89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 439

VOTING RIGHTS ACT OF 1965

JUNE 1, 1965.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 6400]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6400) to enforce the 15th amendment to the Constitution of the United States, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Amendment No. 1: Strike all after the enacting clause and insert in lieu thereof the following:

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

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

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

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for *the purpose or with the effect* of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of such test

or device in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

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

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

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

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

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

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

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

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account fo race or color if (1) incidents of such use have been few in number and have been promptly and

effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1 1964, it may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that the Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequistie, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided,* That the Commission is authorized ,after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

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

(b) Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 9(b) shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. Any person whose name appears on such a list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list

in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

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

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

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

SEC. 9. (a) Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

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

(c) The Civil Service Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

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

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

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

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

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

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

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

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

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any person alleges to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) his listing under this Act or registration by an appropriate election official and (2) his eligibility to vote, he has not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith apply to the district court for an order declaring that the results of such election are not final and temporarily restraining the issuance of any certificates of election, and the court shall issue such an order pending a hearing on the merits. In the event the court determines that persons who are entitled to vote were not permitted to vote in such election, it shall provide for the marking, casting, and counting of their ballots and require the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

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

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section.

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

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

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

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

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

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

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

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

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

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

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

Amendment No. 2: Amend the title so as to read:

A bill to enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

PURPOSE OF THE LEGISLATION

The bill, as amended, is designed primarily to enforce the 15th amendment to the Constitution of the United States and is also designed to enforce the 14th amendment and article I, section 4. To accomplish this objective the bill (1) suspends the use of literacy and other tests and devices in areas where there is reason to believe that such tests and devices have been and are being used to deny the right to vote on account of race or color; (2) authorizes the appointment of Federal examiners in such areas to register persons who are qualified under State law, except insofar as such law is suspended by this act, to vote in State, local, and Federal elections; (3) empowers the Federal courts, in any action instituted by the Attorney General, to enforce the guarantees of the 15th amendment, to authorize the appointment of Federal examiners, pending final determination of the suit or after a final judgment in which the court finds that violations of the 15th amendment have occurred; (4) provides criminal penalties for intimidating, threatening, or coercing any person for voting or attempting to vote, or for urging or aiding any person to vote or to attempt to vote. In addition, civil and criminal remedies are provided for the enforcement of the act.

Upon the basis of findings that poll taxes as a prerequisite to voting violate the 14th and 15th amendments to the Constitution, the bill abolishes the poll tax in any State or subdivision where it still exists.

HISTORY OF THE LEGISLATION

On March 15, 1965, the President of the United States presented his proposals for a Federal voting rights bill to a joint session of the Congress (H. Doc. 117, 89th Cong., 1st sess.). The proposed legislation submitted by the President was introduced in the House of Representatives on March 17, 1965, as H.R. 6400.

A Judiciary Subcommittee conducted hearings on 122 bills dealing with voting rights which had been referred to it. These hearings were held on March 18, 19, 23, 25, 29, 30, 31; and April 1, 1965. In addition to morning meetings, this schedule included 1 afternoon and 4 evening sessions, amounting to a total of 13 sessions. ("Voting Rights Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary," 89th Cong., 1st sess., serial No. 2.)

During the course of these hearings, testimony was received relating to all aspects of the proposed legislation. The witnesses included the congressional authors of the proposals; other Members of Congress; the Attorney General; members of the Civil Rights Commission; the Acting Director of the Bureau of the Census; the Chairman of the Civil Service Commission; State and local officials, private citizens, as well as members of various organizations specifically concerned with the proposed legislation. The subcommittee afforded to all who were interested a reasonable opportunity to present their views on the proposals. Those who did not appear personally were given an opportunity to submit relevant material for the records.

Upon conclusion of the hearings, the subcommittee met in executive session for 4 days to consider the legislation. Thereafter, the subcommittee struck out all after the enacting clause and inserted in lieu thereof an amendment in the nature of a substitute which it recommended to the full Judiciary Committee.

The substitute retained the principal provisions of the original measure and added a number of new provisions. Principal among these were:

(*a*) Judicial remedies to deal with voting discrimination in the so-called pockets of discrimination—areas outside those in which the prohibitions of section 4(a) suspending literacy tests are in effect. (Sec. 3).

(*b*) Authority to the U.S. Civil Service Commission to send, upon the request of the Attorney General, observers to any election held in any political subdivision for which a Federal examiner has been appointed. (Sec. 8.) This provision was deemed an appropriate means of assuring compliance with the Federal registration system envisioned by the bill.

(*c*) Elimination of the poll tax in State and local elections. (Sec. 10.)

(*d*) Extended coverage to prohibit intimidation of those who engage in activities to encourage others to vote, and to prohibit intimidation of persons exercising powers and duties under the bill. (Sec. 11.)

(*e*) Amendment of title I of the Civil Rights Act of 1964 to apply it to all elections, by repealing any limiting reference therein to "Federal" elections. As a result, the Civil Rights Act of 1964 would apply to State and local as well as Federal elections by (1) requiring application of uniform voting standards; (2) prohibiting disqualification for immaterial errors or omissions;

(3) requiring literacy tests to be administered in writing (with certain exceptions); and (4) establishing a rebuttable presumption of literacy upon completion of the sixth grade where literacy is deemed a relevant factor. (The provisions relating to literacy requirements would apply only to the extent that such requirements were not suspended by this bill.)

The full Committee on the Judiciary considered the bill for 10 sessions. In its deliberation and consideration of H.R. 6400, as amended, the committee adopted an amendment in the nature of a substitute. The substitute retained the principal provisions recommended by the subcommittee with the following major changes:

(*a*) Deletion of the requirement that an applicant for registration allege to a Federal examiner that within 90 days of his application he had been denied the right to vote or found not qualified to vote. (This requirement could have been waived by the Attorney General; sec. 7.) The committee deleted this provision because it believed that requiring an applicant to first attempt to register with a local registrar was both unnecessary and burdensome. It is intended that the opportunity for listing by an examiner be readily available to persons who might be fearful or reluctant to apply to a local registrar.

(*b*) Insertion of a congressional finding that the requirement of poll tax payments violates the 14th and 15th amendments to the Constitution (sec. 10).

(*c*) Extension of coverage to prohibit intimidation of any person seeking to vote, whether or not his right to vote issecured by any provision of this bill (sec. 11).

LEGISLATIVE EFFORTS TO EFFECTUATE THE 15TH AMENDMENT

A salient obligation and responsibility of the Congress is to provide appropriate implementation of the guarantees of the 15th amendment to the Constitution. Adopted in 1870, that amendment states the fundamental principle that the right to vote shall not be denied or abridged by the States or the Federal Government on account of race or color.

The historic struggle for the realization of this constitutional guarantee indicates clearly that our national achievements in this area have fallen far short of our aspirations. The history of the 15th amendment litigation in the Supreme Court reveals both the variety of means used to bar Negro voting and the durability of such discriminatory policies. (See *United States* v. *Reese*, 92 U.S. 214; *Ex Parte Yarborough*, 110 U.S. 651, through the "grandfather clause" cases, *Guinn* v. *United States*, 238 U.S. 347, *Myers* v. *Anderson*, 238 U.S. 368; and the "white primary" cases, *Nixon* v. *Herndon*, 273 U.S. 536; *Nixon* v. *Condon*, 286 U.S. 73; *Smith* v. *Allwright*, 321 U.S. 649; *Terry* v. *Adams*, 345 U.S. 461; the resort to procedural hurdles, *Lane* v. *Wilson*, 307 U.S. 268; to racial gerrymandering, *Gomillion* v. *Lightfoot*, 364 U.S. 339; to improper challenges, *United States* v. *Thomas*, 362 U.S. 58; and, finally, the discriminatory use of tests, *Schnell* v. *Davis*, 336 U.S. 933; *Alabama* v. *United States*, 371 U.S. 37; *Louisiana* v. *United States*, 380 U.S. 145 (1965).)

The past decade has been marked by an upsurge of public indignation against the systematic exclusion of Negroes from the polls that characterizes certain regions of this Nation.

By the Civil Rights Act of 1957, Congress empowered the Attorney General of the United States to institute suits to protect the right to vote from deprivation because of race or color (42 U.S.C. 1971 (a), (c)). At the same time, the act prohibited threats and intimidations for the purpose of interfering with the right to vote in Federal elections and gave the Attorney General authority to bring suits to protect against such interference (42 U.S.C. 1971 (b), (c)).

A number of lawsuits were brought between 1957 and 1960 under the authority of the new act. The experience with this litigation quickly pointed to the need for further voting legislation. It became apparent at once that voting discrimination suits could not adequately be prepared without full access to the relevant registration papers and documents and that, even where a suit was brought to a successful conclusion, the scope of relief had to be wider than what was being afforded by the courts at that time. In 1960, Congress set out to remedy these defects. The Civil Rights Act of that year granted to the Attorney General full powers of inspection of documents in the custody of local voting registrars. It further provided that where a pattern or practice of discrimination was found a new and more comprehensive procedure for the registration of Negroes was to be employed. This new procedure permits any Negro in the affected area whose application has been rejected by local officials to apply directly to the Federal court or a Federal voting referee for an order certifying him to vote. The orders of the court so obtained are binding upon State voting officials with respect to both State and Federal elections. The Department of Justice brought 40 discrimination suits between the date of enactment of the 1960 act and the enactment of the Civil Rights Act of 1964.

Additional modifications in the voting laws were made in the Civil Rights Act of 1964. Title I of that act provided for the expedition of voting suits and their trial before a three-judge district court with a direct appeal to the Supreme Court. The 1964 statute also prohibited, with respect to registration conducted under State law for elections held solely or in part for Federal offices, (i) the use of voting qualifications, practices, and standards different from those applied in the past under such law to other individuals; (ii) the rejection of applicants because of immaterial errors or omissions made by applicants filling out registration forms; and (iii) the use of literacy tests as a qualification for voting unless they are administered and conducted wholly in writing. The statute further established a rebuttable presumption of literacy flowing from the completion of six grades in any recognized school.

ENFORCEMENT EXPERIENCE IN RECENT YEARS

What has been the effect of the 1957, 1960, and 1964 voting rights statutes? Although these laws were intended to supply strong and effective remedies, their enforcement has encountered serious obstacles in various regions of the country. Progress has been painfully slow, in part because of the intransigence of State and local officials and repeated delays in the judicial process. Judicial relief has had to be gaged not in terms of months—but in terms of years. With reference to the 71 voting rights cases filed to date by the Department of Justice under the 1957, 1960, and 1964 Civil Rights Acts, the Attorney General testified before a judiciary subcommittee that an incredible

amount of time has had to be devoted to analyzing voting records—often as much as 6,000 man-hours—in addition to time spent on trial preparation and the almost inevitable appeal. The judicial process affords those who are determined to resist plentiful opportunity to resist. Indeed, even after apparent defeat resisters seek new ways and means of discriminating. Barring one contrivance too often has caused no change in result, only in methods. See dissenting opinion of Judge John Brown in *United States* v. *Mississippi*, 229 F. Supp. 925, reversed and remanded, 380 U.S. 128 (1965); see also *United States* v. *Penton*, 212 F. Supp. 193 (M.D. Ala.). And even where some registration has been achieved, Negro voters have sometimes been discriminatarily purged from the rolls. *E.g.*, *United States* v. *McElveen*, 180 F. Supp. 10, 12–13 (E.D. La. 1960), *affirmed sub. nom. United States* v. *Thomas*, 362 U.S. 58 (1960); *United States* v. *Assn. of Citizens Councils*, 196 F. Supp. 908, 910 (W.D. La. 1961). Such experience amply demonstrates that the case-by-case approach has been unsatisfactory.

Another measure of the effectiveness of existing civil rights statutes and their case-by-case enforcement is to be found in voter registration statistics in those areas where Federal litigation has been previously concentrated. For example, in Alabama, the number of Negroes registered to vote has increased by only 5.2 percent between 1958 and 1964 to 19.4 percent; in Mississippi, approximately 6.4 percent of voting age Negroes were registered in 1964 compared to 4.4 percent in 1954; and in Louisiana, the increase in Negro registration has been imperceptible—from approximately 31.7 percent in 1956 to approximately 31,8 percent of the eligible Negroes registered as of January 1, 1965. Meanwhile, the percentage of registered white voters in Louisiana is 80.2 percent.

Illustrative of the ingenuity and dedication of those determined to circumvent the guarantees of the 15th amendment are the actions taken by the State of Mississippi. The changes in voter qualifications adopted by that State are detailed in the recent decision of the Supreme Court in *United States* v. *Mississippi, supra.* The insufficiency of existing remedies and the need for stronger measures is also demonstrated by various voting rights suits brought by the Department of Justice. One such example is the record in Dallas County, Ala., of which Selma is the county seat. Dallas County has a voting-age population of approximately 29,500, of whom 14,500 are white persons and 15,000 are Negroes. In 1961, 9,195 of the whites—64 percent of the voting-age total—and 156 Negores—1 percent of the total—were registered to vote in Dallas County. An investigation by the Department of Justice substantiated the discriminatory practices that these statistics make obvious. A voter discrimination suit was brought against the Dallas County Board of Registrars on April 13, 1961. It was 13 months before the case finally came to trial. The Department of Justice proved discrimination on the part of registrars no longer in office—that exactly 14 Negroes had been registered between 1954 and 1960. But the court found that the board of registrars then in office was not discriminating and, therefore, refused to issue an injunction.

On September 30, 1963, 2½ years after the suit was originally filed, the court of appeals reversed the district court and ordered it to enter an injunction against discriminatory practices, but it refused to hold that Negro applicants must be judged by standards no different than

the lenient ones that had been applied to white applicants during the long period of discrimination—so that the effects of past discrimination would be dissipated.

Two months later, the Department photographed voter registration records at the Dallas County courthouse which showed that the new registrars whom the district court had earlier given a clean bill of health were engaging in blatant discrimination.

Between May 1962 and November 1963, 445 Negro applications were rejected; 175 had been filed by Negroes with at least 12 years of education, including 21 with 16 years and 1 with a master's degree. Processing of applications was slowed to a snail's pace. In October 1963, when most of the applicants were Negroes, the average number of persons allowed to fill out forms each registration day was about one-fourth the average in previous years, when most of the applicants were white.

Since registration is permanent in Alabama, the great majority of white voters in Selma and Dallas County, already registered under easier standards, did not have to pass the tests that the local officials then devised. Under a new test adopted in 1964, the applicant has to demonstrate his ability to spell and understand by writing individual words from the dictation of the registrar. Applicants in Selma were required to spell such difficult and technical words as "emolument," "impeachment," "apportionment," and "despotism." The Dallas County registrars also added a refinement not required by the terms of the State-prescribed form. Applicants were required to give a satisfactory interpretation of one of a number of the excerpts from the constitution printed on the form.

In March 1964 the Department of Justice filed a motion in the original Dallas County case initiating a second full-scale attempt to end discriminatory practices in the registration process in that county. On February 4, 1965—nearly 4 years after the Department first brought suit—the district court finally enjoined use of the complicated literacy and knowledge-of-government tests and entered orders designed to deal with the serious problem of delay.

The committee hopes that this most recent decree will be effective, but notes that after 4 years of litigation only 383 out of 15,000 Negroes in Dallas County have been registered to vote.

The litigation in Dallas County took more than 4 years to open the door to the exercise of constitutional rights conferred almost a century ago. The problem on a national scale is that the difficulties experienced in suits in Dallas County have been encountered over and over again under existing voting laws. Four years is too long. The burden is too heavy—the wrong to our citizens is too serious—the damage to our national conscience is too great not to adopt more effective measures than exist today.

Such is the essential justification for the pending bill.

PREVALENCE OF VOTING DISCRIMINATION THROUGH THE USE OF TESTS AND DEVICES

Beginning in the early 1890's a number of States enacted legislation establishing new voting qualifications. Among them was the literacy test. Prior to 1890, apparently no Southern State required proof of literacy, understanding of constitutional provisions or of the obliga-

tions of citizenship, or good moral character, as prerequisites to voting. However, as the following table shows, these tests and devices were soon to appear in most of the States with large Negro populations.[1]

1. Reading and/or writing: Mississippi (1890), South Carolina (1900), Alabama (1901), Virginia (1902), Georgia (1908), Louisiana (1921). And see Oklahoma (1910).

2. Completion of an application form: Louisiana (1898), Virginia (1902), Louisiana (1921), Mississippi (1954).

3. Oral constitutional "understanding" and "interpretation" tests: Mississippi (1890), South Carolina (1895), Virginia (1902), Louisiana (1921).

4. Understanding of the duties and obligations of citizenship: Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1954).

5. Good moral character requirement (other than nonconviction of a crime): Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1960).

Graphic evidence of the present-day use of tests and devices (as defined in the bill) to deny or abridge the right of Negroes to vote appears in tables B–2(a) through B–4(b) at pages 33–37 of Voting Rights Hearings Before Subcommittee No. 5, House Committee on the Judiciary, 89th Congress, 1st session, series No. 2.

These tables show that the Department of Justice has instituted 12 voting discrimination suits in Alabama, 22 in Mississippi, and 14 in Louisiana. It is striking that no voting discrimination suit has ever been concluded without a judicial finding of racial discrimination by either the district court or the court of appeals. In all cases thus far decided in these three States the courts have found discriminatory use of tests and devices. Moreover, the abuse of such tests and devices appear to be the norm rather than the exception. In the predominant number of these cases thus far concluded, the courts have found that the discriminatory use has been pursuant to a "pattern or practice" of racial discrimination.

That literacy tests and other devices have been widely used in violation of the 15th amendment is amply shown by evidence and decisions in cases brought by the United States in the past 5 years and by studies of the U.S. Commission on Civil Rights. Many decisions have held that such tests and devices have been used as part of a calculated plan to deprive Negroes of their right to vote. (See, *e.g.*, *United States* v. *Louisiana*, 225 F. Supp. 353 (E.D. La. 1963); *United States* v. *Alabama*, 334 F. 2d, 583 (C.A. 5). In this connection, the committee also adopts the catalog of cases listed in S. Rept. 162, pt. III, 89th Cong., 1st sess., at pp. 11–12.)

These cases demonstrate that frequently whites have not been subjected to these tests at all; in many places they are applied only to Negroes. Indeed, Justice Department lawsuits have revealed that large numbers of illiterate whites are registered in many different places in States affected by the bill.

[1] See, for example, *Ratliffe* v. *Beale*, 74 Miss. 247, where the Mississippi Supreme Court, referring to the convention which adopted the Mississippi Constitution of 1890 which contained literacy requirements and poll taxes, remarked that "within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the Negro race," 74 Miss. 266. See also *United States* v. *Mississippi*, No. 73, October term 1964, decided Mar. 8, 1965 (Slip. pp. 14–15).

Moreover, even the most cursory examination of the content of many of these tests—for example, the constitutional interpretation tests, the "perfect form" requirements, and the citizenship-knowledge tests—reveals that they are vague, arbitrary, hypertechnical or unnecessarily difficult, and have little (if any) bearing upon the capacity to cast an intelligent ballot. The inescapable conclusion is that these tests were not conceived as and are not designed to be bona fide qualifications in any sense, but are intended to deprive Negroes the right to register to vote. The only real function they serve is to foster racial discrimination.

These facts are clear. In widespread areas of several States tests and devices, as defined in this bill, have been effectively and repeatedly used to deny or abridge the right of Negroes to vote.

PROVISIONS SUSPENDING TESTS AND DEVICES AND AUTHORIZING APPOINTMENT OF EXAMINERS.

Section 3 of the bill makes additional remedies available to deal with denials or abridgments of the right to vote in so-called "pockets of discrimination"—areas outside the States and subdivisions to which the prohibitions of section 4 are in effect. Section 3 follows the traditional case-by-case approach, authorizes the suspension of tests and devices and the appointment of Federal examiners after a judicial determination that violations of the 15th amendment have occurred (and also the appointment of examiners by interlocutory order of the court). In such cases, section 3 further authorizes the court to determine the validity of any voting standard or practice which is different from that which was in effect when the suit was instituted.

Suspension of "tests and devices"

Sections 4, 5, and 6 of the bill, as amended, provide for "automatic" suspension of literacy tests and other devices in certain areas and for appointment of Federal examiners to register applicants to vote in Federal, State, and local elections. Under the bill, the use of specified voting qualifications, defined as "tests and devices", would be suspended in States and subdivisions upon the coincidence of two factors, namely, where (1) such tests or devices were maintained on November 1, 1964, and (2) less than 50 percent of the voting-age population was registered or voted in the presidential election of 1964.

The record before the committee indicates that where these two factors are present there is a strong probability that low registration and voting are a result of racial discrimination in the use of such tests. To illustrate, in the presidential election of 1964, although ballots were cast by 62 percent of the national electorate, there were nine States in which fewer than 50-percent voted. Of these nine States, seven maintained literacy tests. In addition, a preliminary suvey, suggests that there are certain counties in States which maintained literacy tests in November 1964, in which counties fewer than 50 percent voted, although the statewide percentage exceeded 50 percent. From the foregoing, it would appear that the voting qualifications of the following States and political subdivisions would be affected by the bill: The States of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia; and Apache County (Arizona), Elmore County (Idaho), Aroostook County (Maine), and 34 counties in the State of North Carolina.

Decisions of the Federal courts and the reports of the U.S. Civil Rights Commission persuasively indicate that many of the States and political subdivisions to which the formula applies have engaged in widespread violations of the 15th amendment over a period of time. The large number of voting discrimination suits instituted by the Department of Justice in the States of Alabama, Louisiana, and Mississippi has already been mentioned. The number of final judicial determinations of discrimination through abuse of tests and devices; the number of judicial findings of a "pattern or practice" of discrimination, and the fact that no voting discrimination case thus far instituted by the Department has been concluded without a finding of discrimination lends strong support to the validity of the formula in section 4. Moreover, in the counties in Alabama, Mississippi, and Louisiana where such suits were instituted, a statistical pattern emerges of a substantial nonwhite voting-age population, a high percentage of white registration, a low percentage of nonwhite registration and a low voter turnout in the presidential election in 1964.

Another similarity exists among the six Southern States which appear to be covered by section 4 of the bill. Each has had a general public policy of racial segregation evidenced by statutes in force and effect in the areas of travel, recreation, education, and hospital facilities. Of the 21 States which maintain a test or device, there are only 2 others besides these 6 which have had a similar policy of racial discrimination reflected by their laws. In one of these, North Carolina, 34 counties are covered by the bill. In the other, Delaware, recent enactments reflect an abandonment of that policy.

In most of the States which maintain tests or devices but in which more than 50 percent of the voting-age population voted in the presidential election of 1964, there are statutes prohibiting racial discrimination. Since these States express, in so many areas, a public policy against racial discrimination, it is certainly reasonable to assume that voting discrimination on account of race does not exist.

It is possible, of course, that there may be areas covered under the formula of section 4 where there has been no racial discrimination violating the 15th amendment. The bill takes account of this possibility by a provision which affords any State or subdivision an opportunity to exempt itself, by obtaining an adjudication that such tests or devices have not been used by it to accomplish substantial discrimination in the preceding 5 years. (This opportunity to obtain exemption is afforded only to those States or to those subdivisions as to which the formula has been determined to apply as a separate unit; subdivisions within a State which is covered by the formula are not afforded the opportunity for separate exemption. The committee is of the opinion that to permit each such subdivision to litigate the issue would severely limit the effectiveness of the bill and would impose a continuation of the burdensome county-by-county litigation approach which has been shown to be inadequate. Further, where the discriminatory use of tests and devices is a matter of State policy it is appropriate that suspension of these tests and devices be statewide. It is also noteworthy that no exemption from the provisions of the bill is available to any State or subdivision within 5 years after the entry of a final judicial determination that violations of the 15th amendment, through the use of tests or devices, have occurred within its territory.

This provision for overturning the presumption or inference created by the determinations in section 4 provides assurance that no State or subdivision will be treated unfairly and that the suppression of tests and devices will be applied only to areas where it is necessary to enforce the rights guaranteed under the 15th amendment.

The committee believes that the 5-year cooling off period imposed by the bill as a prerequisite to exemption is both reasonable and necessary to permit dissipation of the long-established political atmosphere and tradition of discrimination in voting because of color in those States and subdivisions in which literacy tests and low registration and voting have gone hand in hand.

In the recent Supreme Court decision in *United States* v. *Louisiana*, 380 U.S. 145 (1965), the Court suspended the operation of a literacy test (enacted during pendency of the litigation) without evidence that that particular test had been abused, on the basis of evidence that previous tests had been used to discriminate. Essentially, that is what Congress will be doing in the present bill, on the basis of overwhelming evidence that, where discrimination in voting has occurred, literacy tests have been an effective instrument of such discrimination.

The committee has also considered and rejected the view that, since examiners are to be appointed, suspension of the use of tests is unnecessary because the examiners can administer them fairly. There are many reasons why this alternative is unacceptable.

First, we have elsewhere noted that the history of the origin of these tests and devices and their administration in the affected areas shows that they are not bona fide qualifications, and we conclude that they need not be and should not be treated as such by the Congress.

Second, most if not all of the tests and devices affected are not capable of fair administration. Thus, for example, in an area where few or no Negroes are registered to vote, the requirement that registered voters must vouch for new applicants is inherently discriminatory in effect since, as is well known, whites will not vouch for Negroes in such places. (See; e.g., *United States* v. *Logue*, No. 21603 (C.A. 5, Apr. 21, 1965).) Similarly, it would not be possible to administer fairly or even rationally a law which requires that applicants give a satisfactory interpretation of any one of hundreds of provisions of a State constitution but which fails to define a satisfactory interpretation. And the laws requiring that application forms be completed perfectly, without errors, omissions, or assistance, are patently arbitrary and could not be fairly applied in any sense.

Third, even fair administration of the tests, following decades of discrimination when most whites were permanently registered without having had to pass such tests, would simply freeze the present registration disparity created by past violations of the 15th amendment. As the courts have made clear, this is not acceptable. (See, *e.g.*, *United States* v. *Louisiana*, 380 U.S. 145 (1965).)

Fourth, what we know about the failure of local officials to apply the tests to whites, or to apply them equally, leads us to conclude that preservation of the tests would seriously jeopardize the effectiveness of this bill. Racial discrimination would be perpetuated in a new guise if the Federal examiners administered literacy tests fairly to Negro applicants while whites applied to State registrars who continued to follow their traditional practice of registering all white appli-

cants without making them take tests or regardless of their performance (or lack of it) on the tests. In light of the record, we believe that this is just what would happen. For that reason we find that the only way to end discrimination is to suspend the use of the tests entirely.

Appointment of Federal examiners

The record before the committee establishes that suspension of tests and devices alone would not assure access of all persons to voting and registration without regard to race or color. Although the maladministration of tests and devices has been a major problem, other tactics of discrimination have also been used and would readily be available to State or local election officials if tests and devices are suspended.

This is demonstrated by two recent lawsuits in Louisiana and Alabama. The registrars in East and West Feliciana Parishes were enjoined by the three-judge district court in *United States* v. *Louisiana* (225 F. Supp. 353 (E.D. La. 1963), affirmed, 380 U.S. 145 (1965)), from using various State literacy tests. Their response was to close the registration office, thus freezing the existing unlawful registration disparity in those parishes. In Dallas County, Ala., the registrars (as found by the district court) slowed down the pace of registration so as to prevent any appreciable number of Negroes, qualified or not, from completing the registration process. Thus, the committee believes that the appointment of examiners in those areas where violations of the 15th amendment are occurring, or where the Attorney General considers Federal examiners necessary to assure compliance with the 15th amendment rights, is the effective answer to such tactics.

The appointment of examiners would not be automatic. Except in cases in which a Federal court may authorize such appointment pursuant to section 3, the Attorney General has discretion to determine in which areas covered by the formula (i.e., areas in which tests and devices have been suspended) the appointment of Federal examiners is needed.

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 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, 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 a need therefor.

CONSTITUTIONALITY [1]

For the following reasons, substantially as found by the Senate Committee on the Judiciary in reporting a similar measure, the committee is satisfied that the measure reported herein is constitutional.

The proposed legislation implements the explicit command of the 15th amendment that "the right * * * to vote shall not be denied or abridged * * * by any State on account of race [or] color."

[1] A discussion of the constitutionality of sec. 10, the poll tax provision, is found infra.

1. The power of Congress.

Section 2 of the amendment says, with respect to the 15th article of amendment: "The Congress shall have power to enforce this article by appropriate legislation" (amendment XV, sec. 2). Here, then, we draw on one of the powers expressly delegated by the people and by the States to the Congress—the power to prevent the denial or abridgment of the right to vote on account of race or color.

No statute confined to enforcing the 15th amendment exemption from racial discrimination in voting has ever been voided by the Supreme Court. The criminal laws involved in the cases of *United States* v. *Reese* (92 U.S. 214), and *James* v. *Bowman* (190 U.S. 127), were held bad because they purported to punish interference with voting on grounds other than race. Indeed, in *Reese* (92 U.S. at 218), and again in *Bowman* (190 U.S. at 138–139), the Supreme Court expressly recognized the power of Congress to deal with racial discrimination in voting:

> If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guarantee against this discrimination: now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by "appropriate legislation."

(See also *United States* v. *Raines*, 362 U.S. 17 (1957 act); *United States* v. *Thomas*, 362 U.S. 58 (same); *Hannah* v. *Larche*, 363 U.S. 420 (Civil Rights Commission rules under 1957 act); *Alabama* v. *United States*, 371 U.S. 37 (1960 act); *United States* v. *Mississippi*, No. 73, this term, decided Mar. 8, 1965 (same); *Louisiana* v. *United States*, No. 67, this term, decided Mar. 8, 1965 (same).)

It remains only to see whether the means suggested are appropriate. In the case of *Ex Parte Virginia*, 100 U.S. 339, speaking of the post-Civil War amendments, the Court stated, at 345–346:

> Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons tbe enjoyment of perfect equality of civil rights and the equal protection of the laws against Stete denial or invasion, if not prohibited, is brought within the domain of congressional power.

See, also, *Everand's Breweries* v. *Day* (265 U.S. 545, 558, 559), applying the same standard to the enforcement section of the prohibition (18th) amendment. And, see *United States* v. *Raines* (362 U.S. 17, 25).

2. Relationship of this bill to the right of the States to fix qualifications for voting

Article I, section 2, and the 17th amendment to the Constitution permits the right of the States to fix the qualifications for voting. However, the 15th amendment outlaws voting discrimination, whether accomplished by procedural or substantive means. The restriction of the franchise to whites in the Delaware constitution was a "voting qualification." Thus it had to bow before the 15th amendment (*Neal* v. *Delaware*, 103 U.S. 370). So did the grandfather clauses of Oklahoma and Maryland, which were also substantive qualifications (*Guinn* v. *United States*, 238 U.S. 347; *Myers* v. *Anderson*, 238 U.S. 368). Nor are only the most obvious devices reached. As the Court said in *Lane* v. *Wilson* (307 U.S. 268, 275): "The amendment nullifies sophisticated as well as simple-minded modes of discrimination." Literacy tests and similar requirements enjoy no special immunity. In *Lassiter* v. *Northampton Election Board* (360 U.S. 45), the Court found no fault with a literacy requirement, as such, but it added: "Of course, a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot" (Id. at 53). See, also, *Gray* v. *Sanders* (372 U.S. 368, 379). Furthermore, as the opinion in *Lassiter* notes, the Court had earlier affirmed a decision annulling Alabama's literacy test on the ground that it was "merely a device to make racial discrimination easy" (360 U.S. at 53). (See *Davis* v. *Schnell*, 336 U.S. 933, affirming 81 F. Supp. 872.) The Supreme Court has also recently voided one of Louisiana's literacy tests (*Louisiana* v. *United States*, No. 67, this term, decided March 8, 1965). Mr. Justice Frankfurter, speaking for the Court in *Gomillion* v. *Lightfoot* (364 U.S. 339, 347), a 15th amendment case said:

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

Thus, so long as State laws or practices erecting voting qualifications do not run afoul the 15th amendment or other provisions of the Constitution, they stand undisturbed. But when State power is abused, it is subject to Federal action by Congress as well as by the courts under the 15th amendment. That was expressly affirmed in the *Lassiter* case where the Supreme Court said that "the suffrage * * * is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed" (360 U.S. 51).

3. The appropriateness of legislation

The factual background is always relevant in assessing the constitutional "appropriateness" of legislation. See, *e.g.*, *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 32; *Labor Board* v. *Jones & Laughlin*, 301 U.S. 1, 43; *Wickard* v. *Filburn*, 317 U.S. 111, 125–128; *United States* v. *Gainey*, No. 13, this term, decided March 1, 1965. The rule applies in the area of persistent racial discrimination. See, *e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483; *Eubanks* v. *Louisiana*,

356 U.S. 584; *Griffin* v. *School Board*, 377 U.S. 218; *Louisiana* v. *United States*, No. 67, this term, decided March 8, 1965.

There can be no doubt about the present need for Federal legislation to correct widespread violations of the 15th amendment. The prevailing conditions in those areas where the bill will operate offer ample justification for congressional action because there is little basis for supposing that the States and subdivisions affected will themselves remedy the present situation in view of the history of the adoption and administration of the several tests and devices reached by the bill.

The choice of the means to solve a problem within the legitimate concern of the Congress is largely a legislative question. What the Supreme Court said in sustaining the consitutionality of the Civil Rights Act of 1964 is fully applicable:

> * * * where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end. * * * (*Katzenbach* v. *McClung*, 379 U.S. 294, 303–304).

In enforcing the 15th amendment Congress may forbid the use of voter qualification laws where necessary to meet the risk of continued or renewed violations of constitutional rights even though, in the absence of the course of illegal conduct predicated upon the use of such tests, he same State laws might be unobjectionable.

The bill provides a means for a State or subdivision to show that it is not in violation of the 15th amendment. There is ample precedent for that procedure. See e.g., Emergency Price Control Act of 1942, section 203(a), 56 Stat. 23; Civil Rights Act of 1964, section 709(c), 78 Stat. 241, 263, 42 U.S.C.A. 2000a–8(c); Interstate Commerce Act, section 204(a)(4a), 49 U.S.C. 304(a)(4a); Securities and Exchange Commission Rule 10 B–8(f), promulgated pursuant to Securities Exchange Act of 1934, 15 U.S.C. 78j(b). Congress has also previously established a single forum for determining questions of national concern, and the Supreme Court has approved its action. See Emergency Price Control Act of 1942, section 204 (a), (d), 56 Stat. 23; *Locketry* v. *Phillips*, 319 U.S. 182.

ELIMINATION OF THE POLL TAX

A significant amendment to H.R. 6400 was proposed by the Judiciary Subcommittee and adopted with additions by the full committee. As so amended, the bill now contains congressional findings that the poll tax as a precondition for voting is violative of the 14th and 15th amendments to the Constitution (sec. 10(a)); and eliminates the collection of a poll tax, or any other tax, as a precondition to register or to vote (sec. 10(b)).

At the present time five States still require payment of poll taxes as a condition of voting in State or local elections: Alabama, Arkansas, Mississippi, Texas, and Virginia. (One other State, Vermont, requires such payment as a condition to voting only in local elections.) Arkansas has recently adopted a constitutional amendment to abolish the poll tax requirement and implementing legislation is expected to be enacted in the near future.

The taxes in the four remaining poll-tax States are as follows:

State	Annual rate	Cumulative provision	Maximum charge	Maximum additional tax at option of local authorities
Alabama	$1.50	2 years	$3.00	None.
Mississippi	2.00	2 years	4.00	$1.00, counties.[1]
Texas	1.50	None	1.50	$0.25, counties.[2] $1.00, cities.[3]
Virginia	1.50	3 years	[4] 4.50	$1.00, counties. $1.00, cities. $1.00, towns.[1]

[1] Local areas have not made use of their authority to levy poll taxes.
[2] All counties levy this tax.
[3] Some cities require payment of an additional tax of $1 as a prerequisite for voting in municipal elections.
[4] With penalties, the maximum possible payment is $5.01 per person.

Today, 46 States in the Union, subscribing to the principle that voting rights are not to be encumbered by any fiscal exaction, have set a national norm rejecting the poll tax. In the opinion of a majority of the members of the Judiciary Committee, Congress not only has authority to prohibit the poll tax in these remaining States under section 5 of the 14th amendment and section 2 of the 15th amendment, but it has the duty to do so. The history of the poll tax is so intertwined with racial discrimination that the tax itself can never and will never be dissociated from racial discrimination.

The purpose of the poll tax in the Southern States where it has been enacted was clearly one of discrimination against Negroes. In 1942, the Senate Committee on the Judiciary expressly reached this conclusion. (S.Rept. 1662, 77th Cong., 2d sess.):

> We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll tax laws, were motivated entirely and exclusively by a desire to exclude the Negro from voting.

In addition, the proceedings of the constitutional conventions which imposed the poll taxes are replete with statements by the legislative draftsmen that the purpose of the taxes was Negro disenfranchisement. See "Journal of the Proceedings of the Constitutional Convention of the State of Mississippi," 11 (Jackson 1890); "Official Proceedings of the Constitutional Convention of the State of Alabama" (1901) 3368, (Wetumpka, 1940); "Report of the Proceedings and Debates of the Constitutional Convention of Virginia," 1901–02, 604 (Richmond 1906); see also Snow, "The Poll Tax in Texas: Its Historical, Legal, and Fiscal Aspects," 32 (Mss. M. A. Thesis, University of Texas, 1936). Indeed, the supreme court of the State of Mississippi candidly admitted that the poll tax was primarily designed to restrict Negro suffrage in that State. (See *Ratliffe* v. *Beale*, 74 Miss. 247 (1896)). Thus, the poll tax clearly was conceived in discrimination. Its purpose—to keep Negroes from the franchise—is its fatal infirmity. It cannot be doubted that Congress, acting to implement the equal protection and due process clauses of the 14th amendment and the right to vote in the 15th amendment, has full authority to eliminate

State provisions purposefully dedicated to restricting the right to vote. (See *Guinn* v. *United States*, 238 U.S. 347 (1915), "grandfather clause" outlawed; *Buchanan* v. *Warley*, 245 U.S. 60 (1917), invalidating zoning restricting the right to vote; *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), invalidated redistricting in Tuskegee, Ala.)

Not only was the poll tax conceived in discrimination but it has been operated and administered in a discrimonatory manner. The poll tax, as does the literacy test, lends itself to discriminatory administration by officials so inclined. A proffer of the tax may be refused, tax receipts or exemption certificates may be withheld and other abuses inhere in the administration of such taxes. There is some evidence of such discrimination in the collection of the poll taxes in the committee's hearing record in the State of Virginia. In two cases in Mississippi, *United States* v. *Dogan*, 314 F. 2d, 767 (C.A. 5, 1963); and *United States* v. *Duke*, 332 F. 2d, 759 (C.A. 5, 1964), the U.S. Court of Appeals found that distinctions on accout of race or color were made in the collection of poll taxes in the State of Mississippi. In addition, the Government has three other cases pending alleging discriminatory administration of the poll tax.

The fact that there was not more evidence presented to the Congress on the discriminatory operation of the poll tax may be in part attributable to the widespread discrimination through literacy tests, vouching requirements, economic reprisals and even violence, that has kept most Negroes from ever reaching the poll tax stage. We deem it significant that despite all these discrimonatory obstacles barring Negroes from the polls, there should be as much evidence of discriminatory use of the poll tax as there is. What is more, once other discrimonatory methods are eliminated the use of poll taxes may rise in significance as a discriminatory deterrent to voting by Negores. The Congress in these circumstances can and should act, both to redress racial discrimination that has already occurred and to prevent its perpetuation in the future.

It is obvious that the poll tax has a heavier economic burden on Negroes than on whites because Negroes generally have smaller incomes out of which to pay. Furthermore, apart from racial considerations, a State should no more be permitted to condition the right to vote on economic ability to pay a poll tax than it may condition the right to appeal a conviction on economic ability to pay for the record. In *Griffin* v. *Illinois* (351 U.S. 12, 17), the Supreme Court stated that "a State can no more discriminate on account of poverty than on account of religion, race, or color." In *Douglas* v. *California* (372 U.S. 353, 357), the Court held that an indigent must be afforded counsel on his first automatic appeal from a criminal conviction and stated that not to do so is to draw "an unconstitutional line * * * between rich and poor * * *". If the Supreme Court's rule of "one man, one vote" as enunciated in *Reynolds* v. *Sims* (377 U.S. 533, 558), is to be meaningful, Congress must act to protect the right of those with the lowest incomes to cast their votes. As the Supreme Court has stated: "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the 14th amendment just as much as invidious discriminations based on factors such as race * * * or economic status * * *" *Reynolds* v. *Sims*, supra, at 566.

In these circumstances, the bill makes the finding in section 10(a) that the poll tax is not a "bona fide qualification of an elector, but an

arbitrary and unreasonable restriction upon the right to vote." It is hardly necessary to belabor this point. Nothing in the payment of a poll tax evidences one's "qualification" to vote. A man with a million dollars in the bank cannot vote if he fails to pay the tax; a man who steals a couple of dollars to pay the tax has met this condition. A poll tax has nothing in common with true "qualifications": Age (reflecting maturity of judgment); residency (reflecting knowledge of local conditions), etc. Once it is demonstrated that the poll tax cannot be justified as a qualification for voting fixed by the States under article I of the Constitution, good cause for this restriction on the right to vote is hard to find. No one seriously contends that it is a revenue measure. Forty-six States deem it unwise. Ample evidence exists of its discriminatory origin, application, and effect. Further, the committee believes that the 1937 decision of the Supreme Court in *Breedlove* v. *Suttles* (302 U.S. 277), which upheld the constitutionality of the now repealed Georgia poll tax, is not controlling here. In *Breedlove*, a white male claimed denial of equal protection under the 14th amendment because the State's poll tax exempted older citizens and women. At no time was the question of the 15th amendment raised, nor did *Breedlove* consider the question of whether persons may be discriminated against on economic grounds in determining eligibility to vote. For this reason and in view of the Court's assertion of the doctrine of "one man, one vote" in *Reynolds* v. *Sims*, the committee believes that the holding in *Breedlove* is inapplicable.

Moreover, the fact that Congress proposed abolition of the poll tax in Federal elections by a constitutional amendment does not evidence any lack of congressional power to abolish the poll tax in State and local elections by statute. The action of Congress in proposing the abolution of the poll tax for Federal elections was a compromise, and was undertaken long before the enunciation by the High Court of the doctrine of "one man, one vote" in *Reynolds* v. *Sims*, supra.

In their administration, no less than by their arbitrary restriction, these exactions lend themselves to notorious abuse. Some poll taxes must be paid in advance, by a specified date—or the right to vote lapses; cumulative charges have to be satisfied, perhaps pricing the vote out of the market for the indigent applicant. Surely, in the light of its recent expressions (see, e.g., *Harman* v. *Forssenius*, October term, 1964 (decided Apr. 27, 1965)), the Supreme Court can be expected to recognize and strike down these arbitrary restrictions on the right to vote, particularly so when Congress has determined that their elimination is appropriate to the safeguard of the rights of citizens under the 14th and 15th amendments.

ANALYSIS OF THE BILL

The title of the bill has been amended to indicate that this is a bill to enforce the 15th amendment to the Constitution and "for other purposes." Thus, the bill now relies upon constitutional provisions in addition to the 15th amendment.

Section 1

The first section states that the title of the statute is the Voting Rights Act of 1965.

Section 2

This section grants to all citizens of the United States a right to be free from enactment or enforcement of voting qualifications or prerequisites to voting or procedures, standards, or practices which deny or abridge the right to vote on account of race or color.

Section 3

This section makes additional remedies available to deal with denials or abridgments of the right to vote in the so-called "pockets of discrimination"—that is, areas outside the States and political subdivisions as to which the prohibitions of section 4(a) are in effect. It reaches denials and abridgments of the right to vote on account of race or color wherever they may occur throughout the United States. Nothing in this section is intended to limit the powers of a court under any other provision of law.

Subsection 3(a).—This subsection provides that whenever the Attorney General brings an action in a State or political subdivision to enforce the 15th amendment or implementing legislation, including this statute, the district court shall authorize the appointment of examiners (1) as part of interlocutory relief if the court determines such appointment to be necessary to enforce the 15th amendment, or (2) as part of any final judgment if the court finds that the 15th amendment has been violated in such State or subdivision. The court has discretion, however, as to the subdivision or subdivisions in which the examiners will serve and the duration of their service. The subsection also defines certain circumstances in which a court would not be required to authorize the appointment of examiners. Thus, authorization is not required where the court finds, by a preponderance of the evidence, that the incidents of violations of the 15th amendment (1) have been few in number and promptly and effectively corrected by State or local action; (2) the continuing effect of the incidents has been eliminated; and (3) there is no reasonable probability of their recurrence. This subsection is not intended to limit in any way the provisions of section 4 or the appointment of examiners pursuant to section 6(b).

Subsection 3(b).—This subsection provides that whenever the Attorney General brings an action in a State or a political subdivision to enforce the 15th amendment or implementing legislation, and the court finds that a test or device (as defined in subsec. 4(c)) has been used for the purpose or with the effect of denying or abridging the right of any citizen to vote on account of race or color, the court shall suspend the use of such test or device in such State or such subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

Subsection 3(c).—This provision is intended, by providing for judicial scrutiny of new or changed voting requirements, to insure against the erection of new and onerous discriminatory voting barriers by State or political subdivisions which have been found to have discriminated.

Subsection 3(c) provides that whenever the Attorney General brings an action against any State or subdivision to enforce the 15th amendment or implementing legislation, and the court has found that violations of the 15th amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court shall retain jurisdiction for such period as it may deem

appropriate. During such period no voting qualifications, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the action was brought shall be enforced until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

A proviso in this subsection authorizes the enforcement of a new or changed qualification, prerequisite, standard, practice, or procedure without resort to the court if the qualification, prerequisite, standard, practice, or procedure is submitted by the appropriate State or local official to the Attorney General and the Attorney General does not interpose an objection within 60 days of such submission. The Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Section 4

Subsection 4(a).—This subsection grants to all citizens of the United States in any State or political subdivision, for which determinations have been made pursuant to subsection 4(b), the right to vote in any Federal, State, or local election without compliance with any test or device, as that term is defined in subsection 4(c).

This subsection prescribes the procedure by which States and political subdivisions can seek to have restored their right to use tests and devices. Such relief may be sought in a declaratory judgment proceeding before a three-judge district court convened in the District of Columbia upon application of an entire State, where the subsection 4(b) determination covers the entire State, or upon application of a political subdivision with respect to which a subsection 4(b) determination has been made as a separate unit. A State or political subdivision will be permitted to resume the use of tests or devices if the district court determines that no test or device has been used in the plaintiff State or in the plaintiff political subdivision during the 5 years preceding the filing of the action for the purpose and with the effect of denying or abridging the right to vote on account of race or color. A State or political subdivision may not obtain a declaratory judgment under this subsection for a period of 5 years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this bill, determining that tests or devices have been used to deny or abridge the right to vote on account of race or color anywhere within the territory of the plaintiff State or political subdivision. The "final judgments" included within this provisio do not include judgments in proceedings brought pursuant to this subsection.

Subsection 4(a) further provides that where a declaratory judgment is issued under this subsection, the three-judge court shall retain jurisdiction of such action for 5 years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

In any proceeding brought pursuant to this subsection, the Attorney General may consent to the entry of a declaratory judgment if he has no reason to believe that any test or device has been used during the 5 years preceding the filing of the action for the purpose or with the

effect of denying or abridging the right to vote on account of race. The consent of the Attorney General does not bar a later request for reopening.

Subsection 4(b).—This subsection prescribes the conditions under which the provisions of subsection 4(a) become effective. The formula established requires certain factual determinations—determinations that are final when made and not reviewable in court.

Subsection 4(b)(1).—This is the first of the determinations which must be made before the provisions of subsection 4(a) become operative. The Attorney General must determine that a State or any political subdivision of a State maintained any test or device on November 1, 1964, as a qualification for voting.

Subsection 4(b)(2).—This subsection sets forth the determinations which the Director of the Census must make before the provisions of subsection 4(a) become operative. The Director of the Census must determine that less than 50 per centum of the persons of voting age residing in any State or any political subdivision of a State were registered to vote on November 1, 1964, or voted in the presidential election of 1964. The vote in the presidential election of 1964 is the vote cast for the presidential candidates. Where an entire State falls within this subsection, so does each and every political subdivision within that State.

Figures showing the probable effect of the bill upon various States and political subdivisions have been submitted to the Congress by the Department of Justice and are printed as part of the committee's Voting Rights Hearings (89th Cong., 1st sess., serial No. 2, at pp. 30, 42–48). Some of these figures represent preliminary estimates and projections and are, therefore, subject to change when determinations are ultimately made by the Bureau of Census. There is reason to believe that the differences between the final figures and the present estimates will not be great and will not affect many political subdivisions.

Subsection 4(c).—Under this subsection, a test or device would be within the terms of this act if it is a prerequisite for voting or registration for voting and is any one of the four tests or devices described in subsections 4(c)(1) through 4(c)(4).

Subsection 4(c)(1).—Under this subsection, a test or device includes any requirement for a demonstration of the ability to read, write, understand, or interpret any matter, whether by means of an application form or otherwise, as a prerequisite for voting or registration for voting.

Subsection 4(c)(2).—The second type of test or device covered is any prerequisite for voting or registration for voting that requires demonstration of any educational achievement or knowledge of any particular subject, whether this demonstration is to be made by means of an application form or otherwise. This definition is intended to include a requirement that an applicant be familiar with provisions of Federal, State, or local law or demonstrate knowledge of current events or of historical facts and would also preclude a test of knowledge of such matters as one's exact age in years, months, and days, as well as tests of knowledge in the more usual sense.

Subsection 4(c)(3).—The third type of test or device covered is any requirement of good moral character. This subsection does not proscribe a requirement of a State or any political subdivision of a

State that an applicant for voting or registration for voting be free of conviction of a felony or mental disability.

Subsection 4(c)(4).—The final type of test or device included within this subsection is any prerequisite for voting or registration for voting which requires a person to prove his qualifications by the voucher of registered voters or members of any other class.

Subsection 4(d).—This subsection clarifies the burden of proof required of a State or political subdivision to resume use of tests or devices in those situations where resumption would not be precluded because of the existence of a final judgment as described in the proviso to subsection 4(a). This subsection provides that a State or political subdivision, not barred from relief under the proviso to subsection 4(a), shall not be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of the use of tests or devices for the purpose of denying or abridging the right to vote on account of race or color have been limited in number and have been promptly and effectively corrected by State or local action; (2) the continuing effect of the discriminatory use of tests or devices has been eliminated; and (3) there is no reasonable probability of the recurrence of the discriminatory use of tests or devices in the future. A promise not to violate the law would not meet the test of this subsection.

Section 5

This section deals with attempts by a State or political subdivision with respect to which the prohibitions of section 4 are in effect to alter by statute or administrative acts voting qualifications and procedures in effect on November 1, 1964.

Section 5 permits a State or political subdivision to enforce a new or changed requirements if it, through its chief legal officer, submits the new requirement or change to the Attorney General and the Attorney General does not interpose objections within 60 days.

If the new qualification, prerequisite, standard, practice, or procedure is not submitted to the Attorney General, or if it is submitted and he interposes an objection, then the State or subdivision which is within section 4(a) will not be able to enforce the new requirements without obtaining a declaratory judgment that such new qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging rights guaranteed by the 15th amendment. Any such action for declaratory judgment must be brought before a three-judge District Court for the District of Columbia. There is a right of direct appeal to the Supreme Court.

The Attorney General's failure to interpose an objection will not bar any subsequent actions to enjoin the enactment or enforcement of a new or changed voting qualification, prerequisite, standard, practice, or procedure.

Section 6

This section provides for the appointment of examiners. Examiners are to be appointed by the Civil Service Commission in any one of three general circumstances.

The first of these circumstances is the authorization of examiners pursuant to section 3(a). This provision was not included in the bill

as introduced, and was added to conform with the new section 3(a).

Second, examiners will be appointed by the Civil Service Commission following a certification by the Attorney General that he has received 20 or more meritorious complaints of voting discrimination from residents of a political subdivision which falls within the scope of section 4(b). It is intended that the Attorney General's certification that the complaints are meritorious be final and not subject to review by the courts. The committee understands that falsification of complaints under this section is subject to the penal provisions of section 1001, title 18, United States Code.

Third, examiners will be appointed by the Civil Service Commission when the Attorney General certifies that in his judgment the appointment of examiners in a subdivision within the scope of section 4(b) is necessary to enforce the guarantees of the 15th amendment. The section adds a provision to the bill as introduced, providing that in making this certification, the Attorney General is to consider among other factors whether the ratio of nonwhite registered persons to white registered persons in the subdivision can be reasonably attributed to violations of the 15th amendment, or whether substantial evidence exists that bona fide efforts are being made with the subdivision in question to comply with the 15th amendment. Under express language in subsection 4(b), section 6 determinations and certifications of the Attorney General, as well as such factors as may be considered by him, are final and nonreviewable by the courts.

Section 6 also authorizes the Civil Service Commission to appoint as many examiners for each subdivision with respect to which certifications have been made as it deems necessary.

The duties of examiners are set out in this section. Their functions are to examine applicants who present themselves and to prepare and maintain lists of persons eligible to vote in Federal State, and local elections. Examiners are authorized to administer oaths.

The Civil Service Commission may, as required by circumstances, have one examiner serve one or more subdivisions so that it will not be necessary to have one examiner in each subdivision that may be covered.

The personnel provisions set forth in this subsection make it clear that examiners, hearing officers provided for in section 9, and other necessary support personnel, including observers under section 8, shall be appointed without regard to the civil service laws and the Veterans' Preference Act of 1944, as amended, and section 11 of the Administrative Procedure Act, and that they shall be compensated without regard to the Classification Act of 1949, as amended. Such persons may be expected by the Civil Service Commission from the provisions of the Dual Compensation Act. The section also provides that all personnel appointed from outside the Government service to these positions may be separated without regard to the Veterans' Preference Act of 1944, as amended, section 11 of the Administrative Procedure Act, and any other statute. Personnel appointed under this act, however, are subject to the provisions of the Hatch Act.

Personnel appointed from outside the Government service will, however, be covered by the Federal Employees' Compensation Act and subject to the Social Security Act. The provision that the Civil Service Commission is authorized to designate suitable persons in the official service of the United States, with their consent, to serve in the positions of examiner, hearing officer, and of support personnel is to

enable the Civil Service Commission to use present Government employees on a detail basis in accordance with prevailing practices. Such detailed employees will retain their full rights and benefits while serving in the positions to which they are detailed. They will not, however, by virtue of such detail, acquire additional entitlement to leave, health and life insurance, or retirement benefits, but their entitlement to such benefits will in no way be diminished.

Section 7

Subsection 7(a).—This subsection provides that examiners, appointed pursuant to section 6 are to examine applicants to determine their qualifications for voting.

This subsection requires the applicant to allege in his application that he is not otherwise registered to vote.

The bill, as introduced, also required that the applicant allege that within 90 days of his application, he had been denied the right to register or vote or found not qualified to vote, but the necessity of this allegation could be waived by the Attorney General.

The committee deleted this provision because it believed that requiring an applicant to first attempt to register with a local registrar was both unnecessary and burdensome. It intended that the opportunity for listing by an examiner be readily available to persons who might be fearful or reluctant to apply to a local registrar.

Subsection 7(b).—This subsection provides that the examiner is to place on a list of eligible voters any person whom he finds, in accordance with instructions received under subsection 9(b), to have qualifications prescribed by State law. While State law prescribing qualifications is to govern, this means only State law which is not inconsistent with Federal law, including this act. State laws regulating the procedures for registration for voting need not be followed by Federal examiners.

This subsection also provides that challenges to the examiner's listing are to be made only in accordance with subsection 9(a) and are not to be the basis for a criminal prosecution under section 11 or 12. The subsection specifies the time for transmitting and certifying the list of eligible voters to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, as well as the times when the list is to be made available for public inspection.

This subsection expressly confers a Federal right to vote to any person whose name appears on the list transmitted to appropriate election officials at least 45 days prior to an election. Such transmittal can be accomplished by depositing the list, certified to be correct by the examiner, in the U.S. mails on or before the 45th day. Any person whose name appears on a list must be allowed to vote unless and until his name has been removed from the list in accordance with subsection 7(d).

Subsection 7(c).—This subsection provides that the examiner shall issue a certificate of voting eligibility to each person whose name appears on a list of eligible voters.

Subsection 7(d).—This subsection sets forth two conditions for removal of a person from the list of eligible voters. Such removal shall be effected if either a successful challenge has been taken in accordance with the procedure enumerated in section 9, or if it is demonstrated to an examiner that the person whose name is sought

to be removed has lost his eligibility to vote under State law. The subsection provides that the examiner is only to consider State law not inconsistent with the Constitution and laws of the United States.

Section 8

This section authorizes the Civil Service Commission, at the request of the Attorney General, to send observers to any election held in any political subdivision for which an examiner is appointed under the act. The observers are required to observe all aspects of the election procedure, including the casting and counting of ballots. Observers are required to report promptly their observations to the examiner for the political subdivision affected and to the Attorney General. Where the appointment of examiners is authorized pursuant to section 3(a), the observer must also report to the authorizing court. Such reports, among other things, shall be the basis for court actions to achieve the casting or counting of ballots, the stay of election results pending such casting or counting, criminal proceedings, or other action to secure equal voting rights of all citizens.

Section 9

Subsection 9(a).—This subsection provides for challenges to listings on the eligibility list and sets forth the procedure to be followed in making such challenge. Section 9(a) provides that a hearing officer appointed by and responsible to the Civil Service Commission shall hear challenges to listings on the eligibility list. Challenges are to be filed in an office within the State designated by the Civil Service Commission and shall be entertained if filed within 10 days after the listing of the challenged person is made available to public inspection and if supported by affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge. A condition to challenge requires that certification be made that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged.

The section provides 15 days for determining the challenge. The decision of the hearing officer on the challenge may be appealed to the court of appeals for the circuit in which the person challenged resides within 15 days after the person appealing has been served with the decision. The hearing officer's decision, however, may not be overturned unless clearly erroneous and the person listed is entitled to vote pending the final outcome of the challenge. There is to be no stay of an examiner's decision declaring a person's entitlement to vote.

Subsection 9(b).—This subsection provides that the Civil Service Commission shall prescribe regulations setting forth the times, places, procedures, and form for application, listing, and removals from the eligibility lists. It provides that the Civil Service Commission, after consultation with the Attorney General, shall instruct examiners concerning the qualifications required for listing and concerning the loss of eligibility to vote. While relevant State substantive laws not inconsistent with Federal law will be applied, State laws relating to registration procedures need not be followed by examiners. It is expected that the application form will be simple.

Subsection 9(c).—This subsection grants the Civil Service Commission the power to subpena witnesses and documentary evidence relating to any matter pending before it. Where the subpena is not obeyed, a Federal district court within whose jurisdiction the person

disobeying the subpena is found, resides, or transacts business is given jurisdiction, upon application by the Attorney General, to issue an order requiring the person subpenaed to appear before the Commission or a hearing officer. Failure to obey such order may be punished as a contempt of court.

Section 10

Subsection 10(a).—This subsection recites a congressional finding that requirements of poll tax payments as a prerequisite to voting have been employed historically to disenfranchise voters in violation of the 14th and 15th amendments and that such requirements were adopted, in some areas, for the purpose, in whole or in part, of denying the franchise on account of race or color. Subsection (a) adds that, under such circumstances poll tax requirements upon which the right to vote is conditioned are not bona fide qualifications for voting, but are arbitrary and unreasonable restrictions on the right to vote which violate the 14th and 15th amendments.

Subsection 10(b).—This subsection provides that no State or political subdivision shall deny any person the right to register or to vote because of his failure to pay a poll tax or any other tax.

Section 11

This section may be enforced by criminal or civil proceedings pursuant to section 12.

Subsection 11(a).—This subsection prohibits persons acting under color of law from failing or refusing to permit any person to vote or willfully failing or refusing to tabulate, count, or report the vote of any person who is entitled to vote under any provision of the act, or who is otherwise qualified to vote.

Subsection 11(b).—This subsection prohibits persons, whether acting under color of law or otherwise, from intimidating, threatening, or coercing or attempting to intimidate, threaten, or coerce any person for voting or attempting to vote, or for urging or aiding any person to vote or attempt to vote. In this context the term "aiding" is intended to cover, for example, action designed to familiarize prospective registrants with registration and voting requirements and is not intended to sanction casting another's ballot or bribery. It also prohibits similar conduct directed at any person exercising powers or duties under sections 3(a), 6, 8, 9, 10, or 12(e). The prohibited acts of intimidation need not be racially motivated; indeed, unlike 42 U.S.C. 1971(b) (which requires proof of a "purpose" to interfere with the right to vote) no subjective purpose or intent need be shown.

Three principal additions to the original bill were made by the committee: (1) coverage was extended to intimidation of any person seeking to vote, whether or not his right to vote is secured by some provision of the act; (2) subsection also covers intimidation of those who engage in activities to encourage others to register or vote; and (3) intimidation of persons exercising powers or duties under sections 3(a), 6, 8, 9, 10, or 12(e) was proscribed.

The power of Congress to reach intimidation by private individuals in purely local elections derives from article I, section 4, and the implied power of Congress to protect Federal elections against corrupt influences, neither of which requires a nexus with race. While article I, section 4 and the implied power of Congress to prevent

corruption in elections normally apply only to Federal elections, and section 11 applies to all elections, these powers are plenary within their scope, and, where intimidation is concerned, it is impractical to separate its pernicious effects between Federal and purely local elections.

Section 12

Subsection 12(a).—This subsection provides criminal penalties for depriving or attempting to deprive any person of any right secured by sections 2, 3, 4, 5, 7, or 10 or for violating section 11 of the act.

Subsection 12(b).—This subsection provides criminal penalties for destruction or alteration of paper ballots which have been cast or alteration of records made by voting machines or otherwise.

Subsection 12(c).—This subsection is a criminal provision which reaches conspiracies to violate subsections (*a*) and (*b*) of section 12 and conspiracies to interfere with rights secured by other specified sections of the act.

Subsection 12(d).—This subsection authorizes the Attorney General to bring civil proceedings for preventive relief whenever he has reasonable grounds to believe that any person has engaged or is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or 12(*b*). The court may issue any appropriate order, including an order directed to a State and State or local election officials requiring them (1) to permit persons listed under the act to vote and (2) to count such votes. The two examples of orders that are specifically set forth in the subsection are not intended to be exclusive.

Subsection 12(e).—This subsection provides that, in political subdivisions for which an examiner has been appointed, if any person alleges to the examiner within 48 hours after the polls close that he has not been permitted to vote notwithstanding (1) that he has been listed under the act or registered by local officials, and (2) that he is presently eligible to vote, the examiner must immediately notify the Attorney General if the allegations appear to the examiner to be well founded. Upon receipt of such notification, the Attorney General may forthwith make an Ex parte application to the Federal district court for an order declaring that the results of the election are not final and temporarily restraining the issuance of any certificates of election. Upon the filing of such an application, the court shall issue such an order pending a hearing on the merits. The subsection provides, however, that the court shall hear and determine the matter "immediately" (as soon as practicable) after the filing of the Attorney General's application. If the court determines after hearing that persons who are entitled to vote were not permitted to vote in the election, it shall provide for the marking, casting, and counting of the votes of such persons and the inclusion of their votes in the total vote before the results of the election may be given effect. Other remedies provided by State or Federal law remain available.

Subsection 12(f).—This subsection confers on the Federal district courts jurisdiction of proceedings instituted under section 12 of the act and provides that such jurisdiction shall be exercised without regard to whether a person asserting rights under the provisions of the act has exhausted any administrative or other remedies provided by law.

Section 13

This section provides for the termination of listing procedures in political subdivisions where examiners have been appointed following the making of determinations pursuant to section 4(b) or where examiners have been appointed following a suit under section 3. Where the appointment of examiners depends upon section 4(b) determinations, listing procedures are terminated when the Attorney General notifies the Civil Service Commission (1) that all persons in the political subdivision involved who have been listed by an examiner have been placed on the voter registration rolls by State officials and (2) that there no longer is reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in the particular subdivision. While a political subdivision may petition the Attorney General to terminate listings, disposition of the petition is left to the discretion of the Attorney General and the exercise of discretion is final and not subject to review by the courts. Where appointment of examiners has been authorized by a court under section 3(a), listing procedures may be terminated by court order.

Section 14

Subsection 14(a).—This subsection provides that all cases of criminal contempt arising under the act shall be governed by section 151 of the Civil Rights Act of 1957. Section 151 provides for fine or imprisonment, or both, in criminal contempt cases, but limits the fine to $1,000 and imprisonment to a term of 6 months. Such criminal contempt proceedings may be with or without a jury. In a proceeding without a jury, if the sentence is a fine in excess of $300 or imprisonment in excess of 45 days, the accused, upon demand, is entitled to a trial de novo before a jury. Section 151 is inapplicable to contempts committed in or near a court or which interfere with the administration of justice. This subsection does not apply to civil contempt proceedings (or procedures therein) which will continue to be tried without a jury.

Subsection 14(b).—This subsection confines to the District Court for the District of Columbia jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of the act or any action of a Federal officer or employee under the authority of the act.

Subsection 14(c).—Clause (1) of this subsection contains a definition of the term "vote" for purposes of all sections of the act. The definition makes it clear that the act extends to all elections—Federal, State, local, primary, special, or general—and to all actions connected with registration, voting, or having a ballot counted in such elections. The definition also states that the act applies to elections of candidates for "party" offices. Thus, for example, an election of delegates to a State party convention would be covered by the act. The definition is not intended, however, to cover staff positions, such as secretaries, clerks, and others employed by a political party.

Clause (2) of this subsection defines "political subdivision" as a county or parish except that, in cases where registration is not con-

ducted under the supervision of a county or parish, the term includes any other subdivision of a State which conducts registration for voting. The term "political subdivision" is not intended to encompass precincts, election districts, or similar units when they are within a county or parish which supervises registration for voting.

Subsection 14(d).—This subsection provides a criminal penalty for knowingly and willfully giving false information to an examiner or a hearing officer in order to establish eligibility to register or vote under the act.

Section 15

This section would amend 42 United States Code 1971 by deleting the word "Federal" wherever it appears in subsections (a) and (c) of 42 United States Code 1971 and by repealing subsection (f) thereof, the subsection which defines "Federal" elections.

As a result, the Civil Rights Act of 1964 would apply to State and local as well as Federal elections by (1) requiring application of uniform voting standards; (2) prohibiting disqualification for immaterial errors or omissions; (3) requiring literacy tests to be administered in writing (with certain exceptions); and (4) establishing a rebuttable presumption of literacy upon completion of the sixth grade where literacy is deemed a relevant factor. (The provisions relating to literacy requirements would apply only to the extent that such requirements were not suspended by this bill.)

Section 16

This section provides that no provision of the 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.

Section 17

This section authorizes the appropriation of such sums as are necessary to carry out the terms of the act.

Section 18

This section is a general separability clause, providing that the invalidity of any portion of the act shall not affect the validity of the remainder of the act. It also provides that the invalidity of the application of the act to any person or circumstances shall not affect its applicability to other persons or circumstances.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed by the bill as reported. Matter proposed to be stricken by the bill as reported is enclosed in black brackets. New language proposed by the bill as reported is printed in italic.

SECTION 2004 OF THE REVISED STATUTES (42 U.S.C. 1971), AS AMENDED BY SECTION 131 OF THE CIVIL RIGHTS ACT OF 1957 (71 STAT. 637), AND AS FURTHER AMENDED BY SECTION 601 OF THE CIVIL RIGHTS ACT OF 1960 (74 STAT. 90), AND AS FURTHER AMENDED BY SECTION 101 OF THE CIVIL RIGHTS ACT OF 1964 (78 STAT. 241).

SEC. 2004. VOTING RIGHTS.

(a) (1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any [Federal] election apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any [Federal] election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any [Federal] election unless (i) such test is administered to each individual wholly in writing except where an individual requests and State law authorizes a test other than in writing, and (ii) a certified copy of the test whether written or oral and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88).

(3) For purposes of this subsection—

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

(b) * * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventing relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has

completed the sixth grade in a public school in, or a private school accredited by, any State or territory or the District of Columbia where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any [Federal] election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection, any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) * * *

(e) * * *

[(f) When used in subsections (a) or (c) of this section, the words "Federal election" shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives.]

[(g)] (*f*) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

[(h)] (*g*) In any proceeding instituted in any district court of the United States under this section the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. A copy of the request shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending

immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

REPUBLICAN VIEWS OF HON. WILLIAM M. McCULLOCH, HON. RICHARD H. POFF, HON. WILLIAM C. CRAMER, HON. ARCH A. MOORE, JR., HON. CLARK MacGREGOR, HON. CARLETON J. KING, HON. EDWARD HUTCHINSON, AND HON. ROBERT McCLORY

CONTENTS

1. General statement.
2. The committee-Celler bill.
3. The Republican voting rights bill:
   (a) Triggering provisions.
   (b) Qualifications of voters.
   (c) The right to vote.
   (d) Voting frauds.
   (e) The poll tax.
4. Conclusion.
Appendix I. H.R. 7896—The Republican voting rights bill.

GENERAL STATEMENT

National demand for legislation further implementing 15th amendment protection of the right to vote has brought before this Congress a matter of the most vital concern. Fundamental to our democracy is the right of each qualified citizen to participate in the selection of those who will serve him as his government. Our Nation, born of a mighty struggle to secure representation to its citizenry, has grown and propospered in freedom through self-government. Our history unfolds at every chapter the story of rededication to a belief in government by and for the people. Events of recent times presage legislative renewal of this basic faith.

The problem to which this legislation is directed is no abstract matter to those whose rights must be assured. The right to vote is of particular importance and value to minority groups in general but to our Negro citizens in particular who suffer deprivations of rights other than access to the ballot. If these other deprivations are to be rectified and the present imbalance cured at the level of government contemplated by the Constitution as custodian of the welfare of individual citizens, that level of government must be maintained responsive to the needs of all its people. Federal authority lies to correct the gross imbalance of today, to bring back to a constitutional standard the responsive character of State and local governments where lies the final assurance and vindication of these rights. Neither in the streets nor in the courts, nor in the Federal Congress but in the political process of free and responsive operation of local government lies the final goal of equality in all civil rights. The vote is indispensable—it cannot longer be denied.

In 1957 and again in 1960, or after a lapse of some 80 years following enactment of the 14th and 15th amendments to the Constitution, the Congress passed laws designed to assure the franchise to many Negro citizens from whom it had been systematically denied because of their race, color, and previous condition of servitude. The opera-

tion of these laws required judicial assessment of the laws and actions of States and State officials and provided judicially applied remedies to correct discrimination where established in the courts. In 1963, the Civil Rights Commission, reporting on some 6-years of enforcement of voting rights under the laws termed the methods adopted therein "ineffective" in solving the problem to which they were addressed.[1] In so doing, the Commission advocated Federal laws which, based on congressional findings, would temper State-imposed registration prerequisites such as literacy tests and morality requirements which had been used to deny the vote on grounds of race and color. But a far more basic and sweeping change in legislative approach was posed: Judicial process with its inherent delays and restricted area of application should be removed as the predicate to remedial action. Substituted therefor would be direct dispatch of Federal examiners, as to whose presence and actions judicial power would obtain as a final check but not as an initiating step.

In 1964, the Congress passed a far-reaching and comprehensive civil rights bill. Title I of that measure augmented substantially the provisions of the then-present law pertaining to voter qualifications for Federal elections but did not alter the procedural basis for remedial action which remained with the courts. Within a year, as this committee has returned to consideration of voting rights, there is consensus that a departure from traditional legislative method must be made, and a wholly new approach embraced; the burden of inherent delay and inertia of court process must be shifted to those who would withhold the right to vote. Executive rather than judicial appointment of Federal registrars is designed to speed Federal action aimed at nullification of control of voter rolls by local registrars, where that control has been used improperly to withhold the franchise. Similarly, to remedy the other major means of discrimination, criminal provisions must be enacted to extend Federal protection against interference with registration and voting by coercion and intimidation.

The record before this committee and before the public abounds with evidence supporting the immediate necessity for such steps embodied in the most effective legislation that can be devised within the framework of the Constitution. The staggering list of counties—where figures are available—in which less than 15 percent or even 10 percent of Negro citizens are registered;[2] the reported rapidity of several State legislatures to enact measures to circumvent provisions of title I of the 1964 Civil Rights Act;[3] the determined efforts of small groups of willful local election officials to subvert Negro access to the franchise by trickery and coercion, as sampled in some of the 70 cases filed by the Justice Department;[4] and incredible accounts of citizens in our own land living in an atmosphere of terror and reprisal if they even attempt to register;[5] these are the stark and appalling facts which must be squarely confronted.

Our responsibilities require that other aspects of the record be not overlooked. As can be shown in some areas, great progress toward enlightened assurance of civil rights has been quietly accomplished.[6]

[1] 1963 report of U.S. Commission on Civil Rights, p. 28.
[2] Subcommittee transcript 135-257.
[3] Subcommittee transcript 51-60.
[4] See *United States* v. *Duke*, 332 F. 2d. 759 (5 Cir. 1964) (abuse of poll tax); *United States* v. *Dogan* 314 F. 2d. 767 (5 Cir. 1963) (same).
[5] Commission on Civil Rights, "Voting in Mississippi" ch. III (1965).
[6] For instance, subcommittee transcript 48, 103 (Louisiana); 114-119 (South Carolina).

Many examples might be found of the dedication of responsible citizens to promote the same ends we would assure by our work here. While some have held our earlier efforts to remedy the voting rights problem to have gone for naught, the impact of our last measure, title I of the 1964 Civil Rights Act, has been hardly put to the test. For example, in February of this year, Burke Marshall, formerly Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice, reported to the Civil Rights Commission that—

> In sum, some strides have been made in eradicating voting 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. Progress has been made and far greater progress may confidently be anticipated. In other States, where similar efforts were begun sooner, tangible results are already more visible (subcommittee transcript 309).

Since this statement was uttered, the Supreme Court has handed down two precedents representing, in the words of the Commission on Civil Rights, "a major step forward."[7] The decisions allow broad-gage suits to suspend discriminatory laws on a statewide basis and provide the blueprint for possibilities of statewide relief to cure present racial imbalance in registration from previous discrimination. *United States* v. *Mississippi*, 380 U.S. 128 (1965); *Louisiana* v. *United States*, 380 U.S. 145 (1965).

The small comfort of this slow progress cannot detract from the urgency and determination to reinforce the requirements of the Constitution. But it must remind us that we cannot break the faith with those responsible elements who work toward and share our hope in a common goal of assurance of this basic right to all citizens. We need not forego our earlier considered legislation in this area. Rather we should incorporate the procedures and remedies which have been developed and tested, and adapt them to our present purpose to assure fair and effective action across the full spectrum of the problems this legislation must reach. The aim of all such legislation should be remedial, for the need is to assure present and future electoral participation, not to adjust old grievances or punish past wrongs.

It is our intention to make it unmistakably clear that, as we have in the past, we will support the most effective legislation that can be devised to solve these problems. We propose, in the Republican bill, a measure of firm effectiveness and universal application that is in harmony with the Constitution it enforces and protects.

We must be mindful that in the measures we adopt we teach as we command, and that respect for law is indispensable to the law's effect. We legislate not only for the immediacy of today's problems but for the requirements of the future as well.

2. THE COMMITTEE-CELLER BILL

The committee-Celler bill, H.R. 6400, is a hastily contrived, patchwork response to the Nation's demand for social justice. Conceived in a highly charged emotional atmosphere, it is certainly less than the best solution before the Congress. It is beset with numerous frailities and excesses, as this section of the report will discuss. In its practical

[7] 1963 report of U.S. Commission on Civil Rights, p. 14.

application to the situations it is designed to remedy, it is not uniformly applicable, as the following section of this report will demonstrate in comparing it to the Republican voting rights bill, H.R. 7896.

From an experienced draftsman's viewpoint, the reported bill leaves much to be desired. It remains vague, disorganized, and inconsistent. The consideration given the bill in working sessions of the whole committee cured but few of its earlier faults. Many remain, despite amendments offered and summarily rejected which we submit would have cured many shortcomings which it is now our responsibility to reveal. The principal fault with the form of the bill lies not wholly with the draftsmen who assembled the words upon the pages. It lies with the bill's cumbersome mechanisms which fairly defy more lucid expression.

Overshadowing the surface and immediate faults, however, are provisions whose far-reaching effect can only be suggested here in the most urgent hope they may receive full consideration in the coming debate. They involve grave constitutional risks which need not and should not be a part of the final legislation. While these provisions are claimed to represent an expression of determination to enact strong legislation, the strength we must infuse into the law is the strength of truly effective measures that go to the heart of the problem. Harshness for the sake of harshness—a danger in the emotional urgency which accompanies our actions—is no answer to the needs of the Nation we serve.

Provisional voting

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

Section 9 would give the right to vote to all of those who have been listed by Federal examiners, and would allow their votes to be counted and election results certified even though challenges to their listing, pending on appeal at the time of the election, could subsequently result in a finding that they are not qualified to vote (subcommittee transcript, p. 59). There is no disagreement that Federal examiners must be made available to assure listing of citizens discriminatorily barred by State officials in violation of the 15th amendment. But to rush in and recklessly distribute the franchise in disregard of its integrity is a disservice to those citizens who have waited so long and trusted us to act wisely in assuring a full measure of representation.

The united purpose of Congress should be to assure the integrity of the elective process by assuring a vote to each qualified citizen. The casting of a vote by a person who is in fact not qualified to do so may be viewed as an undesirable aspect of a plan to end voter discrimination. But to count such votes and certify the election of officials on the basis of such illegally cast votes is shocking. An end to voter discrimination need not be bought at the cost of corruption of the vote itself. The confusion, bitterness, and possible social upheaval that could result after a close election where the change of a few votes could have altered the final outcome would destroy respect for the very process we here seek to preserve. It is no answer to leave such chaos to State process. Where Federal law creates such serious problems in State affairs, that same law, where it can be so easily done, should provide a solution.

It is dangerous to create a mechanism which could well mean the election of any official, be it a local councilman or the President of the United States, who has failed to receive the largest number of votes cast by legally qualified electors. Thus, to insure against this invitation to illegality and disorder, we have and will continue to insist upon the provisional voting of those persons who are challenged, with an impounding of the ballots cast (when they are of such a number that they may affect the election results) until the issue of eligibility has finally been determined.

Discrimination in application of Federal remedies

The "triggering" provisions of the committee-Celler bill are examples of bewildering complexity. Alternate means are provided for activating the remedies afforded by the bill. One, an "automatic trigger," reaches for large, hard-core areas (secs. 4 and 5); the alternate, a "pocket trigger," applies to other areas where discrimination on account of race or color is found (sec. 3). The original bill considered in subcommittee contained only the first of these, a formula-based provision predicated on the premise that the combination of low voter participation (or registration) in a State which required a voter literacy qualification indicated the presence of racial discrimination. The application of the bill was limited to seven States.

Republicans resisted limitation of this important legislation to such narrow bounds; the overwhelming majority of witnesses who appeared in support of the bill were critical of the restricted application; even the Attorney General conceded that other areas of discrimination should be included (subcommittee transcript, p. 69). We were gratified when this serious deficiency was acknowledged by addition of alternative triggering means. But those who expect or infer increased flexibility from the new provisions are misled and will be disappointed for, in practical application, the "pocket trigger" hardly goes beyond the present law. It does not remove the chief and acknowledged shortcoming which now requires court action before any remedy is available. These mechanical inadequacies are fully discussed later in this report at section 3(a).

The overall defect of committee-Celler bill's triggering provisions is inescapable: it attempts to remedy discrimination by discriminatory means. The percentage formula is based on figures which have nothing to do directly with ratios of white to Negro voters (subcommittee transcript, pp. 48, 91, 289). It is obvious that a target for the bill was selected before the means to reach the mark were devised. A State is selected and condemned regardless of the inclusion of many counties or parishes deserving of commendation for the progress they have made, and the irreproachable conditions they have produced. Since application of the bill is frozen by the state of injustice as of November 1964 and born of past evils, it cannot adjust to the future: States not presently reached can enact and enforce discriminatory laws and devices and remain outside effective coverage of the majority bill. What end is usefully served by this legislative indictment?

Citizens deprived of the voting rights on account of race or color in 135 counties in Texas where less than 50 percent of eligibles voted will get no immediate assistance from the majority bill. They must wait for the Justice Department to bring suit, for assurance of their rights has been left to means the Attorney General has described as

restricted to "the tortuous, often-ineffective pace of litigation" (subcommittee transcript, p. 9). The aim of effective legislation should be the effective relief of the individual voter at the voting district level.

Suspension of State sovereignty and disqualification of the Federal courts

Inseparably bound up in the triggering provisions are two innovations which should be of primary concern to all who are sworn to uphold the Constitution and our Federal system. The first of these is a provision, once the committee-Celler bill is triggered, that no new election law, rule, regulation or resolution of a State or subdivision thereof may be put into effect without the prior approval of a Federal court or the Attorney General. The second proposition is that a State or political subdivision, covered by the automatic trigger, must come to the District of Columbia to quash the bill's indictment or, failing this, to get approval for its new election laws. This same forum must be utilized to correct the actions of any Federal officer or employee (examiners, hearing officers, and observers) who are sent to implement its provisions (sec. 14(a)). For neither measure is there a precedent, save among dangers of overextension of Federal power cataloged by the Founding Fathers (subcommittee transcript, p. 560).

While recognizing the problems that have been encountered in certain district courts, we should not abandon the traditional concept that a court decision properly should be made in the jurisdiction where the cause of action arises. To disqualify all Federal courts save those of the District of Columbia from hearing cases brought by the States under these laws was characterized by the chairman himself as "harsh" law (subcommittee transcript, p. 62). We would add to "harsh," unnecessary. We are not destitute of hope that the only possibility of reform lies in the Congress of the United States. Internal disciplinary resources of the judicial branch have not been effectively used, as yet, in the opinion of studious observers. See "Comment, Judicial Performance on the Fifth Circuit," 73 Yale Law Journal 90 at 133 (1964). And other authorities intimately involved with the problem have suggested that not only the pace but the effectiveness of a local court action has improved and will continue to improve now that basic standards have been set by the appellate courts. (Subcommittee transcript, p. 308, February 1965 statement of Burke Marshall.)

The end to be achieved is hardly worth the affront to the doctrine of separation of powers contained in this thoroughly mischievous precident. The measure cannot be justified on grounds other than mistrust of southern district judges.

The District Court for the District of Columbia already has a huge backlog of over 4,000 civil cases.[8] With the median time of 28 months required from the time of filing an action in this court to the disposition after trial,[9] this provision of the committee-Celler bill will contribute to a long delay in the hearing of such cases. In the meantime, State voter qualifications and standards are suspended without relief. If such drastic effects must be visited upon the States involved, resolution of this class of cases should be handled expeditiousyl. If the automatic trigger and its abrasive, built-in ramifications must be imposed upon selected States, would it not be fairer to provide for a three-judge district court, or even circuit court, sitting locally to hear cases arising under this act? We deplore the unprecedented

[8] Quarterly report of the director of the administrative office of the U.S. courts, table C-1 (1965).
[9] Annual report of the director of the administrative office of the U.S. courts, table C-5 (1964).

requirement that an affected State or subdivision must come to a single court sitting in the Nation's Capital to absolve itself of an automatically presumed guilt.

To add to this disqualification of the local courts the nullification of expressly granted State sovereignty—which is inherent in the bill's presumption of the irregularity of State voting laws, and the rules, regulations, and resolutions of its subdivisions—is unthinkable. We regard it as a proscription without justification. The immediate access to more appropriate legislative means to avoid continued obstruction by a few State legislatures or local governing bodies is fully discussed in section 3(b).

Clean elections and voting frauds

As we destroy the traditional bastions of discrimination erected at registration and polling places, we must foresee the path of retreat and reentrenchment of those who may continue to preserve the affects of discrimination on account of race or color. Surely, it will be in the form of fraud, intimidation, and corruption. Therefore, we maintain that any effective voting rights bill must include a comprehensive clean elections section. The public record is replete with endless instances of vote frauds, including stuffing the ballot box, tombstone voting, multiple casting of votes by one individual in several precincts or districts, threats and coercion of voters, destruction or alteration of ballots, willful miscounting of votes, and buying votes. These conditions do not exist in just one part of the country, but can be found in many States across the length and breadth of this land.

It is a cruel deception to give any man the elective franchise and then allow destruction the effect of his vote through a multitude of corrupt practices. Not only must we insure the integrity of the Negro's right to vote, but we are obligated to protect the integrity of the vote cast by any citizen. Without such safeguards, the right to vote becomes but a snare and a delusion. Representation in government is reduced to a mirage.

The committee-Celler bill makes a few very feeble gestures toward this problem, but they are quite limited in scope, and in one instance, at least, quite unconstitutional in the form of presentation. See section 3(d) of this report.

We are dismayed by the refusal of the majority in the committee to support our efforts to meet this obvious need. We are unable to understand how anyone could oppose a clean elections law when his vote is subject to public scrutiny, and we shall make every effort to achieve its adoption in the House of Representatives.

Poll tax

We favor and would welcome the earliest possible elimination of the poll tax as a precedent to the right to vote. We recognize that the poll tax has been used in some States to deny or abridge the right to vote on account of race or color. However, early realization of this goal may well be frustrated by a congressional nullification of poll taxes by statute, as prescribed by the committee-Celler bill. We are of the opinion that the constitutionality of such an approach is not free of doubt. See section 3(e) of this report. Without regard to the embarrassment to Congress that would occur should the Supreme Court hold such a provision unconstitutional, the problem before us is an issue of such vital concern that we are not willing to risk further

delay in its solution by taking this questionable and hazardous approach.

3. THE REPUBLICAN VOTING RIGHTS BILL

General.—The text of the Republican voting rights bill is set out in appendix I of this report. We shall request and press for a rule which will make this bill in order as a substitute for the committee-Celler bill.

The Republican bill is a bill of uniform nationwide application, a bill that directs its remedy at voting rights abuses wherever found. It is a bill which is nondiscriminatory in its approach and application to the problems it is designed to solve. Simple and flexible in operation, the provisions of this bill are clear—understandable to the citizens whose rights it assures, unmistakable to those whose conduct it proscribes, and unassailable in its consistancy with constitutional principles enunciated by the courts. It is a bill which honors the rights of the States to fix and enforce nondiscriminatory voter qualifications. It enlists and encourages good faith compliance with its terms by those it affects. It is a bill which addresses itself to the present and looks to the future. Without penalizing innocent areas, it applies firm, considered standards to meet the critical requirements of the present situation, standards that will continue in their validity for future times when massive discrimination has ended. It is a bill of constitutional integrity, in the finest congressional tradition of sound, responsive, and responsible legislation.

3(a) Triggering provisions

The Republican bill is triggered by receipt of meritorious complaints from 25 or more persons of any voting district in any State, who assert they have been denied the right to register or to vote on account of race or color. Upon receipt of such complaints, the Attorney General certifies that fact to the Civil Service Commission which promptly appoints an examiner to evaluate further the individual complaints. If, after examining the qualifications of the complainants, the examiner determines that 25 or more are qualified to register and vote but have been denied the right to register or vote, a presumption is established based on the bill's congressional finding that there exists in the voting district a pattern or practice of denial of the right to vote on account of race or color. The examiner serves a copy of his list together with a report of his findings upon the local election officials and the State attorney general.

The pattern or practice of denial, once presumed, becomes established if a challenge to the examiner's findings is not forthcoming within 10 days, or if a hearing officer affirms the examiner's finding upon challenge. Establishment of a pattern or practice warrants Civil Service Commission appointment of additional examiners, if required, who will continue to list applicants found qualified to vote. As done initially, examiners serve these additional lists and reports of applicants found eligible to vote upon election officials and the State attorney general.

Comment.—Inherent in the 25-complaint triggering device are 2 principles basic to our national traditions. First, this requirement assures measurement of a pboblem that bears a reasonable relation to the area involved before Federal power preempts State process. Second, it retains the touchstone of self-determination that those who need Federal help may bring it in if they so desire. This triggering

device enjoys the flattery of imitation in section 6 of the committee-Celler bill, where 20 citizen complaints seem to impower the Attorney General to call for examiners (though in fact he may do so at his own discretion). The advantages of simplicity are apparent from surface comparison of the two bills. The advantages of not only flexibility but fairness are clear upon analyzing the triggering provisions of the committee-Celler bill, and comparing them with those of the Republican substitute.

Automatic trigger of the committee-Celler bill.—The committee-Celler bill's 50 percent voter-registeration test, or automatic triggering device, being retrospective in viewpoint, does not consider the actions of a State or political subdivision in the present, but rests upon past occurrences. Despite the gross injustices perpetrated by some individuals and governmental bodies, we find the creation of penalties today, to be applied in the form of indictments for yesterday's sins, to be philosophically undesirable, especially in the light of the delicate Federal-State relationship and the constitutional issues involved. There is no opportunity open to all for the redemption of wrongdoers. Good faith compliance with the spirit and letter of the law after passage of this voting rights bill would be of no avail.

The "numbers game" approach, obviously designed to hit a predesignated target, is clearly an arbitrary device unless we are to believe that, without evidence, without a judicial proceeding or a hearing of any kind, a contrived mathematical formula is capable of fairly delineating those States that discriminate on account of race or color and those that do not. As noted earlier, it is conceded by the committee-Celler bill's proponents that the figures used do not purport to show a proportionally low ratio of Negro to white registrants or voters which might reflect a pattern of racial discrimination. In fact, discrimination prohibited by the 15th amendment could continue untouched under the formula so long as 50 percent of the voting age population on November 1, 1964, was registered or voted—even if they were all whites. We find it to be quite illogical to declare, on the basis of the formula, that Louisiana is guilty of discriminating since it had only 47.3 percent of the eligible population voting in the 1964 election, while Hawaii with 52 percent voting is deemed innocent (subcommittee transcript, p. 29). Meanwhile, Texas escapes censure, although it had only 44 percent participation. Yet, as a result of this arbitrary calculation, a State's voting qualifications are suspended until it comes to a selected court in the District of Columbia and establishes the fact that its "tests and devices" were never used during the past 5 years to deny or abridge the right to vote.

The fair and effective enforcement of the 15th amendment calls for precise identification of offenders, not the indiscriminate scatter-gun technique evidenced in the 50 percent test. Where local election officials practice discrimination, a Federal remedy should be readily available to be swiftly administered even if 99 percent of the eligible voters are properly registered or voted. However, the committee-Celler bill with its 50 percent test would engulf whole States in a tidal wave of Federal control of the election process, even though many of the counties or parishes within that State may be acknowledged by all to be absolutely free of racial discrimination in voting. In South Carolina, for example, it was admitted by the Attorney General, as it had been by his predecessor, that a large portion of the State

is free of any such wrongdoing (subcommittee transcript pp. 114–117). Yet here, as in other States, the innocent as well as the guilty must suffer the same humiliation and deprivation of traditional State and county authority over the conduct of elections.

The statistical test is a faulty barometer of discrimination since it ignores the political facts of life in the South. Although progress is being made to restore a healthy two-party system, this region still suffers from the voter apathy that accompanies traditional one-party domination.[10] It is little wonder that, where winning the Democratic party primary has been tantamount to election, voter turnout in the November election is less than vigorous. Moreover, in several of the States affected, low voter participation is further engendered by the fact that in many areas, the election of local officials does not coincide with the presidential elections.

The percentage test of the committee-Celler bill creates a further inequity which, to our knowledge, defies remedy. It is widely known that many of the personnel stationed at our military bases in this country, and their dependents, are registered and vote in States other than that of their duty assignment. Yet, they as well as aliens, prison inmates, incompetents and students are counted by the Bureau of the Census as a part of the total voting age population of the State and county in which they temporarily reside. It is obvious that their inclusion in such population figures will work to the detriment of that locality under the reported bill. Unfortunately, there is no reasonably accurate data available to indicate the number of eligible persons temporarily residing in one State who are registered and participating voters in their home State or subdivision.

Finally, we view with much concern the broad discretionary powers placed in the hands of the Attorney General by this triggering provision of the bill. Without suggesting any criticism of the present incumbent, we foresee a multitude of opportunities for political manipulation by an Attorney General who is inclined to do so. This is especially true since in recent times several Attorneys General, Republican and Democrat, have been closely tied to the political campaigns prior to their taking office. Of all the grants of authority to the Attorney General under the administration bill, including the ability to consent to the entry of declaratory judgments and to call for the appointment of examiners and election observers, it does not require a great deal of imagination to see that the authority to approve or disapprove State laws stands out as the power most subject to abuse. This threat, as well as many of the other problems inherent in this bill, would be eliminated by adopting machinery that starts through the initiative of those people who need help to secure the franchise rather than depending upon a federally actuated authority that presupposes the guilt and bad faith of selected parts of the country on the basis of an arbitrary and irrelevant test.

The pocket trigger.—We are also concerned by the ineffectiveness of the alternate triggering device of the committee-Celler bill, so lately adopted, to enforce the guarantees of the 15th amendment. To attack pockets of discrimination, the Attorney General still must bring a court action under the procedures in existing law which, we are told, have been found wanting. As described in the majority report, the pocket trigger "follows the traditional case-by-case approach." In

[10] Subcommittee transcript 543–545; Report of the President's Commission on Civil Rights, pp. 1, 24 (1963); Commission on Civil Rights, with Liberty and Justice For All 46 (1959).

the light of the clear evidence that discrimination also exists outside of those States or subdivisions caught by the automatic trigger, we are unable to comprehend the willingness to accept a slower route than immediate relief. Wherever discrimination prevails, we intend to, and the Republican bill does provide a uniform, readily accessible remedy.

Why should some be benefited by sweeping relief, though crude and unduly harsh, while others must be content with that which comes only after (in the words of the majority report) a "burdensome county-by-county litigation approach which has been shown to be inadequate"?

Section 3 unnecessarily deprives the courts of discretion and flexibility in deciding and disposing of voter discrimination cases. If, for example, the only violation of the 15th amendment in a county involves intimidation of Negro voters by the local sheriff, and the court orders appropriate relief to correct that problem, why should local election officials be usurped of a portion of their properly performed duties by the appointment of Federal examiners? Under section 3(a)(2) of the committee-Celler bill the court is compelled to authorize the appointment of such examiners.

If, under section 3(b) of the committee-Celler bill, it is found that a literacy test is being applied in a discriminatory manner by one county registrar, why should that literacy test, if not invalid on its face, be struck down throughout that county along with all other voter qualifications such as the ability to read and write? The language of the bill allows the court no choice but to do so.

Moreover, even if the operation of the act is triggered, as is possible, by no more than wrongdoing of a single local registrar, local power to change election laws or procedures can only be exercised upon court approval or the consent of the Attorney General. This is required even if every other county or State official has carried out his duties without the slightest violation of the 15th amendment. Just as we are vexed by the similar mechanism in sections 4 and 5, we find this provision to be violative of the principle that an accused is to be presumed innocent of wrongdoing until proven guilty.

3(b) Qualifications of voters

In determining a complainant or applicant's qualifications under the Republican bill, the examiner must apply State and local standards, but with certain enumerated exceptions. He is to disregard any requirement that a person possess good moral character unrelated to commission of a felony, or prove his qualifications by the voucher of persons of other classes such as landowners, or previously registered voters. Literacy tests are disregarded for those persons having an accredited sixth grade education. However, for those of less than sixth grade achievement, the State's test is administered in writing and the results included in the examiner's report. Review of literacy qualification is thereafter limited to the test answers reported.

Comment.—Abolition of irrelevent morality and voucher requirements as prerequisites to exercise of the franchise is a common feature of both bills. The problems presented in States which require literacy tests raise basic substantive and philosophic differences which require detailed analysis.

The committee-Celler bill automatically suspends any and all tests and devices in States reached by the automatic triggering

formula. Such an extension of Federal power is of doubtful constitutionality. Under article I, section 2, and the 17th amendment, the States are expressly given power to set voter qualification standards. The Supreme Court has squarely held that these qualifications may include literacy tests, noting that literacy requirements have a logical and even desirable relation to a person's qualifications to vote. (*Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959); *Guinn & Beal* v. *United States*, 238 U.S. 347 (1915).) While a State clearly may not abridge 15th amendment rights by use of a literacy test, Federal legislative nullification of all tests based on a percentage figure, which even the Attorney General agreed bore no direct relation to race is unsound on its face (subcommittee transcript, p. 48, 91). Moreover, the affected tests themselves vary in content from a simple requirement to be able to read, to the complicated interpretation tests (subcommittee transcript, p. 30, table A–3).

As to those voting districts which can be reached only by the pocket triggering means, the present law as to literacy tests remains basically unchanged. A showing still must be made in Court that the test in question has been used to discriminate before relief from the test can be granted. Since the reported bill acts only on the State of the law as of November 1964, other States are at liberty to enact harsh tests which can be removed only by litigation.

The Republican bill embodies the 1963 recommendation of the Civil Rights Commission and enlarges upon the presumption enacted in title I of the 1964 Civil Rights Act in automatically suspending any literacy test requirement for citizens of sixth grade or higher level of education. Those of less than the prescribed educational achievement take the State test as applied by the Federal examiner. This treatment acknowledges the constitutional right of the people of any State to prescribe their own voter qualifications. On the other hand, it acknowledges the 15th amendment limitation on State power and the possibility of State abuse of literacy tests by prescribing a limit, based on a congressional finding, which a State may not legally exceed.

It must be emphasized that under the Republican bill, no one to whom a literacy test will apply is left at the mercy of any unfair tests which might now be in force, or which might be enacted in the future. The bill's application of the test to those below the sixth grade standard presupposes a valid form of test which is being validly applied. Existing provisions of the law remain whereby the Attorney General may bring an action against a State to set aside a test, either because it is invalid on its face, or because it has been discriminatorily applied. (*United States* v. *Mississippi*, 380 U.S. 128 (1965), *Louisiana* v. *United States*, 380 U.S. 145 (1965).) Thus, in bringing immediate relief, the bill does not cast aside the present body of law, the full effect of which has yet to be felt on the problems it was designed to remedy, in favor of a new and untested scheme.

Favorable decisions in the *Louisiana* and *Mississippi* cases which allow a broad gage attack on a State-by-State basis, represent, in the words of the Civil Rights Commission, "a major step forward." [11] As the cases demonstrate, a test may be voided or suspended either because it is unconstitutional on its face, or because it has been used to disqualify registrants on account of race or color. A test valid on its

[11] 1963 Report of U.S. Commission on Civil Rights, pp. 13-14; see "Civil Rights Commission, Voting in Mississippi," p. 61, finding 8 (1965).

face can be suspended until a reregistration is effected by the State, on the basis that previous tests have been used to discriminate and in order to preclude even fair application in the future of the same or a new test that would "freeze" an imbalance of white and Negro voters achieved through past discrimination. Further, as the *Mississippi* case indicates (380 U.S. at 135), a complaint which asserts that a test seeks to capitalize on a prospective voter's lack of formal education, where the State has failed to maintain adequate schooling facilities, states grounds for suspension of such test.

Thus, the proposed Republican bill immediately and safely removes substantial danger of abuse from any and all literacy tests wherever they are found. It retains developed procedures and principles, interposing judicial action between Federal power and State law where outright nullification of that law is required. This is traditional, flexible, and fair. In contrast, the committee-Celler bill rushes to outlaw only selected tests on questionable criteria, and provides no immediate relief to those outside the seven-State areas.

3(c) The right to vote

The act assures the qualified registrant the right to vote when service has been made upon State authorities of the list bearing his name, provided that service precedes election by 45 days, and that the person so registered has not been successfully challenged. In cases where a challenge is still pending (before the circuit court of appeals), the listee is allowed to vote provisionally, and his ballot impounded until the challenge is resolved.

Protection of the right to vote under the act is the object of civil and criminal remedies of section 13. In the event of notification within 24 hours of an election that a federally listed voter was not allowed to vote, or that his vote was not properly counted, the U.S. attorney may apply to the district court for appropriate injunctive relief, or for the issuance of orders required to enforce the provisions of the act and listing pursuant thereto. Contempts of such orders are made punishable under the Civil Rights Act of 1957 (42 U.S.C. 1995). Criminal penalties are prescribed for persons who—acting under color of law—fail or refuse to permit a voter qualified under the act to vote, or intimidate or coerce anyone for voting or attempting to vote.

Comments.—It is essential that listed persons, whose challenges are pending at the time of an election, vote provisionally. We anticipate that State election officials will comply with this provision by holding separate the ballots of the challenged voters and refrain from certifying the election results when their total number is such that they may affect the outcome of the election. In the event the election officials were not prepared to comply with the provisional voting requirement, the Court of Appeals under its equity jurisdiction and 28 U.S.C. 1651, could order the impoundment and enjoin issuance of the election certificates until the status of the challenged voters has been determined and the appropriate votes counted.

3(d) Voting frauds

This comprehensive section provides criminal penalties for voting frauds in any election held solely or in part for the purpose of selecting candidates for or electing officials to Federal office. It prohibits any person from failing or refusing to allow qualified persons to vote, willful failure to count, tabulate and report accurately such person's

vote, and all forms of intimidation, threats, and coercion of voters. Additionally, the destruction or alteration of ballots and voting records, the giving of false information for the purpose of establishing eligibility to register or vote, and the purchase or attempted purchase of votes are made punishable as criminal acts.

Comment.—A sound constitutional nexus for congressional authority to create such statutes is found in the application of these antifraud provisions to elections which concern Federal offices, solely or in part.

Broad in scope, this section is desired to cover as many of the known vote fraud practices as possible. Every voter of every race or color shall be assured that not only will he be guaranteed an equal opportunity to register and vote, but that upon qualification he will be afforded an opportunity to vote without personal fear, knowing that his ballot will be fairly counted and tabulated, and not nullified by illegally cast ballots or those cast by persons whose vote and freedom of choice have been purchased by another.

The call for this legislation has long been sounded and the need for it is clear.[12] It is particularly appropriate in the present context of national realization of the need for comprehensive voting rights legislation. For it can confidently be expected that once systematized impediments to Negro registration and voting are removed, there will be an increase in practices of fraud and corruption in attempts to nullify the impact on election results of the reinfranchised voters.[13]

The committee-Celler bill attempts to meet this serious problem only to a limited extent. It does not touch the question of ballot destruction or alteration outside of those voting districts in which an examiner has been appointed. Nor does it address itself to the giving of false information to election officials for the purpose of establishing eligibility to register or vote. Only falsifications before examiners and hearing officers are prohibited. Similarly, the vice of paying or accepting payment for voting is not even mentioned.

Section 11(b) of the reported bill attempts to reach the question of coercion of any voter by any private citizen not acting under color of law in, apparently, any election. We believe that such a proposition by the Congress, having no basis in either the 14th or 15th amendments, is with out constitutional authority. (*James* v. *Bowman*, 190 U.S. 127 (1903); *United States* v. *Reese*, 92 U.S. 214 (1875).)

3(e) Poll tax

The congressional finding in section 15 of the Republican bill accurately reflects the evidence before the Congress on abuse of the poll tax in State elections. In some areas, unquestionably, the poll tax has been shown to have been used with the purpose or effect of denying the right to vote on account of race or color. Accordingly, the Attorney General is named a proper party to bring actions to suspend enforcement of taxes which can be shown to be discriminatorily used. Such actions are required to be heard before a court of three judges with direct appeal to the Supreme Court.

Comment.—The real issue presented by the juxtaposition of the above proposal and the committee-Celler bill's flat ban of the poll tax has been popularly misunderstood by a number of the press and the

[12] House Committee on Judiciary, "Extending the Commission on Civil Rights and Its Duties," H.R. 995, 87th Cong., 1st sess. 4(1961); 111 Congressional Record 7801-7804, 8200-8213, 8515-8520 (1965); 109 Congressional Record 3099, 10390-10393, 11793-11794, 17898-17899 (1963); Cooper, "What You Should Know About Rigging Voting Machines and Voting Machine Law" (Lillian B. Enterprises 1962).

[13] Civil Rights Commission, Voting in Mississippi, 3 (1965).

general public. As demonstrated by the recent debate in the other body, the heart of the controversy is not a question of being in favor of or against poll taxes as an abstract proposition. The real issue is, first, whether a ban on poll taxes by act of Congress is consistent with the Constitution. It must be conceded that at very least the validity of such legislation is not without serious doubt. The second question, then, is whether the practical considerations of the problem sought to be remedied are best served by presently attempting outright invalidation of poll taxes. We have long been opposed to placing a price tag on the franchise. However, the Attorney General has seriously questioned the validity of an outright legislative ban. We question, also, the practical propriety of the approach embodied in the reported bill. It is submitted that when the merits of the two approaches are compared—without the overtones of popular misconception of those issues—the sounder of the two proposals is to be found in the Republican bill.

The constitutional question.—Poll taxes have been upheld as a valid State prerequisite to the right to vote where they are not discriminatorily applied. (*Breedlove* v. *Suttles*, 302 U.S. 277 (1937); *Butler* v. *Thompson*, 97 F. Supp. 17, (E.D. Va.) aff'd 341 U.S. 937 (1951).) Imposition of nondiscriminatory qualifications on voting rights is a power that lies wholly with the States by explicit direction article I, section 2, of the Constitution. (*Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959); *Breedlove* v. *Suttles*, supra, *Guinn & Beal* v. *United States*, 238 U.S. 347 (1915).) To this array of legal precedent can be added recent congressional acknowledgment that the proper course for abolition of State-imposed voter requirements is through constitutional amendment. The speed with which the 24th amendment was ratified further debases mere statute as an appropriate means of eliminating the poll tax.

The Attorney General pointed out in his testimony before the subcommittee that "the substantial risk of unconstitutionality" arose because of the lack of evidence that poll taxes were invariably discriminatorily used (subcommittee transcript, p. 23). It begs the question to observe that some of these taxes may have been partially or wholly instituted for purposes of discrimination.

No strong congressional finding would be warranted condemning present general use of poll taxes on the basis that they deny the right to vote on account of race or color in State elections. To be sure, there are examples of such abuse at the county level in the testimony before committee and in the records of the Federal courts. (I.e. *United States* v. *Duke*, 332 F. 2d 759 (5 Cir. 1964); *United States* v. *Dogan*, 314 F. 2d 767 (1963).) But the Attorney General concluded the matter quite simply when he testified, " * * * I can't establish that the poll tax has been used as that kind of a device." [14] Chairman Celler described the situation accurately when he later declared:

> If it can be shown that poll tax is used for purposes of discrimination against the Negro voting, we probably could put it into a statute under the 15th amendment, but we would have to have solid substantial proof that the poll tax was used for discriminatory purposes * * *. Now, we would cherish some real solid information on that score * * *. [It] may be due to the fact that everybody

[14] Subcommittee transcript 107; see also pp. 22-24.

> repeats the same conclusion that the poll tax does discriminate—the poll tax does discriminate—everybody reverberates that idea and that statement, but what proof is there?" (Subcommittee transcript, pp. 672–673.)

The Supreme Court will not sustain a statute where no factual basis therefore exists. Compare *United States* v. *Carolene Products Co.*, 304 U.S. 144 (1938).

Practical considerations.—Poll taxes are presently found only in the State laws of Texas, Alabama, [15] Mississippi, Virginia, and certain localities in Vermont. The area to which the poll tax provisions apply is thus a small part of the area sought to be covered by the legislation finally enacted. A practical gage of the effectiveness of the two proposals is achieved by measuring their respective effects on the next general elections to be held in 1966. Court tests of any statutory abolition must be considered a certainty. Once a cause of action has arisen the case would have to clear two levels of Federal courts to reach final determination by the Supreme Court. In the meantime, since the ban may be upheld or denied at any level, the law will be uncertain until final decision. Suppose there is a finding of unconstitutionality prior to an election; many voters who—in reliance on the ban—had not timely paid their taxes suddenly would be ineligible to vote. If a final decision of invalidity should follow an election, the same uncertainty will prevail, added to which may be the confusion of having election returns challenged and suspended until the issue is finally resolved.

To add to this unnecessary waste and confusion, legislative outlawing of the poll tax may moot or postpone decision in the case already pending in the Supreme Court, which seeks to invalidate poll taxes on 14th amendment equal protection and due process grounds. *Harper* v. *Virginia State Board of Education*, No. 835, *pending* (probable jurisdiction noted on March 8, 1965). The Attorney General has gone on record as preferring 14th amendment grounds for court attack on taxes.[16]

The Republican proposal would allow presentation in court of the 15th amendment question under an accelerated three-judge court procedure. The broad question of whether poll taxes are invalid per se under the 15th amendment would be joined with allegations of discriminatory application of the law of the particular State selected by the Attorney General as the best available case. This procedure would not affect the pending 14th amendment case and might be unnecessary in the event of success in that litigation. In short, the proposal to abolish State poll taxes by statute must be considered in the light of the availability of a more practical alternative which neither sets an unfortunate legislative prededent nor seeks to apply a remedy which for no reason invalidates all tax payments as prerequisites to voting in any election.

The disregard of the majority for the legal and practical consequences of section 10 of their bill is well demonstrated by their abolition of not

---

[15] The Alabama Senate recently voted for an amendment to the State constitution which would eliminate the poll tax in that State; the legislature adjourned, however, before the State House of Representatives could act. 111 Congressional Record 9583 9596 (daily ed. May 7, 1965) (remarks by Senator Holland).

[16] Subcommittee transcripts 22–23; see also 111 Congressional Record 9587 (daily ed. May 7, 1965) (letter to Senator Mansfield).

only the poll tax but "any other tax" as a condition precedent to voting. The impact of this law will be felt in the many political subdivisions where payment of property taxes is a prerequisite to voting in special elections and referendums having to do with such monetary matters as increase in ad valorem taxes or authorization of bond issues. There is no unjustified discrimination in limiting voice in such matters to those voters who by their property and other taxes pay the community bills. The committee-Celler bill, however, would have a severe effect on those communities, absolutely irrespective of discrimination on account of race or color. Such an unwarranted provision can only be viewed as a further significant impediment to a finding of constitutionality of the poll tax section of the committee-Celler bill.

4. CONCLUSION

The injustices and deprivations this legislation must be designed to alleviate are clear. It requires no recapitulation of the evidence to emphasize the urgency of this task, to free those of our citizens who now endure the near-tyranny of nonrepresentation. It should require no detailed analysis of the operation of a representative republic to establish that if the major aim of these laws is accomplished, if the franchise is made available to those who now demand it and so long have been unheard, they can and will determine—as under the Constitution is their right—the qualifications they will require of their electorate.

History will record our success or failure in this important task. For if we are too eager to condemn, too quick to indict for past deprivations before we wisely use our power to strike a balance for the present day, we will erode the very rights we must assure. Our debates and proposals—already part of any law we will adopt—have properly condemned and blamed. The time for speeches is past; the time for effective legislation is at hand.

The conclusion to be drawn from comparison of the two bills is clear: the Republican bill is a measure that will immediately and effectively promote the ends we seek in any political subdivision where voter discrimination can be found. It will assure relief now and in the future with firmness, uniformity, and fairness to all the people, providing a single standard applicable to all of the 50 States. And upon inspection by future generations, it will reflect upon us as wise lawgivers who in the finest tradition of the Congress of the United States, in answer to a pressing, present need, met the problem with conviction, with speed, and with vision to see beyond the confines of our times.

WILLIAM M. MCCULLOCH.
RICHARD H. POFF.
WILLIAM C. CRAMER.
ARCH A. MOORE, JR.
CLARK MACGREGOR.
CARLETON J. KING.
EDWARD HUTCHINSON.
ROBERT MCCLORY.

APPENDIX I

[H.R. 7896, 89th Cong., 1st sess.]

A BILL To guarantee the right to vote under the fifteenth amendment to the Constitution of the United States.

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

DEFINITIONS

SEC. 2. (a) The phrase "literacy test" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, or (2) demonstrate an educational achievement or knowledge of any particular subject.

(b) A person is "denied or deprived of the right to register or to vote" if he is (1) not provided by persons acting under color of law with an opportunity to register to vote or to qualify to vote within two weekdays after making a good-faith attempt to do so, (2) found not qualified to vote by any person acting under color of law, or (3) not notified by any person acting under color of law of the results of his application within seven days after making application therefor.

(c) The term "election" shall mean any general, special, or primary election held in any voting district solely or in part for the purpose of electing or selecting any candidate to public office or of deciding a proposition or issue of public law.

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

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

FINDINGS

SEC. 3. (a) Congress hereby finds that large numbers of United States citizens have been and are being denied the right to register or to vote in various States on account of race or color in violation of the fifteenth amendment.

(b) Congress further finds that literacy tests have been and are being used in various States and political subdivisions as a means of discrimination on account of race or color. Congress further finds that persons with a sixth-grade education possess reasonable literacy, comprehension, and intelligence and that, in fact, persons possessing such educational achievement have been and are being denied or deprived of the right to register or to vote for failure to satisfy literacy test requirements solely or primarily because of discrimination on account of race or color.

(c) Congress further finds that the prerequisites for voting or registration for voting (1) that a person possess good moral character unrelated to the commission of a felony, or (2) that a person prove qualifications by the voucher of registered voters or members of any other class, have been and are being used as a means of discrimination on account of race or color.

(d) Congress further finds that in any voting district where twenty-five or more persons have been denied or deprived of the right to register or to vote on account of race or color and who are qualified to register and vote, there exists in such district a pattern or practice of denial of the right to register or to vote on account of race or color in violation of the fifteenth amendment.

APPOINTMENT OF EXAMINERS; PRESUMPTION OF PATTERN OR PRACTICE

SEC. 4. (a) Whenever the Attorney General certifies to the Civil Service Commission (1) that he has received complaints in writing from twenty-five or more residents of a voting district each alleging that (i) the complainant can satisfy the voting qualifications of the voting district, and (ii) the complainant has been denied or deprived of the right to register or to vote on account of race or color within ninety days prior to the filing of his complaint, and (2) that the Attorney General believes such complaints to be meritorious, the Civil Service Commission shall promptly appoint an examiner for such voting district who shall be responsible to the Commission.

(b) A certification by the Attorney General shall be final and effective upon publication in the Federal Register.

(c) The examiner shall examine each person who has filed a complaint certified by the Attorney General to determine whether he was denied or deprived of the right to register or to vote within ninety days prior to the filing of such complaint, and whether he is qualified to vote under State law. A person's statement under oath shall be prima facie evidence as to his age, residence, and prior efforts to register or otherwise qualify to vote. In determining whether a person is qualified to vote under State law, the examiner shall disregard (1) any literacy test if such person has not been adjudged an incompetent and has completed the sixth grade of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico, or (2) any requirement that such person, as a prerequisite for voting or registration for voting (i) possess good moral character unrelated to the commission of a felony, or (ii) prove his qualifications by the voucher of registered voters or members of any other class. If applicable State law requires a literacy test, those persons possessing less than a sixth-grade education shall be administered such test only in writing and the answers to such test shall be included in the examiner's report.

(d) If the examiner finds that twenty-five or more of those persons within the voting district, who have filed compalints certified by the Attorney General have been denied the right to register or to vote and are qualified to vote under State law, he shall promptly place them on a list of eligible voters, and shall certify and serve such list upon the offices of the appropriate election officials, the Attorney General, and the attorney general of the State, together with a report of his findings as to those persons whom he has found qualified to vote. Service shall be as prescribed by rule 5(b) of the Federal Rules of

Civil Procedure. The provisions of section 8(d) and 8(e) shall then apply to persons placed on a list of eligible voters.

(e) A finding by the examiner under subsection (d) shall create a presumption of a pattern or practice of denial of the right to register or to vote on account of race or color.

CHALLENGES

SEC. 5. (a) A challenge to the factual findings of the examiner, contained in the examiner's report, may be made by the attorney general of the State or by any other person upon whom has been served a certified list and report of persons found qualified to vote, as provided in section 4(d). Such challenge shall be made by service upon the attorney general and upon the Civil Service Commission as prescribed by rule 5(b) of the Federal Rules of Civil Procedure. Such challenge shall be entertained only (1) if made within ten days after service of the list of eligible voters as provided in section 4(d), and (2) if supported by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge.

(b) Upon service of a challenge the Civil Service Commission shall promptly appoint a hearing officer who shall be responsible to the Commission, or promptly designate a hearing officer already appointed, to hear and determine such challenge. A challenge shall be determined within seven days after it has been made. A person's fulfillment of literacy test requirements, if not disregarded by the examiner as provided for in section 4(c), shall be reviewed solely on the basis of the written answers included in the examiner's report required by sections 4(c) and 4(d).

ESTABLISHMENT OF A PATTERN OR PRACTICE

SEC. 6. A pattern or practice of denial of the right to register or to vote on account of race or color is established (a) if a challenge to a finding under section 4(d) has not been made within ten days after service of the list of eligible voters on the appropriate State election officials and the attorney general of the State, or (b) upon a determination by a hearing officer that twenty-five or more of those persons within the voting district, who have been placed on the list of eligible voters by the examiners, have been denied or deprived of the right to register or to vote and are qualified to register and to vote. The listing of additional persons prescribed in section 8 shall not be stayed pending judicial review of the decision of a hearing officer.

JUDICIAL REVIEW

SEC. 7. A petition for review of the decision of a hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review, but no decision of a hearing officer shall be overturned unless clearly erroneous.

LISTING OF PERSONS FOUND ELIGIBLE

SEC. 8. (a) Upon establishment of a pattern or practice, as provided in section 6, the Civil Service Commission shall appoint such

additional examiners for the voting district as may be necessary who shall determine whether persons within the voting district are qualified to register and to vote. In determining whether such persons are so qualified the examiners shall apply the same procedures and be subject to the same conditions imposed upon the initial examiner under section 4(c), except that a person appearing before such examiner need not have first attempted to apply to a State or local registration official if he states, under oath, that in his belief to have done so would have been futile or would have jeopardized the personal safety, employment, or economic standing of himself, his family, or his property. Such examiner shall in the same manner as provided in section 4(d), certify and serve lists of eligible voters and any supplements as appropriate at the end of each month upon the appropriate election officials, the Attorney General, and the attorney general of the State, together with reports of his findings as to those persons listed.

(b) Challenges to the findings of the examiners shall be made in the manner and under the same conditions as are provided in section 5.

(c) The Civil Service Commission shall appoint and make available additional hearing officers within the voting district as may be necessary to hear and determine the challenges under this section.

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

(e) Examiners shall issue to each person placed on a list of eligible voters a certificate evidencing his eligibility to vote.

(f) No person shall be entitled to vote in any election by virtue of the provisions of this Act unless his name shall have been certified and transmitted on such list to the offices of the appropriate election officials at least forty-five days prior to such election.

APPLICATION AND PROCEDURE

SEC. 9. (a) Consistent with State law and the provisions of this Act, persons appearing before an examiner shall make application in such form as the Civil Service Commission may require. Also consistent with State law and the provisions of this Act, the times, places, and procedures for application and listing pursuant to this Act and removals from eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission. The Commission shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing.

(b) Notwithstanding time limitations as may be established under State or local law, examiners shall make themselves available every weekday in order to determine whether persons are qualified to vote.

(c) Times, places, and procedures for hearing and determination of challenges under sections 5 and 8(b) shall be prescribed by regulation promulgated by the Civil Service Commission, provided that hearing officers shall hear challenges in the voting district of the listed persons challenged.

REMOVAL FROM VOTER LISTS

SEC. 10. Any person whose name appears on a list, as provided in this Act, shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list. A person whose name appears on such a list shall be removed therefrom by an examiner if (1) he has been successfully challenged in accordance with the procedure prescribed in sections 5 and 7, or (2) he has been determined by an examiner (a) not to have voted or attempted to vote at least once during four consecutive years while listed or during such longer period as is allowed by State law without requiring reregistration, or (b) to have otherwise lost his eligibility to vote: *Provided, however,* That in a State which requires reregistration within a period of time shorter than four years, the person shall be required to reregister with an examiner who shall apply reregistration methods and procedures of State law not inconsistent with the provisions of this Act.

QUALIFICATIONS OF EXAMINERS AND HEARING OFFICERS

SEC. 11. Examiners and hearing officers appointed by the Civil Service Commission shall be existing Federal officers and employees who are residents of the State in which the Attorney General has issued his certification. Examiners and hearing officers shall subscribe to the oath of office required by section 16 of title 5, United States Code. Examiners and hearing officers shall serve without compensation in addition to that received for such other service, but while engaged in the work as examiners and hearing officers shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from their usual place of residence, in accordance with the provisions of sections 835 to 842 of title 5, United States Code. Examiners and hearing officers shall have the power to administer oaths.

TERMINATION OF LISTING

SEC. 12. The listing provisions of this Act shall be applied in a voting district until, within any twelve-month period, less than twenty-five persons within the voting district have been placed on lists of eligible voters by examiners.

ENFORCEMENT

SEC. 13. (a) Whenever a person alleges to an examiner within twenty-four hours after the closing of the polls that notwithstanding his listing under the provisions of this Act he has not been permitted to vote or that his vote was not properly counted or not counted subject to the impounding provision, as provided in section 8(d), the examiner shall notify the United States attorney for the judicial district if such allegation, in his opinion, appears to be well founded. Upon receipt of such notification, the United States attorney may forthwith apply to the district court for a temporary or permanent injunction, restraining order, or other order, and including orders directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote, (2) to count

such votes, or (3) for such other orders as the court may deem necessary and appropriate.

(b) No person, acting under color of law, shall—

(1) fail or refuse to permit to vote any person who is entitled to vote under any provision of this Act; or

(2) willfully fail or refuse to count, tabulate, and report accurately such person's vote; or

(3) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any such person entitled to vote under any provision of this Act for voting or attempting to vote; or

(4) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any person for urging or aiding voting or attempted voting by persons entitled to vote under any provision of this Act.

(c) No person, acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any person for exercising any powers or duties under section 4, 5, 6, 7, 8, 9, or 10 of this Act.

(d) No person shall in any matter within the jurisdiction of an examiner or a hearing officer, knowingly and willfully falsify or conceal a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(e) Any person violating any of the provisions of subsection (b), (c), or (d) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

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

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

INTERFERENCE WITH ELECTIONS

SEC. 14. (a) No person shall, for any reason—

(1) fail or refuse to permit to vote in any State any person who is qualified to vote under the provisions of the law of such State which are not inconsistent with the provisions of Federal law; or

(2) willfully fail or refuse to count, tabulate, and report accurately such person's vote; or

(3) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any such person for the purpose of preventing such person from voting or attempting to vote; or

(4) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any person for the purpose of preventing such person from urging or aiding voting or attempted voting.

(b) No person shall, within a year following an election, (1) destroy, deface, mutilate, or otherwise alter the marking of a paper ballot cast in such election, or (2) alter any record of voting in such election made by a voting machine or otherwise.

(c) No person shall knowingly or willfully give false information as to his name, address, or period of residence in a voting district for the purpose of establishing his eligibility to register or vote, or conspire with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pay or offer to pay or accept payment either for registration to vote or for voting.

(d) Any person violating any of the provisions of subsection (a), (b), or (c) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(e) The foregoing provisions of this section shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing presidential electors, Members of the United States Senate, Members of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions.

RELIEF FROM ENFORCEMENT OF POLL TAX

SEC. 15. (a) Congress hereby finds that the constitutional right to vote of large numbers of citizens of the United States is denied or abridged on account of race or color in some States by the requirement of the payment of a poll tax as a prerequisite to voting in State or local elections. To assure that the right to vote is not thus denied or abridged, the Attorney General shall forthwith institute in the name of the United States actions for declaratory judgment or injunctive relief against the enforcement of any poll tax, or other tax or payment, which, as a condition precedent to voting in State or local elections, has the purpose or effect of denying or abridging the right to vote on account of race or color.

(b) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(c) Appeal from judgments rendered under this section shall be to the Supreme Court in accordance with section 1253, title 28, United States Code.

APPROPRIATIONS

SEC. 16. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 16. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

ADDITIONAL VIEWS OF HON. ROBERT McCLORY

I subscribe wholeheartedly to the foregoing Republican views, with the exception that I would prefer in the Republican bill a legislative annullment of poll taxes enforced as a prerequisite to the right to vote.

ROBERT MCCLORY.

ADDITIONAL VIEWS OF REPRESENTATIVE JOHN V. LINDSAY, REPUBLICAN, OF NEW YORK, ON H.R. 6400

There is no need for me to attempt a restatement of the need for this legislation, to analyze its provisions, or to prescribe its merits. The majority report does so amply and ably. I concur in the view that all too many Negro Americans are today the victims of a vicious cycle in which antagonistic local governments are able to remain in power by denying the Negro the right to participate in State and local elections. A system like this breeds on itself and it can be undone only by strong measures from without. If diligently and effectively administered this bill should make substantial inroads into the denial of the right to vote because of race or color.

While I strongly support H.R. 6400 as a significant step forward in the struggle for equal treatment under the law, I am constrained to point out what I consider to be certain defects and inadequacies in this legislation. It seems to me that the weakness of previous voting rights legislation has been its complete dependence on judicial proceedings. Once the issue of the denial of voting rights has been adjudicated, it seems to me that the implementation of these rights is an administrative matter and should be entrusted to an administrative agency charged with that responsibility—an agency which could supervise the Federal officials appointed to administer the act; which could issue appropriate regulations; which could review the findings of examiners and hearing officers. The failure to face up to the need for such an agency has produced such odd results in H.R. 6400 as direct review of the decisions of hearing examiners by the courts and the assignment by default of a broad range of voting rights duties to the Civil Service Commission—a personnel agency.

The failure to establish a well integrated administrative procedure to deal with voting rights problems leaves something to be desired in this legislation in another respect as well. When Negroes can no longer be denied the right to vote by distorting the processes of government, the means are likely to become intimidation and coercion. Against these restraints on voting H.R. 6400 provides inadequate protection. There would appear to be a need for procedures by which the Federal Government can protect voting rights in these circumstances as well. It was for this purpose, as well as to achieve a clearer, more effective means of securing voting rights that I introduced H.R. 7191. Adoption by the committee of several provisions of that bill has served to strengthen H.R. 6400.

Regrettably, however, the committee did not see fit to include in H.R. 6400 a provision for the protection of rights guaranteed by the first amendment. An election is not a mechanical process. Issues must be explored; positions stated; voters rallied. Unless these things can be done without fear of repression or reprisal, the guarantees offered by this bill are incomplete. Unhappily, experience has shown that the exercise of first amendment rights by Negroes in their attempts to participate in the political process have been suppressed,

through intimidation and force. It seems to me that if we are to give life to the voting rights secured by this bill we should go the additional step of assuring an environment in which those rights can be meaningfully exercised. Accordingly, I had hoped that the committee would have included a provision authorizing the Attorney General to institute civil actions on behalf of persons whose right of freedom of speech, of the press or of peaceful assembly, or whose right to petition the Government for a redress of grievances was being violated. There is ample precedent for such a remedy in the provision of the 1957 Civil Rights Act authorizing actions of this kind with respect to voting rights. Given the fundamental nature of the rights involved, I do not find very convincing the argument that the adoption of this provision would be burdensome to the Government.

In spite of these reservations about the bill which the committee has agreed to report, I believe that it is a good bill and I shall, therefore, support it.

Important as the voting rights problem is it still must be viewed as part of the broad problem of achieving equality of opportunity, not only in the political process but also in such areas as jobs, schools, and housing. While denials of voting rights are largely a regional problem, other denials of opportunity on account of race are not. With the ever-increasing concentration of people in our cities—people who are dependent upon others for a livelihood—the demands for equal job opportunities are great. The adoption of a Federal fair employment practices law as part of the 1964 Civil Rights Act demonstrated a recognition by Congress of the need for assisting minority groups in getting on their economic feet.

Similarly, urbanization has created significant problems in housing—not only in terms of adequacy but also in terms of racial restrictions. Recognition of this problem was manifested in the 1964 Civil Rights Act in the provisions authorizing the Federal Government to act against discrimination in housing projects built with the assistance of Federal funds.

These achievements are substantial. Together with the redress of voting rights grievances, they should do much to give all of our citizens the fair break to which they are entitled. However, if more is needed, then more will be done.

JOHN V. LINDSAY.

MAY 28, 1965.

ADDITIONAL VIEWS OF THE HONORABLE WILLIAM T. CAHILL (REPUBLICAN, OF NEW JERSEY)

It is regrettable that legislation such as H.R. 6400, is required in order to give effect to the clear intent of the 15th amendment of the Constitution of the United States enacted more than 100 years ago. Yet nothing is more necessary today than legislation that will guarantee the right to vote to all men regardless of race or color. Both the majority and minority reports concede this necessity. I would merely recommend to the unconvinced or the doubter the report of the U.S. Commission on Civil Rights, dated May 18, 1965. The shocking disclosures in this report concerning the deprivation of voting rights in the State of Mississippi will, I believe, convince any impartial reader of the present need for immediate, effective legislation in the field of voting rights.

I recommend an examination of the stated purposes of registration tests and poll taxes as described in that report. If there are any doubts of the need for Federal legislation in this field, an examination of the report and its account of intimidation, reprisal, interference, and violence will, I submit, be most convincing.

While I concur wholeheartedly in the need and while I will support the legislation, I nevertheless have certain misgivings about the bill in its present from. I share the views of my colleague, Representative Lindsay, in the belief that once the issue of the denial of voting rights has been adjudicated, the implementation of these rights should be an administrative matter and should be entrusted to an administrative agency charged with that responsibility. The Civil Rights Commission has been working diligently and effectively for many years in this field and has compiled authentic, reliable statistics based upon thorough investigation so that the areas of denial of voting rights can be easily ascertained. Based on evidence thus gathered, an appropriate agency with authority and with the control over personnel, such as examiners and hearing officers, could, I think, more expeditiously implement these findings so that relief for those deprived of the franchise could more readily be obtained.

I also find myself disturbed by the special venue rule wherein a State or political subdivision wishing to challenge the appointment of Federal examiners must bring the action in the District Court of the District of Columbia.

I am fully aware of the problems which the Department of Justice has encountered in trying racial cases before some Federal judges in the South whose opinions can only be explained by the supremacy of personal, social predilections over well-established law. The result, of course, has been to deny justice and this is most regrettable and undesirable.

We are, however, in my judgment, establishing a dangerous precedent and may find ourselves in the future regretting what is being done as an expedient. The failure of any Federal judge to carry out

the mandate of the Supreme Court of the United States is inexcusable and should, I believe, result in appropriate constitutional action. To change the venue to a more favorable forum while desirable and perhaps even necessary in a given case, establishes a precedent which may yet come back to haunt us.

Assuming the creation of an appropriate Federal agency, an appeal should follow the normal route from an administrative agency to a court of appeals with venue on the circuit in which the State or political subdivision is located. In the absence of an appropriate administrative agency then, I believe the best procedure would be the establishment of a three-judge court in the District.

In spite of these differences of opinion and others relating to possible differences that may result in interpreting some of the language, I believe that it is essentially a good bill, that its purposes are noble, that its passage is essential, and I shall, therefore, support it.

WILLIAM T. CAHILL.

JUNE 1, 1965.

ADDITIONAL VIEWS OF HON. CHARLES McC. MATHIAS, JR.

After the need for voting rights legislation has been accepted, the form that it should take to guarantee suffrage to all Americans will continue to be a matter of honest debate. I believe that H.R. 6400 comes closer to meeting the demand of the current situation than any other solution likely to be adopted, and I shall support it. While it falls short of providing answers to all the questions that have been brought to the attention of the Congress, it does adopt positive principles with respect to the right to vote. H.R. 6400 acts upon these principles in a manner calculated to put the world on notice that Congress intends the right to vote to be universal.

CHARLES McC. MATHIAS, Jr.

INDIVIDUAL VIEWS OF HON. EDWIN E. WILLIS

GENERAL STATEMENT

I emphasize at the outset that the views I now express on the voting rights bill, H.R. 6400, are not based on racial considerations.

The people in my congressional district believe in the right of all qualified persons to vote. They are against the application of different standards to different people—and they practice what they preach.

For example, 57 percent of the colored people of voting age in the Third District of Louisiana are registered and 73 percent of those registered did vote in the last general election. This means that percentagewise there are more registered colored people of voting age in the Third Congressional District than there are white people of voting age registered in some other States. It means also that in the Third District there is no discrimination in the registration process or in the office of the registrar of voters, and further, that there is no intimidation or denial of the right to vote in the voting process or in the polling place. Furthermore, no one has to pay a poll tax where I come from. Incidentally, these same conditions obtain in the Seventh Congressional District of Louisiana, as well as in other parishes in the State.

The foregoing is not an idle or self-serving statement but is based on cold facts and statistics. As I shall show, the committee itself recognized this in adopting an amendment offered by me. It is clear, therefore, that there is no need whatever for this legislation.

APPLICABLE CONSTITUTIONAL PROVISIONS

Article I of the Constitution provides that the States have the right to fix the qualifications of voters. The 14th amendment provides, in substance, that there can be no discrimination with respect to the right to vote. The 15th amendment provides that the right of citizens to vote cannot be denied on the grounds of race or color. These are the three constitutional provisions to be considered and respected. In fact, it is our duty as Members of Congress to reconcile and give effect to all three.

If the only thing this bill did would be to prohibit discrimination under the 14th amendment, and to prevent the denial of all qualified persons throughout the United States of their right to vote under the 15th amendment, it would carry out and give effect to the three constitutional provisions under consideration; it would be clearly constitutional and I would vote for it, as would, I am sure, most if not all Members from every section of our country. But under the guise of implementing the 14th and 15th amendments, the bill is deliberately aimed at six Southern States only—Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia—and with punitive effect, it strips the powers of those States only, to fix the qualifications of

voters, under article I of the Constitution. In this respect the bill itself is discriminatory.

What is more, the bill contains what I consider personally to be unconstitutional provisions unrelated to or certainly going beyond these constitutional provisions and the right to vote, which is said to be the subject of the proposed legislation.

All of this is not to say that I have any illustion about the probable outcome of a Court test of the bill because, as stated by a former Chief Justice of the Supreme Court, many years ago, the Constitution is what the Supreme Court says it is. I was rather shocked by this statement at the time, but a number of Court decisions in recent years seem to bear out its accuracy. In my judgment, however, this is no reason why the legislative branch should not itself use self-restraint and avoid the exercise of dubious bare powers, to say the least. For instance, a man might have the sheer power to beat up or brutalize his child, but that does not make his action right. In fact, I think every reasonable person would agree it is wrong.

IMPROPER AND UNWARRANTED PROVISIONS OF THE BILL

Let me give a few illustrations of the type of provisions I have in mind which are equally wrong, besides being improper and unwarranted.

The bill provides a "formula" under which any State or political subdivision which used a literacy test in November 1964, and in which less than 50 percent of the voting age population (white and nonwhite) 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. This is the arbitrary "numbers game" formula—unrelated to race or color—which "hooks" six Southern States only, while exempting others which have literacy tests also.

Let me illustrate how this arbitrary formula works. Louisiana has a literacy test. Way over 50 percent of the people of voting age in Louisiana were registered last November, but due to disinterest, apathy, or some other reasons less than 50 percent of those of voting age went to the polls at that time. Under the formula this means that Louisiana is covered by the bill and must discontinue use of a literacy test.

Over 50 percent of the people in New York were registered last November and, because of a greater interest in the election or for some other reason, over 50 percent of those persons voted. This means that under the formula New York is not covered, even though it has a literacy test, and it means also that the literacy test will not have to be discontinued in New York.

Furthermore, under a dragnet gimmick in the bill, a county or parish which is in one of the six Southern States to which the "formula" applies, has no avenue of escape from the bill, regardless of how completely such subdivision may be in compliance with the law, so far as race or color is concerned.

Thus the bill fails to fulfill the promise stated by President Johnson when he proposed the voting rights bill to Congress:

> To those who seek to avoid action by their National Government in their *home communities*—who want to, and who

seek to maintain purely local control over elections—the answer is simple. Open your polling places to all your people.

As I have shown, *the doors have already been opened* in my congressional district. Accordingly, we should be rewarded for our efforts and should be completely exempted from the provisions of this bill.

A State, county, or parish 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 the District Court of Washington, D.C. Not only does this requirement go far beyond the constitutional principles I have mentioned, but it seems to go out of its way to obstruct local and State governments at the very time when they may be making praiseworthy efforts to comply with the mandate of the 15th amendment. Giving the Attorney General veto power of such efforts is reminiscent of the power once vested in colonial regents. It virtually makes a governor of the Attorney General. Moreover, if court approval is determined to be an essential check on revised voting standards, there is no persuasive reason why the State or local government should be required to travel to Washington, bypassing the Federal judiciary in the affected districts. This seems a gratuitous affront to some very fine Federal judges. But the principal objection to this provision is and remains that instead of fostering compliance—instead of helping areas to get in line—it places obstacles in their path.

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 changes in voting standards which may already have been enacted and placed into effect long before this bill was even introduced, much less enacted by the Congress, even when such changes were undertaken for the purpose of complying with constitutional guarantees. Certainly this requirement of the bill is without precedent or constitutional foundation, and has a marked ex post facto flavor. As will later appear, I proposed an amendment to eliminate the retroactive effect of this provision.

Under the present provisions of the bill, moreover, while a State, as such, may not be covered, certain counties within the State may be covered. The result is that if there is a literacy test in the State, the operation of the test is automatically suspended for the counties covered but remains effective for other counties in the same State. This result applies especially to 34 counties in North Carolina and a few other counties elsewhere. It is difficult to conceive a more disruptive situation.

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 subdivisions may be in compliance with the law. The bill would be much fairer in its effect if all political subdivisions, as well as States, were permitted to exonerate themselves and secure complete exemption through the courts from the impact of the formula. My efforts to correct this inequitable approach, at first agreed to, were finally rejected by the committee on a motion to reconsider.

I could catalog further instances, at greater length, but the foregoing amply demonstrates that this bill goes too far, cuts too deep, and goes beyond its asserted purpose to protect the right to vote.

COMMITTEE ACTION ON MY PROPOSALS

In representing clients as a lawyer, I took the position that a good settlement was better than a lawsuit and made the best I could out of a bad bargain. And in representing the people of my district as their Congressman I feel a deep sense of responsibility, even when outnumbered, to offer reasonable amendments to try to improve any bill under consideration; or, failing in this, to make it less unpalatable or less burdensome and onerous, and then to vote against the final measure if it is still unacceptable.

On that basis, I offered amendments to this bill, some of which were adopted and others rejected, and I want to briefly describe some of my principal amendments.

One of my amendments, 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 "whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 15th amendment."

In explaining this amendment the committee report states:

> 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 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, 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 a need therefor.

In short, this amendment and the committee's explanation of it assure that under conditions obtaining in the Third and Seventh Congressional Districts of Louisiana, Federal voting examiners will not be appointed. To be sure, so-called literacy tests will not be employed for the reason that the entire State of Louisiana, as such, is brought under the force of the formula of the bill. But the point is that under my amendment, local registrars will continue to do the job of registering all qualified voters, and Federal voting examiners will not be installed in these areas. This, at least, is as it should be because Federal voting examiners are unnecessary and unneeded in such areas.

I have referred to the Third and Seventh Congressional Districts of Louisiana only because I am personally familiar with them but my amendment will apply to other areas, counties, or parishes in which the local community and its elected officials are similarly determined that the voting rights of all will be protected irrespective of race or color.

Let me emphasize that notwithstanding the fact that my own constituents will be free from the imposition of Federal examiners, I nevertheless sought to have included in the bill other provisions that would help local communities where examiners will be appointed. For example, another amendment that I proposed, and the committee adopted, makes clear that persons already registered will not have to go back and register again with the Federal examiners. In this respect, at least, the bill looks to the future, rather than to the past. It prevents retroactive disruption of and preserves all existing voting registrations.

In a further effort to improve this bill, I offered another amendment designed to enable individual counties and parishes to question the applicability of the "formula" of the bill to them. My amendment would have followed a county-by-county, or parish-by-parish approach. It was based on statistics showing voting registration by race in each county or parish and would have permitted counties and parishes to be completely exempted upon persuading a court that substantial Negro registration and voting had been achieved. Certainly, this is a suitable approach if our object is to effectuate constitutional guarantees. Unfortunately, although at first accepted, the proposal was rejected on a motion to reconsider. I hope that this particular amendment can be reinstated before this bill becomes law. As it now stands, because of the "numbers game" formula previously described, there is no reference in the reported bill to statistics on racial discrimination as a basis for the operation of this very drastic measure.

Also, as I have indicated earlier in these views, I offered an amendment that would have eliminated the retroactive or ex post facto effect of the provisions freezing voting standards as of November 1, 1964, until Federal approval is obtained for new standards. My amendment would have enabled State and local governments to adopt improved voting standards at any time prior to the enactment of the bill, without having to seek approval from Washington. The committee rejected the proposed amendment. In consequence, all changes made since November 1964, long before this bill was introduced, will have to be submitted for Federal approval. This can only result in a loss of respect for and confidence in State and local governments.

CONCLUSION

I realize the force of the argument that some areas of the country or some counties or parishes within such areas have not made enough effort to accord all the people the right to vote, and to the extent that the lack of effort is due to a plan to deprive any qualified person of his right to vote, I agree that this is wrong. It is as wrong as the enactment of the provisions I have described, and others. I have always been taught, however, that two wrongs don't make a right and that the end does not justify the means. I can only say that the people I represent do not participate in discrimination and that they want no part of recrimination.

For the foregoing reasons, and because the ultimate impact of the bill sets a dangerous precedent for unwarranted intrusion of Federal power into legitmate concerns of State and local governments, I cannot support this bill, as reported out by the full committee.

E. E. WILLIS.

VIEWS OF HON. WILLIAM M. TUCK IN OPPOSITION TO THE PROPOSED VOTING RIGHTS ACT OF 1965 (H.R. 6400)

In the midst of a series of brazen and uncalled-for demonstrations conducted by groups of questionable characters, the Chief Executive addressed a joint session of the House and Senate on March 15, 1965, and proposed legislation of a most incredible nature which was introduced in the form of H.R. 6400, and the Judiciary Committee has reported the same in amended form.

The legislation now being advocated has been conceived in a highly emotional atmosphere of stress and strain, and in contravention of time-honored constitutional principles.

It is the right, if not indeed the duty, of every qualified person to vote, but the right to vote is not absolute and the States under our system of government have the exclusive power to fix and determine qualifications.

The Federal Government has no power to bestow upon any person the right to vote in any State. All that the Federal Government can do under our Constitution is to exercise its powers under the 15th amendment to guarantee that—

> the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

H.R. 6400 reaches a crest in the flood of Federal intrusions into matters constitutionally reserved to the States. The bill is offered in the name of morality, with the asserted purpose of assuring the right to vote, without discrimination because of race or color. But its enactment would immorally undermine other constitutional guarantees, which repose all power to establish voting qualifications in the States and which reserve to the States and the people all powers not delegated to the Federal Government. Before demonstrating the manifest unconstitutionality of the legislation, I shall review some of its most objectionable features.

One of the most iniquitous provisions of H.R. 6400 is that which automatically suspends all literacy tests by retroactive application of a formula or "trigger." Section 4 of the bill provides that in any State or political subdivision in which fewer than 50 percent of the persons of voting age were registered on November 1, 1964, or fewer than 50 percent of such persons voted in the Presidential election of November 1964, the operation of any literacy test is automatically suspended. There is no requirement that discrimination be shown. The formula is apparently based on an inference that low voting and registration statistics *prove* that any literacy test in use has been discriminatory in its requirements or its application.

It is amazing that such an insupportable proposition should be seriously advanced. In the first place, the number of "persons of voting age" does not necessarily correspond to the number of persons

eligible to vote. The latter figure is substantially affected by a number of neutral factors, such as mobility of residents, length of residence requirements, ineligibility of locally stationed members of the Armed Forces, indifference, and the like. In the second place, as has been held, literacy tests are not per se illegal discouragements of the right to vote (*Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45). The "literacy test" in effect in Virginia, for example, comprises an application to register in the following form:

Form 1

COMMONWEALTH OF VIRGINIA

Form for Application to Register to Vote

I hereby make application to be registered to vote.
Name: ----------
Age: ----------
Date of Birth: ----------
Palce of Birth: ----------
Place of Residence: ----------
Place of Residence for
the one year next preceding: ----------
Occupation: ----------
Occupation for the
one year next preceding: ----------
Have you ever voted? ----------
If you have ever voted, give State, county
(or city), and precinct where you last voted: ----------
Dated: ----------
Signature: ----------
Applicant

It is difficult to understand how any fairminded person can consider this a literacy test, although it does appear that there are those who advocate the right to vote, irrespective of a person's ability to write his name or to read one word of English.

Even more disturbing is the arbitrary and indiscriminate impact of the formula. Under the bill, the automatic supension of literacy tests will be effected in Alabama, Alaska, Georgia, Louisians, Mississippi, South Carolina, and Virginia; 34 counties of North Carolina, and 1 county of Arizona. The Attorney General, as proponent of the measure, has offered no evidence of any discrimination in Virginia and, in fact, the U.S. Civil Rights Commission in its 1961 Report on Voting found that there has been no voting discrimination because of race or color in Virginia. The total unreliability of the formula as a basis for inferring discriminatory use of literacy tests is demonstrated by the fact that the formula reaches Virginia in which no voting discrimination exists, and also reaches Alaska, which was not even a part of the Confederacy and has been accused of discriminating.

On the other hand, States and political subdivisions meeting the 50-percent test are immune from automatic suspension of their literacy tests. Apparently the inference is that in the presence of 50-percent-or-better registration and voting, literacy tests are not instruments of discrimination. The bill is highly discriminatory in that it preserves to some States such as New York the right to use literacy tests while denying the right to other States, such as Virginia, even though there is no proof that Virginia has resorted to these tests or any other to deprive persons of their constitutional rights. On the contrary, as above pointed out, there has been no suggestion of voter discrimination in Virginia; yet the Attorney General and this administration,

disregarding the facts, would require Virginia to prostrate itself before a three-judge Federal court in a foreign jurisdiction and establish its innocence of discrimination.

In any event, it is difficult to see why it should make a difference to one's right to vote whether 60 percent or only 40 percent of one's neighbors voted in 1964, and this is especially true when we take into consideration factors hereinabove pointed out, as well as the fact that some States, such as Virginia, do not elect their State and local officers in presidential election years.

It seems clear that this ill-conceived formula can only have been arrived at by first determining that literacy tests of certain Southern States should be suspended and then coming up with a mathematical ratio that would accomplish this, with the greatest appearance of objectivity. I agree with the conclusion of the editorial in the Wall Street Journal of March 22, 1965, that—

> To play with complicated formulas, to measure justice by percentages, and to aim punitive laws at some States, not only violates both the letter and the spirit of the Constitution but buries the real moral question in sophistry.

Equally objectionable from the constitutional viewpoint are the provisions of H.R. 6400 which enable the Attorney General to procure the appointment of Federal examiners or inspectors for any State or political subdivision to which the formula applies. This seems to me to be a peculiarly punitive proposal. Even in the heat of mortal conflict, General Grant, in his letter to General Lee at Appomattox, April 9, 1865, was more magnanimous than the proponents of this vindictive measure. He said:

> Each officer and man will be allowed to return to their homes not to be disturbed by United States authority so long as they observe their parole and *the laws in force where they reside.*

There is no possible justification for permitting Federal personnel to overrun areas of a State or subdivision as intimidating symbols of Federal power, as the bill would permit.

In a startling reversal of the normal presumption that one is innocent until proven guilty, the measure requires States and subdivisions to which the formula applies to prove their innocence if they wish to be exempted. To do this the State or subdivision must convince a court in Washington, D.C., that it has not, in the past 5 years, used its literacy test to deny the right to vote on account of race or color. To require State and local officials to go to Washington is a further unnecessary and unwarranted inconvenience and humiliation to which this bill subjects State and local governments. What is more, it may seriously prejudice them in the preparation and presentation of their proof. No valid reason exists for bypassing Federal judges in the local districts to which such cases would normally go, except that it is intended as a studied insult to these honorable judges and the people over whom they preside. Finally, no provision is made whereunder a political subdivision, however spotless its record, can acquire and exemption if it is within a State to which the formula applies. Thus a county of Virginia, even if 100 percent of its persons of voting age are registered and vote, could not apply for exemption. Such a political subdivision under this act is triggered by a spurious formula into guilt,

and no forum is provided for it to establish its innocence and exculpate itself from the provisions of this horrendous proposal.

Section 5 of the bill requires States and subdivisions to which the formula applies to obtain the consent of the Federal court in Washington or of the Attorney General for the operation of any voting rules or standards differing from those in effect on November 1, 1964. This would apply to the substitution of machines for paper ballots or to the establishment of a new voting precinct. It would give the Washington court or the Attorney General arbitrary power to nullify legal action by the duly elected representatives of the people of the State or subdivision. The retroactive effect of this provision would alone be enough to condemn it. Together with the authorizations in the bill for the appointment of Federal election examiners, it places State and local governments in virtual receivership to the Attorney General with respect to voting.

Section 10 of the reported bill would outlaw the requirement of the payment of a poll tax as a condition of voting. This is proposed on some obscure theory that poll taxes discriminate against some voters on account of race or color. The proposal was inserted in the bill in the absence of any evidence that where the poll tax still exists it is being abused.

When the 87th Congress proposed the measure which, on ratification became the 24th amendment, striking down the use of poll taxes in Federal elections, it obviously deemed it necessary to resort to the amendment route, even while limiting the impact of the prohibition to Federal elections. Now it is proposed to resort to a mere statute to affect an even more sensitively State-related area. Evidently some former advocates of the constitutional amendment approach have since then reversed their constitutional principles. It seems clear, however, that if an amendment was essential in that instance, it is all the more indispensable when the object is to affect the conduct of State, as distinguished from Federal, elections. In short, I believe that this proposal, if enacted, would be constitutionally indefensible.

The question is pertinent: Are we headed into a political dictatorship determined to abolish or radically change our system of government which is supposed to be obedient to a written Constitution?

The proposed legislation has as its cornerstone and premise the complete violation of the section which clearly lodges with the States the power to fix qualifications for voting. Furthermore, it is in total disregard of article X of the Bill of Rights.

One person can trump up some charge of discrimination and hold up the counting of votes and keep in doubt the result of an election until it has been brought to a Federal court. It is difficult to conceive of a more fantastic or outrageous proposition, or one which so flagrantly tramples upon the rights of the sovereign States to operate and control their election machinery.

A horde of "examiners" could swarm over a community, order registrations, collect poll taxes, and perform unheard of acts totally foreign to our system and never contemplated under the Constitution. In addition, the appointment of Federal "observers" at the behest of the Attorney General of the United States is authorized for the nebulous purpose of observing elections in any political subdivision in which a Federal examiner has been appointed. One wonders to what length the Federal Government will go in its zeal to punish certain sections of our country. This proposal is local in

application, although general in scope. If enacted, it is also ex post facto in that it applies to acts committed or omitted in the past.

I cannot conceive of a more insensate and reprehensible proposal. This unwarranted slur and smirch upon the fair name of Virginia and other political subdivisions will be, as it ought to be, resented by the lovers of justice and constitutional liberty wherever they may be.

It is unnecessary to comment exhaustively on the remaining provisions of the bill. Enough has been indicated concerning its dubious foundation in law or logic.

Although the legislation was requested and proposed on a so-called basic principle of morality, and is said to have as its purpose the enforcement of the 15th amendment of the Constitution, it actually constitutes a flagrant violation of the Constitution.

I know of no more competent and reliable authority on this subject than the able attorney general of the Commonwealth of Virginia, the Honorable Robert Y. Button. When Mr. Button testified before Subcommittee No. 5 of the House Judiciary Committee on March 29, 1965, in opposition to H.R. 6400, he was requested to submit a statement dealing specifically with the constitutionality of the pro-proposed legislation. His statement was as follows:

THE CONSTITUTIONALITY OF THE VOTING RIGHTS ACT OF 1965—H.R. 6400—A RESPONSE TO THE ATTORNEY GENERAL OF THE UNITED STATES

On March 29, 1965, in my capacity as attorney general of Virginia, I testified before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives of the United States in opposition to H.R. 6400, entitled the "Voting Rights Act of 1965." On that occasion, I began my testimony with the statement that the proposed bill was:

"* * * among the most dangerous pieces of legislation ever offered in the Congress of the United States. I make this statement advisedly, for I earnestly believe it goes further than any step yet attempted to erode the basic concepts of constitutional government in which the individual States are acknowledged to be sovereign. The legislation is not only patently unconstitutional, but it is shockingly discriminatory."

During the course of the hearings on that date, my attention was directed by a member of the subcommittee to the following observation made by the Attorney General of the United States while testifying on the same bill before the House Judiciary Committee on March 18, 1965:

"I have shown why this legislation is necessary and have explained how it would work. It remains to determine whether it is constitutional. The answer is clear: the proposal is constitutional."

In light of this obvious conflict of opinion concerning the constitutionality of H.R. 6400, I was invited by the subcommittee to submit a more elaborate expression of my views on this subject in the form of a response to those previously announced by the Attorney General of the United States. I accepted this invitation, and I wish now to express my appreciation to the members of the subcom-

mittee for this opportunity to detail my position on this aspect of the legislation under consideration.

In essence, H.R. 6400 provides that no person shall be denied the right to vote in any election (Federal, State, or local) because of his failure to comply with any voter qualification test established by State law, in any State or political subdivision thereof (1) which maintained a voter qualification test on November 1, 1964; and (2) in which less than 50 percent of the resident persons of voting age were registered on November 1, 1964, or in which less than 50 percent of the resident persons of voting age voted in the presidential election of November 1964. In effect, H.R. 6400 would abolish any voter qualification test (including racially nondiscriminatory tests) in certain States only; i.e., those States falling within the ambit of one or the other of the two "50 percent" formulas mentioned above.

The only provision of the Constitution of the United States upon which its proponents attempt to justify enactment of the legislation in question is the 15th amendment. In its entirety, that amendment prescribes:

"SECTION 1. 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.

"SECTION 2. The Congress shall have power to enforce this article by appropriate legislation."

The Attorney General of the United States asserts that H.R. 6400 constitutes "appropriate" legislation under section 2 of the 15th amendment. I submit, however, that H.R. 6400 is constitutionally invalid because (1) in its direct operation and effect under the "50 percent" formulas, the bill arbitrarily and unjustifiably includes within its terms States which are demonstrably free of any racial discrimination in the establishment or administration of their electoral processes; and (2) in its direct operation and effect, the bill infringes the constitutional power of the individual States of the Union to impose such racially nondiscriminatory qualifications upon the exercise of the right to vote as each State may select. I shall discuss these two fundamental constitutional objections to the bill seriatim.

In considering the first stated objection to the constitutionality of H.R. 6400, it is well settled, as the Attorney General points out, citing *Katzenbach* v. *McClung*, 379 U.S. 294, that Congress must have a "rational basis" for the findings upon which its legislation is predicated. It must be noted, however, that the Attorney General's attempt to establish a "valid factual premise" for congressional action with respect to voter discrimination in Virginia is completely refuted by the findings of the U.S. Civil Rights Commission. In its 1961 Report on Voting, the Commission declared:

"The absence of complaints to the Commission, actions by the Department of Justice, private litigation, or other indications of discrimination, have led the Commission to conclude that, with the possible exception of a deterrent effect of the poll tax—which does not appear generally to be

discriminatory upon the basis of race or color—Negroes now appear to encounter no significant racially motivated impediments to voting in 4 of the 12 Southern States: Arkansas, Oklahoma, Texas, and Virginia" (vol. 1, p. 22).

"In three States—Louisiana (where there is substantial discrimination), Florida (where there is some), and Virginia (where there appears to be none)—official statistics are compiled on the State level by county and by race" (vol. 1, p. 102).

As the Supreme Court has repeatedly pointed out, a statute, valid on its face, may be assailed by proof of facts demonstrating that the statute as applied to a particular class is without support in reason. See, *United States* v. *Carolene Products Company*, 340 U.S. 144. In light of the findings of the U.S. Civil Rights Commission summarized above, it is unarguably apparent that no racial discrimination exists in Virginia with respect to the right to vote. This circumstance completely undermines the indispensable factual foundation upon which H.R. 6400 is based. The power of Congress to enforce the guarantee of the 15th amendment is specifically limited to the enactment of "appropriate" legislation for this purpose; yet it is manifest that the "50 per centum" formulas which would activate the proposed legislation operate to include within the ambit of the bill States in which no racially motivated voter discrimination exists. Clearly, Congress may not—under the guise of enforcing the 15th Amendment prohibition against denial of the right to vote on account of race or color—enact legislation which would suspend the electoral laws of a State in which racial discrimination in the exercise of the right to vote is known by Congress, as a matter of public record, to be nonexistent. Legislation having such an effect is clearly without reasonable classification or rational justification, amounts to no more than a mere arbitrary fiat and cannot constitute "appropriate" legislation under the 15th amendment.

Consideration of the second stated objection to the constitutionality of H.R. 6400 begins with the premise that the right to prescribe the qualification of electors is one constitutionally vested exclusively within the province of the individual States, subject only to the limitations contained in the Federal Constitution forbidding qualifications based upon race (15th amendment), sex (19th amendment), and the payment of a poll tax in Federal elections (24th amendment). Thus, article 1, section 2, of the Constitution of the United States and the 17th amendment provide that electors for the House of Representatives and Senate, respectively, shall have the qualifications requisite for electors of the most numerous branch of each State legislature. Under these provisions, the qualifications of electors in congressional elections must be those qualifications established by each State for electors of the most numerous branch of the State legislature. Further in this connection, the Supreme Court of the United States has repeatedly declared that a State is free to conduct its elections and limit its electorate as it may

deem wise, except as its actions may be affected by the prohibitions of the Federal Constitution, and that the power of Congress to legislate at all the subject of racial discrimination in voting rests upon the 15th amendment and extends only to the prevention by appropriate legislation of the discrimination forbidden by that amendment.

Decisions of the U.S. Supreme Court since ratification of the 15th amendment dispel in conclusive fashion any doubt concerning the validity of this fundamental premise. In 1876 (*United States* v. *Reese*, 92 U.S. 214), the Supreme Court declared:

"The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another, on account of race, color, or previous condition of servitude * * *. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be * * *. *The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment.*" [Italic supplied.]

Moreover, in 1959 (*Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45), the Court stated:

"*The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised* * * *. So while the right of suffrage is established and guaranteed by the Constitution * * * *it is subject to the imposition of State standards which are not discriminatory* and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed * * *. While section 2 of the 14th amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of 'the right to vote,' *the right protected 'refers to the right to vote as established by the laws and constitution of the State.'* " [Italics supplied.]

Finally, on March 8 of this very year (*Carrington* v. *Rash*, ——U.S.——), the Court confirmed:

"*There can be no doubt* either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise. Indeed, *'the States have* long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised.' * * * 'In other words, the privilege to vote in a State *is within the jurisdiction of the State itself*, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violations of the Federal Constitution.' " [Italics supplied.]

In light of these decisions, it is manifest that for almost a century the Supreme Court of the United States has consistently and repeatedly proclaimed the power of each State under the Federal Constitution to establish racially non-

discriminatory criteria governing the exercise of the elective franchise of its citizens. The language in which this fundamental power of the individual States has been declared, reaffirmed, and protected consists of such plain English words that he who runs may read and the ingenuity of man cannot evade them. The prescription of racially nondiscriminatory qualifications upon the right to vote is the exercise of a power vested in each State by the Constitution of the United States. If this power rests with the States under the Constitution—as is unarguably true—then its exercise may not be interdicted by the Congress or any department of the Federal Government, under the 15th amendment or any other provision of the Constitution. If the constitutional powers of the States could be thus manipulated out of existence by the legislative action of Congress, the guarantees of our Constitution are illusory indeed.

Let me attempt to clarify this proposition and emphasize its validity by reference to an analogy with which, perhaps, not even the Attorney General of the United States will disagree. Section 2 of the 14th amendment authorizes Congress to reduce the basis of representation of States in the House of Representatives whenever the right to vote in a State is denied or abridged except upon stated grounds. By contrast, the right of a State to equal representation in the Senate of the United States by two Senators, each of whom shall have one vote, is a right guaranteed to each State without qualification by article V of the Constitution. If the Congress of the United States—purporting to act under the 15th amendment—should enact a law diminishing Senate representation in those States in which the right to vote has been denied or abridged upon the ground of race, would such a law be constitutional? Manifestly not, and I do not believe that even the Attorney General of the United States would have the temerity to suggest that it would be. In enacting appropriate legislation under the 15th amendment, it simply does not lie within the power of Congress to violate other provisions of the Federal Constitution which expressly guarantee certain rights to, and confer certain powers upon, the States or other independent coordinate branches of the Federal Government.

Yet the right to prescribe racially nondiscriminatory voting qualifications is one no less vested in the States by the Federal Constitution than the right to equal representation in the Senate. If the latter right of the States cannot be infringed by Congress under the 15th amendment, the former right equally cannot be.

Let me emphasize at this point that I do *not* make the broad (indeed, too broad) assertion that each State has the power to prescribe *any* voting qualifications it may see fit. It is the power to prescribe *racially nondiscriminatory* qualifications which each State constitutionally possesses, and when a State establishes such nondiscriminatory qualifications, it exercises a constitutionally protected power with which no branch of the Federal Government may permissibly interfere.

Just such a situation exists in my State. Under Virginia law, a prospective voter is required to fill out in his own handwriting a form indicating the applicant's age, date and place of birth, residence and occupation at the time of registration and for 1 year next preceding, whether or not he has previously voted and if so, the State, county, and precinct in which he last voted. These requirements are not only reasonable but are utterly devoid of any racial connotation whatever, and their imposition neither denies nor abridges anyone's right to vote because of race or color. Under the Constitution of the United States, Virginia has the power to impose these nondiscriminatory voter qualifications upon its citizens, and the Congress has no authority whatever to suspend them. If these qualifications were discriminatory, or if they were discriminatorily administered, then—and only then—would these circumstances provide an area in which Congress, under the 15th amendment, could legislate. However, if neither of these circumstances exists—as is concededly the case in Virginia—no enactment of Congress can vary them in the slightest degree. Congress cannot substitute its own voting standards for the nondiscriminatory voting qualifications prescribed by the State without infringing the constitutionally established and judicially protected power of the State in this field.

During the course of his testimony before the House Judiciary Committee on March 18, 1965, the Attorney General of the United States made reference to the following observation of the late Mr. Justice Frankfurter, speaking for the Court in *Gomillion* v. *Lightfoot*, 346 U.S. 339, 347, a 15th amendment case:

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

Precisely so. *And when a State establishes nondiscriminatory voting qualifications, it exercises a power wholly within the domain of the State and is insulated not only from Federal judicial review but from Federal legislative interference.* It adds nothing to emphasize that such insulation is not available when State power is used as an instrument for circumventing a federally protected right, for when a State's voting standards are, in fact, nondiscriminatory, they cannot be an instrument for such purpose nor come within the reach of congressional power.

The Attorney General of the United States also referred to certain observations of Chief Justice John Marshall in the historic cases of *Gibbons* v. *Ogden*, 9 Wheat. 1, and *McCullough* v. *Maryland*, 4 Wheat. 316, for alleged support of the power of Congress to enact H.R. 6400. In this connection, he quoted the following classic utterances of Marshall in those cases: "this power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent,

and acknowledges no limitations, *other than are prescribed in the Constitution.*" (9 Wheat. 196.)

* * * * *

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but consistent with the letter and spirit of the Constitution*, are constitutional." (4 Wheat. 421.)

In light of the phrases of the quotations which I have italicized above, it is manifest that these declarations lend no support to the Attorney General's position. On the contrary, the great Chief Justice was abundantly careful, on both occasions, to point out that congressional power was subject to the limitations "prescribed in the Constitution" and that the only means properly available for the exercise of congressional power are those "which are not prohibited * * *." However, as we have seen, the power of Congress to deal with State-prescribed voter qualifications is severely limited by the Constitution and the suspension by Congress of the racially nondiscriminatory qualifications of a State is clearly prohibited.

Equally irrelevant and misleading are the Attorney General's reference to *Ex Parte Siebold* (100 U.S. 371), and his statement that in the cited case the Supreme Court "sustained a system of Federal supervisors for registration and voting not dissimilar to the system proposed here." Not only was the legislation under review in *Siebold* limited to Federal elections, but it did not even purport to interfere with State laws prescribing voter qualifications. It is thus apparent that the legislation validated in *Siebold* was not even remotely similar to the legislation currently under consideration by Congress.

I lay no claim to reputation as an authority on the subject of constitutional law, and certainly I have no talent for predicting the future course of Supreme Court decisions on the basis of existing precedent. I do believe, however, as Mr. Justice Harlan made clear in his address dedicating the Bill of Rights Room in New York City on August 9, 1964, that the framers of the Constitution:

"* * * staked their faith that liberty would prosper in the new Nation not primarily upon declarations of individual rights *but upon the kind of government the Union was to have.* And they determined that in *a government of divided powers* lay the best promise for realizing the free society it was their object to achieve." [Italic supplied.]

One aspect of this governmental edifice which the framers sought to erect, and which H.R. 6400 would manifestly subvert, was the distribution of power between the Nation and the States, each supreme within its sphere, thus forming an indestructible Union of indestructible States. I speak today for the preservation of this governmental ideal and for the preservation of the right of every citizen to vote, without regard to race or color, within the framework of this ideal

and in a manner consistent with the letter and spirit of the Constitution.

For all the foregoing reasons, as well as others and including the able statement of the attorney general of Virginia, I reiterate my unalterable opposition to this bill.

In conclusion, I would like to say that I am opposed to all legislation on the part of the Federal Government in this field, including the bill introduced by the gentleman from Ohio (Mr. McCulloch), although his proposal is relatively moderate in comparison to H.R. 6400 and drafted more in harmony with constitutional principles.

WM. M. TUCK,
Member of Congress.

MINORITY VIEWS OF BASIL L. WHITENER, JOHN DOWDY, AND ROBERT T. ASHMORE, MEMBERS OF THE HOUSE OF REPRESENTATIVES, ON H.R. 6400

H.R. 6400 is a legislative proposal of questionable constitutionality but unquestioned harshness. It has been characterized by its author as "strong medicine."

As legislators under a sworn duty to support and defend the Constitution of the United States we are compelled to register our strong disagreement with the majority of our colleagues on the Committee on the Judiciary. This compulsion results from our firm conviction that the majority of the committee would lead the Nation down a path of destruction of basic principles which have made our Nation the envy of the people throughout the world.

We recognize and applaud the provisions of the Constitution of the United States which guarantees to all qualified citizens the right to vote. We do not condone discriminatory practices of any type which would deprive a qualified American of this right. Our opposition to H.R. 6400 is strong, but it is not one whit stronger than our desire to see that the right of qualified persons to vote is protected within the framework of time-honored constitutional principles.

Thoughtful people in areas of the Nation other than those made the target of this iniquitous legislation have sounded a warning to the Congress. On March 22, 1965, the Wall Street Journal discussed the legislation in an editorial entitled "An Immoral Law." This editorial so clearly registers our views that we quote its full text at this point

An Immoral Law

When President Johnson last Monday asked Congress for a new law to safeguard the voting rights of Negro citizens he rested his case on the Constitution and on a basic principle of morality.

What he has now proposed that the Congress do is enact a law which would violate that Constitution he asks us not to flout and, more, which is itself immoral.

If you think not so, consider:

The administration's bill offers a formula—a complicated one, which we will come to in a moment—to prohibit certain States from using any test of a citizen's ability to read and write our language as a qualification for voting.

The argument for doing this is the 15th amendment to the Constitution which provides, clearly enough, that neither the Federal Government nor any State shall deprive a citizen of his vote "on account of" his race or color.

But the proposed bill does not stop with providing means against the violation of the 15th amendment. It does not aim at insuring that any such State literacy test shall be fairly drawn and impartially administered so that it may not

be used as an excuse to deprive anyone of his vote "on account of" his race.

The effect—and indeed the purpose—would be to abolish such tests entirely in the affected States. And that flies squarely in the face of this selfsame Constitution which the President professes to uphold.

The very first article of that Constitution authorizes the individual States to decide the qualifications of voters in both Federal and State elections, subject only to the proviso that whoever is deemed qualified to vote for "the most numerous branch of the State legislature" is automatically qualified to vote in Federal elections.

Making this a State function was no casual decision. It was reaffirmed in identical language in the 17th amendment—adopted, incidentally, more than 40 years after the 15th amendment—which provided that all such qualifications should be impartially applied among all citizens.

This principle in the Constitution has been repeatedly upheld and affirmed by the U.S. Supreme Court, not merely in dusty antiquity but as recently as 1959 by judges presently sitting upon that bench.

Now we are well aware that there are a good many people, and perhaps the President is included, who oppose any literacy requirement. They say that a man's illiteracy is irrelevant to the question of having his judgment counted in public affairs. No man can quarrel with the right of such people to argue their case and, if persuasive, to alter the Constitution so as to prohibit them.

But the requirement that voters be able to read and write is by no means restricted to those Southern States now the object of this special legislation. Many others—including New York State—require that qualification, as the Constitution entitle them to do.

If it is immoral, as the President says, to deprive a qualified citizen of his right to vote "under color of a literacy test," is it moral to violate one part of the Constitution under the color of upholding another which is in nowise in conflict?

Nor does the question end there, for what this bill proposes to do is to set up a double standard. Some States would be permitted to keep their literacy requirement; others would not.

The formula prescribed is that of a ratio between the number of persons of voting age within a State and the number of voters in an election. If 50 percent or more of the voting age inhabitants do vote, then the State is absolved. The Federal authorities will keep out, and the State may set its own qualifications for voters, including literacy tests; otherwise, no.

This formula has been carefully devised so that in practice it is expected to apply only to six States—Alabama, Louisiana, Mississippi, Georgia, South Carolina, and Virginia. In these States the Federal authorities would not only have the right to supervise voter registration but to abolish the voter qualifications they don't like.

A few moments reflection on this formula will suggest such weird paradoxes, and the possibility of such strange discriminations, as to stagger the mind.

A minor one is that a strict application of the formula would probably make it applicable to Alaska. However, a way has been devised to exempt it, which as much as anything suggests that the intent is not to write a general rule of law but to subject certain States to special laws.

Not so minor, but certainly weird, is the provision that a person once registered as a voter by the Federal authorities will be stricken from the list if he fails to vote "at least once during 3 consecutive years while listed." In short, you have to vote or you can't.

Of more consequence is the fact that if we have this law a citizen, white or Negro, can be entitled to a vote in Alabama no matter how illiterate he is or, for that matter, even if he is a moron. But if the same citizen, white or Negro, lives in New York State he will not be entitled to vote.

This would create a truly ingenious paradox. The illiterate citizen, Negro or otherwise, would find himself with more "rights" in Alabama and her five outcast sister States than in the great State of New York. More, the educational level of the voting citizens of Alabama, the low level of which is part of the general complaint against it by civil rights leaders, would be further reduced. And this by Federal sanction.

Unfortunately, the irony is not funny. Beneath the paradox lies a serious question. Is it moral that our national laws should apply one rule to one State and another to another, requiring that the people of one State abolish qualifications for voters while the people of another State may uphold their standards?

Nor is that the end of the consequences of that weird formula. Recall that it permits the Federal Government to put all this machinery in motion, the takeover of the whole voting procedure by Federal authorities, only when the voting percentage of a State falls below 50 percent of the voting age population. If there was ever a device open to what President Johnson calls manipulation, this is it.

So long as a State contrives that one-half of its adults vote, it is free of the formula. This will not be overlooked by ingenious men who can contrive many things when justice is measured by percentages.

And this brings us to what we think is the fundamental immorality of this proposed law, unintentioned though it may be by those who drew it.

Any citizen, white or Negro, has the right to be treated by the law like all other citizens. If he has to meet qualifications to vote—age or any other—they must be only the qualifications asked of all. If he qualifies like any other he has the right to vote and to deny him that right is to deny him what is inalienably his.

It makes no difference whether 99 percent of his neighbors vote or whether only 20 percent do. It makes no difference whether he has voted in the last three elections, or in none

at all before he presents himself at the polls. His right is to vote or not to vote as he pleases.

That is the whole of the moral issue. And the whole duty of government, insofar as it touches this matter, is to see that all equally can exercise this right.

The constitutional duty of the Federal Government is to see that this right is not abridged—anywhere, populous States or sparse States, Northern States or Southern States, where many go to the polls or where few take the trouble to. The means of assuring this, everywhere, is what any Federal voting law ought to do, and all it ought to do.

To play with complicated formulas, to measure justice by percentages, and to aim punitive laws at some States, not only violates both the letter and the spirit of the Constitution but buries the real moral question in sophistry.

Many outstanding legal scholars have expressed views in accord with the foregoing comment of the Wall Street Journal. One of those was the distinguished attorney general of the Commonwealth of Virginia who testified before Subcommittee No. 5 of our committee that the bill was—

> * * * among the most dangerous pieces of legislation ever offered in the Congress of the United States. I make this statement advisedly, for I earnestly believe it goes further than any step yet attempted to erode the basic concepts of constitutional government in which the individual States are acknowledged to be sovereign. The legislation is not only patently unconstitutional, but it is shockingly discriminatory.

H.R. 6400 discriminates in an arbitrary and unjustifiable manner against States which are free of any racial discrimination in the conduct of elections by the use of the phony formula set forth in section 4(b) of the bill as reported by the Committee on the Judiciary. This formula makes the bill applicable to States and political subdivisions in which less than 50 percent of the persons of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the presidential election of November 1964. It further infringes upon the constitutional power of the States to require nondiscriminatory qualifications of voters.

The effort to establish by a simple mathematical stratagem a conclusive finding of fact that discrimination has occurred is without precedent in the legislative history of our country. If this stratagem is accepted as a sound basis for legislating it is difficult to envision all of the disastrous consequences which may ensue in our Republic.

If by a "strong medicine" legislative action the Congress undertakes to strike down nondiscriminatory voter qualifications which have been, or may hereafter be, prescribed by the several States, such action will be inconsistent with decisions of the U.S. Supreme Court.

In *Lassiter* v. *Northampton County Board of Elections* (360 U.S. 45 (1959)), the Supreme Court said:

> *The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised* * * * So while the right of suffrage is established and guaranteed by the Constitution * * * *it is subject to the imposition of State standards which are not discriminatory* and

> which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed * * *. While section 2 of the 14th amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed) speaks of "the right to vote," *the right protected "refers to the right to vote as established by the laws and constitution of the State."* [Italic supplied.]

On March 8, 1965, in *Carrington* v. *Rush*, —— U.S. ——, the Court again stated:

> *There can be no doubt* either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise. Indeed, "the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised." * * *. "In other words, the privilege to vote in a State *is within the jurisdiction of the State itself*, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violations of the Federal Constitution." [Italic supplied.]

It will readily be seen that the U.S. Supreme Court has consistently held that the several States are vested by our Constitution with the power to determine conditions governing the exercise of the right of suffrage and that the only limitation upon the States is that there must be an absence of discrimination in their electoral process. The proponents of the instant legislation now ask the Congress of the United States to disregard these fixed constitutional principles.

Section 10 of the committee amendment would prohibit a requirement by the States that a person "pay a poll tax or any other tax" as a prerequisite to participating in local elections. The majority of the committee contends that such requirements are in some way discriminatory as to certain voters on the basis of their race or color. This, to us, is an absurd conclusion even though we do recognize that such taxpaying requirements may constitute a hindrance to voting by certain individuals.

We cannot see, however, that the requirement of the payment of a poll tax or other tax as a prerequisite to voting in a State or local election can be equated with discrimination on the basis of race or color. In our judgment the race or color of an individual has no relationship whatever to his payment or nonpayment of poll taxes. There is no evidence before the committee that any political subdivision has ever barred any individual of any race or color from freely paying such taxes as are imposed by local government authority.

We further point out that in the 88th Congress it was the judgment of the Congress that in order to strike down the requirement that a poll tax be paid as a prerequisite to voting in Federal elections a constitutional amendment was necessary. It seems strange to us that some of the advocates of that constitutional amendment who agreed with us at that time now feel that the poll tax payment requirement for voting in local and State elections can be stricken down by statute.

It is our view that if a constitutional amendment was required in that instance the same requirement faces the Congress if it would strike down the poll tax requirement for local voting.

Section 3(c) presents another unconscionable legislative proposal. As far as we know it is unprecedented for Congress to suggest that the Attorney General of the United States should have veto power over State legislation. This would be accomplished under the terms of the bill by providing that the Attorney General would have 60 days within which to object to State legislation which provided a qualification, prerequisite, standard practice, or procedure, with reference to voting which was different from that in force and effect at the time a proceeding had been instituted by the Attorney General against a State or political subdivision in a voting rights case.

We unhesitatingly condemn this proposal. We affirm our strong conviction that no nonjudicial Federal official should be given the arbitrary power to nullify legislative action by the duly elected representatives of the people in any State or political subdivision.

Another unpalatable provision of the committee bill is contained in section 5. This would require that a State or political subdivision would have no tribunal to which it could resort other than the U.S. District Court for the District of Columbia. The Federal courts in all other districts other than the District of Columbia would be barred to any State or political subdivision falling within the "50-percent formula" which sought to have a legal determination as to the validity of its electoral procedures.

This requirement places an undue hardship upon the local governments involved and constitutes an expression of lack of congressional confidence in the willingness and ability of Federal courts outside the District of Columbia to sit in judgment in cases of this type. We are astounded that such a proposal would be advanced by the Attorney General of the United States and ratified by the great Committee on the Judiciary.

The bill in its entirety is an example of gross discrimination against a few of the soverign States of the Union. It was deliberately designed to have unequal application as between the several States. That alone is sufficient to condemn it.

During the course of the debate in the House of Representatives it is contemplated that there will be an opportunity to offer amendments which will eliminate some of the provisions of the committee bill. There will be amendments offered which will seek to add new matter to the legislation. It is our fervent hope that this bad package of legislative proposals can be substantially amended in a way that would eliminate at least some of its bad features.

It will be our role to seek to improve the legislation. If this effort should fail we would urge that our colleagues assist us in providing the proper antidote to this constitutionally poisonous "strong medicine." The proper antidote is a defeat of the measure and an adherence to consitutional principles.

BASIL L. WHITENER.
JOHN DOWDY.
ROBERT T. ASHMORE.

○