. I think it is information we all would like to have.

Mr. Colmer. It is my understanding of the rules and the practice and always has been that when an amendment in the order of a substitute is offered, then amendments to that are then in order, and then when those amendments within the rules are offered that that substitute as amended is disposed of, and if that is voted up, then that is it.

Mr. O'Neill. It precludes it.

Mr. Colmer. That is right, it precludes it. If it is

voted down, then you go back to the original bill and start amending it.

The Chairman. Mr. Sisk reaches the opposite conclusion, that you would have to perfect both bills before you vote on either.

Mr.Sisk. That is correct. If the gentleman would yield I agree that the substitute would be voted on before your final vote on the whole compact perfected bill. But let us say when you start to read the bill at that point Mr. McCulloch would rise and offer his substitute, then the gentleman from Louisiana, Mr. Willis, or anyone else could offer an amendment or a number of amendments to the original bill and have those considered and on each one voted on, before the substitute would occur. The rule is very clear on this issue.

Mr. Colmer. Of course, the parliamentarian will decide it. My observation and experience has been to the contrary and I see the distinguished former Speaker of the House of Massachusetts nodding his head in agreement with me and against you.

Mr. O'Neill. I think we are on the right side for once.

Mr. Sisk. We will have to live with what the parliamentarian says.

The Chairman. We cannot decide it here but I find this which seems to affirm what Mr. Sisk is maintaining: "The substitute amendment, as well as the original proposition, may be perfected by amendments before the vote is taken. "

Mr. Colmer. Yes, before the final vote is taken.

Mr. Sisk. That is right.

The Chairman. Taken on what?

Mr. Colmer. But the substitute is to be -- who am I to argue with you, Mr. Chairman.

The Chairman. Let us come back in 30 minutes.

(Recess taken from 2:55 p.m. to 3:30 p.m.

The Chairman. Mr. Willis.

Mr. Willis, Yes, sir.

The Chairman. Are there any further questions?

Mr. Willis. Mr. Chairman, I might point out that another amendment of mine that was agreed to by the committee is this: There was some question as to whether in areas where voting examiners mig..t operate, people already registered might have to go back and register a new, or some involvements along that line. So I offered and there was put in the bill Section 16 which reads as follows:

"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."

That means to that extent, anyway, that the bill looks to the future and that there will be no disruption of anything that has happened thus far, and that any person registered in any state involved or not involved, but let us say in a state involved, my own state of Louisiana, all persons already registered and on the registration books will remain so, and at least if voting referees are appointed that only those desiring to register in the future would be involved. Let me say I feel very keenly about the operation of this bill in every section of the country and every section of my state. Unfortunately, some of the amendments that are offered will not be helpful to every parish in Louisiana, but they will be helpful to many, many, many, many parishes outside of my District.

Mr. Colmer. Mr. Willis, reference was made in your testimony and other testimony to this provision in the bill whereby a state or subdivision hasto come to the District of Columbia. You commented on that yourself. Isn't that a novel procedure? Why should the people

of Louisiana or Maine or any other state have to come to a District court here in the District to get relief?

Mr. Willis. That is right.

Mr. Colmer. To me this is an abominable thing.

Mr. Willis. I commented on that and I agree with the gentleman. Not only that, but you have to come either to court or in certain instances to the Attorney General of the United States.

Mr. Colmer. Of course, that brings up another avenue about the power given to the Attorney General. I have never seen or heard anything to compare with it. But getting back to this court thing, it would appear, and probably the gentleman commented on that, that the Congress says to judges -- federal judges -- who are appointed because of the same qualifications, uniform qualifications throughout the United States, that they are to be by-passed, the courts are to be by-passed, and the burden is put on the people of the other several states to come to the District of Columbia. Certainly it is a long, long, long step toward further centralization of power and concentration of government here in the District of Columbia.

Mr. Willis, I do not think there is any question about it.

Mr. Colmer. That thing certainly should come out. If I understood Mr. McCulloch's testimony correctly, and in fact I know it is true because I read his bill, that provision is in that bill, and therefore that bill certainly recommends itself on that [illegible] for no other.

Mr. Willis. That is correct. Actions under the McCulloch bill would be instituted in the usual District Court having jurisdiction [illegible] faction. That is correct.

The Chairman. Mr. Anderson.

Mr. Anderson. Just one question.

Your amendment, Mr. Willis, provides that it is the Attorney General shall have the power to make the determination whether or not there is substantial evidence that there has been bona fide compliance within a particular subdivision and then eliminate the necessity for sending in federal voting referees.

Is that a correct interpretation?

Mr. Willis. It is not my amendment to give the Attorney General the power to do so. My [illegible]ant would direct the Attorney General in exercising the power to give effect, to consider whether he ought to exercise the power when there is substantial evidence of compliance.

Mr. Anderson. Supposing you had a politically minded Attorney General who wanted to punish a Congressman in a certain district because his voting on domestic legislation was not right, what protection is there in this bill or elsewhere in your amendment that would guarantee that he could not abuse that power and find either for or against a particular district on the basis of some ulterior motive that he might have?

Mr. Willis. None. There would be none.

Mr. Anderson. Why should that not be a judicial determination? Why should we not leave that to the courts to decide whether or not there has been substantial compliance in any political subdivision with the 15th Amendment?

Mr. Willis. I tried to make ti so by virtue of another amendment.

Mr. Anderson. And that was refused?

Mr. Willis. It was adopted and then overcome on reconsideration, many days afterwards. But I did not quarrel with the parliamentary procedure. When you have the votes you will get it anyway.

Mr. Anderson. I thank you for clearing up that point. Maybe you covered it earlier but I did not catch it.

The Chairman. Are there any further questions?

Mr. Willis. I might call your attention to this, Mr. Colmer, which could be considered in one way a virtue of the bill in that actions are instituted under the Celler bill in local courts.

Section 3, page 12 -- Section 3(a) -- provides that whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the 15th amendment," and so on. That action must be brought in the local district. So on its face that does away with coming to Washington. But I will tell you the other side of the coin. The purpose of Section 3(a) and I do not know anybody that has explored it, the language I have read, is to amend all existing civil rights laws, and that is the provision that Mr. McCulloch was telling Congressman Pepper that was added. That action is instituted locally. That is true.

Mr. Colmer. Yes, we make fish out of one and fowl out of the other. Is that the idea?

Mr. Willis. They serve you fish locally but the pot is boiling in amending all civil rights laws to give an action under existing civil rights laws which does not today exist.

Mr. Colmer. In other words, when they want to go

further, the Attorney General will go from Washington down into Louisiana to institute a proceeding, but if Louisiana wants to get some relief, Louisiana has to come to the District of Columbia.

Mr. Willis. The gentleman has stated it very clearly.

Mr. Colmer. I thought I had.

Mr. Willis. Incidentally, and again I am not making comparisons to do anything but to compare, under the triggering provision of this bill, the Administration-Celler bill, I compared the situation in Louisaiana, and the situation in New York. New York has a literacy test as Louisiana does, but New York is not brought under the force of the bill because over 50 per cent of the people in New York voted. On the other hand, if you get closer to my state and go to Texas, here is the situation. Texas does not have a literacy test and because it does not have a literacy test it is not involved. But the record under the 50 per cent trigger, Texas looks awful, because only 44 per cent of the people of Texas voted in 1964 as compared to 47 per cent in Louisiana. Louisiana comes in because it has a literacy test. Texas is out because it has no literacy test but is worse off than Louisiana under the percentage of people who

went to the polls. That trigger deal there is really tricky.

Mr. Colmer. I am glad the gentleman made reference to that.

Mr. Willis. As I say, I am making no comparison. This is purely coincidence.

Mr. Colmer. I am glad the gentleman made reference to it. I call the gentleman's attention to the fact that down in the section from whence he and I come, and which is affected by this bill, that fortunately or unfortunately as the case may be, we have been a one-party system.

Mr. Willis. They tried to make it two against me last time.

Mr. Colmer. I understand that.

Mr. Willis. I had to struggle.

Mr. Colmer. The result has been a general apathy on the general election day. It is true that this arbitrary date for 1964 that is selected here that the vote was heavier than usual in our section, but I can recall in my service here that in my state where we were just so one-sided democratic in previous years that five per cent of the people did not go to the polls on a general election. I can recall many times, and I call it to the attention of my

friend, on election day when I went fishing myself.

Mr. Willis. General election, that is.

Mr. Colmer. That is right.

Mr. Willis. Not primaries.

Mr. Colmer. No. I am speaking now of the general question of apathy because of conditions. Again coming back to the Negro vote, I think there is, and I think the gentleman would agree with me, to a limited extent at least -- it varies -- that there is a general apathy among the Negro voters, the Negroes who are eligible to vote. They never worry about it. I call attention to the fact that in my friend's district, and I know I am going to get a retort from this, that an effort is madebecause of the two party system to go out and register these people. Down in my area there has been no particular effort to go out and encourage them to register or to seek their registration. So what I am trying to say is this gimmick is applied here to invoke the strong arm of the federal Government that is not a true yardstick by any means. That is all, Mr.Chairman.

The Chairman. Mr. Quillen.

Mr. Quillen. Mr. Chairman, I have just been sitting here and listening. You say you do not know why 6400 is drawn

as it is affecting only a few state. I kind of have a suspicion that politics has something to do with it.

Mr. Willis. With what?

Mr. Quillen. With the way it is drawn.

It is not on a partisan basis as far as I am concerned. I feel that it is not triggered to cover all of the 50 states, that it is designed to cover up some conditions that exist in some states and to point the finger at conditions that exist in some states for a reason. I would be interested in knowing what the reason was. Not that I am asking you, but it will probably come out on the Floor.

Mr. Willis. It is an appropriate comment, but it is not a question.

Mr. Quillen. That is all, Mr.Chairman.

Mr. Sisk. Mr. Chairman, I have indicated my admiration for the legal mind of the gentleman. I would appreciate briefly his comments on Section 10 which Mr. Hutchinson discussed. I know he has made a very thorough study of this entire bill. I was just curious what his interpretation of bringing in both the Fourteenth and Fifteenth Amendments, and any significance he might have with reference to the constitutions of quite a number of states, because I know the voting situation on bond issues, et cetera. I was

curious to know if the gentleman had any comment on the section.

Mr. Willis. Are you talking with that part of the sentence concluding with "or any other tax?"

Mr. Sisk. Also the implication of bringing the Fourteenth and Fifteenth Amendments in. Maybe the gentleman was not here when Mr. Hutchinson testified.

Mr. Willis. I was.

Mr. Sisk. I am not trying to get two differing opinions. I mean this sincerely. I do have a very high regard for the gentleman. He is one of the finest lawyers in the House.

Mr. Willis. To be truthful about it, and I said it a while ago in my primary statement, I feel like the gentleman from Mississippi that the poll tax provision does not concern me too much in this sense. As a matter of principle I am against the poll tax requirement.

As a matter of procedure before this body, I think the very committee that reported out this bill last year, the Judiciary committee, or a couple or three years ago, reported out a bill in the form of a constitutional amendment with reference to the apyment of a poll tax in national

elections. I think that should be the approach. In principle that does not bother me. However, it does bother me as a matter of law, and I can tell you right now I offered an amendment which was defeated, to Section 10, which would have made it read, "Any poll tax or any other tax required as a condition to voting."

I agree with the gentleman from Michitan. It should be specifically directed that way.

Mr. Sisk. I should have clarified my question. I too am opposed to the poll tax. Whether this is a way to get rid of it -- I agree maybe the Constitutional amendment would be better. I wanted actually the gentleman's comments as to that particular feature which he just closed on and as it compares to the language, for example, in the McCalloch bill, which I believe is Section15 in the McCulloch bill, where he actually attempts to tie it specifically to the voting rights because of race or color, as I understand it. I think he even goes to that point.

Mr. Willis. Exactly. The McCulloch approach talks about the payment of a poll tax as a condition precedent to voting in state or local elections which has the purpose or effect of denying or abridging the right to vote on account of race or color. Itried to carry the principle of the

McCulloch bill into this bill.

Mr. Sisk. It sounds much better. In other words, it seems to me thatyyou are getting at the issue of poll tax and not bringing in what could possibly be extraneous matters or affecting other interpretations of the law. Isimply wanted the gentleman's ideas.

Thank you, Mr. Chairman.

Mr. Pepper. I just wanted to make one observation. Comment has been made here that it is difficult to understand why the criteria of "triggering" as it were, was where less than 50 per cent of the population of the state registered or voted in the general election of 1964, and the question was asked that since this bill is primarily designed to emancipate the Negroes who have been denied the right to vote, that they are the largest class in the United States which admittedly have been discriminated against, I thought I might call attention to page 247 of the hearings showing that if you use the criteria that the triggering process would apply not only to the states where less than 50 per cent of the Negroes of voting age were registered to vote, you would get exactly the same 7 states, except for the omission of North Carolina.

On that page the table shows Alabama had 23 per cent in 1964, 23 per cent of the Negroes of voting age who were registered. Arkansas had 49.3 per cent. Georgia had 44 per cent. Louisiana had 32 per cent. Mississippi, 56.7 per cent, South Carolina, 38.8 per cent, and Virginia, 45.7 per cent.

Those are the 7 states that are included in Section 4.

Now, North Carolina has had 46.8 per cent. If you had less than 50 per cent of the Negroes eligible to register and not having registered, North Carolina would have been added but all the other colored states -- Florida had 63.7 per centage of the Negroes registered, Tennessee had 69.4, and Texas, 57.7 , so the difference would not have been very much except in the case of North Carolina, if you had made it less than 50 per cent of the Negroes eligible to register were registered than the way the section is.

Thank you, Mr. Chairman. No other comment.

Mr. Willis. I think it should be added as an addenda to the remark, however, that the situation would be different if you applied the other percentage in the literacy test. There is a combination of the requirements of the three

that brings it about. I do not want to quarrel about that. That is the way the bill is drawn and for my part I tried to amend the bill before us.

Mr. Pepper. Thank you, Mr. Chairman.

Fls TP

The Chairman. Mr. Hutchinson, do you wish to testify?

Mr. Hutchinson. I am willing and able to testify now, if you desire to call me.

STATEMENT OF HON. EDWARD HUTCHINSON,
A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MICHIGAN

Mr. Hutchinson. Mr. Chairman and gentlemen of the committee, I appear before you to urge a rule on this bill which will essentially be an open rule, and also a rule which will make in order consideration of H. R. 7896. There isn't any question about the constitutional power of Congress under the 15th amendment to pass appropriate legislation to enforce the provisions of the 15th amendment, but what is indeed appropriate is a profound issue of public policy and the question of appropriateness is really the issue before the House in this bill. This bill is referred to as legislation to enforce the 15th Amendment. I think it is proper to point out that in H. R. 6400, the 15 amendment is included, but the 14th amendment is also relied upon at least in Section 10. That is the point I wish to discuss briefly with your committee at this time. Why is it that Section 10 of 6400 relies upon the 14th amendment as well as the 15th? The federal power under the 15th amendment is, in spite of the breadth of the word "appropriate" still a limited power.

Under the 15th amendment whatever is done must have a reasonable connection with the denial or abridgement of the

right to vote on account of race or color.

The 15th amendment is broad enough, however, to base every congressional expulsation of racial denial. I submit the 15th amendment needs no help from the 14th in order to meet the problem of racial discrimination in voting. The 15th amendment is broad enough to take care of that. So why do they bring into Section 10, the 14th?

Now, the 14th amendment is a very broad amendment, as the Court now interprets it. Those phrases such as the "equal protection" phrase in Section 1 of the 14th amendment means about anything that you wish these days. Certainly it is broader than the matters having to do with race or color. It is an unlimited federal power now that we have under the phrases of the first section of the 14th amendment, an unlimited power. Section 10 is based upon the 14th as well as the 15th amendment. In Section 10 all of the attention has been given to poll tax, but Section 10 outlaws poll taxes, but it outlaws any other tax as a voting qualification. This abolition of poll tax and the other taxes is not limited to racial criteria. It would be if this section based itself entirely upon the 15th amendment. If Section 10 was based on the 15th amendment, then, of course, any tax requirement, whther it be a poll tax or any other tax, would have to have some reasonable connection with race or color. But when they bring the 14th inthis broadens the scope of Section 10 immeasurably. I submit that as Section 1o is written, it is subject to be interpreted by the Courts

to bmadly sweep away every taxpayer qualification for voting any issue. Well, I don't know, amybe that is what Congress intends to do. Maybe it intends that this legislation is to outlaw every taxpayer qualification for voting upon any issue, anywhere in the country. But that isn't what this bill has been represented to do. This bill has been represented to implement, to enforce the provisions of the 15th amendment and to make sure that every qualified American citizen has a right to vote, regardless of his race or color, but I submit that Section 10 goes much further than that when it strikes out, when it makes it possible to outlaw, for the courts to outlaw, any taxpayer qualification for voting upon any issue.

I can only conclude that Section 10 is intended to strike down such state requirements as the one in my own state of Michigan which directs that in order to vote upon the direct expenditure of money, or on the question of issuing bonds, a voter, in addition to having the other residential qualifications, must also be the owner of the property assessed for taxation in the voting district to be affected by the bonds or by the expenditure of the money. This has been the constitutional law of the State of Michigan for many years. It has nothing to do with race or color, at all. So far as I know, there is absolutely no suggestion anywhere that anybody in the State of Michigan is now or has been denied the right to vote on racial grounds, or their right to vote has not been abridged.

When it comes to issuing bonds, general obligation bonds which have to be paid by the municipality,

or the school district issuing them, the people who have to pay the bonds are the property taxpayers. It comes out of their pocket.

In Michigan, many many years ago, the people decided that when it came to issuing bonds, you should be a property owner, or you should be the spouse of a property owner, else you ought not be permitted to vote on the question of issuing bonds, or the direct expenditure of public money.

In Michigan, too, we have a constitutional limitation upon the rate of property taxation. That rate is $15 a thousand. The local units of governmentall combined, that is to say the school district and the county and the township all combined, they cannot, in total, assess taxes in excess of $15 a thousand, unless the people of that district vote to increase that limitation.

Our constitution in Michigan provides that if that limitation is to be increased for a period longer than five years at a time then you have to be a property tax elector in order to vote on the issue, the reason being that if they are going to incr ase the property taxes upon you for a long period of time, that only the people who own the property ought to be permitted to make that decision.

Now, this is the situation in Michigan, but, Mr. Chairman and gentlemen, this is not a unique situation. I have asked for an examination of the constitutions of the several states with regard to this said issue and I have been interested to note

there are 14 states out of the 50 which now, in their constitutions, provide for some property qualification in order to vote on one issue or another, a particular type of issue. I mentioned Michigan. Texas has a far-reaching provision running along the same lines. They in Texas, as I understand their provisions, they require anyone to be a property taxpayer -- that is to have property assessed for taxation -- in order to vote on various kinds of issues.

Utah is in the same situation, and Utah goes even further, Mr. Chairman, because in Utah not only do you have to show that you own property, or be the spouse of the owner of property assessed for taxation, but you have to also show that you have paid a property tax in the preceding year to vote on bond issues in cities and towns for water and lights and sewers, or in bond issues in county water and sewage districts. There are a lot of others, here. I will not take the time to enumerate them all.

As I say, 14 states in all have such restrictions as these. They are not states of the Old Confederacy, by and large. Most of them are northern states. Rhode Island has provisions in its laws limiting the power to vote upon certain issues to people who pay taxes. This, I don't think, is an unusual requirement. Certainly if you put any strength at all, or rely at all upon our history, it is certainly not unamerican to require a property taxpayer -- that is someone with some interest in property, to vote on certain issues.

I submit that Section 10 of H. R. 6400 goes so far as to, in the end, wipe out all of this structure. It has nothing to do with race, or color. Section 10, as the members of this committee well, I am sure, know, was not in the Administration bill. This so-called poll tax provision.

Mr. Chairman, I am not directing my question against the poll tax, here. I am directing my point to the fact that this thing covers any other tax. And it is worded in such fashion as not to require the payment of a tax as a prerequisite to voting. Subsection (b) of Section 10 says that no state or political subdivision thereof shall deny my person the right to register or vote because of his failure to pay a poll tax or any other tax.

Now, the substitute, HR 7896, does a much better job in my opinion than Section 15, in spelling out just exactly what is covered.

Section 15 of 7896 actually gets at the problem that is intended to be covered by the bill. The Republican substitute here refers to tax which is a prerequisite to voting. It also refers to the 15th amendment. That is to say, you have to have an actual showing of denying or abridging the right to vote on account of race or color in order to wipe out any other tax. But you don't do that in H. R. 6400. Therefore, I am asking the committee to seriously consider a rule broad enough not only to permit us to offer the substitute, but certainly an open rule as I am confident will come forth, which will permit

amendment of Section 10, if need be, in order to base it, if we possibly can base it, upon the 15th amendment alone.

You know I am a little bit suspicious every time another provision of law is apparently just casually dragged into a bill, because, Mr. Chairman and gentlemen, I have been in the legislative end of government now for 20 years, and I have learned as I know we have all learned from experience, that sometimes the language which we write into law is given some very strange and unexpected interpretations in the courts. I believe we must keep in mind that whenever we write a law, a statute law or a constitutional provision, either one, what we are doing in effect is providing a tool to the courts, giving the courts a tool to offer interpretation for the settlement of controversy.

I think, too, that keeping that in mind, I have an idea that the Supreme Court of the United States, looking at Section 10, if it were enacted as it is in the committee reported bill, would say, "Aha, we have here the tool which we need to say that under the equal protection clause of the 14th amendment, all taxpayer requirements for voting on any issue, in any subdivision of any state, is wiped out."

I don't think that is what the Congress intends to do here. I hope not, because this is a much broader issue than the issue of 6400, which it seems to me is how the country generally understands the issue. I would like to say just

this one thing further. I think it is worthy of note that in setting up 6400, with provisions of Section 10, the poll tax provision, this poll tax was not made a test or device under the machinery of the law. This section 10 sets out all by itself, pretty much independently of the rest of the bill. It doesn't seem to be really tied into the rest of it at all. I say I can't help but believe that the framers of Section 10 as it stands certainly intended by draging in the 14th Amendment here to do something much broader than the Congress, certainly the people at large, intend to do. When I see something like that, I just feel that I should raise the point. I am a little bit suspicious. That is all I have to say, sir.

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

Mr. Colmer. Yes, I would like to ask, Mr. Hutchinson, we have heard and we have been told, and we have felt, those of us, to use your expression, from the 11 Confederate States, that this bill was just aimed at us. You brought a new angle in here, and frankly I am glad you did, because it looks like it goes beyond that. It is your contention, if I understand you correctly, that this bill or this provision of the bill, as interpreted by you, would affect the voeters of your state, as a qualification of the voters of your state, and a number of other states?

Mr. Hutchinson. I certainly believe that, sir.

Mr. Colmer. A number of states, I don't know just how many -- I have not done any research on the -- I know in my

state we not only have a poll tax that one must pay in order to vote, but he must have paid all of his taxes, his ad valorem taxes. In other words, by February 1 of that year, he must have paid his taxes before he is eligible to vote. I assume that some other states have that. I guess we would be charged with having that provision as a method of discrimination. I never heard that discussed or advanced in my own state, as a reason for it. Rather that it was a provision to insure the collection and the timely collection of revenues. So I think you have raised a very interesting question here, and one that some people outside of the Southern States might want to look at.

Mr. Hutchinson. I thank the gentleman from Mississippi. I don't have the list of the 14 states before me. It does not include Mississippi. The provisions which you mentioned in your law must be statutory law, rather than based upon Mississippi's constitution.

Mr. Colmer. It is.

Mr. Hutchinson. Because these 14 states that I have here all refer to their constitutions in one way or another. I say to the gentleman that in fact the substitute, 7896, will treat this whole matter of taxpaying in connection with the issue of racial bias. There will have to be some showing of racial bias. But under 6400, as I think it is likely to be interpreted by a liberal court --

Mr. Colmer. Such as we have.

Mr. Hutchinson. I think the provisions of 6400 are going

to be quite revolutionary.

Mr. Colmer. That is all.

The Chairman. Are there any other questions of Mr. Hutchinson?

Mr. Young. I just want to say, with your mentioning Texas there, not only does a person have to be a property owner to vote, but if the issue involves an increase in the tax rate, it must carry by two-thirds vote.

Mr. Hutchinson. It must?

Mr. Young. Yes.

Mr. Colmer. I would like to clarify my statement to this extent. In my state one does not have to be a property owner. He doesn't have to be a tax payer, other than the poll tax in order to vote, but if he owes any taxes, he must pay them.

The Chairman. Thank you, Mr. Hutchinson.

Would it be agreeable to the committee to quit now and come back at 10:30 in the morning?

Very well, we will reconvene at 10:30 in the morning.

(Whereupon, at 4:35 o'clock p.m., the committee was adjourned to reconvene at 10:30 o'clock a.m., Wednesday, June 30, 1965.)