Calendar No. 149

89TH CONGRESS
1st Session

SENATE

REPORT
No. 162

VOTING RIGHTS LEGISLATION

APRIL 9 (legislative day, APRIL 8), 1965.—Ordered to be printed

MR. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1564]

The Committee on the Judiciary, to which was referred the bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States, having considered the same, reports the bill in conformity with instruction of the Senate, with amendments in the nature of a substitute, and without recommendation.

STATEMENT

By order of the Senate, agreed to March 18, 1965, S. 1564, to enforce the 15th amendment to the Constitution of the United States, was referred to the Committee on the Judiciary, with instructions to report it back to the Senate not later than April 9, 1965.

The committee conducted public hearings on March 23, 24, 25, 29, 30, and 31, and April 1, 2, and 5, 1965.

The committee met in executive session on April 6, 7, 8, and 9, 1965, considering the bill.

The committee considered numerous amendments. The amendments agreed to by the committee are set forth in the bill as reported to the Senate.

35-010

Calendar No. 149

89TH CONGRESS
1st Session

SENATE

REPT. 162
Part 2

VOTING RIGHTS LEGISLATION

APRIL 20, 1965.—Ordered to be printed
Filed under authority of the order of the Senate of April 9, 1965

Mr. EASTLAND (for himself, Mr. MCCLELLAN, and Mr. ERVIN), from the Committee on the Judiciary, submitted the following

INDIVIDUAL VIEWS

[To accompany S. 1564, to enforce the 15th amendment of the Constitution of the United States]

We, the undersigned, adopt the following statements of the Honorable Charles J. Bloch and the Honorable Thomas H. Watkins as our individual views on S. 1564.

JAMES O. EASTLAND.
JOHN L. MCCLELLAN.
SAM J. ERVIN, Jr.

35-010 O—65—pt. 2——1

MEMORANDUM FOR DISCUSSION OF S. 1564 (H.R. 6400) BEFORE JUDICIARY COMMITTEE OF THE U.S. SENATE, MARCH 29, 1965

Mr. Chairman, Senators, since 1957, I have had the honor and privilege of appearing several times before the Judiciary Committee on subjects kindred to that of this bill.

During those years the personnel of the committee has changed considerably. Therefore, it may not be amiss for me to tell the committee that I was admitted to the bar in Macon, Ga., in 1914. I have practiced law there consecutively since. The firm of which I am now senior member is a direct successor to that with which I commenced "reading law" 52 years ago. During those years, I have held every office in the Georgia Bar Association, including the presidency. I have been chairman of the Judicial Council of Georgia, and am now chairman of the Rules Committee of the Supreme Court of Georgia. At one time I was chairman of the American Bar Association's Committee on Judicial Selection, Tenure, and Compensation, and at other times a member of its committees of Jurisprudence and Law Reform, and on the Federal Judiciary.

I am a member of the American College of Trial Lawyers, and of the American Bar Foundation.

I tell you this personal history so that those of you who are personally strangers to me will know that I would not without serious study and consideration express to you the opinion which I shall today express.

Over the years, I have had the opportunity to study academically the subject matter of these bills; have also had the opportunity of trying cases involving a great many of the principles here involved.

When the Congress enacted the civil rights bill of 1957, I was of counsel for those who attacked it as unconstitutional. The District Court for the Middle District of Georgia (Judge T. Hoyt Davis) declared it unconstitutional (172 F. Supp. 552). The Government appealed directly. The case was argued before the Supreme Court by Attorney General Rogers and me. That case, *Sub nomine United States* v. *Raines* (362 U.S. 17), was mentioned by Attorney General Katzenbach in his appearance before the House committee on March 18, 1965. The Supreme Court of the United States reversed Judge Davis as to the vital point there at issue, to wit: the proper application of *United States* v. *Reese* (92 U.S. 214). The Court refused to follow Judge Davis' construction of the *Reese* case.

It is noteworthy that last June in the *Aptheker* case (84 S. Ct. 1661(20)) (37 U.S. ——) a majority of the Court speaking through Mr. Justice Goldberg held that in appraising a statute's inhibitory effect upon personal liberties, the court can take into account possible applications of the statute in other factual contexts beside the ones at issue in the cases at bar. Therefore, a section of the Subversive Activities Control Act making it a felony for a member of a Communist organization to apply for, use, or attempt to use, a passport is unconstitutional on its face.

I also had the honor and privilege of representing the chairman of the Democratic Committee of Georgia, John Sammons Bell, now a judge of the Georgia Court of Appeals, the last time Georgia was successful before the Supreme Court of the United States in resisting an attack on her nominating system known as the county unit system (*Hartsfield* v. *Sloan*, 357 U.S. 916).

Then, questions of that nature were still considered to be political questions. The Court had not entered the political thicket.

I am here to express my opinion for what it may be worth to you on the validity, as a matter of law, of the bill before you. I shall endeavor to support that opinion by established principles of constitutional law—which, we are told, should be the "law of the land."

Were I a judge, I would attempt to approach the questions involved bearing in mind the views expressed by the late Justice Frankfurter in *West Virginia State Board of Education* v. *Barnette* (319 U.S. 646–647):

> One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a life time. But as judges we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard.

It occurs to me that you and I must approach the problem from the standpoint. You, as Senators; I, as a lawyer, took substantially the same oath.

As a member of the same faith as the late Justice I have this personal interest, too. Over the years, I have struggled against stretching and distortions of our Constitution. I sincerely believe that the only hope any American, certainly any minority, has for survival is in strict construction of and obedience to our written Constitution. If, today, those in power can stretch and distort the Constitution favorably to a minority, tomorrow, another and adverse group, risen to power, can stretch and distort it to destroy that minority.

So, isn't the first basic problem for us to decide whether or not in all respects this bill squares with the 15th amendment?

That amendment is:

> 1. The right of the 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.
>
> 2. The Congress shall have power to enforce this article by appropriate legislation.

The sole power given to Congress by that amendment, the only appropriate legislation which can be enacted pursuant to it, is to *prevent* the United States or any State from denying certain people the right to vote on account of their race or color.

That amendment does not confer the right upon Congress to confer upon any one the right to vote.

The 15th amendment was declared ratified March 30, 1870; the 14th had been declared ratified July 28, 1868. The 14th contained a provision:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * *."

A that time the constitution of the State of Missouri provided. "Every *male* citizen of the United States shall be entitled to vote."

On October 15, 1872, Mrs. Virginia Minor, a native born, free, white citizen of the United States and of Missouri, over the age of 21, wishing to vote for presidential electors, sought to register to vote. Being denied that privilege, she brought legal action contending that the Missouri laws confining the right of suffrage to men were void. The argument was that as Mrs Minor was a citizen, she had the right of suffrage as one of the privileges and immunities of citizenship which the State could not abridge.

In deciding against Mrs. Minor the Court held that all citizens are not necessarily voters; the United States has no voters in the States of its own creation; the elective officers of the United States are all elected directly or indirectly by State voters; the Members of the House of Representatives are chosen by the people of the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature. (Constitution, art. I, sec 2.)

Minor v. *Happersett* (88 U.S. (21 Wallace) 162, 170–171)

Then, as now, no citizen regardless of sex or color has any right under the Constitution of the United States to vote for electors who, in turn, elect the President and Vice President. Each State, under the Constitution (art. II, sec. 2) must *appoint* those electors in such manner as the legislature thereof may direct. (Ibid., p. 171.)

On page 171, the Court, speaking through Mr. Chief Justice Waite, used this cogent language:

> It is clear, therefore, we think that the Constitution has not added the right of suffrage to the privileges and immunities as they existed at the time it was adopted.

All that was said with respect to the 14th amendment.

The impact of it here is that when the 15th amendment was adopted it did not deprive the States of their constitutional power to determine who had the "right to vote" under article I, section 2, or any other provision of the Constitution. It simply prevents the States from using the laws it passes so as to deny or abridge the colored person's right to vote. It does not empower the Congress to supersede those laws by enacting statutes to replace them when they are used to abridge or deny.

As *Minor* v. *Happersett* (at p. 173) clearly points out in some detail, when the Federal Constitution was adopted, in no State were all citizens permitted to vote. "Each State determined for itself who should have that power."

To illustrate, at the time of the adoption of the Constitution the law of Connecticut was that to be a voter a person had to be one who

had "maturity in years, quiet and peaceable behavior, a civil conversation, and 40 shillings freehold or 40 pounds personal estate" (88 U.S 172; New York's of that day is equally interesting, ibid.).

Suppose that were still the law of Connecticut, and suppose it were so administered by the State's officers as to violate the 15th amendment, so as to deprive a person of his right to vote by reason of his race or color, do you for one minute think that the Congress would have the constitutional power to wipe that law off of the statute books of Connecticut, and substitute its own notions of what Connecticut citizens had the right to vote?

The 15th amendment was simply not intended to confer upon the Congress the power to enact as "appropriate legislation" legislation determining the qualifications of voters in any State, or group of States, regardless of whether or not that State or those States had violated the 15th amendment. The Federal courts can prevent such violation. Neither the Congress nor the courts can enact laws to replace the offending laws.

Every case on the subject decided from 1870 to this date teaches the correctness of that statement.

"The power of Congress to legislate at all upon the subject of voting at State elections rests upon" the 15th amendment. It "does not confer the right of suffrage, but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude, and empowers Congress to enforce *that right* by appropriate legislation."

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United States v. *Reese, et al.* (93 U.S. 214 (1875))

> In *Minor* v. *Happersett* (21 Wallace 178), this Court decided that the Constitution * * * has not conferred the

> right of suffrage upon any one, and that the United States have [sic] no voters of their [sic] own creation in the States. In *United States* v. *Reese et al.*, *supra* (p. 214), it held that the 15th amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.

United States v. *Cruikshank* (92 U.S. 542)

Even a territory (Idaho) in 1890 had the right through its territorial legislature to provide that no person who taught or advised bigamy or polygamy, or to enter into plural or celestial marriage, or who was a member of any order or organization which so taught should be permitted to vote.

Davis v. *Beason* (133 U.S. 333 (1890))

> Under the second clause of article II of the Constitution, the legislatures of the several States have *exclusive power* to direct the manner in which the electors of President or Vice President shall be appointed. Such appointment may be made by the legislatures directly, or by popular vote in districts, or by general ticket, *as may be provided by the legislature.* * * * The second clause of article II of the Constitution was not amended by the 14th and 15th amendments, and they do not limit the power of appointment to the particular manner pursued at the time of the adoption of these amendments, or secure to every male inhabitant of a State, being a citizen of the United States, the right from the time of his majority to vote for presidential electors.

McPherson v. *Blacker* (146 U.S. 1 (1892)) [Emphasis added]

The Constitution "recognizes that the people act through their representatives in the legislature, and leaves it to the legislature *exclusively* to define the method of effecting the object" [of appointing electors]. (Ibid., p. 27.)

The doctrine of *Cruikshank* and *Reese* was explicitly reaffirmed. (Ibid., p. 38.)

Guin and Beal v. *United States* (238 U.S. 347 (1915)) was decided by a Court over which Chief Justice White presided. Among his Associates were Justices Oliver Wendell Holmes, William R. Day, of Ohio, Charles Evans Hughes, of New York, Mahlon Pitney, of New Jersey.

This case should be most carefully considered because of it, and its companion, *Myers* v. *Anderson* (238 U.S. 368), the Attorney General stated before the House committee on March 18 last:

> The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the 15th amendment. (Manuscript, p. 39.)

To what extent did the provisions of the Oklahoma constitution have to "bow"? They had to "bow" to the extent of being *elimi-*

nated, but it was not even contended by the United States that the Congress of the United States could enact something in their stead. (See 238 U.S 351.) The language of the Court clearly indicates that no such power would have been implied from the words of the 15th amendment.

> The Fifteenth Amendment does not, in a general sense, take from the States the power over suffrage possessed by the States from the beginning, but it does *restrict* the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color or previous condition of servitude. While the 15th amendment gives no *right of suffrage*, as its command is self-executing, rights of suffrage may be enjoyed by reason of the *striking out of discriminations* against the exercise of the right. (Op. cit., p. 347.) [Emphasis added.]

What the Court did there was to nullify the "grandfather clause" (h.n. 1) and to declare that *ipso facto* the 15th amendment had stricken the word "white" from the phrase "white male citizen" in the Oklahoma law.

In so doing (op. cit., p. 363) the Court followed much older cases:

Ex parte Yarbrough (110 U.S. 651, 665), *Neal* v. *Delaware* (103 U.S. 370 (1880))

In 1959, Guin, as well as *Pope* v. *Williams* (193 U.S. 621), *Mason* v. *Missouri* (179 U.S. 328), were cited in support of the propositions that a State "may * * * apply a literacy test to all voters irrespective of race or color" and that the "States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised."

Lassiter v. *Northampton County Board of Elections* (360 U.S. 45, 50)

In that case, Justice Douglas, writing for a unanimous court, said:

> 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 (op. cit., p. 51).

The theory of this bill and of the Attorney General is that if in the opinion of Congress a State imposes standards which are discriminatory, or applies legal standards (test and devices) discriminatorily, Congress may by statute divest that State of its constitutional powers of determining the conditions upon which the right of suffrage may be exercised; may substitute its own conditions, and may do all of that retroactively.

The Constitution gives the Congress no such power over any State of this Union, North or South, East or West, Republican or Democrat.

The Attorney General at page 39 of the manuscript of his testimony correctly quotes from Justice Frankfurter's opinion in *Gomillion* v. *Lightfoot* (364 U.S. 339, 347).

From that case, too, it appears that the Court decided that if a local act of the Alabama Legislature redefining the corporate boundary of Tuskegee had as its purpose the removing from that city all but 4 or 5 of its 400 negro voters while not removing a single white voter or resident, with the result of depriving such negroes of benefits of

residence in the city including the right to vote in municipal elections, such act would be void as violative of the 15th amendment.

If that act, or any act like it, were found to be void, would it follow that Congress could, therefore, deprive the Alabama Legislature of all future power to create municipal corporations?

If such be the law, then Congress, under the guise of enforcing the 14th and 15th amendments, has power to strip any State legislature of every vestige of its legislative power.

If, for example, a statute defining and punishing murder should be so administered so as, in the opinion of Congress, to deprive certain groups of the equal protection of the laws, then Congress would have the right not only to nullify that statute but to enact one to supplant it, and send federal officers or agents into the State to enforce it.

Nothing in any case ever decided by the Supreme Court of the United States even hints at any such power which, if it exists, would place it in the power of the Federal Government to destroy the States which created it.

The three most recent cases cited by the Attorney General are *Alabama* v. *United States* (371 U.S. 37), *United States* v. *Mississippi* (33 L.W. 4258 (Mar. 8, 1965)), *Louisiana* v. *United States* (33 L.W. 4262 (Mar. 8, 1965)).

The Alabama case is a per curiam case based on *United States* v. *Thomas* (362 U.S. 58), which simply followed and applied the *Raines* case, supra.

Nothing in the *Mississippi* case, supra, or the *Louisiana* case, supra, even hint at such a power in Congress, impliedly conferred by the 15th amendment.

Even if there were direct, uncontradicted proof that the election officials were under direct State authority purposely and universally using valid literacy tests ("tests and devices") to deny the right of Negroes to vote, such would not authorize the Congress to annul those valid literacy tests and enact laws supplanting the State's laws, or even to annul those valid literacy tests.

A fortiori, Congress has no such power when the so-called "guilt" of a State or subdivision is based on a presumption or presumptions.

And even the more strongly, Congress has no such power when the presumptions are based on conclusions reached by the application of an arbitrary percentage which is a part of such presumption to an arbitrary past date.

In the first place such a method of procedure is violative of article I, section 9, paragraph 3, of the Constitution which provides: "No Bill of Attainder or ex post facto Law shall be passed."

Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are "bills of attainder" prohibited by this clause.

United States v. *Lovett* (328 U.S. 303)

A bill of attainder is defined to be "a legislative act which inflicts punishment without judicial trial where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial and fixes the punishment."

In re De Giacomo (7 Fed. Cases No. 3747); see *Cummings* v. *Missouri* (4 Wallace 277, 323), *Ex parte Garland* (4 Wallace 333)

In the *Cummings* case, it was held that a State, under the form of creating a qualification or attaching a condition could not in effect inflict a punishment for a past act which was not punishable at the time it was committed. Deprivation or suspension of any civil rights for past conduct is punishment for such conduct. There a Missouri statute, which sought to bar Reverend Mr. Cummings, a priest of the Roman Catholic Church, from teaching and preaching by reason of his past allegiance to the Confederacy, was declared invalid.

In *Ex parte Garland*, supra, the Court said:

> Exclusion from the practice of law in the Federal courts, or from any of the ordinary avocations of life for *past conduct* is punishment for such conduct. * * * The act being of this character partakes of the nature of a bill of pains and penalties, and is subject to the constitutional inhibition against the passage of bills of attainder. * * *"

The Garland of that case decided in 1866 was A. H. Garland, Esq., who afterward (1885–89) became an Attorney General of the United States.

An ex post facto law is one which imposes a punishment for an act which was not punishable at the time it was committed, or a punishment in addition to that then prescribed.

Burgess v. *Salmon* (97 U.S. 384); see also *U.S.* v. *Trans-Missouri Freight Ass'n.* (166 U.S. 290)

In the light of these cases, of many others of like nature which could be cited, and of others which will be hereinafter cited, pass on to an examination of section 3(a) of this bill.

Section 3(a) is:

> No person shall be denied the right to vote in any Federal, State or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which—
>
> (1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which
>
> (2) the Director of the Census determines that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964, or
>
> that less than 50 percent of such persons voted in the presidential election of November 1964.

The phrase "test or device" is defined in section 3(b); the phrase is practically synonymous with what the courts have been denominating as "literacy tests," or "conditions under which the right of suffrage may be exercised."

I do not appear here for the State of Georgia. I am not an officer of the State of Georgia. Because of being practically a lifelong resident of the State of Georgia I am more familiar with the facts there than I am with those of any other State. The effect of those provisions can be better understood if they are applied to a real, factual situation, so I apply them to Georgia.

We know, of course, that we do have statutes creating voting tests such as those held to be valid in the *Northampton County* case, supra.

We know, too, that in the Attorney General's testimony before the House committee, supra (p. 31), he said:

> I turn now to the information we have regarding the impact of section 3(a). Tests and devices would be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, and Alaska, 34 counties in North Carolina, and 1 county in Arizona. Elsewhere, the tests and devices would remain valid, and similarly, the registration system would remain exclusively in the control of State officials.

So, the United States of America would be divided into two groups—the good and the bad—if you please.

The "good"—41 States and a portion of 2 others, could go on exercising their rights and freedoms, and enforcing their statutes.

The "bad"—seven and a portion of those two others—could not.

(It is striking that of the bad seven, the electoral votes as a result of the 1964 election of five of them were cast for the Republican candidate and save for his home State were the sole five.)

Now, as to Georgia, I do not know whether out law as to voting qualifications would be swept aside because by the edict of the Director of the Census because of the supposition that 50 percent of *all* persons of voting age residing in Georgia were not registered on November 1, 1964, *or* because of the supposition or fact that less than 50 percent of all persons of voting age residing in Georgia did not vote in the presidential election of 1964.

Based on one or both of those states of fact, the Congress of the United States would be adjudicating that Georgia is *now* guilty of abridging or denying the rights of Negroes to vote on account of their race or color.

And what would be the basis or bases of such an adjudication? Either one or two.

One might be. 50 percent of *all* persons of voting age residing in Georgia were not registered 5 months ago on November 1, 1964, so from that we presume that you denying or abridging the right—*not* of all persons in your State, but of Negroes to vote.

The other, and the only other, would be or might be: 50 percent of all persons of voting age residing in Georgia did not vote in the presidential election of November 1964 (which, by the way, our legislature was not compelled under the Federal Constitution or statutes to hold) so we from that presume that you are denying or abridging the right—*not* of all persons in your state, but of Negroes to vote.

Whichever "determination" of the Director of the Census may be used, the consequences on Georgia and the impact on her laws is equally unjustified, invalid, and not justified by any principle of constitutional law heretofore known.

In my suppositions, I have used Georgia as the example. The determination and the result in any other State would be just as invalid.

The dates are purely arbitrary.

The percentage used is equally arbitrary.

The events are purely arbitrary.

The supposed result from the facts determined is purely arbitrary.

The testimony of the Attorney General (p. 31) shows just how arbitrary the "triggering" is. Said he:

> The premise of section 3(a), as I have said, is that the coincidence of low electoral participation and the use of tests and devices results from racial discrimination in the administration of the tests and devices. That this premise is generally valid is demonstrated by the fact that of the six States in which tests and devices would be banned statewide by section 3(a), voting discrimination has unquestionably been widespread in all but South Carolina and Virginia, and other forms of racial discrimination, suggestive of voting discrimination, are general in both of these States.

The New York Times of March 18 editorially said of the "drafters" of this bill in the Justice Department:

> But they have been both *inventive* and inexorable in providing machinery to keep those standards from being imposed "to deny or abridge the right to vote on account of race or color." In the six Southern States where less than half the voting population participated in the last presidential election, *presumption of past discrimination will be automatic, and no literacy or other qualifying test will be allowed to bar anyone from the ballot box in Federal, State, or local elections.* [Emphasis added.]

That same Constitution which is held to guarantee freedom to the owners of the New York Times to make money by printing what they please, guarantees to every State of this Union, the people of every State of this Union—including the "six Southern States"—the right to be free from the tyrannical provisions sought to be imposed on the basis of "presumptions."

Before I proceed to discuss the law of such presumptions, I wonder why 50 percent is the figure used for participation in presidential elections. My information is that in Arkansas the participation was 50.1 percent; Kentucky, 52.6 percent; Tennessee, 51.2 percent. So you have the result: Arkansas in which 50.1 percent participated may use voting tests; Georgia in which, say, 49.9 percent participated, may not.

The presumption arising from the one percentage is no more valid than the counter presumption arising from the other.

In Georgia there are 159 counties. My home county of Bibb with a *total* population (not merely persons of voting age) in 1960 of 141,249, had 54,872 voters registered as of November 1, 1964, which is doubtless more than 50 percent of the persons of voting age residing therein. According to the official records of Bibb County (Georgia), 46,883 registered voters cast their ballots in the presidential elections of November 1964.

Section 3(a) is quite ambiguous, despite the fact that the Supreme Court of the United States directs that "precision must be the touchstone of legislation so affecting basic freedoms (*NAACP* v. *Button*, 371 U.S. 438, 83 S. Ct. 340; *Aptheker* v. *Secretary of State*, 84 S. Ct. 1659, 1668). I can imagine no greater basic freedom than that of a State and the people of a State specifically reserved by the 10th amendment.

Section 3(a) lacks that precision. Suppose more than 50 percent of persons of voting age residing in Bibb County (or any other county) and more than 50 percent of such persons voted in the presidential elections of November 1964; suppose, further, that those facts do not hold true for the State of Georgia as a whole, may Bibb County continue to use voting tests?

Suppose, further, that more than 50 percent of persons of voting age residing in the State of Georgia (or any other State) and more than 50 percent of such persons voted in the presidential election of 1964; suppose, further, that those facts do not hold true for a certain county or counties of the particular State; will the whole State be deprived of the use of voting tests because one, two, or even a majority of the counties do not conform to the arbitrary criteria set up in section 3(a)?

I recall an elder statesman once saying that you could not indict a whole people.

Particularly in the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia the participation in presidential elections of less than 50 percent of persons of voting age residing therein is no criterion whatsoever of discrimination of any kind.

It is only recently that citizens of those States, regardless of color, have seen fit to participate in presidential elections to any extent. To illustrate (before I give you the reasons), look at these figures:

Votes in presidential elections

[In thousands]

	1912	1920	1960	1964
Alabama	116	241	568	688
Georgia	120	150	723	1,138
Louisiana	79	126	807	896
Mississippi	65	83	298	409
South Carolina	50	66	387	525
Virginia	136	230	1,245	1,156

To demonstrate that the trend upward of those figures is not confined to those six states, I include—

	1912	1920	1960	1964
Texas	298	485	2,313	2,609

You will see even from those approximate figures the total votes in those six States in 1964 were about seven times the total of 1912. That figure applies to Texas as well.

The principal reason for it is that up until about 1948, we were the "Solid South"; we were the backbone of the Democratic Party; it was taken for granted that we would vote the Democratic ticket so that in presidential elections we contented ourselves (up to 1936, anyway) with having a real voice in the nomination of the party's candidate, and then let the rest of the country fight it out in the election. Up to 1948 we didn't bother to vote in presidential elections, of if we did we simply voted Democratic. In 1948, the trend began to change. We discovered, after 12 years, that we no longer had any voice in the

nomination, so we had better go to voting in the election. So you will find a marked increase after 1948 in the number of votes cast. But, there still remain some who do not vote in the presidential elections either because they haven't become accustomed to the new situation, or because rather than not vote Democratic, they won't vote at all.

The Attorney General testified (p. 31) that the validity of his premise is demonstrated by what he calls the fact that of the six States named, "voting discrimination has unquestionably been widespread in all but South Carolina and Virginia and other forms of racial discrimination, suggestive of voting discrimination, are general in both of those States."

I wish I had the power to compel the Attorney General to prove his statement that voting discrimination has unquestionably been wide spread in four of those six States—particularly as to Georgia would I like to see him try to prove it. And if he proved it I would wonder why the Department of Justice really hasn't used the tools that Congress has given it over the past 7 years. Oh, I have read what he had to say about the delays in some of the Federal courts of those four States, particularly in two of them. But my own observation from reading and experience is that the U.S. Court of Appeals for the Fifth Circuit brooks no delay in the trial of any case unless there is good reason for it.

In 1957, Congress enacted a "civil rights" law embodying voting provisions which was declared constitutional in the *Raines* case, supra. In 1960, it strengthened it. In 1964, it enacted another one. Since 1957, certainly, the Attorney General of the United States has had the authority to institute a civil action for preventive relief 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 person of his 15th amendment rights. Since 1960, he may make the States parties defendant in such proceedings (42 U.S.C.A. 1971). Such suits are brought in the Federal courts which may appoint voting referees in certain instances (ibid., sec. 1971e).

In the six States most grievously affected by this bill—

Alabama has (counties)	67
Georgia has (counties)	159
Louisiana has (parishes)	64
Mississippi has (counties)	82
South Carolina has (counties)	46
Virginia has (counties)	98
Total	416

Therefore, there are 416 counties or political subdivisions as to which the Attorney General says "voting discrimination has unquestionably been widespread."

In how many of these counties has the Department of Justice instituted suits in the last 8 years? In how many of these suits has the Court found a "pattern and practice" of discrimination authorizing the appointment of Federal referees?

One of two States of facts is unquestionably true. There is no widespread discrimination forbidden by the 15th amendment, or the Department of Justice has, purposefully or neglectfully, been lax in the exercise of the processes at its disposal which would remedy such widespread discrimination if it in fact existed.

Maybe the truth of the matter is that present acts of Congress do not, as Circuit Judge Wisdom points out in *United States* v. *Manning* (215 F. Supp. 272), purport to fix qualifications of voters or to give that right to any Federal judge. They simply protect the rights of voters, *qualified under State law*, to participate in elections (op. cit., p. 285).

No wonder that the acts do no more for up to now it has been conceded that that is all the 15th amendment does. But, now, Congress is urged to go over and beyond the 15th amendment—to do more than protect the rights of voters qualified under State law, and to determine who shall be qualified, not under State law, but under the terms of the act it passes.

What is really troubling the Department of Justice and the "civil rights" people is that there is really no such widespread violation of the 15th amendment as will justify Federal action under it, so they want Congress to presume such violation.

They cannot meet the constitutional guidelines set up by the courts, so they want different guidelines which are not warranted by the Constitution.

The present guideline, declared by the Federal courts to be warranted under the Constitution and appropriate statutes is:

If a pattern or practice of discrimination is found (under sworn evidence in an action in a proper court), the court is empowered to declare persons entitled to vote who have been judicially found to have been deprived of voting rights on account of race or color. If the Federal court finds, from the evidence before it, such pattern or practice of discrimination, those who have been subjected to discrimination are entitled to an order declaring them entitled to vote.

Such was the pronouncement of the U.S. Court of Appeals for the Fifth Circuit on July 21, 1964, in *United States* v. *Fox* (334 F. 2d 449), following the principle which that same court had several times stated. (See cases cited in footnote 10, 334 F. 2d 453.)

The panel which decided the *Fox* case was composed of Circuit Judges Rives and Jones, and District Judge Bootle. Certainly the Department of Justice cannot accuse either one of those eminent judges of "tarnishing" our judicial system "by evasion, obstruction, delay, and disrespect." (Testimony before House committee, p. 11.)

The premise is false.

But even if the premise were true, it would by no means follow that Congress would be constitutionally authorized to give the premise the effect sought by this bill.

I must assume that a State or a political subdivision is entitled to constitutional consideration of the same degree as any one of its citizens or as any one within its jurisdiction.

The "main fact in issue" is whether the 15th amendment is being violated by certain States, political subdivisions, or officers.

The Congress is asked to declare that if the Director of the Census determines either that 50 percent of the persons of voting age residing in a given State or political subdivision were not registered on November 1, 1964, regardless of whether they sought registration or not, or that 50 percent of such persons did not vote in the presidential election of 1964, that State or political subdivision is presumed to be *now* in violation of the 15th amendment.

> While States may, without denying due process of law, enact that proof of one fact shall be *prima facie* evidence of the main fact in issue, the inference must not be purely arbitrary; there must be rational relation between the two facts, and the accused must have proper opportunity to submit all the facts bearing on the issue.

Bailey v. *State of Alabama* (219 U.S. 219)

The "accused" here are all of the States and political subdivisions of the United States.

While the "accused" may seem to be just a few southern States, and while the other 44 may be tempted to stand mute and think, "Let those southerners squirm," I warn you that if this bill passes, and is declared constitutional, then by the same device and with the same argument which Mr. Katzenbach used before the House committee, the criminal statutes, the jury statutes, taxing statutes of every State of this Union may be swept aside.

So I respectfully request that not only the six States which seem here to be mainly affected, but all of the States give heed to what the Department of Justice is trying to do.

The inference it seeks to draw is purely arbitrary; there is no rational relation to the premise, even if it be a fact, and the ultimate fact in issue; the accused does not have *proper* opportunity to submit all the facts bearing on the issue. There is absolutely no opportunity afforded the State or political subdivision to submit any fact bearing on the issue prior to the impact of the decision, resulting from the use of the presumption.

(Parenthetically I do not know how anyone can now tell how many Negroes are registered or how many voted in a given political subdivision or a given election. "The keeping of separate registration and voting records for whites and Negroes according to race" is subject to Federal injunction (*United States* v. *Raines*, 189 F. Supp. 121, 133(3); *Anderson* v. *Courson*, 203 F. Supp. 806)).

One of the salient inquiries which would have to be made as to a low registration in any given political subdivision would necessarily be: How many attempted to register and were denied the privilege? The mere fact of nonregistration of a given percentage without division between races, and without any reason assigned for the nonregistration, and without any showing of attempts to register, proves nothing.

Applicable, too, is the case of *Manley* v. *State of Georgia* (279 U.S. 1), wherein the court held that a presumption created by the Georgia Banking Act to the effect that every insolvency of a bank should be deemed fraudulent as to the president and directors was violative of the Federal Constitution in that the presumption created thereby was unreasonable and arbitrary, as pointing to no specific transaction, matter, or thing as the cause of the fraudulent insolvency, or to any act or omission of the accused tending to show his responsibility. Furthermore, the Court said that a law creating a presumption which operates a fair opportunity to repel it violates the Constitution.

> It is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.

McFarland v. *American Sugar Co.* (241 U.S. 79, 86)

In *Western & Atlantic R. Co.* v. *Henderson* (279 U.S. 639), the Supreme Court applied the principle of the *Manley* case, supra, to a statute of Georgia in a civil case. The Court held that a section of the Georgia Code which raised a presumption of negligence against a railroad in an action for damages, construed as raising presumption, on mere fact of grade crossing collision and resulting death of occupant of automobile, that railroad and its employees were negligent and without other evidence of negligence permitting presumption to be considered as evidence against defendant's evidence tending affirmatively to prove that operation of train was not negligent was unconstitutional.

> Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property (ibid., p. 642).

A fortiori, legislative fiat may not take the place of fact in the determination of whether a State of this Union has violated the provisions of the 15th amendment to the Constitution.

In *Tot* v. *United States* (319 U.S. 463, 467), the Court explained what it meant by a "rational connection." There it declared a "presumption" invalid.

Barrett v. *United States* (322 F. 2d 292), a decision of the Fifth Circuit Court of Appeals held unconstitutional a statute creating presumptions of defendant's possession of still and carrying on business of distiller on showing of defendant's unexplained presence at the stillsite (1963, Circuit Judges Tuttle, Wisdom, and District Judge Johnson).

This case was reviewed by the Supreme Court in a decision of March 1, 1965, *Sub nomine, United States* v. *Gainey* (33 L.W. 4200). The Supreme Court (7 to 2) reversed the court of appeals and held the statute to be valid. The rationale of the opinion, holding that there was a rationality in the connection "between the fact proved and the ultimate fact assumed." The support for the holding was:

> Congress was undoubtedly aware that manufacturers of illegal liquor are notorious for the deftness with which they locate arcane spots for plying their trade. Legislative recognition of the implications of seclusion only confirms what the folklore teaches—that strangers to the illegal business rarely penetrate the curtain of secrecy. We therefore hold that section 5601(b)(2) satisfies the test of *Tot* v. *United States, supra.*

That case is by no means decisive of the situation here though it may have been the inspiration for the plan of this bill.

Suppose someone made the statement to you that the State of *Montana is* depriving Negroes of their right to vote on account of their race or color. Suppose you asked: What proof have you of that statement? He answered: The Director of the Census has just determined that less than 50 percent of the persons of voting age residing in Montana were registered on November 1, 1964; less than 50 percent of the persons of voting age residing in Montana voted in the presidential election of November 1964. Would you consider that answer to be the slightest proof of the statement? I doubt it. I daresay you would ask many, many questions; one of them would be

how many of those who constitute 50 percent of the persons of voting age residing in Montana were citizens? How many sought to register? How many were qualified under Montana law?

I daresay that you would know that the premise is totally unrelated to the ultimate fact to be proven, and that any thought that there might be a valid connection between the two would only arise if someone planted the seed of propaganda in your thoughts. "Well, you know, voting discrimination has unquestionably been widespread" out there, but we haven't been able to prove.

You will see from this bill that whatever the area may be, voting tests become inoperable in that area the very instant the Director of the Census determines one of the two factors of section 3(a).

Absolutely no remedy is given in the bill to the State or any political subdivision thereof to offer proof to rebut the thoroughly irrational presumption. Even if it were rational, it would be invalid because of this lack of opportunity.

A presumption is valid only if opportunity is given to rebut it in the forum in which the prosecution uses the presumption.

Suppose, for example, the presumption held valid in the *Gaines* case had had a provision in it: Should the defendant be found guilty in a case in which this presumption is used, he may offer evidence to rebut it in a certain court in Washington. If that court in Washington should find the presumption invalid, the verdict and sentence shall be set aside.

Doesn't that sound preposterous? It does, but that is exactly what this bill provides.

For fear that you may not have read what the Attorney General had to say on this subject before the House committee, I quote it:

> In view of the premise for section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the 15th amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in such violations * * * the States and counties affected by the formula in which it may be doubted that racial discrimination has been practiced * * * *need only demonstrate in court that they are guiltless in order to lift the ban of section 3(a) from their registration systems.* That is, section 3(a) in reality reaches on a *long-term basis* only those areas where racial discrimination in voting in fact exists. (House hearing manuscript, p. 32.)

That statement is that of the chief law officer of the Government of the United States so naturally it has been heeded and quoted.

To paraphrase the television: Will the real section 3 please stand up?

Here is what section 3(c) of the bill provides:

> (c) Any State with respect to which determinations have been make under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the pe-

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

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

The Attorney General says that the States and counties affected by the formula "need only demonstrate in court that they are guiltless."

What court? The answer is, a three-judge district court convened in the District of Columbia.

Who will appoint that court? From whence will the judges be selected? Will they be judges from the District of Columbia, judges from the affected States, or judges from just anywhere in the United States?

What does the action brought in that court have to allege? It must allege that neither the petitioner nor any person acting under color of law has engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color.

The Attorney General says that the convicted State must only demonstrate that it is guiltless in order to "lift the ban."

The bill says that the State must allege that neither it nor *any person* acting under color of law has during the 10 years preceding the filing of the bill engaged in any act or practice contravening the 15th amendment.

What in the world does "any person acting under color of law" mean?

Even assuming that it means any person within the jurisdiction of the State, it is bad enough.

Of course, anyone who reads the bill knows that the so-called remedy is a will-o'-the-wisp because even in Georgia during the last 10 years in 1 county of the 159 there has been a decree of the Federal court to the effect that certain officials of that county did engage in acts and practices denying or abridging the right of certain people to vote by reasons of race or color (*United States* v. *Raines*, — F. Supp. —, supra).

So it is, therefore, that if the ban were placed on Georgia, Georgia could not lift that ban because in 1 of her 159 counties there has been a court decree.

The same applies to any other State affected by this bill. The Attorney General knows and you know that in some of the counties and/or parishes of Mississippi, Alabama, and Louisiana, there have been such decrees.

Under this bill, decrees in perhaps 10 or 12 counties (the Attorney General can supply the exact figure) out of the 300 or 400 affected effectually prevents any lifting of the ban.

Time does not permit the present document to go into details of the act beyond section 3 thereof.

As a matter of fact, most of the other sections fail when section 3 shall have been deemed or declared invalid.

However, there is one glaring section to which attention should be called. That is section 8. It reads as follows:

> SEC. 8. Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the fifteenth amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

The purported object of this bill is to prevent the application of voting qualifications or procedure so as to deny or abridge the right to vote on account of race or color. The contention is that voting qualifications and procedures are being imposed or applied so as to deny 15th amendment rights.

Yet, the bill provides that if it is determined under section 3 (a) and (b) that a State or political subdivision is using tests or devices for discriminatory purposes, that no State may enact any law or ordinance even repealing the offending test or device, or rather, that if it does enact such law or ordinance, it shall not be enforced by the State unless and until it shall have been finally adjudicated by an action for declaratory judgment brought in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

Now here is how section 8 would work in some of the States which possibly may be affected by the bill.

Suppose it is declared by the Attorney General that those registration laws which contain voting qualifications fall under the ban of section 3(a). The State says to the Federal Government: All right, you are accusing us of using our registration laws so as to deprive Negroes of their right to vote; a great many of the States of the Union don't have any registration laws, so we will go along with those States and repeal our registration laws. And that is what the States do. But here comes section 8. That repeal of the registration laws cannot become effective until a three-judge court in the District of Columbia, selected by someone, adjudicates that the repeal of the

offending statute will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

I imagine that for the first time in the history of constitutional government anywhere, it is being suggested that the Congress has the right indirectly to enjoin a State legislature from repealing one of its laws.

In the last 2 or 3 days, I have read the following:

> But why suppose the irreconcilability of the two propositions?
>
> Proposition 1: The States have the right to prescribe voter qualifications.
>
> Proposition 2: No State may discriminate against a racial minority.
>
> What, then, if a State, in the cause of practising its rights under the first proposition, denies the rights of Negroes under the second? The Federal Government should precisely step in and legislation to this effect should be passed—but its mandate should then be, not to revoke voter qualification tests as set up by the States, but to administer them without reference to race or creed.

I suggest that the author of that column, and every Member of Congress, read title I of the Civil Rights Act of 1964, entitled, "Voting Rights" (42 U.S.C. 1971, as amended by sec. 131 of the 1957 act and 1960 act and 1964 act).

That statute, approved July 2, 1964, provides that "no person acting under color of law shall * * * employ any literacy test as a qualification for voting in any Federal election unless (1) such test is administered to each individual and is conducted wholly in writing, and (2) a certified copy of the test and of the answers given by the individual is furnished to him within 25 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 3 of the Civil Rights Act of 1960."

That act has been in force for almost 9 months.

Has any person anywhere been accused in any criminal proceeding or in any civil proceeding of violating that act? Does the Department of Justice know of any violation of the act?

Why does not that act give to the Department of Justice every power that it needs to insure that voting tests or devices will not be used at any time or place so as to deprive Negroes of their 15th amendment rights? Has any effort been made to use it?

I have been taught, "If thy right hand offend thee cut it off, and cast it from thee" (St. Matthew 5: 30).

If any statutes which give rise to the accusation that their use offends the 15th amendment are offensive to the Department of Justice, it ought at least give the privilege of cutting them out and casting them aside.

HEARINGS BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, 89TH CONGRESS, 1ST SESSION, ON S. 1564

STATEMENT OF THOMAS H. WATKINS, ATTORNEY AT LAW

It is a privilege and an honor to be permitted to appear before this committee. I am here at the request of Governor Johnson, Senator Eastland and Senator Stennis of Mississippi, and my purpose is to defend the Constitution of the United States.

In destroying the constitutional rights of Mississippi and other States to use literacy tests as a qualification of the privilege of voting, S. 1564 constitutes an undisguised frontal assault on the Constitution, as interpreted by the Supreme Court of the United States for more than 100 years. This bill flies squarely in the face of the same Constitution that every U.S. Senator has taken an oath 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. At the time of the adoption of the Constitution, there was wide divergence of opinion among the States as to what should be the voting qualifications of their respective citizens. New Hampshire permitted only male inhabitants 21 years of age, who were not paupers, to vote. Massachusetts limited the privilege of voting to male inhabitants 21 years of age who had an estate of the value of 60 pounds. Connecticut permitted only those to vote who had "maturity in years, quiet and peaceful behavior, a civil conversation, and 40 shillings freehold or 40 pounds personal estate." New York limited the privilege of voting to male inhabitants of full age, possession a freehold of the value of 20 pounds within the county and had actually paid taxes to the State. Pennsylvania permitted only freemen who paid taxes to vote. Maryland limited the privilege of voting to freemen who were property owners. North Carolina allowed only those to vote who were freemen 21 years of age who owned 50 acres of land to vote. South Carolina limited voting to free white men who owned 50 acres of land (*Minor* v. *Happersett*, 21 Wall 162, 21 L. Ed. 627).

Recognizing that each should reserve the right to say which of its citizens could exercise the privilege of voting, the Constitution left the fixing of voting qualifications to the States and provided in section 2 of article I that in choosing Representatives for Congress "The Electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

This provision met with the complete approval of the delegates. According to James Madison's "Journal of the Constitutional Convention," the only dissension arose when Gouverneur Morris proposed

that all electors be required to be freeholders. This suggestion was rejected on the theory that the States were the best judges of the circumstances and temper of their own people.

During the Constitutional Convention the question of Federal control over qualifications of electors arose. Both George Mason and James Madison expressed the view that this would be a dangerous power in the hands of the National Legislature.

The section was unanimously approved by the Convention on August 8, 1787. During the campaign for ratification of the Constitution, this section was strongly supported in "The Federalist Papers."

Article II, section 1, paragraph 2, concerning the mode of choosing electors for President and Vice President, is clear and concise:

> Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress * * *.

There can be no doubt that the framers of the Constitution intended that the entire process of choosing electors was to remain in the hands of the States. This was clearly followed by adoption of the 9th and 10th amendments reserving unto the States and unto the people all powers and rights not delegated to the United States by the Constitution.

A literacy test as a qualification for voting was adopted by Connecticut in 1855 and by Massachusetts in 1857.

But proponents of this bill will say that all of this was prior to the adoption of the 15th amendment under which they claim the power to establish voter qualifications in some of the States. Does the 15th amendment give Congress any such power? Clearly, it does not.

The fact that the 15th amendment was not intended to take from the States the exclusive right to fix voting qualifications is shown by the fact that the 17th amendment, adopted many years later, contains the identical language originally used in section 2 of article I of the Constitution:

> The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

The 15th amendment does prohibit any State from using race or color as a prerequisite for qualifying to vote. Congress has the authority to enforce this amendment by appropriate legislation. Congress can make it a criminal offense to deny the right to vote because of race or color, and Congress can fix the penalties for its violation. It has done so. Congress can provide for injunctive relief against State violating this constitutional provision. It has done so. Congress can authorize suits to be filed by the United States to enforce the 15th amendment, and Congress may give jurisdiction of such actions to three-judge courts. It has done so.

The 15th amendment did not give Congress the power to prohibit discrimination on grounds of education. This bill, in seeking to abolish literacy tests, does just that. After the 15th amendment had been passed by the House, the Senate amended it to add prohibitions against discrimination on grounds of education. This amendment was defeated in the House, and the 15th amendment ultimately passed in its present form, prohibiting only discrimination because of race or

color. In other words, those who framed the 15th amendment specifically refused to give Congress the power to do that which S. 1564 seeks—the elimination of literacy or educational requirements as qualifications for voters.

It is clear that Congress and the States intended the 15th amendment to mean exactly what it said. The color of a man cannot be a reason to grant or deny him the right to vote. But all other qualifications are left entirely to the wisdom of the States.

Mr. Justice Story, in discussing the 15th amendment, stated the correct rule concisely at page 719 of volume 2 of "Story on the Constitution" (1891), as follows:

> There was no thought at this time of correcting at once and by a single act all the inequalities and all the injustice that might exist in the suffrage laws of the several States. There was no thought or purpose of regulating by amendment, or of conferring upon Congress the authority to regulate, or to prescribe qualifications for, the privilege of the ballot.

The 15th amendment does not give the vote to anyone. It does not alter in any way the provisions of article I of the Constitution, which clearly reserved to the States the power to fix the qualifications of voters. In 1876, the Supreme Court stated in *Reese* v. *United States* (92 U.S. 214):

> 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 * * *.
>
> The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment, *and can be exercised by providing a punishment only* when the wrongful refusal to receive the vote of a qualified elector at such elections is *because of his race, color, or previous condition of servitude.*

Other cases decided by the Supreme Court through the years have upheld this principle. In *Pope* v. *Williams* (193 U.S. 621 (1904)), the Court reaffirmed its earlier holding that the States retained control over suffrage, even after the adoption of the 15th amendment. In that case, the Court said:

> Since the 15th amendment the whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color, or previous condition of servitude.
>
> * * * * *
>
> *The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one.*

In *Guinn* v. *United States* (238 U.S. 347 (1915)), one of the questions involved was whether the use by a State of a literacy test conflicted with the 15th amendment. In that case the Supreme Court held

that the establishment of a literacy test was a valid exercise by a State of a lawful power vested in it and was not subject to supervision.

This holding was reaffirmed by the Supreme Court in 1959 in *Lassiter* v. *North Hampton County Board of Elections* (360 U.S. 45), which involved a literacy test required by the State of North Carolina. In holding that a State may apply a literacy test to all voters, irrespective of race or color, the Supreme Court recognized that the State has the sole power to determine the qualifications of voters, and said:

> The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised (*Pope* v. *Williams*, 193 U.S. 621, 633; *Mason* v. *Missouri*, 179 U.S. 328, 335), absent of course the discrimination which the Constitution condemns.
>
> * * * * *
>
> Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books and other printed matter canvass and debate compaign issues, a State might conclude that only those who are literate should exercise the franchise. (Cf. *Franklin* v. *Harper*, 205 Ga. 779, 55 S.E. 2d, 221, appeal dismissed 339 U.S. 946.) It was said last century in Massachusetts that a literacy test was designed to insure an "independent and intelligent" exercise of the right of suffrage. (*Stone* v. *Smith*, 159 Mass. 413–414, 34 N.E. 521.) North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

In *Williams* v. *Mississippi* (170 U.S. 213, 42 L. Ed. 1012 (1898), the Supreme Court of the United States upheld the literacy test required by the Mississippi constitution. In *Trudeau* v. *Barnes* (65 F. 2d 563 (1933), the U.S. Court of Appeals for the Fifth Circuit upheld the constitutionality of the Louisiana literacy requirement.

I respectfully submit that there is no authority to the contrary. If it is the desire of the people of this country to take from the States the right to require a certain degree of literacy in order to qualify to vote, this must be accomplished by an appropriate amendment to the Constitution. The power of Congress in this respect is exactly the same as it is with respect to prohibiting the requirement by the States of a payment of a poll tax to vote in Federal elections. It was correctly recognized that this could be done only by amending the Constitution. Accordingly, the 24th amendment to the Constitution was passed and adopted.

On April 10, 1962, Hon. Robert F. Kennedy, Attorney General of the United States, accompanied by Hon. Burke Marshall, Assistant Attorney General, testified before this committee with respect to S. 480, S. 2750, and S. 2979. The Attorney General supported only S. 2750 which did not take from the States the right to fix qualifications of voters. During that testimony, the Attorney General stated:

> This legislation does not set the qualifications of these voters. It merely sets the test, the testing of those qualifications. And, in my judgment, that is clearly constitutional.

If we were setting the qualifications for the individuals then, I believe that it would be unconstitutional and would require a constitutional amendment (p. 269).

* * * * *

I would say that if we came in here and offered legislation that set the qualifications of the voters that it would be unconstitutional; not unconstitutional only under article I, section 4, but under the 14th and 15th amendments. I would agree with you entirely then, but we are not doing that (p. 271).

* * * * *

For instance, I think that the Civil Rights Commission suggested and recommended that we do away with all literacy tests, at least four out of the six members did, and *I would be opposed to that* (p. 293).

* * * * *

I would have grave doubts about the constitutionality of that particular piece of legislation which abolishes all literacy tests, as I understand it (p. 296).

* * * * *

I think that a State, if it determines that it wants to use or utilize a literacy test, should certainly be permitted to do so (p. 297).

It is, therefore, apparent that Attorney General Robert F. Kennedy, with the excellent advice of Hon. Burke Marshall, was of the opinion that legislation which deprived the States of the right to use literacy tests as a requirement for voting would be unconstitutional and that only a constitutional amendment could make that change in our basic law.

I am astonished to find Attorney General Nicholas Katzenbach testifying directly to the contrary on March 18, 1965, before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives. The Attorney General was also accompanied by Hon. Burke Marshall as adviser.

In an effort to sustain the constitutionality of the bill now before this committee, the Attorney General takes the position that Congress has the same power to legislate under the 15th amendment as it does under the commerce clause, section 8 of article I, which provides:

> The Congress shall have power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

The Attorney General makes no distinction between the unlimited affirmative right of Congress to legislate in the field of commerce and its very limited right to prohibit the States and the Federal Government from discriminating in the field of voting because of race or color under the 15th amendment. The Attorney General relies on *Gibbons* v. *Ogden* (9 Wheat. 1), and its description of the power of Congress to regulate interstate commerce.

The 15th amendment, like the 14th amendment, merely prohibits a State from discriminating. In *Ownbey* v. *Morgan* (65 L. Ed. 837, 256 U.S. 94), the Court said:

> *Its function is negative, not affirmative, and it carries no mandate for particular measures of reform.*

The Attorney General states that the bill will deny the use of "onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes." The bill, however, does not use this language. It prohibits the use of any literacy tests. If the bill prohibited onerous, vague, and unfair tests which tended to disenfranchise Negroes, it would be very much closer to the power granted Congress by the 15th amendment.

The Attorney General states:

> It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far reaching solutions.

Noting that the description of this bill as "far reaching" is an understatement, I respectfully remind the committee that the bill was offered only 8 months after passage of title I of the Civil Rights Act of 1964 which granted broad new powers for the enforcement of the 15th amendment. This is much too short a time within which to determine whether this recently passed legislation is adequate.

The *Lassiter* case was again cited with approval by the Supreme Court of the United States on March 1, 1965, in *Carrington* v. *Rash* (13 L. Ed. 2d 675).

The classification of States (and/or political subdivisions thereof) to which the act is applicable is not a rational classification, but is discriminatory, unrealistic, arbitrary, and unreasonable

This act does not apply to all States or political subdivisions but is applicable only to a special class of States or political subdivisions. This classification violates the fifth amendment to the Constitution. The prohibition against denial of due process of law is, under this amendment, applicable to the United States (*Bolling* v. *Sharpe*, 98 L. Ed. 884. Cf. separate opinion, *Portland Cement Co.* v. *Minnesota*, 3 L. Ed. 2d, 427).

Moreover, article IV, section 2, of the Constitution of the United States provides:

> The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

It is thoroughly established that any classification must rest always upon some difference, and *this difference must bear a reasonable and just relation to the purpose of the act in respect to which classification is proposed.*

The members of the class are determined by the Attorney General, based on findings of the Director of the Census, either: (1) That less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964; *or* (2) that less than 50 percent of such persons voted in the presidential election of November 1964.

This classification is unrealistic, arbitrary, and unreasonable, as well as discriminatory. It does not pretend to prevent discriminatory use of tests except in approximately six States. Other States can have and use the tests as much as they please and yet not be within the class. One State having only 49 percent of the persons of voting age residing therein registered on November 1, 1964, would come within the act while another State with only 50.1 percent of the persons of

voting age residing therein registered would not come within the act regardless of the discrimination in that State.

The evil sought to be avoided is the *discriminatory* use of tests, and whether or not 50 percent of the residents were registered is not by any theory determinative of the discriminatory use of tests. It might be due to apathy or a failure on the part of residents to attempt to register. Registration is not required and cannot be required.

In other words, the basis for the classification is a conclusive legislative presumption that where 50 percent of the residents of a State or political subdivision did not vote in the presidential election of 1964 that there had been a discriminatory use of tests for voter qualification, while this was not true if only 51 percent of the residents voted in said election.

This presumption is conclusive in that no section of the act authorizes a contest thereof. The only right of any State to contest is the right to attempt to be removed from the class, as provided by section 3(c), page 2, under the impossible condition that the State or political subdivision has the burden of proving that *no person* acting under color of law has engaged during such period (the 10 years preceding) in *any act* or practice denying or abridging the right to vote for reasons of race or color. No State or political subdivision anywhere could so prove.

Moreover, the class is a closed class. It permanently excludes all other States or political subdivisions from ever coming within the act, regardless of later discrimination, the determinative period being November 1, 1964. States not within the act on that date may proceed to use tests and devices for voter qualification at will and discriminate in the application thereof at will without coming within the class. The fact that less than 50 percent of the voters were registered in 1963 or in 1965 is immaterial. Nor can any State or political subdivision in the class as of that date be removed from the class even if thereafter more than 50 percent of the residents register or vote in presidential elections.

The Supreme Court of the United States has very recently condemned this type of classification in *McLaughlin* v. *Florida* (13 L. Ed. 2d, 222). The Court quoted with approval:

> *Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which classification is proposed,* and can never be made arbitrarily and without any such basis * * * *arbitrary selection* can never be justified by calling it *classification."*

In the case of *Heiner* v. *Donnan* (76 L. Ed. 772; 285 U.S. 312), the Court held that a classification could not be based upon conclusive presumption.

The above case was recently cited with approval in *Carrington* v. *Rash* (13 L. Ed. 675 (Mar. 1, 1965)).

Numerous provisions of the act deny States (and/or political subdivisions thereof) and the citizens thereof due process of law contrary to the requirements of the fifth amendment to the Constitution, and the act is prohibited by article I, section IX(3), prohibiting the Congress from passing a bill of attainder or an ex post facto law

Section 3(a), page 2, creates a conclusive or irrebuttable presumption that if 50 percent of the residents were not registered by November 1,

1964, *or* if 50 percent did not actually vote in the presidential election of November 1964, that the State is guilty of such massive discrimination in the application of tests for voter qualifications that the State is separately classified and denied all its political rights, *with no opportunity given to it to rebut this presumption.*

Section 3(c), page 2, provides that no State can be removed from the classification and regain its political rights lost under 3(a) until after a final judgment of a three-judge court of the District of Columbia and the Supreme Court that "* * * neither the petitioner nor *any person* acting under color of law has engaged during such period in *any act* or practice denying or abridging the right to vote for reasons of race or color * * *." *This is known by Congress to be an impossible requirement.* Furthermore, no action whatsoever can even be brought for 10 years after any final judgment of any court of the United States, *whether entered prior to or after the enactment of this act,* determining that there has been any denial of right to vote by reason of race or color *anywhere in the territory* of such petitioner. The act denies a state its political and constitutional rights for past offenses and does not punish only for denials or abridgement of the right to vote after the enactment of the act; i.e., is a bill of attainder.

Section 4(a), page 3, provides for the commencement of the examiner procedure at the will of the Attorney General under either of two separate circumstances: (1) That he has received complaints in writing from 20 or more residents of a political subdivision coming under section 3(a) alleging that they had been denied the right to vote by reason of race or color. There is no requirement that these be affidavits or sworn statements. The Attorney General is given absolute discretion as to whether he believes such complaints to be meritorious. No right is given the State to challenge these statements or to be heard thereon, and the affected State is, therefore, denied any right to a hearing as to whether or not the examiner procedure should go into effect in that area or unit; *or* (2) the Attorney General is granted the arbitrary right to institute examiner procedure if in his judgment it is necessary to enforce the guarantees of the 15th amendment. No right to a hearing is granted the State.

By section 5(a), page 4, rights of the State with reference to registration of electors are taken from the State. The Federal examiners are given the full right to examine applicants concerning their qualifications for voting. Arbitrary power is given the Commission. The section provides that the application shall be in "such form as the Commission may require." The only requirement is that it contain an allegation that the applicant is not registered to vote. The requirement that within 90 days preceding his application he has been denied the opportunity to register is placed in the section but then it is provided that this provision "may be waived by the Attorney General." The Attorney General thus may, at his whim or fancy, write out any requirement of exhaustion of remedies by the applicant. There is no positive requirement that the applicants meet the Mississippi age, residence, sanity, or absence of criminal conviction qualifications to vote. The only requirement is: "Any person whom the examiner finds to have the qualifications prescribed by state law *in accordance with instructions received under 6(b)* shall promptly be placed on a list of eligible voters." Section 6(b), page 7, is merely that the Civil Service Commission "shall, after consultation with the Attorney General, instruct the examiner concerning the qualifi-

cations required for listing." Thus, the Commission could ignore entirely the requirements of State law or determine under the advice of the Attorney General which one should be honored and which one ignored.

Section 6(a), page 6, purports to give election officials an opportunity to challenge the list of eligible voters prepared by the examiner. The list is required to be transmitted to the appropriate election officials at the *end of each month*, and yet a challenge must be made within 10 days after the challenged person is *listed*. Presumably it was intended to be 10 days after the list was *transmitted*, but the act does not so provide. No opportunity of any representative of any election official to be present at the hearing of the applicant is granted. No requirement is made that the records of the examination of the applicant be preserved or be in writing or be available to election officials. All that the election officials would have would be a bare list of eligible voters, and an investigation thereof within 10 days would be impossible. The election officials would have no knowledge of any facts which would make the applicant a qualified elector or which would keep him from being a qualified elector. The challenge must be accompanied by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge. The burden of proof of lack of qualifications for registration is on the election officials. The finding of the hearing officer on such a challenge cannot be overturned "unless clearly erroneous." The practical effect of section 6(a) is to deny the State or political subdivision any right whatsoever to challenge the list.

Section 8, page 8, arbitrarily takes from the State all legislative functions with regard to voter qualifications. It provides that no future law or ordinance can be enacted imposing qualifications for voting, or rather that it cannot be enforced, if passed, until the State of Mississippi has brought an action for declaratory judgment against the United States in the District Court for the District of Columbia and secured an adjudication, *with the accompanying burden of proof*, that "such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment." This prohibition is against any new enactment regardless of its validity or its constitutionality.

The mere possibility of future improper administration of a statute is no ground for forbidding the legislation valid on its face and valid if properly administered.

By section 9(a), page 8, severe criminal penalties are imposed. Subparagraph (e) goes so far as to permit the holding up of the election of any official until final hearing, and, therefore, for an indefinite time, whenever a single person "alleges to an examiner" that he has not been permitted to vote or that his vote was not counted. No statement under oath by such person is required. The U.S. attorney immediately applies to the district court for an order enjoining the certification of the results of the election, and "the court shall issue such an order pending a hearing to determine whether the allegations are well founded." There is thus granted the right for a preliminary injunction without a hearing and an unlimited holding up of an election until court procedure is concluded.

Section 11(b) provides that the only court having jurisdiction over the subject matter of the act is the District Court of the District of

Columbia, a thousand miles from some of the States which are included in the class.

There is no doubt but that the provisions of this act violate the constitutional guarantees of the right to justice and remedies for injuries. The U.S. Constitution, through the due process clause of the fifth amendment, guarantees open courts, and a remedy for injuries and prompt justice is guaranteed. While judicial remedies can be suspended, they can only be suspended in an emergency and for a reasonable time. Such guarantees are derived from the Magna Carta and are self-executing and mandatory. The Magna Carta conferred on the people of England one of the most highly prized rights of man; that is, the right guaranteed by the brief but expressive clause: "We will sell to no man, we will not deny to any man, either justice or right." Due process of law not only requires open courts and prompt justice, but requires a hearing which is a hearing in fact and not merely in name.

Here the State of Mississippi has been condemned by legislative classification without an opportunity to be heard before its rights and privileges as a State are withdrawn. If it is to question the classification, it must do so as a plaintiff with the burden of proof imposed on a plaintiff and must sustain an impossible burden of proof and must wait for 10 years to do so. If it is to enact any new law, it must sustain the burden of proof of innocence, not merely deny guilt.

In *Garfield* v. *United States* (53 L. Ed. 168; 211 U.S. 219), the Supreme Court of the United States said:

> The right to be heard *before* property is taken or *rights or privileges withdrawn* which have been previously legally awarded is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court.

To the same effect is *Bailey* v. *Alabama* (55 L. Ed. 191; 219 U.S. 219).

The opportunity to be heard is an essential requisite of due process of law (*Postal Telegraph* v. *Newport*, 247 U.S. 464; 62 L. Ed. 1215).

Moreover, it must be a real opportunity to be heard as was stated in *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill* (74 L. Ed. 1107; 281 U.S. 673).

This bill is in reality a bill of attainder directed at the entire citizenry of the State of Mississippi as a class and depriving them of political rights or suspending their political rights to control State elections.

In *Cummings* v. *Missouri* (18 L. Ed. 356; 71 U.S. 277), the Court defined a bill of attainder as follows:

> A bill of attainder is a legislative act, which inflicts punishment without a judicial trial * * *. These bills * * * may be directed against (individuals or) a whole class * * *.
>
> "Bills of this sort," says Mr. Justice Story, "have been most usually passed * * * in times of violent political excitements * * *" *Punishment * * * embraces deprivation of suspension of political or civil rights * * *. Any deprivation or suspension of * * * rights for past conduct is punishment * * *.* These bills may inflict punishment absolutely

> * * * conditionally. * * * *To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition,* and such denial, enforced for a past act, is * * * punishment imposed for that act.
>
> In [cases of bill of attainder] the legislative body in addition to its legitimate function, exercises the powers and office of judge * * *. It pronounces upon the guilt of the party, without any of the forms of safeguards of trial; it determines the sufficiency of the proof produced * * *. It fixes the degree of punishment in accordance with its own notions of the enormity of the offense.
>
> [Whether] the clauses * * * declare * * * give (or) * * * assume it * * * the legal result [is] the same, for what cannot be done directly cannot be done indirectly. The constitution deals with substance, not shadows * * *. It [the constitutional prohibition] intended that the rights of the citizens should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised.

In *Ex parte Garland* (71 U.S. 333; 18 L. Ed. 366), the Court struck down an act of Congress as a bill of attainder prohibited by the Federal Constitution.

Here the citizens of Mississippi are denied their constitutional right to prescribe the qualifications of electors, if they are determined, without a hearing, to come under section 3(a) of the act, because of facts existing prior to the date of the act. This denial lasts for "10 years after the entry of a final judgment of any court of the United States, *whether entered prior to* or after the enactment of this act." This is unquestionably a deprivation of political rights for a full 10-year period because of past activities.

That this placing of the burden of proof of lack of guilt on the State of Mississippi is denial of due process is clearly brought out in *Speiser* v. *Randall* (2 L. Ed. 2d, 1460; 357 U.S. 513).

In *Bailey* v. *Alabama* (219 U.S. 219, 239; 55 L. Ed. 191, 200; 31 S. Ct. 145), the Court said:

> It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.

S. 1564, in denying to a few States rights enjoyed by the other States of the Union, is invalid

The proposed legislation would deprive Mississippi and a few of her sister States of the right to fix qualifications of voters. It takes from those few States the right to legislate in this field. The remaining States of the Union are left free to exercise their full constitutional rights in this field. Thus, the act attempts to place Mississippi and a few other States in a straitjacket so far as their election laws are concerned. In so doing the act is invalid. There is no such thing as a second-class State. Every State in this Union is equal to every other State and is guaranteed the rights and privileges enjoyed by every other State. In *Coyle* v. *Smith* (221 U.S. 559; 55 L. Ed. 853), the Supreme Court said:

> The power is to admit "new States into this Union." "This Union" was and is a union of States, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.
>
> * * * * *
>
> * * * there is to be found no sanction for the contention that any State may be deprived of any of the power constitutionally possessed by other States, as States, by reason of the terms in which the acts admitting them to the Union have been framed.
>
> * * * * *
>
> To this we may add that the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we amy remain a free people, but the Union will not be the Union of the Constitution.

In *Butler* v. *Thompson* (U.S.D.C. Va., 97 F. Supp. 17, affirmed 241 U.S. 937; 95 L. Ed. 1365), it was held that an act of Congress of 1870 prohibiting the State of Virginia from changing its constitution so as to deprive any class of citizens the right to vote would be invalid if construed to prevent that State from enlarging to 3 years its poll tax requirements as a condition precedent to the right to vote. The Court said:

> The act of 1870, too, must be studied against the background of the tragic era of which it was a part.
>
> Nor was this act a compact under which Virginia, after the Civil War, was readmitted to the Union. The Supreme Court has ruled that the Confederate States were never out of the Union and, hence, there was no necessity for readmission (*State of Texas* v. *White*, 7 Wall. 700; 74 U.S. 700; 19 L. Ed. 227).
>
> This act does not attempt to place Virginia in a straitjacket so far as the election laws of Virginia are concerned. *If the act made that attempt, the act would be invalid.* All States, after their admission into the Federal Union, stand upon equal footing and the constitutional duty of guaranteeing each State a republican form of government gives Congress no power in admitting a State to impose restriction which would operate to deprive that State of equality with other States.

S. 1564 violates the constitutional requirement that trial of all crimes shall be by jury, and such trials shall be held in the State where said crimes shall have been committed

S. 1564 completely ignores the fact that clause 3 of section 2 of article III provides:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by jury; *and such Trial shall be held in the State where the said Crimes shall have been committed;* but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The bill also ignores the sixth amendment to the Constitution which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury *of the State and district wherein the crime shall have been committed,* which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Section 9 of the bill provides criminal penalties which include a $5,000 fine or imprisonment for not more than 5 years, or both, for violations of the act.

Section 8 of the act provides for the filing of actions thereunder in the U.S. District Court for the District of Columbia, and further provides:

> *All actions* hereunder shall be heard by a three-judge court, and there shall be a right of direct appeal to the Supreme Court.

Section 11(b) provides that no court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or injunctions against the enforcement of the bill. The act clearly violates the above-quoted sections of the Constitution as well as the seventh amendment, which provides:

> In suits at common law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved,* and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The composition of and procedure before three-judge courts is established by section 2284 of title 28, United States Code. This Federal statute does not authorize or permit the right of trail by jury before a three-judge court. Therefore, the provisions of this act, and specifically section 8 thereof, requiring "all actions hereunder" to be heard by a three-judge court automatically deprives a person charged with a criminal offense under this act of a trial by jury as guaranteed by the Constitution of the United States. The act is clearly unconstitutional in this respect.

The reason for the bill is perfectly obvious and known to all. Civil rights organizations began well-organized demonstrations in Selma, Ala. They were continued day after day and week after week until the inevitable act of violence occurred. Television cameras were present to publicize this event before the entire Nation. The leader of the demonstrations immediately went to Washington and was afforded an interview by the President and the Vice President of the United States. Under highly emotional circumstances, the President presented this bill to a joint session of Congress, calling for its immediate passage. Enveloped by this mass hysteria, the Senate of the United States orders this committee to report a bill fraught with constitutional defects back to the Senate by April 9, 1965. I respectfully submit that this is not the atmosphere or the manner in which serious constitutional questions should be resolved. Instant

legislative action, in an effort to cure what is believed to be an existing wrong, can only do irreparable damage to the constitutional rights of the people of this great country.

Senator John F. Kennedy, in "Profiles in Courage," described Senator George Norris' opposition to the armed ship bill by saying:

> He was fearful of the bill's broad grant of authority, and he was resentful of the manner in which it was being steamrolled through the Congress. It is not now important whether Norris was right or wrong. What is now important is the courage he displayed in support of his convictions.

The same author also quotes Senator Norris as follows:

> I have no desire to hold public office if I am expected blindly to follow in my official actions the dictation of a newspaper combination * * * or be a rubberstamp even for the President of the United States.

I hope and pray that the wisdom of that outstanding liberal Senator is embodied in the breasts of a sufficient number of the present Members of this august body to grant right and reason an opportunity to be heard.

The present emotionalism does not justify taking constitutional shortcuts. A desirable goal does not justify an unconstitutional means. If the accomplishments of this bill are desirable, let them be forthcoming in the only legal way—by constitutional amendment. The first President of our country, mindful of the disposition of men to shake off the restraining bonds of the Constitution when the situation seemed to demand it or make it politically expedient, said in his Farewell Address:

> If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument for good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any particular or transient benefit which the use can at any time yield.

I appreciate very much the courtesies extended to me by the chairman and members of this committee.

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89TH CONGRESS
1st Session

SENATE

REPT. 162
Part 3

VOTING RIGHTS LEGISLATION

APRIL 21, 1965.—Ordered to be printed

Filed under authority of the order of the Senate of April 21, 1965

JOINT STATEMENT OF INDIVIDUAL VIEWS BY MR. DODD, MR. HART, MR. LONG OF MISSOURI, MR. KENNEDY OF MASSACHUSETTS, MR. BAYH, MR. BURDICK, MR. TYDINGS, MR. DIRKSEN, MR. HRUSKA, MR. FONG, MR. SCOTT, AND MR. JAVITS OF THE COMMITTEE OF THE JUDICIARY SUPPORTING THE ADOPTION OF S. 1564, THE VOTING RIGHTS ACT OF 1965

[To accompany S. 1564, to enforce the 15th amendment of the Constitution of the United States]

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JOINT VIEWS OF 12 MEMBERS OF THE JUDICIARY COMMITTEE RELATING TO THE VOTING RIGHTS ACT OF 1965

The undersigned 12 members of the committee jointly submit the following individual views.

INTRODUCTION

The bill as introduced and reported is primarily intended to enforce the 15th amendment to the Constitution of the United States. Two principal means have been selected to accomplish this purpose. First, the bill would suspend the use of literacy and other tests and certain devices in areas where there is reason to believe that such tests and devices have been and are being used to discriminate on account of race and color. Second, the bill authorizes the appointment of Federal examiners to register persons in such areas. Criminal and civil remedies are provided for enforcement.

Because of differences of view concerning certain provisions of the bill, for example, section 9 which prohibits denial of the right to vote in any election for failure to pay a poll tax and section 4(a)(2) which provides a judicial avenue for States and subdivisions to seek the lifting of certain prohibitions otherwise imposed by the bill, these joint views do not cover such provisions. However, in the hope and expectation that a joint statement of those matters as to which we are agreed will be helpful, we submit this statement to express our recognition of the need for new, strong legislation to protect voting rights.

We all recognize the necessity to eradicate once and for all the chronic system of racial discrimination which has for so long excluded so many citizens from the electorate because of the color of their skins, contrary to the explicit command of the 15th amendment. We are also submitting an analysis of the various provisions of the bill as reported.

Three times within the past 8 years the Congress has attempted to secure the constitutional right to vote free from racial discrimination. Those attempts have not been full successful.

COMMITTEE ACTION

The President presented his proposals for a voting rights bill to a joint session of Congress on the evening of March 15, 1965, by a personal address and a written message. On March 16, the Senate received the President's message on voting rights and on March 17, the President submitted to the Senate the draft of the proposed legislation. This was introduced on Thursday, March 18, as S. 1564,

by Senators Mansfield, Dirksen, and a bipartisan group of 64 other Senators, and the Senate adopted a motion to refer the bill to the committee with instructions to report it back by April 9, 1965.

On Tuesday, March 23, the committee began hearings. Attorney General Katzenbach, the first witness, appeared for 3 consecutive days, in support of the need for and the constitutionality of the legislation. The Attorney General was questioned at length on many aspects of the bill. On March 29, hearings were resumed, with Mr. Charles Bloch, an attorney from the State of Georgia, appearing in opposition to the bill. On March 30, Judge Leander H. Perez, representing Governor McKeithen of Louisiana, testified in opposition to the legislation.

The Acting Director of the Census, Mr. A. Ross Eckler, and Mr. John W. Macy, Chairman of the U.S. Civil Service Commission, appeared in support of the bill on March 31. The assistant attorney general of Georgia, Mr. Paul Rodgers, Jr., appeared in opposition. On April 1 further testimony was heard—from Senator Sparkman, of Alabama, Mr. John Kilpatrick, editor, of Richmond, Va., representing the Virginia Commission on Constitutional Government, the Honorable Robert Y. Button, attorney general of Virginia, Mr. Frederick Gray, former attorney general of Virginia, and Mr. Thomas Watkins, attorney, representing the Governor of Mississippi. On April 2, Mr. Frank Mizell, attorney, appeared to testify as representative of a number of registrars of the State of Alabama. A statement from Attorney General Bruton, of North Carolina, was introduced into the record. On April 5, the committee heard the views of Senator Williams of Delaware, Senator Stennis, of Mississippi, and Senator Thurmond, of South Carolina. On April 6, 7, 8, and 9, the committee concluded its consideration of the bill in executive session.

From the interchange of ideas with these competent witnesses, coming from various parts of the country and representing different points of view, and from the plentiful and pertinent documentary material supplied by committee members and witnesses, a meaningful record was developed. On April 9, in conformity with instruction of the Senate, the bill was reported with amendments but because of the differences previously noted and insufficient time to resolve them, no recommendation was made.

HISTORICAL BACKGROUND

(a) *The 15th amendment and related legislation*

The 15th amendment, ratified nearly a century ago, provides that neither the Federal Government nor any State shall deny or abridge the right to vote on account of race, color, or previous condition of servitude, and specifically authorizes the Congress to enforce its provisions by appropriate legislation.

In May 1870, immediately after ratification, a sweeping statute to enforce the right to vote was enacted, act of May 31, 1870, 16 Stat. 140. This act declared the right of all citizens to vote without distinction of race, color, or previous condition of servitude; subjected to criminal penalties State officials who failed to give all citizens equal opportunity to qualify to vote; and punished violence, intimidation, and conspiracies to interfere with registration or voting. U.S. attorneys, marshals, and commissioners were charged with arresting and prosecuting per-

sons who violated the act and interference with these Federal officers was made punishable as a crime.

Another statute was passed the following year providing for a system of Federal supervisors of elections, act of February 28, 1871, 16 Stat. 4313. Among the duties of these supervisors were inspection of registration books and supervision of registration, poll watching on election day, counting ballots cast, and certifying the results of elections.

While these measures were sweeping, their enforcement was ultimately ineffective, and by 1894 most of them had been repealed.

(b) Literacy tests and similar 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 obligations 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 (1895), North 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), Lousiana (1921), Mississippi (1954).
5. Good moral character requirement (other than nonconviction of a crime): Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1960).

It is significant that in 1890, 69 percent or more of the adult Negroes in seven Southern States which adopted these tests were illiterate (Alabama, 78 percent; Louisiana, 77 percent; Georgia, 75 percent; Mississippi, 74 percent; South Carolina, 73 percent; North Carolina, 70 percent; Virginia, 69 percent). These percentages were much higher than comparable figures for white illiteracy (Alabama, 19 percent; Louisiana, 19 percent; Georgia, 17 percent; Mississippi, 13 percent; South Carolina, 18 percent; North Carolina, 25 percent; Virginia, 15 percent). See Compendium of the Eleventh Census, part III, page 316.

At the same time alternative provisions for qualifying to vote were adopted to assure that illiterate whites were not disfranchised. Thus, in Louisiana, North Carolina, and Oklahoma, white voters were exempted from the literacy test by a "'voting' grandfather clause." Louisiana constitution, 1898, article 197, section 5; North Carolina

[1] A number of examples appearing in the committee record showing that these tests and devices were adoped to disenfranchise the Negro. See, for example, *Ratliff* v. *Beall*, 74 Miss. 247, 20 S. Rept. 865, where the Mississippi Supreme Court, referring to the convention which adopted the Mississippi consitution of 1890 which contained literacy requirements, 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 Sates* v. *Mississippi*, No. 73, October term 1964, decided Mar. 8, 1965 (Slip op. pp. 14–15).

constitution, 1876, article VI, section 4, as amended in 1900; Oklahoma constitution, 1907, article III, section 4a, as amended in 1910. The same result was accomplished in Alabama, Georgia, and Virginia by the so-called " 'fighting' grandfather clause." See Alabama constitution, 1901, section 180; Georgia constitution, 1877, article II, section 1, paragraph IV (1–2), as amended in 1908; Virginia constitution, 1902, section 19. Several of these States provided a separate exemption from the literacy requirement for property holders. See Louisiana constitution, 1898, article 107, section 4; Alabama constitution, 1901, section 181, second; Virginia constitution, 1902, section 19, third; Georgia constitution, 1877, article II, section 1, paragraph IV(5). And Alabama and Georgia additionally exempted persons of "good moral character" who understood "the duties and obligations of citizenship under a republican form of government." Alabama constitution, 1901, section 180, third; Georgia constitution, 1877, article II, section 1, paragraph IV(3), as amended in 1908. Another device, invented by Mississippi, and followed, for a time, by South Carolina and Virginia (and later Louisiana) offered white illiterates an opportunity to qualify by satisfying the registrar that they could "understand" and "interpret" a constitutional text when it was read to them. Mississippi constitution, 1890, section 244; South Carolina constitution, 1895, article II, section 4(c); Virginia constitution, 1902, section 19, fourth; Louisiana constitution, 1921, article VIII, section 1(d). For later registrants, South Carolina substituted a property alternative. South Carolina constitution, 1895, article II, section 4(d). The grandfather clause was struck down by the Supreme Court in 1915 (*Guian* v. *United States*, 238 U.S. 347) but the other devices remained and discrimination continued.

(*c*) *Other methods of discrimination*

The history of 15th amendment litigation in the Supreme Court—from the beginning (*United States* v. *Reese*, 92 U.S. 214; *Ex Parte Yarborough*, 110 U.S. 651) through the "grandfather clause" (*Guinn*, *supra*; *Myers* v. *Anderson*, 238 U.S. 368), and the "white primary" (*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*, *supra*)—indicates both the variety of means employed to bar Negro voting and the durability of these discriminatory policies.

The barring of one contrivance has too often 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*, — U.S. — (1965). The 15th amendment was intended to nullify "sophisticated as well as simple-minded modes of discrimination," *Lane* v. *Wilson*, 307 U.S. 263, 275 (1939).

RECENT CONGRESSIONAL EFFORTS TO ELIMINATE DISCRIMINATION: THE CIVIL RIGHTS ACTS OF 1957, 1960, AND 1964

In 1957, Congress enacted its first major civil rights statute since the Reconstruction era. The Civil Rights Act of 1957 authorized the

Attorney General to bring civil actions for injunctive relief to redress denials of the right to vote on account of race or color. He was also authorized to seek injunctive relief against intimidation, threats, or coercion for the purpose of interfering with the right to vote in Federal elections.

The 1957 act also created the Civil Rights Commission and charged it with investigating denials on the right to vote and other matters.

The act's impact on eliminating voting discrimination has been disappointing. The inability to gain access to voting records impeded effective enforcement of the act. In one suit, it was held that where registrars had resigned there was no one who could be sued since the act, in the view of the Court, did not authorize suit against the State as such. *United States* v. *Alabama*, 171 F. Supp. 720 (M.D. Ala. 1959), *affirmed*, 267 F. 2d 808 (C.A. 5, 1961). While this case was pending in the Supreme Court, Congress enacted the Civil Rights Act of 1960, which contained a provision specifically authorizing joinder of a State as a party defendant.

The 1960 statute also amended the 1957 act in two other significant respects. First it required election officers to retain and preserve voting records and to permit the Attorney General or his representatives to inspect and photograph the records. Second, it provided that if, in a suit under the 1957 act the court finds that discrimination has been pursuant to a "pattern or practice," persons who are thereafter refused registration by State officials may apply directly to a Federal court or a voting referee, and that the court or referee shall issue an applicant a certificate entitling him to vote if he is found qualified under State law, and "qualified under State law" was defined to mean qualifications not more stringent than those required of persons who were registered by State officials in the past.

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 under such law to other individuals in the past; (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.

THE ADEQUACY OF THE CIVIL RIGHTS ACTS OF 1957, 1960, AND 1964

Experiencee has shown that the case-by-case litigation approach will not solve the voting discrimination problem. The statistics alone are conclusive. In Alabama in 1964 only 19.4 percent of voting age Negroes were registered to vote, an increase of only 9.2 percent since 1958. In Mississippi approximately 6.4 percent of voting age Negroes were registered in 1964, compared to 4.4 percent 10 years earlier. And in Louisiana Negro registration appears to have increased only one-tenth of 1 percent between 1958 and 1965.

The inadequacy of existing laws is attributable to both the intransigence of local officials and dilatory tactics, two factors which have largely neutralized years of litigating effort by the Department of Justice. The former Assistant Attorney General in charge of the Civil Rights Division, Mr. Burke Marshall, stated in his recent book, "Federalism and Civil Rights," at page 16:

> When the will to keep Negro registration to a minimum is strong, and the routine of determining whose applications are acceptable is within the discretion of local officials, the latitude for discrimination is almost endless. The practices that can be used are virtually infinite.

Mr. Marshall also described the first four cases filed in 1961 as "characterized by seemingly endless litigation to bring about minimal results," id. at 32. The history of one of those cases—filed against the Board of Registrars of Dallas County, Ala.—illustrates this failure of existing law.

Dallas County, with Selma as the county seat, 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 Negroes—1 percent of the total—were registered to vote in Dallas County.

On April 13, 1961, the Government filed a lawsuit against the county board of registrars under the Civil Rights Acts of 1957 and 1960. The district court and the court of appeals found that the registrars in office when the suit was filed had been engaging for years in a pattern and practice of discrimination against Negroes. But when the case came to trial 13 months later, those registrars had resigned and new ones had been appointed. Although there was proof of discrimination by prior registrars, including the misuse of the application form as a test, the court found that the present registrars were not discriminating and it declined to issue an injunction. The Court of Appeals for the Fifth Circuit reversed, and, among other things, it disapproved the rejection of one Negro applicant for lack of "good moral character" without a hearing and on the basis of rumor and gossip. However, the court of appeals rejected the Government's contention that the registrars should be required to apply to Negroes the same standards applied to whites during the period of discrimination.

This form of relief, usually characterized as "freezing relief," is embodied in the voting referee provision of the Civil Rights Act of 1960 (42 U.S.C. 1971(e)) and, in recent cases, the court of appeals has applied the "freezing" principle. (See, *United States* v. *Mississippi* (*Walthall County*), 339 F. 2d 679 (C.A. 5, 1964); *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5, 1964)), as has the Supreme Court; *Louisiana* v. *United States*, — U.S. — (Mar. 8, 1965). But the failure to secure "freezing" relief in the first Dallas County appeal spelled substantial failure of 2½ years of effort to end voting discrimination in that county.

The Dallas County Board of Registrars continued to discriminate after the injunction was issued. It was proved at the second trial that between May 1962 and August 1964 795 applications for registration had been filed by Negroes but that only 93—12 percent of the Negro applicants—had been registered. During the same period, 945 of 1,232

white applicants—more than 75 percent—were registered. The court found that specific discriminatory practices were still used, including the manipulation of literacy requirements. It pointed out that the registrars had raised the standards for both Negro and white applicants; that the percentage of rejections for both races had more than doubled since the first trial in May 1962. Only a token number of Negroes were registered. These discriminatory practices assured that white political supremacy was unlawfully maintained in Dallas County.

In February 1964, an additional barrier to Negro registration was erected when registrars throughout Alabama, including those in Dallas County, began using a new application form which included a difficult literacy and knowledge-of-government test. In September 1964 another, and still more difficult test, prescribed by the State supreme court, was adopted and administered by the Dallas County registrars. Because registration in Alabama is permanent, the great majority of white voters in Selma, already registered under easier standards, were not required to pass these tests, so that, as a practical matter, it was applied almost exclusively to the unregistered Negroes.

On February 4, 1965, nearly 4 years after suit was originally filed, the district court entered a second decree which, among other things, enjoined use of the new literacy and knowledge-of-government tests and dealt with serious problems of delay in processing applications for registration.

The effectiveness of the litigation approach in Selma, Ala., is to be judged, in large measure, by the fact that less than 3 percent of the voting age Negroes in Dallas County are registered to vote.

The voting referee provisions have also proved inadequate in Perry County, Ala. In August 1962, a suit was brought against the Perry County Board of Registrars under the Civil Rights Acts of 1957 and 1960, alleging racial discrimination against Negro applicants for voter registration. As the court found, at that time 3,100 white persons—90 percent of the adult whites—and 257 Negroes—5 percent of the adult Negroes—were registered to vote. After a trial in October 1962, the Federal district court in November enjoined the board of registrars from discriminating and from engaging in a number of specific discriminatory practices, including the rejection of applicants for inconsequential errors on the application form.

In January 1963, civil contempt proceedings were initiated, on the ground that the board had defied the court's order. At the same time, and in order to bring about the registration of qualified Negroes, the voting referee machinery of the 1960 act—which permits application for registration to be made directly to the court or to a voting referee—was invoked by 173 Perry County Negroes who wrote letters to the Federal district court explaining that their applications for registration had been rejected by the State registrars since the court's decree and asking the court's help. The relief provided by the court was to order the board of registrars to meet on special registration days and reconsider the qualifications of those who had written the letters. The board of registrars met, reconsidered, and again rejected most of these Negro applicants.

During August and September 1963, an additional 175 letters were filed in the district court. Again the court did not consider them

directly, ruling that these letters "do not contain requisite information to qualify them as applications" under the statute.

In July 1964, the court of appeals reversed, directed the district court to process the applications, and suggested that "the judge may well find it helpful to utilize the services of a referee."

In September 1964, the district court appointed a practicing attorney from nearby Hale County, Ala., to act as referee. The referee notified the Negroes who had written letters to the court that he would hold hearings on their applications, and 134 Negroes presented themselves to demonstrate their qualifications.

Although the statute provides that in judging the applicant's qualifications to vote, the standards used may be no more stringent than those previously applied to white applicants during the period of discrimination, and although virtually no standards of literacy had been imposed in the past, the referee administered to the Negroes a knowledge-of-government test and a literacy test. He also subjected them to an oral dictation test, notwithstanding the earlier enactment of the 1964 Civil Rights Act requiring literacy tests to be "wholly in writing."

Following the hearings, the referee filed his reports in the district court, recommending the rejection of 110 of the 134 Negroes. On November 18, the district court confirmed the referee's report in all respects.

The Department of Justice appealed and, this time, obtained an order expediting the hearing of the appeal, which is now set for argument on May 20, 1965—over 2 years after the first applications were filed in the district court under the voting referee provisions of the Civil Rights Act of 1960.

The history of the Perry County case points up some of the inadequacies of the voting referee machinery of the 1960 act. Delay is one defect. Because the government must challenge the referee's decisions, the 1960 act has the effect of interjecting yet another stage of litigation into the case. There are other defects. The remedy is not applicable at all until the Government has brought and won a lawsuit and proved discrimination "pursuant to a pattern or practice." The statute requires that referees be qualified voters of the Federal judicial district. In some districts, because of community pressures, this is difficult.

DISCRIMINATORY MISUSE OF TESTS AND DEVICES IS A WIDESPREAD PRACTICE

The most graphic evidence of the use of tests and devices to deny or abridge the right to vote on account of race or color appears in tables submitted for the record by the Department of Justice (apps. G, H, and I). These tables show that the Department has instituted 12 voting discrimination suits in Alabama, 22 in Mississippi, and 14 in Louisiana.

The results of the suits which have gone to judgment to date are striking. 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 Alabama eight cases have been decided, and the courts have found discriminatory use of tests and devices in all eight. In Mississippi nine cases have been decided, and the courts have found disciriminatory use of tests and devices in all

nine. Again, in Louisiana, nine cases have been decided, and the courts have found disciriminatory use of tests and devices in all nine.

Nor has the abuse of tests and devices in these instances reflected only isolated deviations from the norm. In all eight decided cases in Alabama the courts have found that the discriminatory use of tests or devices has been pursuant to a "pattern or practice" of racial discrimination. In seven of the nine concluded lawsuits in Louisiana a pattern or practice has been found, and, of the other two, the pattern or practice issue is yet to be decided by the court in one case, and the other was decided prior to enactment of the 1960 Act which first enacted into law the pattern or practice concept. And in Mississippi, of the nine cases decided by the district courts, a pattern or practice has been found by the courts in five cases, the defendants have admitted a pattern or practice in two others, and appeals are currently pending in the other two.

For example, in *United States* v. *Louisiana* (225 F. Supp. 353 (E.D. La. 1963)), where the United States challenged the validity of the State's constitutional interpretation test, the three-judge court found "massive evidence that the registrars [in a number of different counties] discriminated against Negroes not as isolated or accidental or unpredictable acts of unfairness by particular individuals, but as a matter of State policy in a pattern based on the regular, consistent predictable unequal application of the tests" (225 F. Supp. 381). The Supreme Court, affirming the district court, found that the constitutional interpretation test "as written and applied was part of a successful plan to deprive Louisiana Negroes of their right to vote."

Similarly, the application form has often been used as a test which only Negroes must "pass" in order to qualify. In *United States* v. *Alabama* (334 F. 2d 583 (C.A. 5)), the court of appeals found that the requirement of filling out a lengthy application form "became the engine of discrimination" because whites "were given frequent assistance in determining the correct answers" whereas "Negroes not only failed to receive assistance, [but] their applications were rejected for slight and technical errors" (304 F. 2d 587). Similarly, in Panola County, Miss., the court of appeals found the application form "was treated largely as an information form when submitted by a white person" but as "a test of skill for the Negro" (*United States* v. *Duke*, 332 F. 2d 759, 767 (C.A. 5)).

Another example of the difference in treatment accorded whites and Negroes occurred in George County, Miss., where Negro college graduates were rejected while a white applicant was registered who gave the following interpretation of a State constitutional provision that "there shall be no imprisonment for debt": "I think that a Neorger should have 2 years in college be fore voting be cause he don't under stand." He also had explained to the registrar's evident satisfaction that the duties and obligations of citizenship were "under Standing of pepper & Government ship bessing."

Often whites are not made to take the tests at all. See *United States* v. *Clement* (231 F. Supp. 913 (W.D. La.)), where Judge Dawkins said:

> Professionally trained Negroes [including public school principals and teachers] were rejected on the basis of the oral test, while white persons with sixth grade education and less were registered without taking the test at all.

To the same effect, see *United States* v. *Duke*, *supra; United States* v. *Mississippi* (*Walthall County*) (339 F. 2d 679 (C.A. 5); *United States* v. *Raines* (189 F. Supp. 121 (N.D. Ga.)); *United States* v. *Wilder* (222 F. Supp. 749 (W.D. La.)); *United States* v. *Crawford* (229 F. Supp. 898 (W.D. La.)); *United States* v. *Ramsey* (8 R.R.L.R. 156 (S.D. Miss.), *affirmed*, 331 F. 2d 824 (C.A. 5)).

Similar examples of discriminatory misuse of literacy tests and devices, including misuse of the application form as a test, can be found in *United States* v. *McElveen* (180 F. Supp. 10 (E.D. La.), *affirmed*, 362 U.S. 580); *United States* v. *Atkins* (323 F. 2d 733 (C.A. 5)); *United States* v. *Penton* (212 F. Supp. 193 (M.D. Ala. 1962)); *United States* v. *Parker* (236 F. Supp. 511 (M.D. Ala. 1964)); *United States* v. *Mississippi* (*Walthall County*), *supra* (C.A. 5 1964); *United States* v. *Lynd* (301 F. 2d 818 (C.A. 5), certiorari denied, 571 U.S. 893 and 321 F. 2d 26 (C.A. 5), certiorari denied, 375 U.S. 968); *United States* v. *Raines*, *supra; United States* v. *Fox* (211 F. Supp. 25 (E.D. La.), *affirmed*, 334 F. 2d 449 (C.A. 5, 1964)); *United States* v. *Clement* (231 F. Supp. 913 (W.D. La. 1964)); *United States* v. *Wilder*, *supra; United States* v. *Ramsey*, *supra; United States* v. *Cartwright* (230 F. Supp. 873 (M.D. Ala.)); *United States* v. *Hines* (9 R.R.L.R. 1332 (N.D. Ala.)); *United States* v. *Crawford* (229 F. Supp. 898 (W.D. La.)); *United States* v. *Association of Citizen Councils* (196 F. Supp. 908 (W.D. La.)); *United States* v. *Ford* (9 R.R.L.R. 1330 (S.D. Ala.)); *United States* v. *Cox* (— R.R.L.R. — (N.D. Miss.)); *United States* v. *Atkins* (— F. Supp. — (S.D. Ala. 1965)); *United States* v. *Campbell* (— F. Supp — (N.D. Miss. 1965)).

Tests of knowledge of a wide variety of subjects, including the duties and obligations of citizenship, have been used for discriminatory purposes or with a discriminatory effect (*United States* v. *Atkins*, — F. Supp. — (S.D. Ala. 1965); *United States* v. *Atkins*, 323 F. 2d 733 (C.A. 5); *United States* v. *Parker*, 236 F. Supp. 511 (M.D. Ala. 1964); *United States* v. *Louisiana*, 225 F. Supp. 553 (E.D. La.), *affirmed*, — U.S. — (March 8, 1965)), including requirements that the applicant know, understand, or interpret his exact age in years, months, and days (*United States* v. *McElveen*, 190 F. Supp. 10, 12–13 (E.D. La.), *affirmed*, 362 U.S. 580) or knowledge of local government (as in *United States* v. *Ward*, (S.D. Miss.) appeal pending (C.A. 5)).

Decisions in cases filed by the Department of Justice show that illiterate whites have been registered in Mississippi in at least Clarke, Forrest, George, Panola, Sunflower, Tallahatchie and Walthall Counties. In Alabama illiterate whites were registered at least in Macon and Sumter Counties. In Louisiana illiterates were registered in Jackson and Plaquemines Parishes.

Indeed, the practice of registering illiterates is doubtless much more common than these cases reveal. Often it was not essential to the government's cases to show this because of other practices which disguise the registration of illiterate whites, *e.g.*, simple failure to administer tests to whites at all, assisting whites in filling out forms and answering questions, allowing whites to register by merely signing the registration book, registration by proxy, and the like.

Thus, in Dallas County, over a 6-year period 47 percent of white application forms were filled out by someone other than the applicant, and the answers to one question on 1,160 of these forms were

proved by expert handwriting analysis to have been filled out by a registrar.

The voucher requirement has similarly been used to effect discrimination. Registrars have required Negroes, but not whites, to produce supporting witnesses to vouch for them (*United States* v. *Ward*, 222 F. Supp. 617 (W.D. La.)). Registrars have required Negroes to produce whites to vouch for them (*United States* v. *Hines*, *supra*; *United States* v. *Manning*, 205 F. Supp. 172 (W.D. La.); *United States* v. *Logue*, — F. Supp. — (S.D. Ala.), appeal pending (C.A. 5); *United States* v. *Ward*, *supra*), and registrars have helped whites, but not Negroes, in obtaining supporting witnesses (*United States* v. *Hines*, *supra*).

And "good moral character" requirements have also been instruments of discrimination. In addition to the Dallas County incident earlier described (*United States* v. *Atkins*, 323 F. 2d 733 (C.A. 5)), such misuse has been challenged in a number of pending suits. *E.g.*, *United States* v. *Ward* (No. 21,717 (George County, Miss.) (C.A. 5)); *United States* v. *Daniel* (Jefferson Davis County, Miss.) (S.D. Miss.); *United States* v. *Bellanyder* (Jefferson County, Ala.). Thus in George County, Miss., a Negro was rejected for bad character on the basis of "complaints" of immoral conduct on his part, without any opportunity for him to rebut the "charge."

These practices often continue despite the entry of court decrees. To cite but one example, in *United States* v. *Penton* (212 F. Supp. 193 (M.D. Ala.)), the district court, noting that it had previously decided two voting rights suits, said that "in spite of these prior judicial declarations, the evidence in this case makes it clear that the defendant State of Alabama * * * continues in the belief that some contrivance may be successfully adopted and practiced for the purpose of thwarting equality in the enjoyment of the right to vote by citizens of the United States * * *." Even after the district court's decision in *Penton*, the discriminatory activity continued. In *United States* v. *Parker* (236 F. Supp. 511 (M.D. Ala.)), decided December 17, 1964, the court found that since its previous order in *Penton*, the Board of Elections of Montgomery County had instituted a "new application form * * * as a means for continuing the rejection of qualified Negro applicants. * * *" Court orders have also been evaded or disregarded in Forrest and Tallahatchie Counties in Mississippi, Dallas, Perry, Bullock, and Macon Counties in Alabama, and Plaquemines Parish in Louisiana, to cite just some instances.

Moreover, the Department of Justice has filed actions alleging that Mississippi, Alabama, and Louisiana have each enacted new and more onerous qualifications laws which discriminate against Negroes even if fairly administered, since registration is permanent in these States and the vast majority of Negroes barred unlawfully in the past must now submit to these new tests or devices while most of the whites have a lifetime exemption. See *United States* v. *Board of Registration of Louisiana* (E.D. La.); *United States* v. *Mississippi* (— U.S. — (March 8, 1965)); *United States* v. *Louisiana* (— U.S. — (March 8, 1965)); *United States* v. *Baggett* (M.D. Ala.).

These facts speak clearly: In widespread areas of several States tests and devices as defined in this bill have been effectively used to deny or abridge the right to vote on account of race or color.

THE MEANS CHOSEN FOR "TRIGGERING" THE SUSPENSION OF TESTS AND DEVICES AND FOR AUTHORIZING APPOINTMENT OF EXAMINERS

Section 3 of the bill as reported follows the judicial remedy tradition by providing for suspension of tests and devices and appointment of examiners after a judicial determination has been made that violations of the 15th amendment have occurred (except that examiners may be appointed as part of interlocutory judicial relief).

Under section 4, however, tests or devices would be suspended, and the appointment of examiners authorized, upon the coincidence of three factors: (1) Where such tests or devices were maintained as a qualification for voting on November 1, 1964; (2) where less than 50 percent of persons of voting age (other than aliens, and military personnel and their dependents) were registered to vote on November 1, 1964, or voted in the presidential election of 1964; and (3) where more than 20 percent of the 1960 voting age population was nonwhite. In addition, tests and devices would be suspended and examiners authorized whenever the Attorney General requests and the Census Director determines by a survey that fewer than 25 percent of persons of voting age of any race or color are registered to vote at the time of the survey.[2]

The record before the committee leaves no doubt that, where the three factors described above are present, low electoral participation is almost always the result of racially discriminatory use of tests and devices. The evidence supporting this conclusion is overwhelming.

In the presidential election of 1964, ballots were cast by 62 percent of the American electorate. (See app. A.) Only 17 States fell below the national average. In 9 of these 17 States, fewer than 50 percent of the persons of voting age voted in the presidential election of 1964. Of these nine States, seven employed tests or devices. A survey of registration data in six of these States (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia) indicates that a large proportion of nonwhites of voting age are not registered to vote. (See app. C.) In these States the low percentage of persons who voted in the presidential election of November 1964 reflects the large numbers of nonwhites of voting age who were not registered. Only in Virginia is less than 20 percent of the voting age population nonwhite. However, in 43 of 130 political subdivisions (counties and independent cities) in Virginia, in which less than 50 percent of the voting age population, excluding aliens and persons in active military service and their dependents, the nonwhite voting age population is more than 20 percent of the total.

While evidence of racial discrimination in the voting process has been found in at least five of these States—Alabama, Mississippi, Louisiana, South Carolina and Georgia—the Department of Justice has focused its efforts primarily on areas where voting discrimination has been most severe.

We have described earlier the large number of lawsuits brought by the Department of Justice in Alabama, Louisiana, and Mississippi, the number of court findings of discrimination by abuse of tests and devices, the number of findings of a pattern or practice of discrimination, and the fact that no voting discrimination case brought by the De-

[2] The undersigned hold differing views with respect to this provision. It is not discussed further herein.

partment has ever been concluded without a finding of discrimination. The statistics for counties in which these numerous suits were brought uniformly support the conclusion we have reached that low registration and voting has been the result of racially discriminatory use of tests and devices.

Thus, in the Alabama counties where suits were brought by the Department of Justice, the figures show a substantial nonwhite voting age population, a high percentage of white registration, a low percentage of nonwhite registration and low voter turnout in the presidential election of 1964. (See app. D.) Similarly, in the Mississippi counties where suits were instituted, the statistics again reveal a substantial nonwhite voting age population, a high percentage of white registration and a low voter turnout in the presidential election. (See app. F). And the statistical pattern holds true in Louisiana: a substantial nonwhite voting age population in each county where a suit has been filed, a high percentage of whites registered, a low percentage of nonwhites registered, and a low voter turnout in the last presidential election. (See app. E.)

An analysis of the registration data for the States covered by section 4(b) (1) and (2) reveals a similar pattern: a substantial nonwhite voting age population, a high percentage of white registration, a low percentage of nonwhite registration, a low voter turnout in the presidential election of 1964, and the use of a test or device. (See app. C.)

Another similarity exists among the States of Alabama, Georgia, Louisiana, Mississippi, and South Carolina. Each has had a general public policy of racial segregation evidenced by statutes in force and effect in the areas of travel, recreation, schools and hospital facilities. (See app. J.) Of the 21 States which maintain a test or device (see app. B), there are only 3, other than these 5, which have had a policy of racial segregation reflected by their laws. In one of these, North Carolina, 29 out of 100 political subdivisions are covered by the bill. In another, Virginia, 43 out of 130 political subdivisions are covered. The third, Delaware, is a State whose statutes now reflect a reversal of that policy. This reversal is evidenced by the recent enactment of antidiscrimination statutes in areas of public accommodations and employment.

On the other hand, 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 in education, public accommodations, employment, and housing. (See app. K.) Since these States express, in so many areas, a public policy against racial discrimination, it may be assumed—and the record shows no contrary evidence—that discrimination in voting on account of race does not exist.

In conclusion it appears—

(*a*) that where there is a substantial nonwhite voting age population;

(*b*) that where tests or devices are used; and

(*c*) that where there is low voter participation—

this low voter participation and accompanying low nonwhite registration almost always is caused by the discriminatory use of tests or devices in violation of the 15th amendment.

Section 4(a) provides for an "escape clause" under which a State or separate subdivision as to which the determinations provided for in section 4(b) (1) and (2) have been made as a separate unit may come into the District Court for the District of Columbia and show that no test or device has been used in a discriminatory manner during the 5 preceding years. This means that in such an area where in fact discrimination has been for that period and is nonexistent—assuming such an area to exist—that fact may be shown and the prohibition on tests and devices lifted accordingly. The 5-year period was selected in order to provide for an appropriate period of proof of the elimination of the effects of past discrimination.

The undersigned support the provisions of the bill which provide for the appointment of examiners under the circumstances set forth in the bill. History has shown that suspension of the tests and devices alone would not assure access of all persons to voting and registration without regard to race or color. The maladministration of tests and devices has been the major problem. Other tactics of discrimination, however, have been used and could readily be resorted to by State or local election officials where tests and devices have been suspended.

That this is so is demonstrated by two recent actions 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, — U.S. — (Mar. 8, 1963)), 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. The appointment of examiners is the effective answer to such tactics.

We have also provided for the suspension of tests and devices until such time as the court determines that the State or subdivision has been for a 5-year period and is free of discrimination. Our reasons are as follows:

First, it appears from the history of the adoption of the tests and devices coupled with their record of their administration in the pertinent areas that they were not intended to and do not serve any purpose but to disenfranchise Negroes. In effect, these States and subdivisions have chosen not to have tests and devices because they are not applied to all applicants to register and vote. Under these circumstances we believe the applicable rule to be that declared by the late Mr. Justice Felix Frankfurter:

> It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled State practice cannot supplant constitutional guarantee, but it can establish what is State law. The equal protection clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out State policy, * * * are often tougher and truer law than the dead words of the written text (*Nashville, C. & St. L. Ry.* v. *Browning*, 310 U.S. 362, 369 (1940)).

In suspending the use of tests and devices, Congress would be applying to Negroes the "law" applied to whites.

Second, many tests and devices used in these States are not susceptible of fair administration. For example, this is the case with respect to the requirement that registered voters must vouch for new applicants in areas where practically no Negroes are registered and where whites cannot be found to vouch for Negroes.

Third, many State laws setting high registration requirements have been recently enacted following a long period of racial discrimination. Fair administration would freeze the present white-Negro registration disparity created by past violations of the 15th amendment. As the Supreme Court stated in *United States* v. *Louisiana* (— U.S. — (Mar. 8, 1965)), under such circumstances the laws ought not to be applied.

Fourth, the educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reffected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attributable to the States and localities involved.

Fifth, it would be unfair to apply these tests or devices to Negroes in States whose voting laws were enacted while large numbers of Negroes were illegally disenfranchised and had no say in the adoption of the laws. The proper solution is to enfranchise the Negroes on the same terms as the whites have been permitted to vote and then, after a period of time during which equal voting rights are exercised, permit the people to determine such qualifications as they desire. This is what the bill will do.

Sixth, as described, local officials commonly have not applied the tests and devices to whites. If examiners were required to administer them, there is risk that, while examiners were applying them to Negroes who apply, whites would be registered by local officials who would not be requiring compliance.

We are also of the view that an entire State covered by the test and device prohibition of section 4 must be able to lift the prohibition if any part of it is to be relieved from the requirements of section 4. The statewide ban is a prophylactic measure grounded on the probability of future discrimination throughout the State even if it may not now exist in some areas. As the Supreme Court said about title II of the Civil Rights Act of 1964:

> With this situation spreading as the record shows, Congress was not required to await the total dislocation of commerce. * * * "Congress was entitled to provide reasonable preventive measures * * *." (*Katzenbach* v. *McClung*, 379 U.S. 294, 301).

Moreover, in most of the States affected by section 4 local boards of registration are so closely and directly controlled by and subject to the direction of State boards of election—and, indeed, the State legislature—that they would be required to misapply tests and devices, irrespective of their own inclinations, if this suited the general policy of the State government.

CONSTITUTIONALITY [3]

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. 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" (Amend. XV., § 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 abridgement 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 wtihin 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*, already referred to, still speaking of the three postwar amendments, the Court continues (100 U.S. 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 the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

[3] This section of the statement is not intended to comment upon or discuss the constitutionality of sec. 9, the poll tax provision.

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 just 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 about action, 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 constitutionality 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, the 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.

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."

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. The section is the same as introduced except that changes have been made to make clear that the rights protected are those of citizens of the United States and to set out with more specificity the breadth of those rights and to harmonize the language with title I of the Civil Rights Act of 1964.

Section 3

This section affords a means of dealing with denial or abridgement of the right to vote on account of race or color wherever it may occur throughout the States or subdivisions of the United States. Nothing in this section is intended to limit the powers of a court under statutes previously enacted.

Subsection 3(a).—The bill as introduced did not contain an equivalent of this subsection. The subsection as reported 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 is required to 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 shall determine in which subdivision or subdivisions and for what period of time the appointment of examiners is appropriate to enforce the guarantees of the 15th amendment. The court is not required to authorize the appointment of examiners if the incidents of violations of the 15th amendment (1) have been limited 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 provision is in addition to the provisions of section 4 and the provisions for appointment of examiners in section 6(b).

Subsection 3(b).—The bill as introduced did not contain an equivalent of this subsection. Section 3(b) as reported by the committee 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 of denying or abridging the right of any citizen to vote on account of race or color, the court is required to 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. If the court finds that any test or device has been used with the intent to discriminate on account of race or color or, in the alternative, has had that effect, or both, it may enjoin the use of tests or devices. A test or device is enjoinable also if its application would perpetuate past discrimination. The court may, of course, exercise power granted under this subsection at the same time as it authorizes the appointment of examiners under subsection 3(a).

Subsection 3(c).—The substance of section 8 of the bill as introduced has been retained in this subsection and in section 5 of the bill as reported. This provision is intended, by providing for judicial scrutiny of new or changed voting requirements, to insure against the erection of new discriminatory voting barriers by States or political subdivisions which have already been found to have discriminated.

Subsection 3(c) as reported provides that if in a lawsuit brought by the Attorney General the court finds violations of the 15th amendment justifying equitable relief, jurisdiction shall be retained as appropriate and the court shall order that any voting qualification, prerequisite, standard, practice, or procedure different from that in force or effect when the action was brought shall be submitted to the Attorney General. If the Attorney General files an objection with the court within 60 days after such submission to him by the chief legal officer or other appropriate official of the State, the voting qualification, prerequisite, standard, practice, or procedure in dispute shall not be enforced unless and until the court finds that it does not have the purpose or will not have the effect of denying or abridging the right to vote on account of race or color. Neither the court's finding nor the Attorney General's failure to object is to constitute a bar to a subsequent action, for example, one growing out of the applications of practice or procedure which had been found unobjectionable on its face, to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Section 4

Subsection 4(a).—This subsection is based upon section 3 of the bill as introduced, but major modifications have been made. This subsection assures that no citizen of the United States in any State or political subdivision for which determinations have been made pursuant to subsection 4(b) shall be denied 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 [4] the procedure by which States and political subdivisions can seek court approval of the use of 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, however, will not be permitted to resume the use of tests or devices unless and until the district court makes one of two determinations:

> (1) 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 of denying or abridging the right to vote on account of race or color. The court may not make this determination if any test or device has been used with the intent of discriminate on account of race or color or, in the alternative, if its use has had that effect, or both (subsec- 4(a)(1)) : or
>
> (2) in the alternative that (*a*) either the percentage of persons in such State or political subdivision that voted in the presidential election most recent to the filing of the action exceeded the na-

[4] The bill as introduced would have permitted a State or political subdivision to resume the use of tests or devices, upon the finding of a three-judge district court convened in the District of Columbia that neither the State nor a political subdivision or any person acting under color of law had engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. No State or political subdivision could file such action for 10 years after the entry of a final judgment determining that denials or abridgment of the right to vote by reason of race or color had occurred in its territory.

tional average of persons voting in such election, *or* that the percent of persons in the plaintiff State or political subdivision that have been registered to vote by State or local officials exceeds 60 percent of persons of voting age meeting residence requirements in such State or subdivision; *and* that (*b*) the State or subdivision can prove to the satisfaction of the court that there is no denial or abridgment of the right to vote on account of race or color in such State or in any political subdivision of such State (subsec. 4(a)(2)). Subsection 4(a) further provides that where a determination is made under either subsection 4(a)(1) or 4(a)(2) 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.

Where a proceeding under subsection 4(a) is brought by a State, it is our intention that a declaratory judgment issued in favor of such State shall not preclude the Attorney General, where appropriate, from requiring the court to reopen the action as to the State upon allegations of discrimination within a subdivision of such State.

Subsecton 4(a) further provides that in any proceeding brought pursuant to it, a final judgment of any court of the United States, rendered before or after the passage of this bill (but within 5 years of the declaratory judgment proceeding), determining that there have been denials or abridgments of the right to vote on account of race or color through the use of tests or devices anywhere within the territory of the plaintiff State or political subdivision, may be introduced as prima facie evidence of the facts found by the court. This proviso, however, is not intended to reduce the legal effect, including res judicata and estoppel, which such a final judgment has under existing law.

In any proceeding brought pursuant to this subsection, the Attorney General shall consent to the entry of a declaratory judgment if he determines that 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 or color, but his consent does not bar a later request for reopening based, for example, upon the application of a test or device not previously used in a discriminatory manner.

Subsection 4 (b).—This subsection prescribes the condtions under which the provisions of subsection 4(a) become effective. There are two alternative formulas. Each formula requires certain factual determinations—determinations that are not reviewable in court. Two of the three determinations required under the first formula are essentially the same as those in subsection 3(a) of the bill as introduced; the other determination required by this formula is new. The second formula under this subsection also is new.

Formula No. I

Subsection 4(b)(1).—This is the first of three determinations which must be made under the first formula 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 two determinations which the Director of the Census must make under the first formula before the provisions of subsection 4(a) become operative:

(*a*) First, the Director of the Census must determine that less than 50 percent of the persons of voting age, other than aliens and persons in active military service and their dependents, 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 exclusion from voting age population of aliens and military persons was added by the committee. 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.

(*b*) Second, the Director of the Census must determine that, according to the 1960 census, more than 20 percent of the persons of voting age were nonwhite in any State or political subdivision of a State. Where an entire State falls within this subsection, so does each political subdivision within that State. This determination was not required in the bill as introduced.

Formula No. II

Subsection 4(b)(3).—This subsection provides an alternative formula to that set out in subsection 4(b)(1) and 4(b)(2). It provides that even if a State or subdivision is not covered by a determination made pursuant to subsections 4(b)(1) and 4(b)(2), the provisions of subsection 4(a) will go into effect when the Director of the Bureau of the Census determines, by a survey made upon the request of the Attorney General, that the total number of persons of any race or color who are registered to vote for Federal and State and local elections in any State or political subdivision is less than 25 percent of the total number of all persons of such race or color residing in such State or political subdivision. It is not contemplated that the Attorney General will request a survey except when he has reason to believe that there has been denial or abridgment of the right to vote on account of race or color. If the information is not available in the files of the Bureau, such survey as is needed will be conducted in accordance with the usual practices of the Bureau of Census.

Subsection 4(c).—Under this subsection, a test or device would be within the terms of this act and particularly section 4 if it is a prerequisite for voting or registration for voting and if it is any one of the requirements described in clauses (1) through (4). The tests or devices proscribed in the bill as reported are identical to those set out in clauses (1) through (4) of section 3(b) of the bill as introduced.

Subsection 4(c)(1).—Under this subsection, a test or device includes any requirement for a demonstration of the ability to read, pronounce, write, understand, or interpret any matter on 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, for example, is intended to include a requirement that an applicant be familiar with provisions of Federal, State, or local law or demonstrate a 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 definition would not result in the proscription of the frequent requirement of States and political subdivisions that an applicant for voting or registration for voting be free of conviction of a felony or mental disability. It applies where lack of good moral character is defined in terms of conviction of lesser crimes.

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 is changed from subsection 3(c) in the bill as introduced, and clarifies the burden of proof required of a State or political subdivision to resume use of tests or devices. It provides that no State or subdivision shall be determined to have engaged in the use of tests or devices for the purpose 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.

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. The section is a substitute for section 8 of the bill as introduced.

Section 5 now permits a State or political subdivision to enforce a new or changed requirement 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 qualifications, prerequisites, standards, practice, or procedure both does not have the purpose or 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.

Neither the Attorney General's failure to interpose an objection or the entry of a declaratory judgment under this section will bar any subsequent actions, for example, one growing out of the application of a practice or procedure which had been found unobjectionable on its fact, to enjoin the enactment or enforcement of a new or changed voting qualification, prerequisite, standard, practice, or procedure.

Section 6.—This section, which is substituted for section 4(a) of the bill as introduced, provides for the appointment of examiners. Examiners are to be appointed by the Civil Service Commission when the Attorney General makes any one of three certifications.

First, when a court authorizes appointment of examiners pursuant to section 3(a), the Attorney General will certify this authorization to the Commission. This provision was not included in the bill as introduced, and was added to conform with the new section 3(a).

Second, the Attorney General may certify that he has received 20 or more meritorious complaints alleging denial of the right to vote under color of law on account of race or color 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. This provision is substantially similar to that in the original bill, but adds a clarification that such certifications may not be made with respect to subdivisions which come within a declaratory judgment rendered pursuant to section 4(a).

Third, the Attorney General may certify 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, directing that in making this determination the Attorney General is to consider among other factors whether the ratio of nonwhite persons to white persons registered in the subdivision can be fairly attributed to violations of the 15th amendment. Again, the new provision makes it clear that such certification may not be made as to subdivisions which come within a declaratory judgment rendered pursuant to section 4(a). Under express language in subsection 4(b), section 6 determinations and certifications of the Attorney General are final and nonreviewable by the courts.

Section 6 also authorizes the Civil Service Commission to appoint as many examiners as it deems necessary for each subdivision with respect to which certifications have been made. To the extent practicable, the examiners are to be residents of the State in which they will serve.

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 such applicants 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 provide that examiners, hearing officers provided for in section 8, and other necessary support personnel, including observers under section 10, shall be appointed and compensated without regard to any statute administered by the Civil Service Commission, including the civil service laws, the Veterans' Preference Act of 1944, as amended, section 11 of the Administrative Procedure Act, and the Classification Act of 1949, as amended. Such persons may be excepted 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 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 detailed basis in accordance with prevailing practice. 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 is similar to subsection 5(a) in the bill as introduced. The subsection provides that examiners, appointed pursuant to section 6 are to examine applicants at such places as the Civil Service Commission shall designate to determine their qualifications for voting. Specific authorization for the Civil Service Commission to designate places of examination was added by the committee.

This subsection requires the applicant to allege in his application that he is not otherwise registered to vote and that he has been deprived of the right to register or vote on account of race or color. A person may be "deprived of the right to register or vote on account of race or color" not only when his registration application is rejected but also when he is turned away at the polls, delayed by registrars, or when some other obstruction cognizable under the bill, deprives him of an effective opportunity to register or vote. The Attorney General may require the applicant further to allege that, within 90 days preceding his application he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law.

Subsection 7(b).—This subsection, which was originally numbered as subsection 5(b), has been slightly changed by the committee. It now provides that the examiner is to place on a list of eligible voters any applicant whom he finds, in accordance with instructions received under subsection 8(b), to have qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States. This latter provision was inserted by the committee to spell out specifically that while State law was to govern, this meant only State law which is not inconsistent with Federal law, including this act.

This subsection also provides that challenges to the examiner's listing are to be made in accordance with subsection 8(a) and are not to be the basis for a criminal prosecution under sections 11 and 12. This 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 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. registered 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 is identical, except for one minor language change, to subsection 5(c) in the bill as introduced. It 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, which was originally numbered as subsection 5(d), has been slightly changed by the committee. In its present form, it sets forth two conditions for removal of a person from the list, of eligible voters. These conditions are, first, a successful challenge taken in accordance with the procedure enumerated in section 8, and, second, demonstration 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. The only change from the bill as introduced is the deletion of a provision which permitted persons to remain on the list if they voted at least once during 3 consecutive years while listed. It was decided that a person should be removed from the Federal list for failure to vote under the same conditions as he would be removed from the State registration rolls.

Section 8

Subsection 8 (a).—This subsection provides for challenges to listings on the eligibility list and sets forth the procedure to be followed in making such challenge. It corresponds to subsection 5(a) of the bill as introduced. As reported by the committee, section 8(a) provides that a hearing officer appointed by and responsible to the Civil Service Commission shall hear challenges to listing on the eligibility list. Challenges are to be filed in an office within the State designated by the Civil Service Commission and may be entertained only if filed within 10 days after the listing of the challenged person is made available to public inspection and if supported by affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge. There must be a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged.

While the bill as introduced imposed a 7-day limitation upon determining the challenge, the present bill provides for 15 days. 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.

Subsection 8(b).—This subsection, which provides that the Civil Service Commissions shall prescribe regulations setting forth the times, places, procedures, and form for application, listing, and removals from the eligibility lists, parallels section 6(b) of the bill as

introduced, with one exception. While the original bill provided that the Civil Service Commission after consultation with the Attorney General shall instruct examiners only concerning the qualifications required for listing, the bill as reported by the Committee provides that the instructions shall concern relevant and valid State laws with respect also to the loss of eligibility to vote.

Subsection 8(c).—This is a new subsection. It grants the Civil Service Commission the power to subpena witnesses and documentary evidence relating to any matter pending before it, when request for a subpena is made either by the applicant or by the challenger. 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 9

This section was added during the Committee proceedings. It provides that no State or political subdivision shall deny or deprive any person of the right to register or vote because of his failure to pay a poll tax or any other tax or payment as a precondition of registration or voting.

The bill as introduced dealt with the poll tax in subsection 5(e). That provision provided that a person could not be denied the right to vote if he tendered payment of his current poll tax to an examiner, whether or not such tender was timely under State law. The effect of this provision was to waive payment of poll taxes for the years prior to the one in which the applicant sought to make payment to an examiner. Under this provision, examiners were required to transmit poll tax payment to the appropriate State or local officials.

Section 10

This section was added by the committee.

Subsection 10(a).—This subsection provides that in any political subdivision in which an examiner is serving, the examiner may assign representatives, who may be officials of the United States, (1) to be present at any polling place for the purpose of observing whether persons entitled to vote are permitted to vote and (2) to be present at any place where votes are tabulated for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

Subsection 10(b).—This subsection provides that no person shall obstruct, impede, or interfere with, or attempt to obstruct, impede or interfere with, any representative of the Department of Justice assigned to perform duties under section 10.

Section 11

This section is a revised version of section 7 of the bill as introduced. Its prohibitions may be enforced in criminal or civil actions pursuant to section 12.

Subsection 11(a).—This subsection prohibits persons acting under color of law from denying or abridging the right to vote or failing to count the vote of any person who is entitled to vote under any provision of this act.

Subsection 11(b).—This subsection prohibits persons whether acting under color of law or otherwise, from intimidating, coercing, or

threatening any person from voting or attempting to vote. It also prohibits similar conduct directed at any person exercising powers or duties as examiners, hearing officers, or observers under sections 3(a), 6, 8, 10, or 12(c).

Section 12

This section is similar to section 9 of the bill as introduced.

Subsection 12(a).—This subsection is similar to subsection 9(a) of the bill as introduced. It provides criminal penalties for "willfully and knowingly" depriving or attempting to deprive other persons of rights secured by section 2, 3, 4, 5, 7, 9, or 10 or for "willfully and knowingly" violating section 11 of the act. The phrase "willfully and knowingly" was inserted by the committee in the criminal provisions of the bill to make it clear, for example, that no criminal violation is involved where a person acts inadvertently.

Subsection 12(b).—The subsection is the same as subsection 9(b) in the bill as introduced except that the word "fraudulently" was inserted to make it clear that good faith inadvertent acts would not constitute criminal violations. The subsection provides criminal penalties for destruction or alteration of paper ballots and alteration of records made by voting machines or otherwise.

Subsection 12(c).—The subsection is the same as subsection 9(c) in the bill as introduced except that the phrase "willfully and knowingly" was inserted and the scope of the subsection was broadened by reference to additional sections of the bill. The purpose of the insertion of the "willfully and knowingly" language is the same as in subsection 12(a). This subsection provides criminal sanctions for conspiracies to violate subsections 12(a) and 12(b) and for interferences with any right secured by section 2, 3, 4, 5, 7, 9, 10, or 11.

Subsection 12(d).—This subsection is the same as subsection 9(d) in the bill as introduced except that the scope of the subsection was broadened by reference to additional sections of the bill and the concluding language of the provision rephrased. The subsection provides for a civil action by the Attorney General for preventive relief whenever he has 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 12(b). The court may issue appropriate orders 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 may be directed at a State or a State or local election official are not intended to be exclusive.

Subsection 12(e).—This subsection is substituted for subsection 9(e) of the bill as introduced. It provides that, in political subdivisions for which an examiner has been appointed, if any person alleges to the examiner within 24 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 appropriate State officials, and (2) that he is presently eligible to vote, the examiner shall immediately notify the U.S. attorney for the judicial district, if the allegations appear to the examiner to be well founded. Upon receipt of such notification, the U.S. attorney may, within 72 hours of the closing of the polls, apply to the Federal district court for an order requiring the casting or 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

deemed final and given effect. The district court is required to hold a hearing and determine the issues raised by the U.S. attorney's application immediately after it is filed. Other remedies provided by State and Federal law remain available.

Subsection 12(f).—This subsection is similar to subsection 9(f) of the bill as introduced. It provides that the Federal district courts shall have jurisdiction of proceedings instituted pursuant to section 12 of the act and that such jurisdiction shall be exercised without regard to whether a person asserting rights under the provisions of the act (which may include rights other than those appertaining to applicants for listing under the act) has exhausted any administrative or other remedies provided by law.

Section 13

This section is similar to section 10 in the original bill. It provides for the termination of listing procedures in political subdivisions both where examiners are appointed as a result of determinations made under section 4(b) and where the appointment of examiners is authorized by a court under section 3. Where the appointment of examiners is the result of a section 4(b) determination, listing procedures are terminated when the Attorney General notifies the Civil Service Commissioner (1) that all persons in the political subdivisions 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 subdivision involved. Any political subdivision may petition the Attorney General to terminate listings. Where appointment of examiners has been authorized by a court, pursuant to secton 3(a), listing by examiners 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 the provisions of section 151 of the Civil Rights Act of 1957. Section 151 provides for punishment by fine or imprisonment, or both, in criminal contempt cases but limits the fine to $1,000 and imprisonment to a term of 6 months. 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 subsecton has no effect upon usual civil contempt procedures which will continue to be tried without a jury.

Subsection 14(b).—This subsection parallels subsection 11(b) in the bill as introduced which confined 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 or any provision of this bill or any action of a Federal officer or employee under the authority of the bill. As reported by the committee, a court of appeals acting under section 8 will have the same authority. This was added to permit a court of appeals, in exercising its reviewing function under section 8, to issue necessary declaratory or injunctive orders in connection with setting aside or

enforcing a hearing officer's finding. All challenges to the constitutionality or legality of any provision of this bill or any action taken pursuant to it must be litigated in the District Court for the District of Columbia or, when applicable, in a proceeding under section 8, in the appropriate court of appeals. This subsection also was amended to provide that the right to intervene in any action brought under the authority of this act is limited to the Attorney General and to States, political subdivisions, and other appropriate officials.

Subsection 14(c).—Clause (1) of this subsection provides for this bill a definition of the term "vote." The definition makes clear that this bill extends to all elections—Federal, State, local, primary, special or general—and to all actions connected with registration, voting and having a ballot counted. Clause (2) of this subsection is new. It defines "political subdivision" as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State which conducts registration for voting. This definition makes clear that the term "political subdivision" is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting.

Subsection 14(d).—This subsection replaces subsection 11(d) of the bill as introduced which made 18 U.S.C. 1001 applicable to false statements to an examiner. As amended, this subsection provides a criminal penalty for knowingly and willfully giving false information to establish eligibility to register or vote under this act or for conspiracy with another for the purpose of encouraging illegal registration or voting or for paying or offering to pay or accepting payment either for fraudulent registration or illegal voting under the provisions of this act.

Section 15

This section is identical to section 12 of the bill as introduced. It authorizes the appropriation of such sums as are necessary to carry out the terms of this bill.

Section 16

This section is identical to section 13 of the bill as introduced. It 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 and that the invalidity of its application to any person or circumstances shall not affect its applicability to other persons or circumstances.

THOMAS J. DODD.
PHILIP A. HART.
EDWARD V. LONG.
EDWARD M. KENNEDY.
BIRCH BAYH.
QUENTIN N. BURDICK.
JOSEPH D. TYDINGS.
EVERETT MCKINLEY DIRKSEN.
ROMAN L. HRUSKA.
HIRAM L. FONG.
HUGH SCOTT.
JACOB K. JAVITS.

ADDITIONAL VIEWS OF SENATORS DODD, HART, LONG OF MISSOURI, KENNEDY OF MASSACHUSETTS, BAYH, BURDICK, TYDINGS, FONG, SCOTT, AND JAVITS, IN SUPPORT OF S. 1564

ELIMINATION OF THE POLL TAX

A significant amendment to S. 1564 adopted by a majority of the Judiciary Committee calls for the elimination of the use of a poll tax or any other tax or payment as a precondition of registering or voting.

At the present time five States require the payment of a poll tax as a condition for voting in State or local elections. The State of Arkansas has recently adopted a constitutional amendment to abolish the poll tax requirement and implementing legislation is expected to be passed in the near future. This leaves the States of Alabama, Mississippi, Texas, and Virginia as the only areas where payment must be made before the privilege of voting is allowed. In the opinion of a majority of the Judiciary Committee, the Congress not only has the authority to outlaw the poll tax in these remaining States but has the duty to do so at this time under the powers given Congress by section 5 of the 14th amendment and section 2 of the 15th amendment.

Three times in the last 8 years Congress has enacted legislation to deal with the denial of voting on the basis of racial discrimination. Had those laws been fully effective we would not now find ourselves faced with the necessity of once again having to act to insure this most basic privilege of our democratic form of government. The President, in suggesting this legislation to the Congress spoke for the Nation in calling for an end ot discrimination in the voting process. The legislation that was sent to the Congress was both strong and just. This majority of the Judiciary Committee, however, in considering the legislation have concluded that it is appropriate at this moment to take the final step to remove the one remaining arbitrary and irrational barrier to the franchise. The majority of the committee was of the mind that those who execise their talents and direct their energies to circumventing the will of Congress should be allowed no additional device or procedure to satisfy their purpose.

For this reason section 9 was added to the Voting Rights Act of 1965. We moved on the belief that the Congress of the United States has made a clear mandate under the 14th and 15th amendments to the Constitution to enforce those provisions in an appropriate manner. It was felt that if the question before us was clearly believed to be unconstitutional it would be inappropriate to so act, but where a genuine case can be made as to the constitutionality of abolishing the poll tax it was incumbent upon us not to refuse to so amend the bill merely because some have raised doubts as to future Supreme Court action.

The purpose of the poll tax in the Southern States where they have been enacted can clearly be shown to have been one of discrimination against Negroes. The Senate Judiciary Committee in 1942 so found as reported in Senate Report No. 1662. Again in 1943, in Senate Report No. 530, the Senate Judiciary Committee stated:

> 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 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 moved entirely and exclusively by a desire to exclude the Negro from voting.

The easily established fact that the poll tax was born for the purpose of disenfranchising Negroes would not be enough to have produced the current amendment. In addition we are convinced that there have been instances where the collection of such taxes has been undertaken in a blatantly discriminatory manner. In the case of Tallahatchie County, Miss., for example, it was found in a case brought by the United States that no colored residents were permitted to pay a poll tax, and affidavits were introduced showing that one applicant had been trying regularly to pay her poll taxes from 1951 to 1962, and another from 1952 to 1962. Each had been regularly turned down (*U.S.* v. *Dogan* 314 F. 2d 767 (Fifth Circuit 1963)).

But aside from instances where the procedures for collecting poll taxes have discourage or helped to discourage citizens from participating in the political process, the majority of members of the Judiciary Committee were convinced that the effect of the poll tax is, by its very nature, discriminatory. As we believe that literacy tests are, by their very nature, discriminatory as a result of recent legal separation of the races in education, so, too, the effect of legal and de facto segregation has had the result of placing Negro citizens in a significantly different economic situation than whites.

The poll tax is a far heavier economic burden on Negroes than on whites. According to the 1960 census, for example, median family incomes for white families in Alabama were almost 2½ times greater than for nonwhite families; the median income for a white family in Mississippi is about 3 times greater than for a nonwhite family; it is 2 times greater in Texas and Virginia.

Since almost all Negroes deprived of their voting rights by those "tests or devices" that this bill is directed against, as well as by the poll tax, have not paid in previous years, the cumulative provisions of the State laws are in effect. A Negro in Mississippi, therefore, whose income reaches the nonwhite State median would have to pay over 12 percent of 1 week's income in order to vote. In Alabama and Virginia the figure is 7 percent. For one-half of the Negro citizens of these States whose income falls below the median the percentage and the economic burden is greater. For the many rural Negroes who buy on credit and transact most of their business in a bartering fashion, the funds needed for poll tax payments are almost impossible to raise in their noncash economy.

We firmly believe that these differences in income and thus the ability to pay the poll tax flow from the system of State-supported segregation and discrimination in all of these States. We firmly believe that in this time of enlightenment the franchise must not be impaired because of economic status, just as other protections of our society are not impaired because a person does not have sufficient material means. The poll tax, in essence, puts a price on the ballot, and if you can pay this price you are "qualified" to vote—if you cannot pay this sum you are somehow not a qualified citizen. This remnant from the days of property "qualifications" for voting purposes cannot stand. For the payment of a poll tax tells us nothing about a citizen's qualifications as an elector. This requirement, then, so heavily involved with various procedural devices for payment does only one thing—it is an effective barrier to voting.

The vote has been found by the Supreme Court to be a "precious" thing (*Wesberry* v. *Sanders* 376 U.S. 1). Those who would impede the broadening of this exercise by continuing to place a price upon the vote bear the responsibility for making their case under the Constitution of the United States, not we who would strike it down.

Beside the fact that Congress has an explicit mandate to see to it that the guarantees of the 14th and 15th amendments are enforced, Congress also has the responsibility under the Constitution to protect our "republican form of government" under section 4 of article IV. Not only does Congress have this authority, but since the landmark decision in *Luther* v. *Borden* (7 How. 1 (1849)), is is clear that its judgment in exercising this authority is conclusive and nonreviewable. As the Senate Judiciary Committee stated in the 1st session of the 78th Congress:

> Can we have a republican form of government in any State if within that State a large portion and perhaps the majority of the citizens residing therein are denied the right to participate in governmental affairs because they are poor? * * * The most sacred right in our republican form of government is the right to vote. It is fundamental that that right should not be denied unless there are valid constitutional reasons therefor. It must be exercised freely by free men. If it is not then we do not have a republican form of government * * *.

Moreover, we do not feel that because Congress abolished the poll tax in Federal elections by a constitutional amendment it conceded that it did not have the power to do this by statute, nor do we feel it conceded that it does not have the power to abolish the poll tax in State and local elections by statute. The House of Representatives has passed five anti-poll-tax bills since 1939, but each time such bills died under Senate filibuster or the threat of a filibuster. We are convinced that the action of Congress in abolishing the poll tax by the 24th amendment for Federal elections was a compromise to avoid such problems.

Neither do we feel that the Supreme Court's decision in *Breedlove* v. *Suttles* (302 U.S. 277 (1937)), which upheld the now repealed Georgia poll tax, is controlling in this area. The *Breedlove* case was a suit by a white male claiming denial of equal protection under the 14th amendment because of favoritism to older people and to women.

At no time was the question of the 15th amendment raised. Furthermore, a decision on the poll tax in the absence of congressional action is not relevant to the issue of congressional power to act. Because neither racial discrimination nor congressional action was involved in *Breedlove*, it has no application to the proposed anti-poll-tax provision presently in S. 1564.

Finally, we are not moved by the arguments of some that if Congress can strike down this tax it can strike down any State tax that falls equally upon the rich and the poor. The argument cannot seriously be made that a poll tax is a revenue-producing device—the argument can be made that it is an attempt to deny a constitutional right. We are not dealing with money here, but with a basic right guaranteed by the Constitution and our action, therefore, falls much more closely to that class of taxes demand "noxious" that the Congress certainly has the right to forbid (*Grosjean* v. *American Press Publishing Co.*, 297 U.S. 233).

By this reasoning we have added section 9 to S. 1564. A majority of the committee had no desire to again focus the attention of this Nation upon congressional action to guarantee the rights of all citizens only to have that action fall short of its mark. At this time, and in this bill, we seek to fully implement the national desire to be free from the crippling effects of discrimination in this important area of voting. Believing the poll tax to be evil in its intent, discriminatory in its effect, and fully within the power of Congress to remove, the majority of the committee has added section 9 to this bill.

THE 60-PERCENT EXEMPTION AMENDMENT

As originally introduced, section 3(c) of the bill permited any State or subdivision covered by the triggering provision to bring a declaratory judgment action in a three-judge district court in the District of Columbia alleging that neither the petitioner nor any person acting under color of law has engaged in discrimination in voting during the preceding 10 years. If the court so found, the suspension of tests and devices and the examiner procedure would, after judgment, be inapplicable to the petitioner. The section specifically barred a judgment for a period of 10 years after a final judgment of any court of the United States determining that discrimination in voting occurred anywhere in the territory of the petitioner.

The committee amended the comparable provision, section 4(a), of the reported bill changing somewhat the criteria for a declaratory judgment by a three-judge court in the District of Columbia. The section now authorizes such a suit based upon either of two grounds. The first is that no test or device has been used during the preceding 5 years for the purpose, or with the effect, of discrimination. The second is itself twofold: (A) the percentage of persons voting in the most recent presidential election exceeded the national average of voting participation or the percentage of persons registered to vote exceeded 60 percent of residents of voting age, and (B) there is no racial discrimination in voting in the petitioner's territory. The section as amended also provides that in any such suit a final judgment determining that discrimination in voting has occurred anywhere in the petitioner's territory shall be prima facie evidence of the facts found by the court, in addi-

tion to whatever res judicata or collateral estoppel effect such a judgment would have.

The amended provision is, in our judgment, an effective one to bar unjustified avoidance of the effect of the bill, but not as effective as the original provision. Under the provision of the bill as introduced, the States of Alabama, Mississippi, and Louisiana would have been barred automatically from bringing suit for almost 10 years because judgements have been handed down against them, or against one or more of their subdivisions, within this year. Georgia would have been barred from bringing suit for 7 years, because of a judgement against it 3 years ago. In addition, some counties in additional States, such as Fayette County, Tenn., would have been barred from suit for a time because of judgments against them within the recent past.

The amended provision does not bar suits by any State or subdivision at any time, but it makes a judgment within the preceding 5 years a prima facie case against the plaintiff as to the facts found in the prior suit. It therefore renders such a suit within 5 years a difficult and unrewarding exercise under section 4a(1). In such a suit the plaintiff would first have to show either no use of tests or devices to discriminate within the past 5 years, or voter participation above the national average and no discrimination in voting, whether by tests or devices or otherwise. Even if a plaintiff could satisfy this burden of proof with its own evidence, the United States may rebut that evidence simply by introducing a judgment entered within the past 5 years. Then the burden of proving its absence of discrimination would again shift to the plaintiff. Alabama, Mississippi, and Louisiana would in effect be barred from suit under section 4a(1) for 5 years and Georgia for 2 years.

The original provision reflected the view that, after the courts had already found discrimination in voting, a State or subdivision should not be permitted immediately to engage the United States in relitigating the same questions. The amended provision substantially reflects the same view. In suits brought under it, a plaintiff which uses tests or devices will have to show either that such test or devices have not caused discrimination during the preceding 5 years, or that voter participation has reached the national average and that discrimination from any cause, whether tests or devices or otherwise, has ceased. Of the States covered by the test or device trigger, only Louisiana presently has voter participation above the national average of 60 percent and would be permitted to bring suit at once. Alabama and South Carolina are near the average but still below it.

However, in such a suit, the plaintiff would still have to show in addition that no discrimination exists in voting whether by reason of tests or devices or by any other reason. The provision providing for use of primie facie judgment does not appear to be of much significance in this situation.

In a suit brought by a plaintiff which does not use tests or devices, but which is covered by the bill's examiner provisions under the new 25-percent trigger, the plaintiff of course cannot meet the first test, relating to nondiscrimination in tests or devices, since by definition it has no such tests or devices. To suspend the examiner provision in such a case the plaintiff will have to show that it meets the second test,

that is, voting participation above the national average and an absence of discrimination from any cause.

The original provision also reflected the view that after many decades of systematic discrimination against Negroes in voting in some States and subdivisions, it is totally unrealistic to expect that in a short period of time the suspension of tests and devices and examiner procedures provided for by the bill would automatically suffice to wipe out all discrimination in the future. The amended provision again substantially reflects the same view. To show that tests or devices are not used to discriminate under section 4(a)(1), a plaintiff will have to show that they have not operated so as to discriminate for the preceding 5 years. Similarly, in determining whether discrimination from any cause, whether tests or devices or otherwise, has ceased under section 4(a)(2)(B), the courts will take into consideration not only the immediate situation throughout the plaintiff's territory at the time of the suit, but also the situation during the years preceding the suit and the likelihood that discrimination will not recur at some point in the future.

The amended provision emphasizes this last point, regarding the future likelihood of compliance with the Constitution, by specifying that the court shall retain jurisdiction of any action brought under section 4(a) for 5 years after judgment and shall reopen the action on the motion of the Attorney General alleging a recurrence of discrimination.

While the amended provision substantially carries out the basic intent of the original provision, it does not do so in as simple and straightforward a fashion as did the original provision. And it does have the net effect of stimulating additional litigation sooner after the enactment of the bill than would have been the case under the original provision. In these respects the original provision was much to be preferred.

THE ADDITIONAL 25-PERCENT TRIGGER

A significant addition to the bill was the adoption, by the committee, of an amendment relating to the formula or "triggering" device designating areas where the appointment of Federal examiners would be authorized.

The bill as introduced on March 18, provided a "triggering" device which affected only those areas which had a literacy test, and where less than 50 percent of the voting-age population voted or was registered to vote. This formula had the disadvantage of bringing under the bill's coverage, certain counties and the entire State of Alaska—areas where discrimination because of race was not a factor in low voting participation. In an effort to correct this formula the revised bill of April 6 further defined these areas by requiring that at least 20 percent of their population be nonwhite.

During consideration of the bill in committee we determined that the formula could be further improved by adding an additional separate criterion for the appointment of Federal registrars, viz, voting participation by less than 25 percent of the Negro population. This "trigger" has two important features:

First, it is grounded firmly on the 15th amendment since it is related entirely to voter discrimination because of race or color. In every State where discrimination has occurred, it would, under the

original bill, be possible to register large numbers of whites, bringing the total registration figure over 50 percent while continuing to discriminate against the very group this bill seeks to protect. Availability of this triggering device would preclude such a maneuver.

Second, the 25-percent trigger would provide Federal relief in areas which would not have been covered under the original formula because they impose no literacy tests. Based on figures supplied by the U.S. Civil Rights Commission, the following political subdivisions in Arkansas and Florida have less than 25-percent Negro voter participation, and would be covered by the additional "trigger":

	Voting age population	Number registered	Percent registered	Percent of total voting age registered
ARKANSAS				
Crittenden				38.7
White	10,569	7,299	69.0	
Nonwhite	12,871	1,777	13.8	
Cross				51.3
White	7,608	4,648	61.7	
Nonwhite	2,640	611	23.1	
Independence				62.3
White	12,386	7,840	63.3	
Nonwhite	321	75	23.4	
Lee				40.3
White	4,545	2,792	61.4	
Nonwhite	5,957	1,434	24.1	
Polnsett				57.5
White	14,636	8,905	60.8	
Nonwhite	1,446	337	23.3	
Pope				67.8
White	12,431	8,584	69.0	
Nonwhite	370	90	24.3	
Washington				51.9
White	33,359	17,448	52.3	
Nonwhite	311	12	3.9	
FLORIDA				
Gadsden				39.4
White	11,711	8,015	68.4	
Nonwhite	12,261	1,425	11.6	
Jefferson				61.8
White	2,383	2,443	100+	
Nonwhite	2,600	638	24.5	
Lafayette				100+
White	1,536	1,889	100+	
Nonwhite	152	0	0	
Liberty				100+
White	1,525	2,104	100+	
Nonwhite	240	0	0	
Union				60.1
White	2,880	2,254	78.3	
Nonwhite	1,082	128	11.8	

Further, the State of Virginia, which would have been covered under the original bill because it imposes a literacy test and has voter participation of less than 50 percent, was excluded by the amendment requiring that affected areas have at least a 20-percent Negro population. Some political subdivisions of the State meet this qualification and would be covered, but others which do not meet the 50-percent figure are covered only by this additional "trigger." They are:

Virginia

	Voting-age population	Number registered	Percent registered
Counties:			
Bland:			
White	3,504	1,947	55.6
Nonwhite	146	7	4.8
Botetourt:			
White	9,045	4,596	50.8
Nonwhite	778	145	18.6
Fairfax:			
White	140,605	87,261	62.1
Nonwhite	9,110	1,904	20.9
Montgomery:			
White	18,091	9,610	53.1
Nonwhite	960	0	0
Prince William:			
White	24,477	9,617	39.3
Nonwhite	2,217	438	19.8
Rockingham:			
White	22,976	8,630	37.6
Nonwhite	427	70	16.4
Smyth:			
White	18,191	8,578	47.2
Nonwhite	327	70	21.4
Cities:			
Buena Vista:			
White	3,390	1,018	30.0
Nonwhite	156	23	14.7
Galax:			
White	3,073	1,500	48.8
Nonwhite	152	20	13.2
Winchester:			
White	9,200	5,135	55.8
Nonwhite	708	174	24.6

In addition, it is estimated that some counties in Texas and Tennessee have comparable low Negro voter participation and would also be covered. Statistics are not presently available, but, according to the testimony of A. Ross Eckler, Acting Director of the Census, they could be obtained by survey within 60 to 90 days.

A majority of the committee approved the addition of this additional trigger and it is incorporated in subseciton 4(b)(3) of the bill. We support its retention.

THOMAS J. DODD.
PHILIP A. HART.
EDWARD V. LONG.
EDWARD M. KENNEDY.
BIRCH BAYH.
QUENTIN N. BURDICK.
JOSEPH D. TYDINGS.
HIRAM L. FONG.
HUGH SCOTT.
JACOB K. JAVITS.

ADDITIONAL INDIVIDUAL VIEWS OF SENATOR JACOB K. JAVITS

During the executive sessions of the hearings on this bill, I offered, on behalf of Senator Robert F. Kennedy and myself, an amendment to provide that education in any language in an accredited school in any State, territory, or the Commonwealth of Puerto Rico be considered equivalent to education in the English language in any such school for the purpose of determining literacy.

This amendment did not come to a vote because of the time limitation imposed upon the committee by the Senate referral.

It will be offered on the floor by both Senators from New York when the measure is considered by the Senate.

APPENDIX

APPENDIX A

	Voting age population [1]	Total vote cast, 1964, presidential election [2]	Percentage of population [3]	Numbers of registered voters 1964 [4]		Percentage of population [3]
				Number	Date	
Alabama [6]	1,915,000	689,818	36.0	1,057,477	July 1964	55.0
Alaska [6]	138,000	67,259	49.0	(5)		
Arizona [6]	879,000	480,770	55.0	584,284	November 1964	66.0
Arkansas	1,124,000	560,427	49.9	633,665	January 1964	56.0
California [6]	10,916,000	7,057,586	65.0	8,184,143	November 1964	75.0
Colorado	1,142,000	776,986	68.0	933,312	do	81.7
Connecticut [6]	1,698,000	1,218,578	72.0	1,373,443	do	80.9
Delaware [6]	283,000	201,320	71.0	245,494	October 1964	86.7
Florida	3,516,000	1,854,481	53.0	2,501,546	November 1964	71.0
Georgia [6]	2,636,000	1,139,352	43	[7] 1,666,778	1964	63.0
Hawaii [6]	395,000	207,271	52	239,361	November 1964	60.6
Idaho [6]	386,000	292,477	76	364,231	do	94.0
Illinois	6,358,000	4,702,841	74	5,534,676	do	87.0
Indiana	2,826,000	2,091,606	74	2,628,627	October 1964	93.0
Iowa	1,638,000	1,184,539	72	(5)		
Kansas	1,323,000	857,901	65	(5)		
Kentucky	1,976,000	1,046,105	53	1,000,000	April 1964	51.0
Louisiana [6]	1,893,000	896,293	47	1,195,395	January 1965	63.0
Maine [6]	581,000	380,965	65	522,236	Nov. 3, 1964	90.0
Maryland	1,995,000	1,116,457	56	1,410,281	October 1964	70.6
Massachusetts [6]	3,290,000	2,344,798	71	2,721,466	November 1964	82.7
Michigan	4,647,000	3,203,102	69	3,351,730	April 1964	72.0
Minnesota	2,024,000	1,554,462	77	(5)		
Mississippi [6]	1,243,000	409,146	33	553,500	January 1964	44.0
Missouri	2,696,000	1,799,879	67	(5)		
Montana	399,000	278,628	70	327,477	November 1964	82.0
Nebraska	877,000	584,154	67	(5)		
Nevada	244,000	135,433	55	163,475	do	67.0
New Hampshire [6]	396,000	288,093	72	365,224	do	92.0
New Jersey	4 147,000	2,846,770	69	3,253,603	do	78.4
New Mexico	514,000	327,615	64	464,911	do	90.4
New York [6]	11,330,000	7,166,203	63	8,443,430	do	74.5
North Carolina [6]	2,753,000	1,424,983	52	2,200,000	March 1965	76.0
North Dakota	358,000	258,389	72	(5)		
Ohio	5,960,000	3,969,196	67	(5)		
Oklahoma	1,493,000	932,499	62	1,189,026	January 1965	82.0
Oregon [6]	1,130,000	785,289	69	932,461	November 1964	75.0
Pennsylvania	7,080,000	4,818,668	68	(5)		
Rhode Island	568,000	390,078	69	472,659	November 1964	83.0
South Carolina [6]	1,380,000	524,748	38	772,572	September 1964	56.0
South Dakota	404,000	293,118	73	369,782	November 1964	91.5
Tennessee	2,239,000	1,144,046	51	1,628,825	February 1964	72.7
Texas	5,922,000	2,626,811	44	3,338,718	January 1964	56.3
Utah	522,000	401,413	77	448,463	November 1964	85.9
Vermont	240,000	163,069	68	209,225	do	87.0
Virginia [6]	2,541,000	1,042,267	41	1,311,023	October 1964	51.6
Washington [6]	1,759,000	1,258,374	72	1,582,046	November 1964	90.0
West Virginia	1,053,000	792,040	75	1,055,429	do	102.0
Wisconsin	2,391,000	1,696,815	71	(5)		
Wyoming [6]	195,000	142,716	73	(5)		
Nationwide totals	113,931,000	70,642,496	62			

[1] This is an estimate by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce, dated Sept. 8, 1964, No. CB64-93. It includes aliens and persons in active military service and their dependents.

[2] This column is based on figures supplied by official State sources to the Congressional Quarterly.

[3] These percentages are based on the voting age population as of Nov. 1, 1964.

[4] Most of these figures are based on the official reports of the various States. In some cases they do not represent the actual number of persons registered, due to the failure of registrars to purge their lists of voters who have died or moved away or otherwise become ineligible.

[5] These States do not have statewide registration.

[6] These States use a test or device as defined by sec. 4(c) of the proposed Voting Rights Act of 1965. Idaho, which does not have a literacy test, has a "good moral character" requirement. Some of the literacy tests States also have a "good moral character" requirement.

[7] This does not include Fayette County, which has approximately 2,400 registered voters.

NOTE.—Subsec. 4(c) of S. 1564 as reported by the committee excludes from voting-age population aliens and persons in active military service and their dependents. If that definition is applied to this table, Alaska is the only State whose voter participation in the presidential election of 1964 would rise from below 50 percent of the voting-age population.

APPENDIX B

Test or devices as defined by sec. 4(c) of the proposed Voting Rights Act of 1965, S. 1564, and the States in which they are used

	Read	Write	Understand	Interpret any matter	Knowledge	Good moral character	Voucher
Alabama	X [1]	X [1]	X [2]	X [2]	X [2]	X [1]	X [2]
Alaska [3]	X [4]						
Arizona [5]	X [6]	X [6]					
California	X [7]	X [7]					
Connecticut	X [8]					X [8]	
Delaware	X [9]	X [9]					
Georgia	X [10]	X [10]	X [11]	X [12]	X [12]	X [11]	
Hawaii	X [13]	X [13]					
Idaho						X [14]	
Louisiana	X [15]	X [15]	X [16]	X [16]	X [17]	X [18]	X [19]
Maine	X [20]	X [20]					
Massachusetts	X [21]	X [21]					
Mississippi	X [22]	X [22]	X [22]	X [22]	X [22]	X [22]	
New Hampshire	X [24]	X [24]					
New York	X [25]	X [25]					
North Carolina	X [26]	X [26]					
Oregon	X [27]	X [27]					
South Carolina	X [28]	X [28]					
Virginia		X [29]					
Washington	X [30]		X [30]				
Wyoming	X [31]						

[1] Code of Alabama, title 17, § 32.
"The following persons * * * shall be qualified to register * * * those who can read and write any article of the Constitution of the United States in the English language which may be submitted to them by the board of registrars [and] who are of good character. * * *"

[2] Order of Jan. 14, 1964, as amended, Aug. 26, 1964, by the Supreme Court of Alabama prescribing a new application form to be used by the board of registrars throughout the State, pt. VI (vouching), pt. III (knowledge, interpret, understand).

[3] The U.S. attorney for the District of Alaska has stated that the Secretary of State believes that anyone who can speak English can vote, even if he cannot sign his name except with an "X." Hearings on S. 2750 before the House Judiciary Committee, 87th Cong., 2d sess., p. 315.

[4] Alaska Statutes, § 15.05.010:
"A person may vote at any election who * * * (5) can speak or read English unless prevented by physical disability, or voted in the general election of November 4, 1924."

[5] The former U.S. attorney for the District of Arizona has stated that an applicant must only attest to the fact that he is able to read the Constitution of the United States in the English language, and if there is any question about his ability, the registrar usually asks him to read other printed papers. Letter dated Mar. 8, 1962, to the Civil Rights Division from Hon. Carl Muecke. See also hearings on S. 2750, supra, p. 317.

[6] Arizona Revised Statutes, § 16-101(A):
"Every resident of the state is qualified to become an elector and may register to vote at all elections authorized by law if he * * *
(4) Is able to read the Constitution of the United States in the English language. * * *
(5) Is able to write his name * * *."

[7] Constitution of California, art. II, § 1:
"[N]o person who shall not be able to read the Constitution in the English language and write his or he name, shall ever exercise the privileges of an elector in this State. * * *"
See also California Election Code, § 100, implementing this provision.

[8] Constitution of Connecticut, art. VI, § 1:
"Every citizen of the United States * * * who is able to read in the English language any article of the Constitution or any section of the statutes of this state, and who sustains a good moral character, shall * * * be an elector."
See also Connecticut General Statutes, § 9-12, implementing this provision.

[9] Constitution of Delaware, art. V, § 2:
"[N]o person * * * shall have the right to vote unless he shall be able to read this Constitution in the English language and write his name. * * *"
See also Delaware Code Annotated, title 15, § 1701, implementing this provision.

[10] Georgia Code Ann., § 34-617(a):
"[The applicant] shall be required to read [the Constitution of Georgia or of the United States] aloud and write it in the English language."

[11] Georgia Code Ann., § 34-617(b):
"[The applicant may also] qualify on the basis of his good character and his understanding of the duties and obligations of citizenship. * * *"

[12] Georgia Code Ann., § 34-618 sets forth a standard list of questions for those who seek to qualify pursuan to § 34-617(b) (e.g., "What are the names of the three branches of the United States Government?"). See also Constitution of Georgia, § 2-704 which sets forth the above requirements.
See also Georgia Code Ann., § 34-617(a).

[13] Constitution of Hawaii, art. II, § 1:
"No person shall be qualified to vote unless he is * * * able * * * to speak, read and write the English or Hawaiian language."

[14] Idaho Code, § 34-404:
"No common prostitute or person who keeps or maintains, or is interested in keeping or maintaining, or who resides in or is an inmate of, or frequents or habitually resorts to any house of prostitution or of ill fame, or any other house or place commonly used as a house of prostitution or of ill fame, or as a house or place

of resort for lewd persons for the purpose of prostitution or lewdness, or who, being male or female, do lewdly or lascivously cohabit together, shall be permitted to register as a voter or to vote at any election in this State."

See also Constitution of Idaho, art. 6, § 5, which disqualifies from voting, inter alia, persons who are members of organizations which teach, advise, counsel, encourage or aid persons to enter into bigamy or polygamy.

[15] Louisiana Rev. Stat., title 18, § 31(3):

"[He shall be able to read and write. * * *"

See also Louisiana Rev. Stat., title 18, § 35.

[16] Constitution of Louisiana, art. VIII, § 1(c):

"He shall be of good character and shall understand the duties and obligations of citizenship under a republican form of government."

See also art. VIII, §§ 1(d), 18; title 18, §§ 31(2), 36. In addition a requirement that an applicant "shall be able to understand and give a reasonable interpretation of any section of [the Louisiana or United States Constitution]," and related provisions (title 18) §§ 35, 36) was enjoined by a federal court, *United States v. Louisiana*, 225 F. Supp. 353 (1963), affirmed by the Supreme Court Mar. 8, 1965.

[17] Constitution of Louisiana, art. VIII, § 18:

"The Board [of Registrars] shall * * * issue a uniform, objective written test or examination for citizenship to determine that applicants * * * understand the duties and obligations of citizenship. * * *"

See also title 18, § 191(A).

[18] Louisiana Rev. Stat., title 18, § 31(2):

"He shall be of good moral character. * * *"

[19] Louisiana Rev. Stat., title 18, § 31(5):

"No registrar or deputy registrar shall register any applicant * * * unless the applicant brings with him two qualified electors of the precinct in which he resides to sign written affidavits attesting to the truth of the facts set forth in the application form. * * *"

[20] Constitution of Maine, art. II, § 1:

"No person shall have the right to vote * * * who shall not be able to read the Constitution in the English language, and write his name. * * *"

See also title 21, § 241, implementing this provision.

[21] Constitution of Massachusetts, art. XX, § 122:

"No person shall have the right to vote * * * who shall not be able to read the Constitution in the English language, and write his name. * * *"

See also Massachusetts Laws, ch. 51, § 1, implementing this provision.

[22] Constitution of Mississippi, art 12, § 244:

"Every elector shall * * * be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate * * * a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government."

See also Mississippi Code, §§ 3209.6, 3213, implementing this provision.

[23] Constitution of Mississippi, art. 12, § 241-A:

"In addition * * * such person shall be of good moral character."

See also Mississippi Code, §§ 3209.6, 3213, 3212.7, implementing this provision.

[24] New Hampshire Rev. Stat., § 55:10:

"[An applicant shall be required] to write and to read in such manner as to show that he is not being assisted in so doing and is not reciting from memory."

See also New Hampshire Rev. Stat. §§ 55.11, 55.12, implementing this provision.

[25] Constitution of New York, art. 2, § 1:

"[N]o person shall become entitled to vote * * * unless such person is also able, except for physical disability, to read and write English."

See also New York Election Code, §§ 150, 168, implementing this provision.

[26] Constitution of North Carolina, art. VI, § 4:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language."

See also General Statutes of North Carolina, § 163-28, implementing this provision.

[27] Oregon Rev. Stat., § 247.131:

"[N]o elector shall be registered unless he is able, except for physical disability, to read and write English."

[28] Constitution of South Carolina, art. II, § 4(d):

"Any person * * * shall be registered: *Provided*, That he can both read and write any Section of this Constitution submitted to him. * * *"

As an alternative to the reading and writing test, art. II, § 4(d), provides:

"Any person * * * shall be registered: *Provided*, That he * * * has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars ($300) or more."

See also Code of South Carolina, § 23-62, implementing these provisions.

[29] Code of Virginia, § 24.68:

"[The applicant must make application] in his own handwriting, without aids, suggestions, or memorandum. * * *"

[30] Washington Revised Code, § 29.07.070(13):

"[An applicant must be] able to read and speak the English language so as to comprehend the meaning of ordinary English prose."

[31] Wyoming Statutes, §§ 22-118.3:

"The term 'qualified elector' includes every male and female citizen of the United States who * * * shall be able to read the constitution of Wyoming."

APPENDIX C

Voting age population and registered voters classified by race in those States where use of tests and devices is suspended by S. 1564

State	White voting age population, 1964 [1]	White registration [2]	Percent	Nonwhite voting age population, 1964 [1]	Nonwhite registration [2]	Percent
Alabama	1,413,270	[3] 935,695	66.2	501,730	[3] 92,737	18.5
Georgia	1,966,456	[4] 1,124,415	57.2	669,544	[4] 167,663	25.0
Louisiana	1,353,495	[5] 1,037,184	76.6	539,505	[5] 164,601	30.5
Mississippi	794,277	[6] 525,000	66.1	448,723	[6] 28,500	6.4
South Carolina	975,660	[7] 677,914	69.5	404,340	[7] 138,544	34.3

[1] The total voting age population for the respective States is taken from an estimate by the Bureau of Census as of Nov. 1, 1964, in a memorandum issued by the Department of Commerce, dated Sept. 8, 1964, No. CB64-93. It includes aliens and persons in active military service and their dependents. The voting age population for white and nonwhite in 1964 was computed by taking the voting age population statistics for white and nonwhite as reported in the Census of Population: 1960, determining the ratio of each group to the total voting age population in 1960, and applying that ratio to the total voting age population as estimated by the Bureau of Census for Nov. 1, 1964.

[2] These statistics, excepting those for Virginia, are based on findings published in U.S. Commission on Civil Rights, Registration and Voting Statistics, Mar. 19, 1965. They are not based on official State sources due to the lack of official State information classifying registrants by race.

The registration data based on official State sources in the chart containing voting and registration statistics for all States (master chart) reflect registration as of a later date than the data published by the Commission. For this reason, the registration figures in this chart, when totaled, differ slightly from the registration figures in the master chart. The totals here are as follows: Alabama, 1,028,432; Georgia, 1,292,078; Louisiana, 1,201,785; Mississippi, 553,500; South Carolina, 816,458; Virginia, 1,311,023.

[3] U.S. Commission on Civil Rights, Registration and Voting Statistics, Mar. 19, 1965.

[4] U.S. Commission on Civil Rights, Registration and Voting Statistics, Mar. 19, 1965.

[5] Ibid.

[6] Ibid.

[7] Ibid.

APPENDIX D

Voting and registration statistics classifying voting age population and registered voters by race in those Alabama counties in which racial voting suits have been brought under 42 U.S.C. 1971(a)

County	Percent [1]	White voting age population, [2] 1960	White registration		Percent	Nonwhite voting age population, [2] 1960	Nonwhite registration	Percent
			Number	Date				
Bullock	38.5	2,387	2,631	October 1964	110.0	4,450	1,386	31.0
Choctaw	31.7	5,192	3,697	February 1963	71.0	3,982	176	4.0
Dallas	22.6	14,400	9,542	August 1964	66.0	15,115	335	2.2
Elmore	43.7	12,510	12,022	November 1964	96.0	4,808	592	12.3
Hale	25.5	3,600	3,674	December 1963	100.0	6,000	200	3.3
Jefferson	37.3	256,319	134,939	October 1964	52.6	116,160	27,013	23.2
Macon	32.6	2,818	2,946	do	100.0	8,493	4,188	49.0
Montgomery	31.6	62,911	40,234	November 1964	64.0	33,056	7,250	22.0
Perry	29.6	3,441	3,260	August 1964	94.0	5,200	364	7.0
Sumter	20.8	3,061	3,297	November 1964	107.0	6,814	358	5.2
Wilcox	22.3	2,647	2,974	May 1964	100.0	6,085	0	0

[1] This is the percentage of those persons of voting are who voted in the presidential election of 1964.

[2] Census of Population: 1960, vol. 1, pt. 2, table 27, pp. 74-91. These figures include aliens and persons in active military service and their dependents.

APPENDIX E

Voting and registration statistics classifying voting age population and registered voters, by race, in those Louisiana parishes (counties) in which racial voting suits have been brought under 42 U.S.C. 1971(a)

Parish	Percent [1]	White voting age population,[2] 1960	White registration		Percent	Nonwhite voting age population,[2] 1960	Nonwhite registration	Percent
			Number	Date				
Bienville	47.4	5,617	5,007	October 1964	89	4,077	584	14.0
East Carroll	24.3	2,990	1,939	do	64	4,183	179	4.5
East Feliciana	18.1	4,200	2,728	do	65	4,102	180	4.4
Jackson	66.4	6,607	6,082	do	91	2,535	1,244	49.0
Madison	29.1	3,334	2,467	do	74	5,181	294	6.0
Ouachita	44.5	40,185	29,575	do	73	16,377	1,746	11.0
Plaquemines	49.2	8,633	7,627	do	88	2,897	96	3.3
Red River	46.9	3,294	3,530	do	100	2,181	96	4.3
St. Helena	45.5	2,363	2,059	do	86	2,082	560	27.0
Washington	51.9	16,804	15,795	do	94	6,821	1,634	23.9
Webster	43.6	15,713	12,002	do	77	7,045	803	11.0
West Feliciana	15.2	1,632	1,345	do	82	2,235	85	3.0

[1] This is the percentage of those persons of voting age who voted in the presidential election of 1964.
[2] Census of Population: 1960, vol. 1, pt. 20, table 27, pp. 74-90. These figures include aliens and persons in active military service and their dependents.

APPENDIX F

Voting and registration statistics classifying voting age population and registered voters, by race, in those Mississippi counties in which racial voting suits have been brought under 42 U.S.C. 1971(a)

County	Percent[1]	White voting age population,[2] 1960	White registration		Percent	Nonwhite voting age population,[2] 1960	Nonwhite registration	Percent
			Number	Date				
Benton	30	2,514	2,266	September 1964	92.0	1,419	55	3.0
Chickasaw	36	6,388	4,607	August 1964	72.0	3,054	1	.03
Clarke	42	6,072	4,829	September 1964	80.0	2,998	64	2.2
Copiah	33	8,153	8,047	October 1964	98.6	6,407	34	.5
Forrest	35	22,431	13,253	June 1964	59.0	7,495	236	3.14
George	52	5,276	4,200	April 1964	79.0	580	14	2.4
Hinds	40	67,836	62,410	October 1964	92.0	36,183	5,616	15.5
Holmes	24	4,733	4,800	August 1964	100.0	8,757	20	.23
Issaquena	28	640	640	March 1965	100.0	1,081	12	1.1
Jasper	36	5,327	4,200	September 1964	79.0	3,675	8	.22
Jefferson Davis	38	3,629	3,236	December 1964	89.0	3,222	126	3.9
Jones	42	25,943	[3] 22,000	September 1963	85.0	7,427	[3] 700-800	10.0
Lauderdale	37	27,200	20,000	September 1964	74.0	11,924	1,700	14.3
Madison	22	5,622	6,256	July 1964	100.0	10,366	218	2.0
Marion	47	8,997	10,123	July 1963	100.0	3,630	383	11.0
Marshall	23	4,342	4,229	December 1964	97.0	7,168	177	2.5
Oktibbeha	31	8,423	8,000	December 1963	95.0	4,952	128	2.6
Panola	30	7,639	5,922	November 1964	77.0	7,250	878	12.0
Sunflower	20	8,785	7,082	October 1964	80.0	13,524	185	1.4
Tallahatchie	29	5,099	4,464	November 1964	88.0	6,481	17	.26
Walthall	45	4,736	4,736	November 1963	100.0	2,490	4	.12

[1] This is the percentage of those persons of voting age who voted in the presidential election of 1964.
[2] Census of Population, 1960, vol. 1, pt. 26, table 27, pp. 61-81. These figures include aliens and persons in active military service and their dependents.
[3] Estimated.

APPENDIX G

Discriminatory use of "tests or devices" challenged in Justice Department litigation in Alabama

County	Court findings of racial discrimination and "pattern or practice" of discrimination		Tests and devices challenged			
	Discrimination	Pattern and practice	Read, write, understand, interpret (4(c)(1))	Knowledge (4(c)(2))	Good moral character (4(c)(3))	Voucher (4(c)(4))
Bullock (*U.S.* v. *Alabama*)	X	X	X	X	----------	X
Choctaw (*U.S.* v. *Ford*)	X	X	X	X	----------	X
Dallas (*U.S.* v. *Atkins*)	X	X	X	X	X	
Elmore (*U.S.* v. *Strong*, 230 F. Supp. 873)	X	X	X	X	----------	
Hale (*U.S.* v. *Tutweiler*)	(1)	(1)	X	X	----------	
Jefferson (*U.S.* v. *Bellsnyder*)	(2)	(2)	X	X	X	
Macon (*U.S.* v. *Alabama*)[3]	X	X	X	X	----------	
Montgomery (*U.S.* v. *Parker*, 212 F. Supp. 193)	X	X	X	X	----------	
Perry (*U.S.* v. *Mayton*)	X	X	X	X	----------	(4)
Sumter (*U.S.* v. *Hines*)	X	X	X	X	----------	
Wilcox (*U.S.* v. *Wall*)	(5)	(5)	X	X	----------	X
Statewide (*U.S.* v. *Baggett*)	(6)	(6)	X	X	----------	

[1] Complaint filed Dec. 16, 1963, has not been decided.
[2] Complaint filed July 13, 1963, has not been decided.
[3] *U.S.* v. *Alabama*, 192 F. Supp. 677; aff'd 304 F. 2d 583; aff'd 371 U.S. 37.
[4] Issue in supplemental proceeding.
[5] Judgment for defendants, case now on appeal.
[6] Complaint filed Jan. 15, 1965, has not been decided.

APPENDIX II

Discriminatory use of "tests or devices" challenged in Justice Department litigation in Louisiana.

Parrish (county)	Court findings of racial discrimination and "pattern or practice" or discrimination		Tests and devices challenged			
	Discrimination	Pattern and practice	Read, write, understand, interpret (4(c)(1))	Knowledge (4(c)(2))	Good moral character (4(c)(3))	Voucher (4(c)(4))
Bienville (*U.S.* v. *Ass'n of Citizens Councils*, 196 F. Supp. 908)	X	X	X			
East Carroll (*U.S.* v. *Manning*, 205 F. Supp. 172)	X	X				X
East Feliciana (*U.S.* v. *Palmer*)	(1)	(1)	X			
Jackson (*U.S.* v. *Wilder*, 222 F. Supp. 749)	X	X	X	X		
Madison (*U.S.* v. *Ward*, 222F. Supp. 617)	X	X		X [2]		
Ouachita (*U.S.* v. *Lucky*)	(3)	(4)	X			X
Plaquemines (*U.S.* v. *Fox*, 211 F. Supp. 25)	X	(4)	X			
Red River (*U.S.* v. *Crawford*, 229 F. Supp. 898)	X	X	X			
St. Helena (*U.S.* v. *Crouch*)	(5)	(5)	X			
Washington (*U.S.* v. *McElveen*, 180 F. Supp. 10; affirmed 362 U.S. 58 (1961))	X	(6)	X			
Webster (*U.S.* v. *Clement*, 231 F. Supp. 913)	X	X	X			
West Feliciana (*U.S.* v. *Harvey*)	(7)	(7)	X			X
U.S. v. *Louisiana* (225 F. Supp. 353) (statewide) [8]	X	X	X	X		
U.S. v. *Board of Registration* (statewide) [10]	(9)	(9)	X			

[1] Complaint filed Mar. 26, 1964, has not been decided.
[2] Decided against Government by district court, being urged on appeal.
[3] Case tried February 1964, has not been decided.
[4] No permanent injunction yet; pattern and practice issue to be decided on permanent injunction.
[5] Complaint filed Oct. 22, 1963, has not been decided.
[6] Case decided prior to Civil Rights Act of 1960; no pattern or practice relief available at that time.
[7] Complaint filed Oct. 29, 1963, has not been decided.
[8] In addition to the State, the defendants included the parishes of—

Bienville	La Salle	Richland
Claiborne	Lincoln	St. Helena
De Soto	Morehouse	Union
East Carroll	Ouachita	Webster
East Feliciana	Plaquemines	West Carroll
Franklin	Rapides	West Feliciana
Jackson	Red River	Winn

[9] Complaint filed Oct. 8, 1963, has not been decided.
[10] In addition to the State board of registration, the defendants included the parishes of—

Caddo	Orleans	East Feliciana
Madison	Tangipahoa	

APPENDIX I

Discriminatory use of "tests of devices" challenged in Justice Department litigation in Mississippi

County	Court findings of racial discrimination and "pattern or practice" or discrimination		Tests and devices challenged			
	Discrimination	Pattern and practice	Read, write, understand, interpret (4(c)(1))	Knowledge (4(c)(2))	Good moral character (4(c)(3))	Voucher (4(c)(4))
Benton (*U.S.* v. *Mathis*)	X [1]	X [1]	X	X		
Chickasaw (*U.S.* v. *Allen*)	[2]	[2]	X	X		
Clarke (*U.S.* v. *Ramsey*, 331 F. 2d 824)	X	X [3]	X	X		
Copiah (*U.S.* v. *Weeks*)	[4]	[4]	X	X		
Forrest (*U.S.* v. *Lynd*, 301 F. 2d 818, 321 F. 2d 20).	X	[5]	X	X		
George (*U.S.* v. *Ward*)	X	[6]	X	X	X	
Hinds (*U.S.* v. *Ashford*)	[7]	[7]	X	X		
Holmes (*U.S.* v. *McClellan*)	[8]	[8]	X	X		
Issaquena (*U.S.* v. *Vandevender*)	[9]	[9]	X	X		
Jasper (*U.S.* v. *Hosey*)	[10]	[10]	X	X		
Jefferson Davis (*U.S.* v. *Daniel*)	[11]	[11]	X	X	X	
Jones County (*U.S.* v. *Caves*)	[12]	[12]	X	X		
Lauderdale (*U.S.* v. *Coleman*)	[13]	[13]	X	X		
Madison (*U.S.* v. *L. F. Campbell*)	[14]	[14]	X	X		
Marion (*U.S.* v. *Miksell*)	X	X	X	X		
Marshall (*U.S.* v. *Clayton*)	X [1]	X [1]	X	X		
Oktibbeha (*U.S.* v. *Henry*)	[15]	[15]	X	X		
Panola (*U.S.* v. *Duke*, 332 F. 2d 759)	X	X	X	X		
Sunflower (*U.S.* v. *C. C. Campbell*)	[16]	[16]	X	X		
Tallahatchie (*U.S.* v. *Cox*)	X	X	X	X		
Walthall (*U.S.* v. *Mississippi*, 339 F. 2d 679)	X	X	X	X		
Statewide (*U.S.* v. *Mississippi*, 229 F. Supp. 925)	[17]	[17]	X	X	X	

[1] Defendants admitted a pattern and practice of discrimination.
[2] Complaint filed Sept. 3, 1964, has not been decided.
[3] The Court of Appeals for the 5th Circuit held that the trial court was clearly erroneous in finding that there had been no pattern and practice of discrimination.
[4] Complaint filed Dec. 17, 1963, has not been decided.
[5] Judgment for defendants, appeal being considered.
[6] Judgment for defendatns, case on appeal.
[7] Complaint filed July 13, 1963, has not been decided.
[8] Case tried in November 1964, has not been decided.
[9] Complaint filed in January 1965, has not been decided.
[10] Complaint filed Sept. 3, 1964, has not been decided.
[11] Case tried February 1965, has not been decided.
[12] Complaint filed Feb. 19, 1965, has not been decided.
[13] Complaint filed Dec. 17, 1963, has not been decided.
[14] Case tried August 1964, has not been decided.
[15] Complaint filed Dec. 16, 1963, has not been decided.
[16] Case tried October 1964, has not been decided.
[17] Complaint dismissed, but Supreme Court remanded case for trial. In addition to the State, the registrars of the following counties are also defendants: Amite, Coahoma, Claiborne, Lowndes, LeFlore, and Pike.

APPENDIX J

Statutes in effect within the past 10 years requiring segregated facilities in those States which use a test or device as defined by sec. 4(c) of S. 1564

State	Travel	Recreation	Schools	Hospitals
GROUP A [1]				
Alabama	X		X	X
Georgia	X	X	X	X
Louisiana	X	X	X	X
Mississippi	X	X	X	X
South Carolina	X	X	X	
GROUP B [2]				
Alaska				
Arizona				
California				
Connecticut				
Delaware			X	X
Hawaii				
Idaho				
Maine				
Massachusetts				
New Hampshire				
New York				
North Carolina	X		X	X
Oregon				
Virginia	X	X	X	X
Washington				
Wyoming				

[1] States in which tests and devices would be suspended by S. 1564 on a statewide basis.
[2] States in which tests and devices would not be suspended by S. 1564 on a statewide basis.

EXPLANATORY NOTES

Alabama

Travel: Ala. Code Ann. (1940), title 48 (1958 Recomp.) § 186 (declared unconstitutional in *Baldwin* v. *Morgan*, 287 F. 2d 750 (C.A. 5, 1961) (1964 Supp.); §§ 196-197; §§ 301 (31a)-(31c) (declared unconstitutional in *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala., 1956)) (1964 Supp.); § 464.
Schools: Ala. Const., art. XIV, sec. 256 (amended, amendment CXI, adopted Sept. 7, 1956); Ala. Code Ann. (1940), title 52 (1960 Recomp.) §§ 56, 93 (both repealed, Acts 1957, p. 487 § 11, amending Acts 1955, p. 495 § 10). See also ibid., § 438, § 443, §§ 452-455, § 466, §§ 613(1)-613(15).
Hospitals: Ala. Code Ann. (1940), title 45 (1960 Recomp.), § 4, § 248. See also title 46 (1958 Recomp.), § 189(19).

Georgia

Travel: Code of Georgia Ann., title 18 (1936), §§ 205-210, §§ 223-224 (1963 Supp.), § 606, §§ 9901-9902, §§ 9904-9906, §§ 9918-9919 (1963 Supp.); title 68 (1957), § 513, § 616.
Recreation: Code of Georgia Ann., title 84 (1955), §§ 1603-1604.
Schools: Georgia Constitution (1948), art. VIII, § 1 (6576) (declared unconstitutional in *Holmes* v. *Danner*, 191 Fed. Supp. 385 (M.D. Ga., 1960)) (1963 Supp.). See also art. VII, § 2-5404 (1963 Supp.). Code of Georgia Ann., title 32 (1952) § 909, § 937 (superseded by Acts 1961, pp. 35-38) (1963 Supp.). See also title 52 (1952), § 123.
Hospitals: Code of Georgia Ann., title 35 (1962), § 225, § 308.

Louisiana

Travel: La. Rev. Stats. Ann. (1951), §§ 45: 194-196 (repealed by Acts 1958, No. 261, sec. 1); §§ 45: 522-534; §§ 45: 1301-1305.
Recreation: La. Rev. Stats. Ann. (1951), § 4: 5; §§ 4: 451-454 (1964 Supp.).
Schools: La. Const., art. XII, sec. 1 (1955) (amended Acts 1958, No. 557, adopted Nov. 4, 1958); La. Rev Stats. (1963 Recomp.), §§ 17: 331-334 (declared unconstitutional in *Bush* v. *Orleans Parish School Board*, 188 F. Supp. 916 (E.D. La., 1960), affirmed 365 U.S. 569; repealed, Acts 1960, 1st Ex. Sess., No. 9, § 1); §§ 17: 341-344 (declared unconstitutional in *Bush* v. *Orleans Parish School Board*, supra; repealed, Acts 1960, 1st Ex. Sess., No. 3, § 1). See also §§ 17: 336-337 (repealed Acts 1960, 1st Ex. Sess., No. 8).
Hospitals: La. Rev. Stats. Ann. (1951), § 46: 181.

Mississippi

Travel: Miss. Code Ann., § 7784-7787, 7787.5 (1956 Supp.).
Recreation: Miss. Code Ann., § 4065.3 (1956 Supp.); Miss. H.B. 1958, No. 1134.
Schools: Miss. Code Ann., § 4065.3, 6220.5, 6334-01 et seq. (1956 Supp.).
Hospitals: Miss. Code Ann., §§ 6883, 6927, 6973, 6974 (1952).

South Carolina

Travel: S.C. Code Ann., title 58, §§ 714-720 (1952).
Recreation: S.C. Code Ann., title 51, § 2.4 (1962).
Schools: S.C. Code Ann., title 21, § 751 (1962).

Virginia

Travel: Va. Code Ann., § 56-325-330, 390-404 (1950), declared unconstitutional as applied to interstate travel in *Morgan* v. *Virginia*, 328 U.S. 373 (1946), but declared valid as applied to intrastate travel in *New* v. *Atlantic Greyhound*, 186 Va. 726 (1947).

Recreation: Va. Code Ann., § 18-356-357, declared unconstitutional in *Brown* v. *Richmond*, 204 Va. 471 (1963).

Schools: Va. Code § 22-188.3-6; § 22-188.30-31; § 22-188.41 et seq. (1958 Supp.), § 37.5-6 (1950), declared unconstitutional in *Harrison* v. *Day*, 200 Va. 439 (1959). See also, *James* v. *Almond*, 170 F. Supp. 331 (E.D. Va. 1959), later repealed by Acts 1959, Ex. Sess., ch. 74-77.

Hospitals: Va. Code, §§ 37-5 to 6 (1964 Supp.).

Delaware

Schools: Del. Code Ann., title 14, § 141, declared unconstitutional in *Evans* v. *Buchanan*, 256 F. 2d 688 (1958), *cert. denied* 358 U.S. 836.

Hospitals: Del. Code Ann., title 16, § 155, repealed by 51 Del. Laws, ch. 136 (1957).

North Carolina.

Travel: N.C. Gen. Stats., § 60-94 to 98, 135-137, repealed by N.C. Sess. Laws of 1963, ch. 1165, sec. 1 (1964).
Schools: N.C. Gen Stats., § 115-274 (1960); N.C. Gen. Stats., §115-176 et seq. (1960).
Hospitals: N.C. Gen. Stats. § 122-3 (1957 Supp.), amended by N.C. Sess. Laws of 1963, ch. 451 (1963).

APPENDIX K

State antidiscrimination laws in force in those States which use a test or device as defined by sec. 4(c) of S. 1564

State	Education	Public accommodations	Employment	Public	Housing	
					Publicly assisted	Private
GROUP A [1]						
Alabama						
Georgia						
Louisiana						
Mississippi						
South Carolina						
GROUP B [2]						
Alaska	X	X	X	X	X	X
Arizona						
California		X	X	X	X	
Connecticut	X	X	X	X	X	X
Delaware		X	X			
Hawaii			X			
Idaho	X	X	X			
Maine		X				
Massachusetts	X	X	X	X	X	
New Hampshire		X		X	X	X
New York	X	X	X	X	X	
North Carolina						
Oregon	X	X	X	X	X	X
Virginia						
Washington		X	X	X	X	
Wyoming		X				

[1] States in which tests and devices would be suspended by S. 1564 on a statewide basis.
[2] States in which tests and devices would not be suspended by S. 1564 on a statewide basis.

EXPLANATORY NOTES

Alaska

Public accommodations and public and private housing: Alaska Stat. Ann., secs. 11.60.230-11.60.240 (1962).
Employment: Alaska Stat. Ann., sec. 23.10.200 (1962).
Education: Alaska Stat. Ann., sec. 14.40.050 (1962).

California

Public accommodations: Cal. Civ. Code, sec. 51 (1964 Cum. Pocket Supp.).
Employment: Cal. Lab. Code, sec. 1412 (1964 Cum. Pocket Supp.).
Public and publicly assisted housing: Cal. Health and Safety Code, sec. 35700 (1964 Cum. Pocket Supp.).

Connecticut

Public accommodations and public and private housing: Conn. Gen. Stat. Rev., sec. 53-35 (1963 Cum. Pocket Supp.).
Employment: Conn. Gen. Stat. Rev., sec. 34-126 (1963 Cum. Pocket Supp.).
Education: Conn. Gen. Stat. Rev., sec. 10-15 (1958).

Delaware

Employment: Del. Code Ann., sec. 19-710 (1964 Cum. Pocket Supp.).
Public accommodations: Del. Code Ann., title 6, ch. 45 (1963).

Hawaii

Employment: Hawaii Rev. Laws, ch. 90A, sec. 1, (1963 Supp.).

Idaho

Public accommodations and employment: Idaho Sess. Laws, ch. 309 (1961).
Education: Idaho Const., art. 9, sec. 6.

Maine

Public accommodations: Me. Rev. Stat. Ann., ch. 137, sec. 50 (1954).

Massachusetts

Public accommodations: Mass. Ann. Laws, ch. 272, secs. 92A, 98 (1956).
Employment and housing: Mass. Ann. Laws, ch. 151 B, secs. 1-10 (1964 Cum. Pocket Supp.).
Education: Mass. Ann. Laws, ch. 151 C, secs. 1-5 (1957).

New Hampshire

Public accommodations and public and private housing (rental): N.H. Rev. Stat. Ann., ch. 354 (1963 Supp.).

New York

Public accommodations and education: N.Y. Civ. Rights Law, sec. 40:
Employment: N.Y. Executive Law, sec. 296.
Housing: N.Y. Executive Law, sec. 291.

Oregon

Public accommodations: Ore. Rev. Stat., secs 30.670, 659.010 (1959).
Employment and housing: Ore. Rev. Stat., sec. 659.010 (1959).
Education: Ore. Rev. Stat., sec. 345.240 (1959), proscribes discrimination in "vocational, professional or trade schools."

Washington

Public accommodations: Wash. Rev. Code Ann., secs. 49.60.030, 49.60.215 (1965).
Employment: Wash. Rev. Code Ann., secs. 49.60.030, 49.60.180, 49.60.190, 49.60.200, 49.60.210 (1965).
Housing: Wash. Rev. Code Ann., secs. 49.60.030, 49.60.217 (1965).

Wyoming

Public accommodations: Wyo. Stat. Ann., sec. 6-83.1 (1963 Cum. Supp.).

APPENDIX L

EFFECT OF S. 1564 ON STATES WHICH USE A TEST OR DEVISE

GROUP A.—*States in which the use of a test or device would be suspended*

State	Voting age population, 1964 [1]	Aliens, 1964 [2]	Persons in active military service, 1964 [3]	Dependents of persons in active military service, 1964 [4]	Revised voting age population, 1964 [5]	Vote cast, 1964 presidential election [6]	Percentage of revised voting age population voting in the 1964 presidential election [7]	Registration	Percentage of revised voting age population registered	Nonwhite voting age population, (1960) [8]	Nonwhite percentage of voting age population (col. 1)
Alabama	1,915,000	5,271	17,000	8,500	1,884,229	689,818	36.6	[9] 1,057,477	56.1	481,320	26.2
Georgia	2,636,000	11,661	96,000	48,000	2,480,339	1,139,352	45.9	[9] 1,666,778	67.2	612,910	25.4
Louisiana	1,893,000	17,685	25,000	12,500	1,837,815	896,293	48.8	[9] 1,195,395	65.0	514,589	28.5
Mississippi	1,243,000	3,641	17,000	8,500	1,213,859	409,146	33.7	[9] 553,500	45.6	422,256	36.1
South Carolina	1,380,000	4,754	47,000	23,500	1,304,746	524,748	40.2	[9] 772,572	59.2	371,104	29.3

[1] This is an estimate of the total resident voting age population by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce, dated Sept. 8, 1964, No. CB64-93.

[2] This is taken from table 36A of the 1964 Annual Report of the Immigration and Naturalization Service.

[3] This is based on unpublished data supplied by the Bureau of Census.

[4] This is based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

[5] This is the total voting age population, excluding aliens and persons in active military service and their dependents.

[6] This is based on official reports.

[7] The percentages beginning with Arizona and ending with Wyoming are based on total voting age population.

[8] Taken from table 16 of the 1960 Census of Population, vol. 1, for the respective States. Aliens and persons in active military service and their dependents have not been excluded from the figures in this column.

[9] This is based on data reported by the U.S. Commission on Civil Rights.

GROUP B.—*States in which the use of a test or device would not be suspended only because less than 20 percent of population is nonwhite*

State	Voting age population, 1964 [1]	Aliens, 1964 [2]	Persons in active military service, 1964 [3]	Dependents of persons in active military service, 1964 [4]	Revised voting age population, 1964 [5]	Vote cast, 1964 presidential election [6]	Percentage or revised voting age population voting in the 1964 presidential election	Registration	Percentage of revised voting age population registered	Nonwhite voting age population, 1960 [7]	Nonwhite percentage of voting age population (col. 1)
Virginia	2,511,000	19,149	113,000	56,500	2,352,351	1,042,267	44.3	[6] 1,311,023	55.7	436,720	18.9

[1] This is an estimate of the total resident voting age population by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce dated Sept. 8, 1964, No. CB64-93.

[2] This is taken from table 36A of the 1964 Annual Report of the Immigration and Naturalization Service.

[3] This is based on unpublished data supplied by the Bureau of Census.

[4] This is based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

[5] This is the total voting age population, excluding aliens and persons in active military service and their dependents.

[6] This is based on official reports.

[7] Taken from table 16 of the 1960 Census of Population, vol. 1, for the respective States. Aliens and persons in active military service and their dependents have not been excluded from the figures in this column.

GROUP C.—*States in which the use of a test or device would not be suspended because more than 50 percent voted*

State	Voting age population, 1964 [1]	Aliens, 1964 [2]	Persons in active military service, 1964 [3]	Dependents of persons in active military service, 1964 [4]	Revised voting age population, 1964 [5]	Vote cast, 1964 presidential election [6]	Percentage of revised voting age population voting in the 1964 presidential election [7]	Registration	Percentage of revised voting age population registered	Nonwhite voting age population, (1960 [8]	Nonwhite percentage of voting age population (col. 1)
Alaska	138,000	2,776	36,000	15,000	90,224	67,259	74.8	([9])	([9])		
Arizona	879,000					480,770	55.0	584,284	66.0		
California	10,916,000					7,057,586	65.0	8,184,143	75.0		
Connecticut	1,698,000					1,218,578	72.0	1,373,443	80.9		
Delaware	283,000					201,320	71.0	245,494	86.7		
Hawaii	395,000					207,271	52.0	239,361	60.6		
Idaho	386,000					292,477	76.0	364,231	94.0		
Maine	581,000					380,965	65.0	522,236	90.0		
Massachusetts	3,290,000					2,344,798	71.0	2,721,466	82.7		
New Hampshire	396,000					288,093	72.0	365,224	92.0		
New York	11,330,000					7,166,203	63.0	8,443,430	74.5		
North Carolina	2,753,000					1,424,983	52.0	2,200,000	76.0		
Oregon	1,130,000					785,289	69.0	932,461	75.0		
Washington	1,759,000					1,258,374	72.0	1,582,046	90.0		
Wyoming	195,000					142,716	73.0	([9])	([9])		

[1] This is an estimate of the total resident voting age population by the Bureau of the Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce dated Sept. 8, 1964, No. CB64-93.

[2] This is taken from table 36A of the 1964 Annual Report of the Immigration and Naturalization Service.

[3] This is based on unpublished data supplied by the Bureau of the Census.

[4] This is based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

[5] This is the total voting age population, excluding aliens and persons in active military service and their dependents.

[6] This is based on official reports.

[7] The percentages beginning with Arizona and ending with Wyoming are based on total voting age population.

[8] Taken from table 16 of the 1960 Census of Population, vol. 1, for the respective States. Aliens and persons in active military service and their dependents have not been excluded from the figures in this column.

[9] No registration.

EFFECT OF S. 1564 ON POLITICAL SUBDIVISIONS WHICH USE A TEST OR DEVICE

GROUP A.—*Political subdivisions in which the use of a test or device would be suspended as a separate unit*

State and county	Voting age population, 1960 [1]	Persons in active military service, 1960 [2]	Dependents of persons in active military service, 1960 [3]	Revised voting age population, 1960 [4]	Vote cast, 1964 presidential election [5]	Percentage of revised voting age population voting in the 1964 presidential election	Nonwhite voting age population, 1960 [1]	Nonwhite percentage of voting age population
Arizona:								
Apache County	13,045	0	0	13,045	3,892	29.8	9,359	71.7
North Carolina:								
Anson	13,065	4	2	13,059	5,865	44.9	5,218	39.9
Beaufort	19,933	55	28	19,850	9,685	48.8	6,196	30.9
Bertie	12,417	0	0	12,417	4,263	34.3	6,261	50.4
Bladen	14,320	14	7	14,299	6,685	46.8	5,147	35.9
Camden	3,042	13	7	3,022	1,404	46.5	1,054	34.6
Caswell	10,155	0	0	10,155	4,306	42.2	4,129	40.7
Chowan	6,332	4	2	6,326	2,483	39.3	2,507	39.6
Edgecombe	27,845	9	5	27,831	11,766	42.3	12,330	44.3
Franklin	15,396	9	5	15,382	6,651	43.2	5,554	36.1
Gates	5,058	3	2	5,053	2,258	44.7	2,344	46.3
Granville	18,580	13	7	18,560	7,220	38.9	6,996	37.7
Greene	8,061	4	2	8,055	3,613	44.9	3,268	40.5
Halifax	30,262	121	61	30,080	13,709	45.6	13,766	45.5
Hertford	11,708	0	0	11,708	4,947	42.3	6,102	52.1
Hoke	7,745	47	24	7,674	3,033	39.5	3,747	48.4
Lenoir	29,553	66	33	29,454	13,234	44.9	10,293	34.8
Martin	13,735	4	2	13,729	6,332	46.1	5,683	41.4
Nash	32,334	9	5	32,320	15,559	48.1	10,573	32.7
Northampton	13,482	9	5	13,468	6,233	46.3	7,304	54.2
Pasquotank	14,345	597	300	13,448	6,649	49.4	4,936	34.4
Perquimans	5,110	19	10	5,081	2,399	47.2	2,027	39.7
Person	14,221	4	2	14,215	6,902	48.5	4,227	29.7
Pitt	36,196	26	13	36,157	16,466	45.5	13,575	37.5
Robeson	42,275	47	24	42,204	17,387	41.2	21,424	50.7
Scotland	12,498	13	7	12,478	5,073	40.7	4,686	37.5
Vance	17,525	0	0	17,525	8,638	49.3	6,520	37.2
Warren	9,929	0	0	9,929	4,758	47.9	5,490	55.3
Wayne	45,103	4,588	2,300	38,215	17,346	45.4	15,754	34.9
Wilson	31,336	17	9	31,310	12,240	39.2	10,770	34.4

See footnotes at end of table, p. 57.

GROUP A.—*Political subdivisions in which the use of a test or device would be suspended as a separate unit*—Continued

State and county	Voting age population, 1960 [1]	Persons in active military service, 1960 [2]	Dependents of persons in active military service, 1960 [3]	Revised voting age population, 1960 [4]	Vote cast, 1964 presidential election [5]	Percentage of revised voting age population voting in the 1964 presidential election	Nonwhite voting age population, 1960 [1]	Nonwhite percentage of voting age population
Virginia:								
Accomack	19,290	81	41	19,168	6,683	34.9	6,142	31.8
Amherst	13,216	8	4	13,204	5,410	41.0	2,693	20.4
Brunswick	9,371	0	0	9,371	4,446	47.4	4,734	50.5
Buckingham	5,984	0	0	5,984	2,733	45.7	2,208	36.9
Caroline	7,003	95	48	6,860	3,243	47.3	3,210	45.8
Charles City	2,708	0	0	2,708	1,348	49.8	2,126	78.5
Charlotte	7,514	0	0	7,514	3,178	42.3	2,500	33.3
Culpeper	9,032	4	2	9,026	3,665	40.6	2,068	22.9
Dinwiddie	13,799	50	25	13,724	4,285	31.2	8,587	62.2
Essex	3,906	11	6	3,889	1,550	39.9	1,665	42.6
Fauquier	13,819	507	254	13,058	5,513	42.2	3,093	22.4
Fluvanna	4,168	7	4	4,157	1,834	44.1	1,378	33.1
Gloucester	7,223	16	8	7,199	3,583	49.8	1,882	26.1
Goochland	5,433	5	3	5,425	2,697	49.7	2,312	42.6
Halifax	18,146	3	2	18,141	6,144	33.9	6,769	37.3
Hanover	15,734	9	5	15,720	7,751	49.3	3,302	21.0
Isle of Wight	9,308	107	54	9,147	4,399	48.1	4,317	46.4
James City	6,901	221	111	6,569	2,839	43.2	2,056	29.8
King George	4,209	162	81	3,966	1,489	37.5	1,009	24.0
King William	4,355	4	2	4,349	1,975	45.4	1,864	42.8
Louisa	7,399	12	6	7,381	3,103	42.0	2,482	33.5
Lunenburg	7,145	0	0	7,145	2,977	41.7	2,534	35.5
Mathews	4,871	16	8	4,847	2,286	47.2	1,062	21.8
Mecklenburg	17,098	0	0	17,098	8,227	48.1	6,624	38.7
Nansemond	16,771	68	34	16,669	7,415	44.2	9,806	58.5
Nelson	7,506	0	0	7,506	2,534	33.8	1,813	24.2
Northampton	10,126	203	102	9,821	3,103	31.6	4,786	47.3
Northumberland	6,088	0	0	6,088	2,418	39.7	2,123	34.9
Pittsylvania	31,439	8	4	31,427	12,373	39.4	8,604	27.4
Richmond	3,845	0	0	3,845	1,540	40.1	1,132	29.4
Southampton [6]	[8] 10,388	0	0	10,388	4,090	39.4	[7] 5,267	50.7
Sussex	6,368	0	0	6,368	2,775	43.6	3,706	58.2
Westmoreland	6,188	0	0	6,188	2,499	40.4	2,352	38.0

Independent city:								
Chesapeake [8]	39,878	1,142	571	38,165	18,621	48.8	9,428	23.6
Danville	28,792	8	4	28,780	12,724	44.2	6,388	22.2
Franklin [9]	[10] 4,286	0	0	4,286	2,041	47.6	[11] 2,173	50.7
Martinsville	11,056	0	0	11,056	4,824	43.6	2,972	26.9
Newport News	65,232	8,846	4,423	51,963	25,824	49.9	20,974	32.2
Norfolk	174,799	45,196	22,598	107,005	51,546	48.2	45,376	26.0
Petersburg	22,349	602	301	21,446	7,775	36.3	9,821	43.9
Portsmouth	65,341	10,562	5,281	49,498	24,544	49.6	21,055	32.2
Richmond	144,227	204	102	143,921	62,890	43.7	53,719	37.2
Suffolk	8,041	18	9	8,014	3,044	37.9	2,769	34.4

[1] Census of Population, 1960, vol. 1, table 27, for the respective States.
[2] Based on unpublished data supplied by the Bureau of the Census.
[3] Based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.
[4] Total voting age population not including persons in active military service and their dependents. Figures showing the alien population on other than a statewide basis are not available at the present time.
[5] Based on official State sources.
[6] The city of Franklin, which is located within the county of Southampton, became an independent city subsequent to 1960. To properly reflect the number of persons of voting age residing in the county of Southampton with the total vote cast in that county in the presidential election of 1964, the number of persons of voting age residing in the city of Franklin has been subtracted from the number of persons of voting age residing in the county of Southampton. (See footnote 9, infra.)
[7] The number of white and nonwhite persons of voting age was determined by ascertaining the ratios of white persons of voting age and nonwhite persons of voting age to the total number of persons of voting age as reported in the Census of Population, 1960. These ratios were then applied to the number of persons of voting age residing in the county of Southampton after deducting the number of persons of voting age residing in the city of Franklin.
[8] The independent city of South Norfolk and the county of Norfolk were consolidated Jan. 1, 1963 and renamed Chesapeake.
[9] See footnote 6, supra.
[10] The city of Franklin became an independent city subsequent to 1960. The Bureau of the Census in its 1960 publication did not report the number of persons 21 and over residing in the city of Franklin. The Census of Population, 1960, vol. 1, pt. 48, table 22, at p. 55, however, does indicate that 4,295 persons 20 years and over reside in the city of Franklin. To ascertain which of these persons are of voting age (21 and over), the following computation was made: 1st, because Franklin was included as part of Southampton County, it was determined that 99.78 percent of those persons 20 and over (14,706) residing in Southampton County are 21 and over (14,674), and this ratio (99.78 percent) was then applied to the number of persons 20 and over residing in the city of Franklin (4,295).
[11] The number of white and nonwhite persons of voting age was determined by ascertaining the ratios of white persons of voting age and nonwhite persons of voting age to the total number of persons of voting age residing in the county of Southampton as reported in the Census of Population, 1960. These ratios were then applied to the number of persons of voting age residing in the city of Franklin.

GROUP B.—*Political subdivisions in which the use of a test or device would not be suspended because less than 20 percent of population is nonwhite and/or more than 50 percent of the population voted*

State, election district, county, or independent city	Voting age population, 1960 [1]	Persons in active military service, 1960 [2]	Dependents of persons in active military service, 1960 [3]	Revised voting age population, 1960 [4]	Vote cast, 1964 presidential election [5]	Percentage of revised voting age population voting in the 1964 presidential election	Nonwhite voting age population, 1960 [1]	Nonwhite percentage of voting age population
Alaska:								
No. 8, Anchorage	50,063				22,588	[6] 45.1	3,861	7.7
No. 11, Kodiak	4,379				1,582	[6] 36.1	668	15.3
No. 16, Fairbanks	27,615				10,750	[6] 38.9	3,001	10.9
No. 12, Aleutian Islands	4,081	2,426		1,655	855	51.7	1,220	29.9
No. 17, Barrow-Kobuk [7]	2,848	244		2,604	1,401	53.8	2,152	75.6
Idaho: Elmore County	8,909	3,300	1,650	3,959	4,167	100.0	262	2.9
Maine: Aroostook	55,787	6,815	3,408	45,564	27,546	60.5	1,071	1.9
North Carolina:								
Craven	31,236	6,805	3,403	21,028	12,113	57.6	8,242	26.4
Cumberland	77,068	31,861	15,000	30,207	22,957	76.0	18,789	24.4
Hyde	3,301	31	16	3,254	1,641	50.4	1,100	33.3
Onslow	39,003	28,310	0	10,693	9,726	91.0	5,015	12.9
Union	24,467	4	2	24,461	11,437	46.8	4,423	18.1
Virginia:								
Albemarle	18,246				6,315	[6] 34.6	2,576	14.1
Alleghany	6,931				2,685	38.7	256	3.7
Augusta	22,178				8,372	37.7	864	3.9
Bath	3,316				1,286	38.8	340	10.3
Bedford	18,302				7,914	43.2	3,044	16.6
Bland	3,650				1,570	43.0	146	4.0
Botetourt	9,823				4,476	45.6	778	7.9
Buchanan	16,790				7,124	42.4	8	.04
Campbell	18,809				9,145	48.6	3,291	17.5
Carroll	13,655				6,146	45.0	41	.3
Clarke	4,802				2,206	45.9	786	16.4
Floyd	6,325				2,985	47.2	308	4.9
Franklin	14,529				5,737	39.5	1,728	11.9
Frederick	12,711				5,474	43.1	232	1.8
Greene	2,659				1,104	41.5	328	12.3
Henry	21,918				8,184	37.3	4,113	18.8
Highland	2,056				989	48.1	16	.8
Loudoun	14,253				6,877	48.2	2,239	15.7
Madison	4,781				1,923	40.2	898	18.8
Montgomery	19,051				8,489	44.6	960	5.0
Orange	7,698				3,107	40.4	1,429	18.6
Patrick	8,692				3,776	43.4	616	7.1

Prince William	26,694				8,963	33.6	2,217	8.3
Pulaski	15,832				6,722	42.5	1,030	6.5
Rappahannock	3,148				1,127	35.8	540	17.2
Rockingham	23,403				8,363	35.7	427	1.9
Rockbridge	13,789				4,806	34.9	1,127	8.2
Smyth	18,518				7,952	42.9	327	1.8
Spotsylvania	7,765				3,367	43.4	1,503	19.4
Stafford	9,585				4,364	45.6	971	10.2
Tazewell	24,308				9,417	38.7	1,071	4.4
Warren	8,798				4,390	49.9	587	6.7
Washington	21,692				9,226	42.5	546	2.5
Wise	23,287				10,539	45.3	685	2.9
Wythe	12,822				5,863	45.7	523	4.1
Independent city:								
Alexandria	56,573				25,683	45.4	6,025	10.6
Bristol	10,045				3,723	37.1	672	6.7
Buena Vista	3,546				1,153	32.5	156	4.4
Covington	6,957				3,206	46.1	751	10.8
Fredericksburg	8,188				3,919	47.9	1,471	18.0
Galax	3,225				1,416	43.9	152	4.7
Harrisonburg	7,183				3,590	49.9	436	6.1
Lynchburg	34,302				16,834	49.1	6,574	19.2
Norton	2,952				1,196	40.5	188	6.4
Roanoke	62,046				28,496	45.9	9,519	15.3
Staunton	14,578				5,680	39.0	1,228	8.4
Waynesboro	9,215				4,531	49.2	548	5.9
Winchester	9,908				4,437	44.8	708	7.1
Nottoway	9,022	112	56	8,854	4,499	50.8	3,458	38.3
Prince George	11,280	5,451	2,725	3,104	3,295	100.0	2,420	21.5
Independent city: Hampton	51,620	6,624	3,312	41,684	22,288	53.5	10,825	21.0

[1] Census of Population: 1960, vol. 1, table 27 for the respective States.
[2] Based on unpublished data supplied by the Bureau of Census.
[3] Based on information supplied by the Bureau of Census indicating that approximately 50 percent of the persons in active military service are married. However in Alaska this calculation was not necessary to bring the percentage of the revised voting age population over 50 percent.
[4] Total voting age population not including persons in active military service and their dependents. Figures showing the alien population on other than a statewide basis are not available at the present time.
[5] Based on official State sources.
[6] These percentages are based on total voting age population.
[7] In 1962 Alaska redefined its election districts merging Barrow with Kobuk.
[8] These percentages beginning with the county of Albemarle and ending with the independent city of Winchester are based on total voting age population.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*

ALASKA [1]

Number and names of election district	Voting age population [2]	Vote cast, 1964 presidential election [3]	Percentage of population
1. Prince of Wales-Ketchikan	7,018	4,595	65.5
2. Wrangell-Petersburg	2,341	1,842	78.7
3. Sitka	3,870	2,396	61.9
4. Juneau	5,857	5,307	90.6
5. Lynn Canal-Icy Straits	1,653	1,308	79.0
6. Cordova-McCarthy Valdes-Chitina-Whittier	2,873	1,485	51.7
7. Palmer-Wasilla-Talkeetna	[4] 3,037	2,205	72.6
9. Seward	1,789	938	52.4
10. Kenai-Cook Inlet	[4] 3,271	2,627	80.3
13. Bristol Bay	2,175	1,198	55.1
14. Bethel	2,535	1,715	67.7
15. Kuskokwin Yukon-Koyukuk	3,799	1,966	51.8
18. Nome	3,084	1,791	58.1
19. Wade Hampton	1,387	712	51.3

[1] In 1962 Alsaka redefined its election districts. Prince of Wales merged with Ketchikan; Cordova-McCarthy merged with Valdes-Chitina-Whittier; Kuskokwin merged with Yukon-Koyukuk; Fairbanks merged with Upper Yukon: and Barrow merged with Kobuk.
[2] Census of Population, 1960, vol. 1, pt. 3, table 27, pp. 31-36.
[3] Report of the secretary of state for the State of Alaska on file at the Governmental Affairs Institute, Washington, D.C.
[4] As a result of the redefinition of Alaska's election districts, see footnote 1, supra, 187 persons of voting age who were listed in the 1960 census as residents of Kenai-Cook Inlet, now reside within the boundaries of Palmer-Wasilla-Talkeetna.

ARIZONA

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Cochise	30,913	16,697	54.0
Coconino	21,108	11,037	52.3
Gila	14,164	10,537	74.4
Graham	7,126	5,438	76.3
Greenlee	5,951	4,279	71.9
Maricopa	380,637	265,326	69.7
Mohave	4,592	4,353	94.8
Navajo	17,647	9,649	54.7
Pima	153,736	102,144	66.4
Pinal	32,294	16,872	52.2
Santa Cruz	5,973	3,460	57.9
Yavapai	18,210	13,550	74.4
Yuma	26,286	14,410	54.8

[1] Census of Population, 1960, vol. 1, pt. 4, table 27, pp. 38-41.
[2] Report of the secretary of state for the State of Arizona on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

CALIFORNIA

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Alameda	569,183	427,340	75.1
Alpine	228	220	96.5
Amador	5,891	5,100	86.6
Butte	51,235	40,419	78.9
Calaveras	6,714	5,397	80.4
Colusa	7,304	4,606	63.1
Contra Costa	232,243	178,245	76.7
Del Norte	9,972	5,727	57.4
El Dorado	18,330	14,610	79.7
Fresno	208,646	136,308	65.3
Glenn	10,399	7,290	70.1
Humboldt	60,666	38,499	64.1
Imperial	41,215	21,492	52.1
Inyo	7,402	5,919	80.0
Kern	163,963	109,608	66.8
Kings	27,677	18,846	68.1
Lake	9,622	8,302	86.3
Lassen	8,206	6,201	75.6
Los Angeles	3,830,926	2,730,898	71.3
Madera	22,729	13,862	61.0
Marin	91,574	75,364	82.3
Mariposa	3,512	2,968	84.5
Mendocino	30,952	18,227	58.9
Merced	50,282	28,269	56.2
Modoc	4,998	3,358	67.2
Mono	1,498	1,516	101.2
Monterey	116,686	64,672	55.4
Napa	43,244	31,210	72.2
Nevada	13,741	11,318	82.4
Orange	400,046	401,157	100.3
Placer	36,196	27,676	76.5
Plumas	7,149	5,713	79.9
Riverside	185,468	144,788	76.4
Sacramento	297,301	227,871	76.6
San Benito	9,073	6,237	68.7
San Bernardino	297,092	215,400	72.5
San Diego	601,616	426,286	70.9
San Francisco	531,774	323,908	60.9
San Joaquin	152,042	95,839	63.0
San Luis Obispo	50,831	37,186	73.2
San Mateo	270,895	219,191	80.9
Santa Barbara	103,084	86,401	83 8
Santa Clara	371,064	320,527	86.4
Santa Cruz	56,635	45,644	80.6
Shasta	34,846	28,350	81.4
Sierra	1,437	1,241	86.3
Siskiyou	20,431	14,335	70.2
Solano	79,132	50,245	63.5
Sonoma	91,136	72,136	79.2
Stanislaus	94,311	65,128	69.1
Sutter	19,391	14,044	72.4
Tehama	15,103	11,467	75.9
Trinity	5,818	3,439	59.1
Tulare	95,540	56,552	59.2
Tuolumne	9,464	7,820	82.6
Ventura	116,970	98,238	84.0
Yolo	38,568	26,274	68.1
Yuba	19,374	11,739	60.6

[1] Census of Population, 1960, vol. 1, pt. 6, table 27, pp. 179–194.
[2] Report of the secretary of state for the State of California on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

CONNECTICUT

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Fairfield	414,664	320,358	77.3
Hartford	433,144	328,882	75.9
Litchfield	75,173	61,006	81.2
Middlesex	56,229	45,134	80.3
New Haven	417,135	316,399	75.9
New London	112,641	78,942	64.4
Tolland	39,592	32,146	81.2
Windham	42,883	34,318	80.0

[1] Census of Population, 1960, vol. 1, pt. 8, table 27, pp. 65–66.
[2] Report of the secretary of state for the State of Connecticut on file at the Government Affairs Institute, Washington, D.C.

DELAWARE

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Kent	38,234	22,054	57.7
New Castle	185,128	146,893	79.3
Sussex	43,887	32,373	73.8

[1] Census of Population, 1960, vol. 1, pt. 9, table 27, p. 32.
[2] Report of the secretary of state for the State of Delaware on file at the Government Affairs Institute, Washington, D.C.

HAWAII

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Hawaii	34,594	24,973	72.2
Honolulu (Oahu)	284,901	155,395	54.5
Kauzi	16,351	10,634	65.3
Maui	24,070	16,219	67.4

[1] Census of Population, 1960, vol. 1, pt. 13, table 27, pp. 36–37.
[2] Report of the secretary of state for the State of Hawaii on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

IDAHO

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Ada	53,996	45,043	83.4
Adams	1,793	1,439	80.3
Bannock	26,303	21,308	81.0
Bear Lake	3,823	3,266	85.4
Benewah	3,637	2,777	76.4
Bingham	14,310	10,595	74.0
Blaine	2,806	2,454	87.5
Boise	957	863	90.2
Bonner	9,167	7,303	79.7
Bonneville	24,288	20,373	83.9
Boundary	3,323	2,483	76.8
Butte	1,838	1,493	81.2
Camas	529	574	108.5
Canyon	33,338	24,067	72.2
Caribou	3,068	2,725	88.8
Cassia	8,297	6,620	79.7
Clark	489	448	91.6
Clearwater	5,104	3,213	63.0
Custer	1,682	1,434	85.3
Franklin	4,317	3,983	92.3
Fremont	4,509	3,915	86.8
Gem	5,135	5,307	103.3
Gooding	5,530	4,375	79.1
Idaho	7,541	5,168	68.5
Jefferson	5,730	4,811	84.0
Jerome	6,320	4,941	78.2
Kootenai	17,638	14,347	81.3
Latah	12,325	8,724	70.8
Lemhi	3,374	2,563	76.0
Lewis	2,601	2,054	79.0
Lincoln	2,066	1,586	76.8
Madison	4,512	4,050	90.0
Minidoka	7,324	5,938	81.1
Nez Perce	15,945	13,147	82.5
Oneida	1,982	1,812	91.4
Owyhee	3,618	2,392	66.1
Payette	7,331	5,267	71.8
Power	2,214	2,127	96.1
Shoshone	11,967	8,079	67.5
Teton	1,290	1,273	98.7
Twin Falls	24,196	19,156	79.2
Valley	2,127	2,106	99.0
Washington	5,055	3,682	72.8

[1] Census of Population, 1960, vol. 1, pt. 14, table 27, pp. 49–59.
[2] Report of the secretary of state for the State of Idaho on file at the Government Affairs Institute, Washington, D.C.

MAINE

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Androscoggin	52,737	37,521	71.1
Cumberland	112,100	73,209	65.1
Franklin	11,842	8,671	73.2
Hancock	20,291	13,719	67.6
Kennebec	54,406	36,120	66.4
Knox	18,418	11,426	62.0
Lincoln	11,736	9,083	77.4
Oxford	26,486	18,956	71.6
Penobscott	73,715	43,215	58.6
Piscataquis	10,640	7,254	68.2
Sagadahoc	13,934	9,739	69.9
Somerset	23,809	15,235	64.0
Waldo	13,349	8,721	65.3
Washington	20,560	13,128	63.9
York	61,045	47,422	77.7

[1] Census of Population, 1960, vol. 1, pt. 21, table 27, pp. 56–59.
[2] Report of the secretary of state for the State of Maine on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

MASSACHUSETTS

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Barnstable	44,244	35,355	79.9
Berkshire	88,834	64,331	72.4
Bristol	254,693	186,657	73.3
Dukes	3,869	3,214	83.1
Essex	361,671	282,945	78.2
Franklin	34,280	25,624	74.7
Hampden	268,284	178,219	66.4
Hampshire	62,624	43,645	69.7
Middlesex	770,246	576,80	74.9
Nantucket	2,424	1,787	73.7
Norfolk	313,071	256,021	81.8
Plymouth	151,138	120,335	79.6
Suffolk	522,395	298,254	57.1
Worcester	367,293	273,331	74.4

[1] Census of Population: 1960. vol. 1, pt 23, table 27, pp. 103-106.
[2] Report of the secretary of state for the State of Massachusetts on file at the Government Affairs Institute, Washington, D.C.

NEW HAMPSHIRE

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Belknap	18,019	13,932	77.3
Carroll	10,232	9,015	88.1
Cheshire	26,685	19,584	73.4
Coos	22,410	16,819	75.1
Grafton	29,305	21,027	71.8
Hillsboro	110,431	89,739	81.3
Merrimack	43,048	32,382	75.2
Rockingham	59,557	46,754	78.5
Strafford	35,849	26,079	72.7
Sullivan	17,189	12,762	74.2

[1] Census of Population, 1960, vol. 1, pt. 31, table 27, pp. 39-41.
[2] Report of the secretary of state for the State of New Hampshire on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

NEW YORK

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Albany	174,414	149,926	86.0
Allegany	25,264	18,365	72.7
Bronx	965,315	555,309	57.5
Broome	132,408	92,254	69.7
Cattaraugus	48,299	33,514	69.4
Cayuga	45,196	36,218	80.1
Chautauqua	90,925	62,937	69.2
Chemung	59,614	41,773	70.1
Chenango	25,743	19,276	74.9
Clinton	41,713	24,914	59.7
Columbia	30,401	24,126	79.4
Cortland	24,233	17,577	72.5
Delaware	26,445	20,442	77.3
Dutchess	116,036	80,995	69.8
Erie	660,623	477,528	72.3
Essex	21,075	17,023	80.8
Franklin	25,951	17,673	68.1
Fulton	33,011	23,685	71.7
Genesee	32,245	24,398	75.7
Greene	20,188	18,204	90.2
Hamilton	2,703	2,958	109.4
Herkimer	41,465	30,986	74.7
Jefferson	53,111	36,638	69.0
Kings	1,745,408	941,567	53.9
Lewis	13,054	10,043	76.9
Livingston	26,598	21,022	79.0
Madison	31,140	23,606	75.8
Monroe	369,189	290,326	78.6
Montgomery	37,990	28,463	74.9
Nassau	765,494	640,721	83.7
New York	1,257,867	645,557	51.3
Niagara	144,912	97,280	67.1
Oneida	164,395	115,354	70.2
Onondaga	258,516	194,538	75.3
Ontario	41,599	31,359	75.4
Orange	116,324	80,106	68.9
Orleans	20,872	15,177	72.7
Oswego	50,021	37,831	75.6
Otsego	31,953	24,287	76.0
Putnam	19,748	22,205	112.4
Queens	1,240,073	838,769	67.6
Rensselaer	88,542	72,983	82.4
Richmond	137,461	95,028	69.1
Rockland	83,365	73,424	88.1
St. Lawrence	62,555	42,421	67.8
Saratoga	53,805	43,553	80.9
Schenectady	99,183	74,980	75.6
Schoharie	13,831	11,615	84.0
Schuyler	8,851	7,414	83.8
Seneca	20,232	13,591	67.2
Steuben	58,795	41,274	70.2
Suffolk	399,989	330,015	82.5
Sullivan	29,177	25,441	87.2
Tioga	21,754	17,847	82.0
Tompkins	38,397	25,666	66.8
Ulster	75,551	60,423	80.0
Warren	27,256	21,064	77.3
Washington	29,152	22,450	77.0
Wayne	41,831	29,765	71.2
Westchester	526,518	399,626	75.9
Wyoming	21,477	15,214	70.8
Yates	11,339	8,862	78.2

[1] Census of Population, 1960, vol. 1, pt. 34, table 27, pp. 155-173.
[2] Report of the secretary of state for the State of New York on file at the Government Affairs Institute, Washington, D.C. These figures include ballots which were spoiled.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

NORTH CAROLINA

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Alamance	50,184	30,574	60.9
Alexander	8,876	7,482	84.3
Alleghany	4,707	3,941	83.7
Ashe	11,391	9,186	80.4
Avery	6,631	4,161	62.8
Brunswick	10,772	7,961	73.9
Buncombe	80,759	50,995	63.1
Burke	31,427	22,896	72.9
Cabarras	40,545	25,099	61.9
Caldwell	27,243	19,579	71.9
Carteret	17,962	10,520	58.6
Catawba	41,838	32,930	78.7
Chatham	15,253	9,406	61.7
Cherokee	9,328	6,929	74.3
Clay	3,149	2,743	87.1
Cleveland	36,830	18,710	50.8
Columbus	25,212	13,475	53.4
Currituck	3,921	2,196	56.0
Dare	3,704	2,343	63.3
Davidson	45,953	31,027	67.5
Davie	9,978	7,546	75.6
Duplin	21,432	10,990	51.3
Durham	66,573	38,138	57.3
Forsyth	112,171	61,891	55.2
Gaston	72,519	37,326	51.5
Graham	3,449	3,135	90.9
Guilford	144,040	75,604	52.5
Harnett	26,211	13,360	51.0
Haywood	23,555	16,239	69.0
Henderson	22,232	14,846	66.8
Iredell	36,611	24,123	65.9
Jackson	10,068	8,088	80.3
Johnston	34,654	17,849	51.5
Jones	5,499	2,905	52.8
Lee	14,844	7,483	50.4
Lincoln	16,439	13,173	80.1
McDowell	15,448	10,488	67.9
Macon	8,753	6,674	76.2
Madison	9,649	7,165	74.3
Mecklenburg	157,937	96,171	60.9
Mitchell	8,006	4,999	62.4
Montgomery	10,194	7,318	71.8
Moore	20,536	11,546	56.2
New Hanover	42,210	24,724	58.6
Orange	24,363	14,991	61.5
Pamlico	5,301	2,900	54.7
Pender	9,716	5,166	53.2
Polk	6,870	5,782	84.2
Randolph	36,068	24,377	67.6
Richmond	21,533	11,639	54.1
Rockingham	40,836	20,495	50.2
Rowan	50,075	29,738	59.4
Rutherford	26,592	16,656	62.6
Sampson	25,581	15,701	61.4
Stanly	24,220	16,855	69.6
Stokes	12,811	9,562	74.6
Surry	28,219	17,780	63.0
Swain	4,634	3,828	82.6
Transylvania	9,092	8,030	88.3
Tyrrell	2,446	1,370	56.0
Wake	99,655	54,195	54.4
Washington	7,008	3,649	52.1
Watauga	9,765	7,963	81.5
Wilkes	25,223	20,190	80.0
Yadkin	13,615	9,498	69.8
Yancey	7,932	5,718	72.1

[1] Census of Population, 1960, vol. 1, pt. 35, table 27, pp. 98-122.
[2] Report of the secretary of state for the State of North Carolina on file at the Governmental Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

OREGON

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Baker	10,509	6,585	62.70
Benton	22,093	16,486	74.60
Clackamas	67,145	57,043	84.90
Clatsop	17,662	12,393	70.10
Columbia	13,335	10,268	77.00
Coos	31,910	21,149	66.27
Crook	5,451	3,586	65.70
Curry	8,132	4,686	57.60
Deschutes	13,928	10,095	72.47
Douglas	38,870	25,717	66.10
Gilliam	1,832	1,220	66.59
Grant	4,559	3,032	66.50
Harney	3,992	2,759	69.10
Hood River	8,146	5,472	67.10
Jackson	45,348	34,084	75.10
Jefferson	3,868	2,938	75.90
Josephine	18,504	13,801	74.50
Klamath	28,047	17,599	62.70
Lake	4,289	2,723	63.40
Lane	94,003	74,200	78.90
Lincoln	15,278	10,323	67.50
Linn	33,882	23,308	68.70
Malheur	12,894	7,983	61.90
Marion	73,925	51,209	69.20
Morrow	2,889	2,097	72.50
Multnomah	335,281	243,749	72.60
Polk	15,742	11,629	73.80
Sherman	1,492	1,353	90.60
Tillamook	10,971	7,573	69.00
Umatilla	26,822	16,859	62.80
Union	10,992	7,489	68.10
Wallowa	4,308	2,848	66.10
Wasco	12,258	8,597	70.10
Washington	53,916	50,181	93.00
Wheeler	1,506	798	50.90
Yamhill	19,592	14,463	73.80

[1] Census of population, 1960, vol. 1, pt. 39, table 27, pp. 57-65.
[2] Report of the secretary of state for the State of Oregon on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

VIRGINIA

County and independent city	Voting age population, 1960 [1]	Vote cast, 1964 presidential election [2]	Percentage of population
County:			
Amelia	4,185	2,239	53.5
Appomattox	5,387	3,791	70.4
Arlington	107,578	54,363	50.5
Chesterfield	40,717	25,871	63.5
Craig	2,056	1,244	60.5
Cumberland	3,466	1,977	57.0
Dickenson	9,855	5,639	57.2
Fairfax [3]	142,628	79,517	55.8
Giles	9,861	5,167	52.4
Grayson	10,502	6,352	60.5
Greensville	8,384	4,519	53.9
Henrico	70,219	42,082	59.9
King and Queen	3,352	1,729	51.6
Lancaster	5,591	2,911	52.1
Lee	14,172	8,626	6 .9
Middlesex	3,949	1,995	50.5
New Kent	2,554	1,365	53.4
Page	9,392	5,419	57.7
Prince Edward	8,021	4,064	50.7
Roanoke	37,225	19,526	52.5
Russell	14,180	7,367	52.0
Powhatan	3,939	2,152	54.6
Scott	14,819	9,269	62.5
Shenandoah	13,604	7,168	52.7
Surry	3,321	2,140	64.4
York	12,024	6,389	53.1
Independent city:			
Charlottesville	19,273	9,704	50.4
Clifton Forge	3,520	2,102	59.7
Colonial Heights	6,066	3,620	59.7
Fairfax [4]	[5] 7,087	4,766	67.2
Falls Church	5,834	3,707	63.5
Hopewell	10,403	5,691	54.7
Radford	5,365	3,358	62.6
South Boston	3,608	1,843	51.1
Virginia Beach [6]	44,868	23,442	52.2
Williamsburg	4,092	2,093	51.1

[1] Census of Population, 1960, vol. 1, pt. 48, table 27, pp. 75 to 107.
[2] Report of the secretary of state for the State of Virginia on file at the Governmental Affairs Institute, Washington, D.C.
[3] The city of Fairfax, which is located within the county of Fairfax, became an independent city subsequent to 1960. To properly reflect the number of persons of voting age residing in the county of Fairfax with the total vote cast in that county in the presidential election of 1964, the number of persons of voting age residing in the city of Fairfax has been subtracted from the number of persons of voting age residing in the county.
[4] See footnote 3, supra.
[5] Census of Population, 1960, vol. 1, pt. 48, table 20, p. 45.
[6] Virginia Beach and Princess Anne County were consolidated Jan. 1, 1963.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

WASHINGTON

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Adams	5,553	4,273	76.9
Asotin	7,746	5,436	70.1
Benton	34,063	28,372	83.2
Chelan	24,696	17,822	72.1
Clallam	17,902	13,455	75.1
Clark	55,815	41,790	74.8
Columbia	2,875	2,187	76.0
Cowlitz	33,746	24,501	72.6
Douglas	8,335	6,376	76.4
Ferry	2,155	1,459	68.9
Franklin	12,837	10,058	78.3
Garfield	1,797	1,532	85.2
Grant	25,080	14,427	57.6
Grays Harbor	33,377	23,027	68.9
Island	10,974	6,999	63.7
Jefferson	5,642	4,456	78.9
King	578,897	450,640	77.8
Kitsap	50,495	37,714	74.6
Kittitas	12,267	8,592	70.0
Klickitat	7,793	5,674	72.8
Lewis	25,692	19,022	74.0
Lincoln	6,738	5,213	77.3
Mason	9,841	8,071	82.0
Okanogan	14,922	10,495	70.3
Pacific	9,302	6,860	73.7
Pend Oreille	4,117	2,965	72.0
Pierce	195,195	125,973	64.5
San Juan	1,992	1,750	87.8
Skagit	31,650	22,308	70.5
Skamania	3,079	2,414	78.4
Snohomish	99,911	81,405	81.4
Spokane	168,083	111,581	66.3
Stevens	10,478	7,528	71.8
Thurston	32,790	27,021	82.4
Wahkiakum	2,091	1,624	77.6
Walla Walla	26,406	17,594	66.6
Whatcom	42,700	31,422	73.5
Whitman	17,925	13,538	75.5
Yakima	82,641	52,730	63.8

[1] Census of Population, 1960, vol. 1, pt. 49, table 27, pp. 65–74.
[2] Report of the secretary of state for the State of Washington on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—*Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted*—Continued

WYOMING

County	Voting age population [1]	Vote cast, 1964 presidential election [2]	Percentage of population
Albany	12,166	8,942	73.5
Big Horn	6,591	5,358	81.29
Campbell	3,380	2,802	85.39
Carbon	8,881	6,482	72.99
Converse	3,752	2,809	74.86
Crook	2,699	1,994	73.88
Fremont	14,321	10,794	75.37
Goshen	6,924	5,353	77.31
Hot Springs	3,804	2,608	68.56
Johnson	3,264	2,492	76.35
Laramie	35,110	24,622	70.13
Lincoln	4,790	4,084	85.28
Natrona	28,239	21,302	75.79
Niobrara	2,372	1,965	82.84
Park	9,282	7,443	80.29
Platte	4,300	3,360	78.14
Sheridan	11,989	9,238	77.06
Sublette	2,160	1,691	78.29
Sweetwater	10,630	7,913	74.44
Teton	1,807	2,049	113.38
Uinta	4,443	3,115	72.58
Washakie	4,750	3,408	73.87
Weston	4,384	2,892	65.96

[1] Census of Population, 1960, vol. 1, pt. 52, table 27, pp. 35–40.
[2] Report of the secretary of state for the State of Wyoming on file at the Government Affairs Institute, Washington, D.C.

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