IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-75

THE STATE OF GEORGIA, et al.,
Appellants,

v.

THE UNITED STATES OF AMERICA,
Appellee.

On Appeal From The United States District Court For The Northern District Of Georgia

REPLY BRIEF FOR APPELLANTS

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ARGUMENT

The Brief for the United States and a Brief Amici Curiae for the NAACP *et al.* have been filed. The appellee and amici would have this Court decide substantial questions (the Court has noted probable jurisdiction) without full discussion of the consequences.

The Court will recall that in *Fairley v. Patterson,* 393 U.S. 544 (1969), decided with *Allen v. State Board of Elections,* 393 U.S. 544 (1969), the Government took the position that there was ". . . no need here for the Court to reach the question whether Section 5 extends to the typical sort of apportionment litigation and districting

changes which have followed in the wake of this Court's decision in *Baker v. Carr.* . . ." (Memorandum of the United States as Amicus Curiae, filed in *Fairley, supra;* see Ga. Br. pp. 18-19).

In *Allen,* the Court found that ". . . the question of whether §5 might cause problems in the implementation of reapportionment legislation is not properly before us at this time." (393 U.S. at 569).

Nevertheless, the Government and amici both argue now that notwithstanding the restriction urged upon and adopted by the Court in *Allen/Fairley,* that decision is controlling in this reapportionment case. We submit that this Court again is being asked to decide far reaching questions without being fully apprised of the governmental impact of such decisions.

The last of the questions presented is not the least significant and could be considered the most significant in terms of the balance of power as between Congress and the Executive Branch. For that reason, and to show the complexity of the administrative problems which the application of Section 5 to reapportionment and redistricting will create, the four questions will be considered in reverse order.

QUESTION 4.

The fourth question is: "Does the Attorney General have the power to extend the 60 day time limit Congress placed on him in Section 5 of the Voting Rights Act of 1965?" (Ga. Br. p. 4) This question, on which the Court noted probable jurisdiction, involves the power of the Attorney General to promulgate regulations, without

statutory authority, which regulations contravene the time limit fixed by Congress. The Government's comparable question is: "Whether the objections interposed by the Attorney General were timely." (U.S. Br. p. 2)

In Section 4 of Georgia's Brief, it was pointed out that no authority has been cited which authorizes the Attorney General to extend, by regulation or otherwise, the 60 day limit fixed by Congress for the suspension of State voting laws (Ga. Br. p. 39). Five pages were devoted to that subject (Ga. Br. pp. 39-44).

The Government's brief cites no authority for the Attorney General to promulgate regulations, and no authority for him to amend the laws of Congress. The Government argues that the question is moot, but that in any event, the Attorney General complied with his regulations (U.S. Br. pp. 43-44). We do not dispute that he complied with his regulations (as to time). We question why he needed additional information and 120 days to invalidate multi-member districts when he knew from the first day that the 1971 reapportionment plan used such districts (A. 19, Ex. A, R. 21-51). We have suggested that he could have stated, following this Court's decision in *Whitcomb v. Chavis,* 403 U.S. 124 (1971), that he did not intend to be bound by it as to the seven covered states (Ga. Br. p. 38). But we have not disputed that he complied with his regulations as to time.

Our dispute with the Government is that the Attorney General's regulations were written without any statutory authority and that as written they are directly contrary to the law as written by Congress. The Government has cited no authority for the proposition that the Attorney General has the inherent power to promulgate regulations.

Amici contend that 5 U.S.C. §301 should be read to authorize the Attorney General to adopt regulations (Amici Br. p. 51). They assert that two cases confirm their reading of §301, citing *U.S. v. Moorehead,* 243 U.S. 607 (1917), and *Smith v. U.S.,* 170 U.S. 372 (1898).[1] In our brief, we pointed out that §301 authorizes the head of an Executive Department to prescribe regulations for the *internal* government of his department, conduct of its employees, distribution and performance of its business, and custody, use and preservation of its records, papers and property, citing *N.L.R.B. v. Capitol Fish Co.,* 294 F.2d 868, 875 (C.A. 5, 1961).

In *U.S. v. Moorehead, supra,* cited by amici, Congress had expressly authorized the Commissioner of the General Land Office to enforce and carry into execution, by appropriate regulations, every part of the provisions of the Public Lands Act (243 U.S. at 613, fn. 6, Rev. Stat. §2478). Contrary to amici's assertion, *Moorehead* does not "hold" that §301 authorizes an Executive Department to enact *external* regulations for the performance of its business.

In *Smith v. U.S., supra,* the Government brought suit against an official of the General Land Office and the sureties on his official bond. It is true that the regulation in question required a citizen applying to purchase public land to make payment before action would be taken on his application. However, the question decided in that case was whether the monies received were public monies within the meaning of the law and the surety bond. The Court held the regulation to be valid as to the public

[1] *F.C.C. v. Schreiber,* 381 U.S. 279 (1965), cited by amici, does not involve any interpretation of, or reference to, 5 U.S.C. §301.

official and the funds in his hands to be public money. The Court did not hold the regulation to be valid externally.

N.L.R.B. v. Capitol Fish Co., supra, was correctly decided. A March 15, 1883 opinion of the Attorney General construed the predecessor of 5 U.S.C. §301 the same way, stating that it did not authorize a department head to promulgate regulations for third parties. 17 Op. Atty. Gen. 524 at 525 (1883).

Amici are requesting this Court to interpret 5 U.S.C. §301 so as to give broad powers to the heads of all Executive *and Military* Departments to prescribe regulations for the performance of their business with all citizens. Such sweeping changes in the separation of powers are not to be undertaken lightly.

Amici also argue that Section 5 of the Voting Rights Act itself implicitly authorizes the Attorney General to promulgate implementing regulations, citing *National Broadcasting Co. v. United States,* 319 U.S. 190, 218-19 (1943), and *F.C.C. v. Schreiber, supra.* In the *National Broadcasting Co.* case, the F.C.C. had been explicitly authorized by Congress to make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of the Act. 319 U.S. at 215, 47 U.S.C.A. §303(f). In *Schreiber, supra,* the F.C.C. Act similarly authorized the F.C.C. to adopt regulations for the conduct of its proceedings (381 U.S. at 289). The power to promulgate regulations is not to be implied from Section 5 of the Voting Rights Act.

Moreover, even if the Voting Rights Act had specifically empowered the Attorney General to prescribe

regulations, the Attorney General could not extend the sixty day time limit placed on him by Congress.

This Court is being asked to hold that the Attorney General has the power to promulgate regulations, for the conduct of seven States, without any statutory authority. The Court is being asked to hold that when Congress says 60 days, the Attorney General can, by regulations adopted without authority, grant himself an extension. The Court is being asked to hold that when Congress put no time limit on the District Court for the District of Columbia to decide Section 5 cases, but put a 60 day limit on the Attorney General (Ga. Br. pp. 50-51), that the Attorney General's regulation is consistent with what Congress intended (U.S. Br. p. 44). Why then did Congress say that a change in State voting laws would become effective, without any approval, if the Attorney General has not interposed an objection within 60 days?

Under Section 5, a change in State voting law does not become effective when timely disapproved by the Attorney General. Thus, Georgia's 1972 House reapportionment plan, including its repeal of the 1971 plan, is not in effect (assuming questions 1-3 are to be decided in favor of the Government). The Government's argument that the 1971 plan has been repealed (and that Georgia's fourth question presented on appeal is mooted by that repeal; U.S. Br. p. 43) overlooks the fact that the repealer clause in the 1972 plan has been suspended and is not in effect. Mr. Norman objected in his March 24, 1972 letter to the entire 1972 Act (S.B. 690) (A. 13). He did not exclude from his objection the provision which would have repealed the 1971 Act (A. 13). He disapproved and suspended the whole thing. The repealer clause in the 1972

plan is not in effect. Thus, if his March 3, 1972 objection to the 1971 reapportionment plan submitted November 5, 1971 (A. 32, 33) was not timely, the 1971 plan is in effect.

The question of timeliness is not moot. It is, instead, properly before the Court and of vital importance, not only to the affected States but to Congress as well. Must Congress pass a law saying "When we say you have 60 days in which to act, we expect you to act within 60 days"?

In addition to arguing that the 1972 plan repealed the 1971 plan, amici also contend that only the 1972 reapportionment plan was before the District Court (Amici Br. pp. 48-49). No such contention has been made by the Government, the plaintiff in this case. It was the Government which attached Georgia's 1971 reapportionment plan to its complaint (A. i), attached its letter disapproving the 1971 plan to the complaint (A. i), and attached Georgia's submission of the 1971 plan to its complaint (A. i). It was the Government that prayed in its complaint that Georgia be enjoined from implementing both its 1971 and 1972 reapportionment plans (A. 7).

Both the 1971 and 1972 plans were before the District Court because the Government put them there. After the District Court overruled (A. 58) Georgia's defense number 4 (A. 26-27), the Court enjoined Georgia from holding elections "under the present reapportionment plan" (A. 75). It is the overruling (A. 58, A. 74) of Georgia's defense number 4 which is before this Court.

The fourth question presented is properly before this Court. It raises questions of vital importance to the balance and separation of power between Congress and the

Executive Branch. The question should not be decided without full recognition of its scope and impact.

QUESTION 3.

The third question presented is: Does Section 5 empower the Attorney General to disapprove a law which he does not find to be discriminatory but about which he is unable to reach a decision?

The Government's Brief treats the question as if it involved only "burden of proof." The question is much more significant. What of the Justice Department's indecisive denial policy (Ga. Br. pp. 31, 34-35, 38)? By what authority has the Attorney General adopted regulations imposing a burden of proof test (Ga. Br. pp. 31, 39-40)? By adopting a burden of proof standard, has the Attorney General constituted his staff as a court, contrary to Section 5, *Allen v. State Board of Elections,* 393 U.S. 544, 549 (1969), and Article III of the Constitution?

How can the burden of proof be on the State, when the Attorney General's regulations provide that his decision will be based upon material not available to the State? (Ga. Br. pp. 32-34). See *Morgan v. United States,* 304 U.S. 1, 18-19 (1938), *Joint Anti-Facist Refugee Committee v. McGrath,* 341 U.S. 123 (1951), *Greene v. McElroy,* 360 U.S. 474 (1959), *Hannah v. Larche,* 363 U.S. 420, 493, dissenting opinion by Mr. Justice Douglas (1960).

These issues have not been mentioned by the Government in its brief because the third question posed by the Government is narrower than the one on which the Court noted probable jurisdiction.

Moreover, the Government says that this question is outside the permissible scope of judicial inquiry and thus not entitled to consideration by this Court (U.S. Br. p. 38), citing *Allen, supra,* and *Perkins v. Matthews,* 400 U.S. 379 (1971). Those were suits by citizens to enjoin the use of State laws which had not been submitted to the Justice Department. This is a suit by the Government to enjoin the use of a State law which was submitted, and disapproved. One defense is that the disapproval was invalid, being both indecisive and based upon an improperly imposed burden of proof standard (A. 25). The Court is entitled to consider the validity of that defense and, hence, the validity of the Attorney General's method of disapproval. This is the only Section 5 case ever to come before this Court with the Government as a party, and the Government has yet to justify the procedures it uses in making Section 5 decisions (J.S. 15), except to say that Congress intended it that way (U.S. Br. pp. 38-42).

The question is not only did Congress so intend, but also, if that intent was accomplished, is it constitutionally valid, and has the Justice Department acted as Congress provided, or has it acted outside the scope of its valid powers? Did Congress provide in Section 5 (and would it be valid if it had): "If the Attorney General is unable to conclude that the change does not have a discriminatory racial effect on voting, he shall disapprove the change"?

That is what happened here (A. 10-11). That is one of the questions presented by this appeal.

Amici have argued that Georgia has abandoned the third question (Amici Br. pp. 42-43). The Government, whose lawyers were present in court, has not made any such argument. At the hearing in the District Court,

Judge Bell asked counsel for the Government (A. 53): "What evidence is there of discrimination in the reapportionment plans?" The Court was treating the Government's complaint in this case as it would any other reapportionment case, without recognizing that *Allen* and *Perkins* held that the inquiry should be "limited to the determination whether 'a state requirement is covered by §5, but has not been subjected to the required federal scrutiny.' " *Perkins,* 400 U.S. 379 at 383, citing *Allen,* 393 U.S. 544 at 561. Government counsel responded to Judge Bell's request for evidence of discrimination (A. 54):

> " It is our position, Your Honor, that the United States does not have to prove discrimination. I think the Supreme Court has made that quite clear in the *Allen* and *Perkins* decisions. However, if your Honor wishes, Mr. Piper can pinpoint some of the grounds for our objection."

Counsel for the State then agreed (A. 54):

> "I do not want to give up any rights of our clients, but neither do I want to lead the Court into error. It is my understanding of the law that the Justice Department is not required to prove discrimination."

After learning that this was not a typical reapportionment case, the Court took a 15 minute recess (A. 54).

After the recess, Mr. Piper, speaking for the Government, returned to the subject, saying (A. 55-56):

> "I might say a word here about the nature of this action and the relief we are seeking. We realize it is difficult for a Judge to grant relief in a case when he doesn't know the basis for the Attorney General's

> finding of discrimination. I know it would be difficult for me if I were a Judge. But we have to live with Section 5 the way it was written by Congress, and the way it has been interpreted by the Supreme Court. This is not a Fifteenth Amendment lawsuit, and we are not here to prove discrimination. It is our contention that if you find in our favor on the four defenses which have been raised by the State, then neither of the House reapportionment plans which have been objected to by the Justice Department can be used by the State and they should be enjoined from doing so."

Amici now contend (Amici Br. pp. 42-43) that Georgia's agreement that the Government was not required to prove discrimination in this case before the District Court, constituted abandonment of Georgia's contention that the Attorney General acted *ultra vires* in putting the burden of proof on Georgia in the "proceeding" before the Justice Department. The location of the burden of proof in court (see *Allen* and *Perkins, supra*) is entirely different and distinct from the location of that burden upon the State in a "proceeding" before the Justice Department (see 28 C.F.R. 51.19; Ga. Br. p. 60). Agreeing once with the Government as to one thing does not mean you agree with the Government as to everything.

It is Georgia's position that the language of Section 5 shows that Congress intended that if the Attorney General did not find the submitted change to have a racially discriminatory purpose or effect, he should interpose no objection and the change would take effect, subject to being challenged in court. That is, we submit, how Section

5 reads and is what this Court had in mind when it said in *Allen,* 393 U.S. at 549:

> "The Attorney General does not act as a Court in approving or disapproving the state legislation."

Contrary to *Allen,* the Attorney General's regulations (promulgated without statutory authority) seek to establish the Civil Rights Division of the Justice Department as a court (28 C.F.R. 51.19; 28 C.F.R. 0.50), to place the burden of proof on the submitting State without notice of charges or opportunity to examine the material (28 C.F.R. 51.26a) on which the decision is based (28 C.F.R. 51.19), and to allow disapproval of State laws when the man in charge is unable to reach a decision (A. 10-11).

If these issues are to be decided in favor of the Government, then the administrative problems left unresolved in *Allen,* 393 U.S. at 569, can be resolved simply by the Government, but the covered States may as well abandon to the local District Courts the task of formulating reapportionment plans.

QUESTION 2.

Apparently we have been unable to make clear the fundamental basis of the second question presented. The Government's restatement of the second question indicates that we have not succeeded in getting attention directed to the main issue.[2]

To clarify our position, we will undertake to simplify the question. One undisputed fact is essential. Georgia has been using multi-member districts since 1880 (Ga. Const. 1877, Art. III, Sec. III, Par. I). Simply stated, the

[2]Amici have omitted all discussion of question 2, except in footnote 12 (Amici Br. p. 14).

question is: Does Section 5 empower the Attorney General to disapprove Georgia's use of multi-member districts, *in toto?* That is what he did.

The Government has restated this question, as follows (U.S. Br. p. 2):

> "2. Whether the 1971 and 1972 Georgia House of Representatives reapportionment plans were election law 'changes' that required submission to the Attorney General under Section 5 of the Act."

That is not the question. Certainly the reapportionment plans were "changes", if reapportionment plans are subject to the Act. But that is the first question.

The question is: Can the Attorney General disapprove Georgia's use of multi-member districts, which he undertook to do, when Georgia has been using multi-member districts since 1880?

A District Court, upon finding one invalid multi-member district, is without authority to eliminate every multi-member district in the State. *Whitcomb v. Chavis,* 403 U.S. 124, 160-161 (1971). A District Court is without authority to find the use of multi-member districts to be invalid, *per se. Whitcomb, supra,* 403 U.S. at 142.

Can the Attorney General eliminate all 32 multi-member districts in Georgia on the basis of 15 to which he objects? Can he find that the use of multi-member districts is invalid *per se?* Can he, under the Voting Rights Act, disapprove their use when they have been in use since 1880?

The real issue the Court is being asked to decide is: When a change is submitted, can the Attorney General

disapprove only the "change", or can he disapprove other parts of the law as well? As candidly stated to the court below (Plaintiff's Brief to the District Court, R. 170, pp. 12-13):

> "The United States submits that the difference between the 1971-1972 plans and the 1964 plan only triggers the requirement for submission under Section 5 and does not necessarily limit the standards of review or the permissible range of objection resulting from such review."

When a reapportionment plan is submitted for a 180 member House, which is not a change in the number of legislative members, can the Attorney General disapprove the continued use of 180 members?

When House and Senate plans are submitted, could the Attorney General disapprove the use of the bicameral system in existence since the State was created?

Without being informed of it, this Court is being asked to hold, in effect, that the "change" only "triggers" the requirement of submission but that the Attorney General is not limited to objecting to the "change." If the Attorney General is not limited to disapproving the "change", what are his limits? The scope of the Attorney General's power silently being asserted is awesome.

Georgia has a majority vote requirement. That is, a candidate must receive a majority of the vote to be elected. If no candidate receives a majority, there is a run-off election, 21 days later, between the two candidates receiving the highest number of votes. Ga. Code §34-1513. Georgia's majority vote, run-off requirement is

valid. *Bond v. Fortson,* 334 F.Supp. 1192 (N.D. Ga. 1971), aff'd., 404 U.S. 930 (1971).

That requirement is not, however, applicable to election of presidential electors. If Georgia were to change the run-off date from 21 to 28 days, or if Georgia were to change the application of the requirement so as to exempt not only presidential electors but also Congressmen, could the Attorney General disapprove Georgia's use of majority vote *per se* because the law had changed? We respectfully submit that the Attorney General's power under Section 5 is limited to disapproving that which has changed. In any event, we feel the Court will now know what power it is being asked to bestow on the Attorney General.

QUESTION 1.

The first and foremost question presented is: Is Section 5 of the Voting Rights Act applicable to State legislative reapportionment acts, and if so, is it constitutional as thus applied?

We apologize for reversing the sequence of the questions presented, but the administrative problems and the Federal/State conflicts are more readily recognized after the Government's administration of Section 5 has been reviewed.

The Government and amici have argued that *Allen* decided that Section 5 is applicable to reapportionment. Neither the Government nor amici's counsel who participated in *Allen/Fairley* has explained the Government's restrictive position before this Court in those cases (see Ga. Br. pp. 17-20). Now counsel says (Amici Br. p. 26) that the *Fairley* practices are indistinguishable, whereas

in the Government's *Fairley* Brief counsel said that *Fairley* does not fit into the ordinary pattern of apportionment litigation (Ga. Br. pp. 18-19).

The Government and amici have argued that Congress adopted *Allen* when it passed the Voting Rights Amendments of 1970. In *Allen,* this Court expressly refused to decide whether Section 5 is applicable to reapportionment legislation (393 U.S. at 569). Congress did not adopt from *Allen* that which the Court did not decide in *Allen.* If Congress adopted *Allen,* it too left undecided this very question.

Amici say that Georgia does not point to even one crisp statement by the draftsmen of the Voting Rights Act that reapportionment acts are not within the coverage of Section 5 (Amici Br. pp. 29-30). Georgia pointed to the statement of Mr. David L. Norman, a draftsman of the 1965 Act, testifying on behalf of the Attorney General, the administration and the Civil Rights Division of the Justice Department, before a Congressional committee, that prior to *Allen* and *Perkins:*

> "We didn't formerly think that reapportionment as such had to be submitted, or annexation." (Ga. Br. pp. 21-22).

We believe Mr. Norman's statement to be crisp enough. If the Court is expected, in construing a statute, to defer to the interpretation of it by the federal administrator (Amici Br. pp. 56-57), Mr. Norman's statement is entitled to great weight.

In addition, it is interesting to note that the Justice Department's statistics on reapportionment submissions all begin in 1969 (U.S. Br. pp. 25-26, fn. 18, fn. 19), the

year *Allen* was decided. We suggest it to be a fact that there are no such statistics for the years 1965 through 1968. The 1960's have been called the reapportionment decade. Yet not once from 1965 to 1969 did the Justice Department or anyone else in this country assert that reapportionment acts were subject to Section 5.

Amici's counsel, first assistant to the Assistant Attorney General in charge of the Civil Rights Division from April 12, 1965 to January 31, 1967, and then the Assistant Attorney General in charge of the Civil Rights Division from January 3, 1968 to January 20, 1969, took no action to apply Section 5 to reapportionment during his 34 month tenure in office. His inaction is also entitled to some weight.

Moreover, amici's argument now makes it appear that the District Courts in seven states considering reapportionment acts adopted after November 1, 1964, should have required such acts to be submitted first to the Attorney General, before accepting jurisdiction and considering those acts on their merits. In fact, it would now appear (from amici's argument) that this Court should not have affirmed in *Toombs v. Fortson,* 384 U.S. 210 (1966), but should have reversed, directing the District Court to require Georgia to submit its 1965 House reapportionment plan to the Justice Department.

The truth of the matter is that nobody, neither Judges nor federal officials, ever thought that reapportionment plans were subject to Section 5 until *Allen,* and *Allen* expressly did not decide the question (393 U.S. at 569).

What happens if Section 5 is made applicable to reapportionment? Legally, Section 5 immediately becomes

applicable to congressional redistricting acts, as well as State legislative reapportionment acts. Then the reapportionment and redistricting acts of the seven covered States must be approved in Washington. Moreover, the reapportionment and redistricting acts of the other affected States, those which have political subdivisions subject to the Act, Arizona, California, Hawaii, Idaho, New York and Wyoming, or at least those portions of their reapportionment and redistricting acts as relate to the covered political subdivisions, must also be approved in Washington.[3]

Then, as a practical consequence, although a covered State could submit its reapportionment plans to either the Attorney General or the District Court for the District of Columbia for approval, it is far more likely to abandon attempts at reapportionment and shift the reapportionment problem to the local District Court in the first instance. Why? First, because self-reapportionment is a bitter legislative battle in any event, pitting legislative neighbor against neighbor.

Secondly, the Attorney General (or District Court for the District of Columbia) can only consider 15th Amendment aspects of reapportionment. The local District Court can consider both 14th and 15th Amendment aspects but will not consider any 15th Amendment questions until after the Attorney General's review is completed (U.S. Br. p. 27, fn. 22).

To avoid the legislative battle, followed by executive delay and indecision, followed by judicial delay and then

[3]At this writing, we have been unable to ascertain whether or not the Justice Department is requiring Arizona, California, Hawaii, Idaho, New York and Wyoming to submit their reapportionment and redistricting acts for approval.

confrontation, the legislatures of the covered States could conclude that one judicial proceeding like *Connor v. Johnson,* 402 U.S. 690 (1971), will expedite and simplify the procedure.

It makes no sense to submit reapportionment plans to the Attorney General when the District Court most familiar with the problems is better equipped to handle them. The Attorney General cannot formulate a reapportionment plan, the District Court can. The Attorney General cannot withhold relief when an election is imminent, the District Court can.

We do not find in either the Government's brief or the amici brief any suggestion that the District Courts are less capable than the Attorney General of reviewing reapportionment plans. One review, by a court of competent jurisdiction, is enough. There is no need to involve the U. S. Attorney General in approving or disapproving reapportionment and redistricting plans. To do so is to extend *Marbury v. Madison,* 1 Cranch 137, 2 L.Ed. 60 (1803), to include the Executive Branch, and place in the hands of the Attorney General the power to veto congressional redistricting acts. The fears of Mr. Justice Black, dissenting in *Allen* and *Perkins, supra,* are particularly applicable in the case at bar.

CONCLUSION

Let us summarize this case. The Government contends that the validity of Section 5 was upheld in *South Carolina v. Katzenbach,* 383 U.S. 301 (1966). At that time, no state law had been submitted, but the Court undoubtedly had in mind state *voting* laws (383 U.S. at 315-316, 319-320, 323).

In *Allen, supra,* it was held that Section 5 is applicable to certain *election* laws (393 U.S. at 549, 566). The Court did not in *Allen* decide whether Section 5 is applicable to reapportionment (393 U.S. at 569) and did not consider the constitutional validity of Section 5 if applied to reapportionment.

Now the Court is being asked to apply *Katzenbach* and *Allen* to reapportionment. Step by step we have come, and where are we?

The Government is asking this Court to hold that the legislative reapportionment and congressional redistricting acts of the covered and affected States cannot go into effect until federal approval is obtained. We submit that that is not "appropriate legislation" authorized by Section 2 of the 15th Amendment.

To accomplish its goal, the Government asks this Court also to hold that the Attorney General can enact regulations without statutory authority, which regulations amend the law of Congress, to uphold the Attorney General's veto of a State law as to which he was unable to reach a conclusion, and to uphold the Attorney General's veto (contrary to *Whitcomb v. Chavis, supra*) of Georgia's historic use of multi-member districts.

We respectfully submit that the decision and order of the District Court should be reversed.

Respectfully submitted,

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