S 521-11

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 818, S. 2456, S. 2507, and Title IV of S. 2029

BILLS TO AMEND THE VOTING RIGHTS ACT OF 1965

JULY 9, 10, 11, AND 30, 1969

FEBRUARY 18, 19, 24, 25, AND 26, 1970

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

37-499 WASHINGTON : 1970

COMMITTEE ON THE JUDICIARY

JAMES O. EASTLAND, Mississippi, *Chairman*

JOHN L. McCLELLAN, Arkansas
SAM J. ERVIN, JR., North Carolina
THOMAS J. DODD, Connecticut
PHILIP A. HART, Michigan
EDWARD M. KENNEDY, Massachusetts
BIRCH BAYH, Indiana
QUENTIN N. BURDICK, North Dakota
JOSEPH D. TYDINGS, Maryland
ROBERT C. BYRD, West Virginia

EVERETT McKINLEY DIRKSEN, Illinois
ROMAN L. HRUSKA, Nebraska
HIRAM L. FONG, Hawaii
HUGH SCOTT, Pennsylvania
STROM THURMOND, South Carolina
MARLOW W. COOK, Kentucky
CHARLES McC. MATHIAS, JR., Maryland

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

SAM J. ERVIN, JR., North Carolina, *Chairman*

JOHN L. McCLELLAN, Arkansas
EDWARD M. KENNEDY, Massachusetts
BIRCH BAYH, Indiana
ROBERT C. BYRD, West Virginia

ROMAN L. HRUSKA, Nebraska
HIRAM L. FONG, Hawaii
STROM THURMOND, South Carolina

LAWRENCE M. BASKIR, *Chief Counsel and Staff Director*

CONTENTS

ADDITIONAL MATERIAL

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

WEDNESDAY, JULY 9, 1969

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., in room 324, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee) presiding.

Present: Senators Ervin, Hruska, Kennedy, Bayh, and Thurmond.

Also present: Lawrence M. Baskir, chief counsel, and Lewis W. Evans, counsel.

Senator ERVIN. The subcommittee will come to order.

Today the Constitutional Rights Subcommittee begins hearings on a variety of proposals to extend or otherwise amend the Voting Rights Act of 1965. These proposals fall into two groups. S. 818, S. 2456, and title IV of S. 2029 are identical. They would extend the provisions of section 4(a) for an additional 5 years. S. 2507, the administration proposal, would make substantial revisions in section 4 and add a number of new provisions. The two proposals will be inserted into the record of the hearings.

When the Voting Rights Act was first proposed to Congress, I declared my support for any constitutional and reasonable legislation designed to protect and insure the right of every American, whatever his race, to register and vote. However, I opposed the Voting Rights Act because in my judgment it was, and still is, politically motivated and unconstitutional legislation designed to impose upon one section of the country onerous terms applicable to no other part.

The act presumes to use authority granted Congress to implement the terms of the 15th amendment by "appropriate" legislation. The 15th amendment simply prohibits the denial of the franchise on the grounds of race or color. Yet Congress used this limited authority to enact legislation directly contrary to other provisions of the Constitution which give to the States the authority to establish qualifications for voting. The Constitution must be read and applied as a whole. One section cannot be used to nullify other sections. Thus, even if Congress has the power under the 15th amendment to enact this legislation, it must still conform to article I, section 2, article II, section 2, and the 17th amendment—each of which gives the States the authority to establish qualifications for voting.

The intent of these constitutional provisions is evident. As James Madison said:

> The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the (national) legislature.

Despite the clear meaning of the Constitution, Congress proceeded to enact the Voting Rights Act. The act established Federal qualifications for voting by prohibiting the use of literacy tests under a carefully devised formula—the so-called trigger device—which assures that the prohibition will apply only to seven States and parts of States.

This is an abritrary formula designed to impose upon Southern States—but not all of them—the full might of the Federal regulation.

The triggering device is based upon the illogical assumption that discrimination in voting has occurred only where literacy tests can be found and that wherever literacy tests have been used, they have been used for the purpose of discrimination in voting.

Second, it illogically assumes that wherever registration or voting falls below the arbitrary figure of 50 percent, this is conclusive proof that the tests have been used for discriminatory purposes. I have never understood what relationship a literacy test has to the number of registered voters who turn out in an election.

In making these assumptions, the Congress legislatively declared that the voting officials of certain States had violated the Constitution. Supreme Court decisions to the contrary notwithstanding, I consider this provision to be a bill of attainder of the worst sort.

The absurdity of this trigger device is demonstrated by comparing the 1964 voting statistics in my State of North Carolina with those in New York, both of which have literacy tests. Hyde County, N.C., had 49.7 percent of eligible voters voting in 1964. New York County voted 51.3 percent. Hyde County is condemned under the act for three-tenths of 1 percent. New York County is innocent for 1.3 percent.

But the true evidence of the arbitrary character of the act is shown by examining the voting patterns of Texas, with no literacy test: 144 Texas counties voted less than 50 percent in 1964 and, overall, only 41 percent of the eligible voters of Texas cast votes in that year. By contrast, nearly 52 percent of the eligible voters of North Carolina voted in 1964, and more than half of those counties of North Carolina covered by the act had better records than the entire State of Texas. Yet the act does not apply to Texas.

Not only is this legislation contrary to the Constitution and clearly politically motivated, but it is also repressive legislation. It places the States affected under a kind of tutelage generally reserved for conquered provinces rather than for full and equal States of the Union. For instance, the act requires that any State wishing to remove itself from the strictures of the legislation must seek a declaratory judgment that it has not used literary tests in the past 5 years for discriminatory purposes. Suit must be brought in a Federal court, but not the Federal court in the district or division where the cause arises. The act closes the door of all Federal courts in the Nation save only one, the Federal court in Washington, D.C.

The sponsors of the legislation evidently felt that Federal judges who make their home in the South cannot be trusted to apply the law of the land and the Constitution even though they take the same oath as the Federal judges in the Nation's Capital.

This provision condemns every Federal judge in seven States by announcing that they cannot be trusted to do their job. It requires that State officials must travel up to a thousand miles to prove their

innocence, bringing their evidence and their witnesses with them. When the 13 colonies declared their independence from England, one of the grievances was "for transporting us beyond the seas to be tried for pretended offenses." The same burdens Parliament imposed upon the colonies have been duplicated by the Congress 175 years later.

Another repressive feature of this legislation is the requirement that States wishing to make changes in their election laws must go hat-in-hand to Washington to beg the permission of the Attorney General of the United States. This is an extraordinary provision, for it subordinates the legislatures and Governors and officials of these seven States to the whim of a politically appointed official of the Federal executive department.

Laws and regulations affecting the right to vote are extremely important, for they can be manipulated to serve partisan ends of particular parties and factions of parties. By giving this power to a political figure in the national administration, Congress delivered an immense amount of political power and the temptation to use that power for narrow partisan ends. One cannot be certain how that power has been exercised in the past 5 years, just as no one can predict how it may be used if conferred for another 5. In any case, this is a power which no honorable official should desire, and no dishonorable official should have.

It is perhaps only appropriate that such an ill-advised piece of legislation should have produced equally ill-advised decisions by the Supreme Court. Each of the three major cases bearing on the act—*South Carolina* v. *Katzenbach*, *Katzenbach* v. *Morgan*, and the recent case of *Gaston County* v. *U.S.*—confirm the constitutional distortions of Congress and even extend them.

The *South Carolina* case fully approved of the constitutional theory of the Voting Act. The Court established the unique and dangerous theory that the Constitution is a set of mutually repugnant provisions of unequal weight. They affirmed what is in effect a congressional suspension of certain provisions of the Constitution—those enabling the States to set voting qualifications—on the grounds that these State procedures might have a "tendency" to produce violations of the 15th amendment. This is a doctrine which the Court, in the classic case of *Ex parte Milligan*, described as follows:

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of Government.

In the *Morgan* case, the Court went even further. It interpreted the Fifth section of the 14th amendment as giving Congress the power to annul a State law in perfect harmony with the 14th amendment—according to the Court's prior rulings—and one which was enacted under authority of at least three specific provisions of the Constitution.

The *Gaston County* case was decided by the Supreme Court on June 2, 1969.

In March of 1966, the Attorney General had determined that Gaston County, N.C., fell under the ban of the Voting Rights Act because less than 50 percent of the eligible voters had registered and voted in the 1964 election. This automatically suspended the literacy test—

a determination from which there is no appeal. In August of 1966, pursuant to the provisions of the act, Gaston County brought an action in the Federal district court in Washington, D.C., seeking to reinstate the literacy test by showing that it had not been used during the last 5 years for the purpose or with the effect of denying to any person the right to vote on account of race or color.

In a two-to-one decision the three-judge district court held that since Gaston County had maintained segregated schools for many years prior to passage of the act, Negroes presently of voting age had attended schools of inferior quality. Therefore, it followed that the literacy tests operated to discriminate against them. The Supreme Court in a seven-to-one decision affirmed the district court's determination and its reasoning.

The Court quickly brushed over Gaston County's contention that any person subjected to the slightest amount of education could pass the simple literacy test established by North Carolina. The North Carolina constitution provides that "any person presenting himself for registration shall be able to read and write any section of the constitution in the English language." In practice, officials in Gaston County made this process even simpler. The only thing a person had to do was copy any sentence from the constitution, and he was allowed as much time as he needed. In Gaston County this was more a test of penmanship than of literacy.

Uncontested testimony was presented at the trial by a Negro school principal to the effect that all of the schools in Gaston County "would have been able to teach any Negro child to read and write so that he could read a newspaper, so that he could read any simple material." Obviously, any person with a third-grade education could pass the simple North Carolina test of copying one sentence from the State constitution. Furthermore, Judge Skelly Wright, who wrote the district court decision, stated that the test had not been deliberately used for the purpose of discrimination.

The Voting Rights Act makes it clear that Congress did not intend to abolish all literacy tests. Furthermore, Congress did not intend to suspend literacy tests irrevocably even where the trigger-device operated. Congress set forth detailed provisions—stringent as they may be—to permit States and counties to escape from the provisions of the act if they could show that the tests had not been discriminately used during the previous 5-year period.

The Court, however, has added a new provision to the act by keeping under its provisions all States and counties which, prior to 1954, maintained a separate school system. The Court ignores the fact that the "separate but equal" doctrine was the law of the land until 1954. And it should be remembered that *Plessy* v. *Ferguson*, which established the "separate but equal" doctrine, was not a product of Congress or the Southern States—it was the work of the Supreme Court.

And I might add it originated in the State of Massachusetts in *Roberts* v. *City of Boston*, in a case in which Charles Sumner was counsel.

The Justice Department apparently interprets the *Gaston County* case as obligating it to sue under continuing provisions of the act to continue the suspension of literacy tests. If the Department's reading of the opinion is correct, this means that for all significant purposes,

the Supreme Court has itself passed and signed into law the very legislation we are now considering.

This case is yet another example of the Court's habit of redoing the work of Congress to conform with its own notions of desirable legislation. Congress could have provided that the existence of separate schools prior to 1954 was conclusive evidence that literacy tests discriminate against Negroes. It declined to do so. To be sure this would have been, in essence, an *ex post facto* law, but Congress was not reluctant to do violence to the Constitution in other respects by this legislation. The Court has chosen to take State actions which were not illegal when they were done and hold them as conclusive evidence of illegality today even though Congress chose not to do so in 1965. The Court has rewritten the Voting Rights Act and made meaningless the release provisions of section 4.

An editorial in the Greensboro Daily News of June 4 described the decision in these terms:

By endorsing the far-fetched reasoning of the U.S. District Judge Skelly Wright in the Gaston County literacy test case, the Supreme Court has in a small but significant measure armed its critics and disarmed its defenders.

I will ask that the editorial, together with the district court and Supreme Court opinions in this case be included in the hearing record.

In my judgment, it is well that certain provisions of this law are due to expire. I see no good reason to extend its terms any longer. Congress had the bad judgment to enact it in 1965. Hopefully, it will rectify this mistake, in part at least, by allowing the act to expire next year.

There is certainly no reason to extend the act even under the assumptions of its proponents. The law has served their stated purposes and served them well. Each of the States covered by the act met the 50-percent requirement in the 1968 election. In North Carolina only three of the 39 affected counties failed to register 50 percent of eligible voters. And in only a handful more did fewer than 50 percent vote. In the covered States, 800,000 Negroes registered between 1965 and the 1968 election. This is a figure I am certain no other comparable group of States can match. The proposal to extend the act 5 years more is a cynical effort to keep these States under Federal supervision despite the fact that they have fully conformed to the terms and goals of the law.

The administration bill, S. 2507, is only a little less objectionable. It proposes to discard the trigger device and to ban literacy tests throughout the country. This at least has the virtue of applying an unconstitutional law without discrimination to all States and localities. While this is a virtue, it is a small one indeed. The Constitution still gives the States the right to prescribe qualifications for voting. This includes the use of literacy tests, which the Supreme Court has not yet ruled imperissible. And it includes the right to set residency requirements in presidential elections, which the administration bill would also prescribe on a national basis. The administration bill has another virtue in that it eliminates the exclusive jurisdiction of the Federal District Court in Washington, D.C. However, this is hardly enough, in my judgment, to warrant its enactment.

The subcommittee has scheduled hearings for today and Friday on these proposals. Additional hearings may be scheduled later if necessary.

(The editorial of the Greensboro Daily News of June 4, above mentioned, follows:)

[From the Greensboro Daily News, June 4, 1969]

LITERACY TESTS IN GASTON

By endorsing the far-fetched reasoning of U.S. District Judge Skelly Wright in the Gaston County literacy test case, the Supreme Court has in a small but significant measure armed its critics and disarmed its defenders.

The least of the questions here is the fairness or unfairness of literacy tests per se. None of the judges or justices who considered the Gaston case felt that the county had deliberately used the test to exclude Negro voters from the rolls. The issue, rather, is to what lengths the courts will go, in interpreting an act of Congress, to achieve what they feel to be—what may in fact be—a desirable result. The running criticism of the federal judiciary has been that it is "result-oriented"—that is, amenable to bending the laws and the Constitution to achieve politically-desirable ends. In general, this criticism is far-fetched; in the Gaston case it may not be.

Recently Gaston County, following the provisions of the 1965 Voting Rights Act, applied to the U.S. District Court in the District of Columbia to be released from the sanctions of the act. In Gaston, under the law, the literacy test has been automatically suspended because fewer than 50 per cent of its residents had voted in the presidential election of 1964—the more or less arbitrary guideline Congress adopted.

Under the 1965 act, a county so proscribed has to demonstrate that it has not for five years used the test discriminatorily. And even Judge Wright, who wrote the district court decision, agreed that the test had not been used "for the purpose" of racial discrimination.

Why not, then, release Gaston County from sanction?

That is where Judge Wright's ingenious reasoning came in. Judge Wright found that the literacy test in Gaston County had had the "effect," deliberate or not, of discrimination because during the minority of some living potential voters Gaston County schools had been segregated and the Negro schools presumably unequal.

This reasoning is questionable on several grounds. In the first place, most illiterates are made over the years in North Carolina by dropping out of school, not by having to attend an inferior school. Moreover, it is clear that Congress in 1965 refused to abolish literacy tests outright. The effect of this decision, notwithstanding, is to abolish them outright in any county that ever had segregated schools. Judge Wright also ignored the fact that until 1954 the "separate but equal" doctrine had been the law of the land for 56 years.

When it endorses Judge Wright's reasoning—and by a vote of 7 to 1 at that—the Supreme Court seems to be visiting the sins of the fathers on the current generation. It is saying to Gaston County, and any county in the same fix, "You are to be penalized under the law of the land, circa 1969, for taking advantage of the law of the land, circa 1898."

The case may seem a bit academic, especially since the literacy test is in increasing disuse in Piedmont North Carolina. But it involves a basic principle—the principle that if the intent of Congress is clear and there is no conflict with the Constitution, a piece of legislation should be applied as Congress wrote it, and not as the judges embellish it.

It is such decisions that pave the way, in public sentiment, for "strict constructionists."

(S. 818, S. 2456, S. 2507, title IV of S. 2029, S. 2507, the Voting Rights Act of 1965, *Gaston County* v. *U.S.*, *South Carolina* v. *Katzenbach*, and *Katzenbach* v. *Morgan*, above-referred to appear in the appendix.)

Senator ERVIN. Senator Hruska.

Senator HRUSKA. I would like to reserve the privilege of submitting a statement at another time.

Senator ERVIN. You have a statement?

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, I am pleased to be here today for these important hearings on the Voting Rights Act.

In reviewing the proposed legislation, I note that S. 818 will extend Voting Rights Act presently in force for 5 years and S. 2507, which is known as the Voting Rights Act Amendment of 1969, which is supported by the Nixon administration, provides for a more reasonable law than the one which is now on the books and will apply equally to all States of the Nation, not just to the South.

The Voting Rights Act of 1965 was a punitive measure designed to punish the States that supported Goldwater for President. I am pleased that this administration will not require Southern States to clear changes in their election laws with the Department of Justice here in Washington. The voting laws of all States, not just the Southern States, will be subject to review by the Justice Department.

The administration's position on the Voting Rights Act shows it is committed to equal treatment for all sections of the country. If the Supreme Court had not recently held that literacy tests are invalid in the Southern States regardless of the Voting Rights Act, I am confident that the administration would have allowed any State to have literacy requirements for voters, since the Constitution leaves voting qualifications to each State.

I think the Voting Rights Act of 1965, which is discriminatory, unjust, and unfair, should be allowed to expire permanently. If the policies it contains should be extended, then such extension should certainly apply nationwide, as recommended by the administration, and not to the South alone, in clear violation of the Constitution.

I thank you, Mr. Chairman.

Senator ERVIN. Senator Scott requests that his statement be inserted in the record.

(The statement of Senator Scott, above referred to, follows:)

STATEMENT OF SENATOR HUGH SCOTT

Mr. Chairman, I welcome this opportunity to urge that the Subcommittee on Constitutional Rights consider, as a first priority, the extension of the existing Voting Rights Act of 1965 and its ban against the use of literacy tests as instruments of racial discrimination. As one who cosponsored and fought for the enactment of this landmark legislation, I feel especially compelled to urge that your Subcommittee not open the door to the clear and present risk that this act could expire by default if Congress is caught in prolonged indecision over other alternative approaches, no matter how enticing these might at first appear.

I have previously announced, and I restate here, my willingness to support a total abolition of literacy tests—if considered as separate legislation, and if debated after an extension of the existing act has once been secured. I do think that we are heading toward the elimination of all literacy tests, and I think that is good. But I do not want the issue of the extension of the Voting Rights Act of 1965 clouded by the injection of other proposals. It is on this question of timing, and not one of basic purpose, that I respectfully and reluctantly take issue with the Attorney General.

Attorney General Mitchell is one of the ablest men I have known in public life. I do not for one moment question his sincerity in advocating a broader approach to the voting rights problem. I am confident great benefits could result from the total ban on literacy tests which he advocates, and I hope that this, too, can be considered at the proper moment. I would expect to lend my support at that time.

Like the Attorney General, I am fully aware of the Supreme Court's recent ruling in the *Gaston* case, and its ban against the use of literacy tests where unequal educational opportunities exist. I am not persuaded, however, that this decision in any way relieves the Congress of its responsibility to guarantee that the progress in voter registration, painstakingly begun under the 1965 Voting Rights Act, is continued. Whether the *Gaston* case will be taken as precedent for

a line of similar decisions, is something which, at this point, remains to be seen.

With the 1965 Voting Rights Act scheduled to expire next year, I do not believe that we can fail now, as a first consideration, to reaffirm our moral commitment to the effective principles of this established Act. I urge, without reservation, its immediate extension for a set period of years, and I have already cosponsored legislation to accomplish this, without further amendment. It would be detrimental to all of our citizens if an intellectual disagreement between a functioning law, and a potential ideal, was to cloud the clear issue of the 1965 Voting Rights Act's future.

Senator ERVIN. Senator, I believe you are the first witness.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Thank you very much, Mr. Chairman.

In 1870, by ratifying the 15th amendment, Congress and the Nation unequivocally declared that the "right of citizens of the United States to vote shall not be denied . . . on account of race, color, or previous condition of servitude." But for 95 years, until the passage of the Voting Rights Act of 1965, that promise was often ignored and even repudiated.

As a member of the Committee on the Judiciary in the other body in 1965, I took part in many of the hearings, debates and conferences which finally produced the Voting Rights Act of 1965. That act was a milestone in our national march toward equal rights under the law. It was a clear statement by the Congress that systematic frustration of the 15th amendment would no longer be tolerated or condoned.

The central feature of the act, as I think the chairman pointed out, is, of course, its "automatic trigger" provision, which suspended literacy tests and similar devices in any jurisdiction in which less than 50 percent of voting age persons either were registered to vote on November 1, 1964, or voted in the presidential election of 1964.

In addition to suspension of the jurisdiction's test, the act provides that the Attorney General can designate any county in such area for appointment of Federal examiners. The examiners compile lists of persons qualified to vote under State law, which persons State and local officials are obligated to place on their official voting rolls.

Section 8 of the act enables the Attorney General to send Federal observers to any county designated under section 6 to observe polling places and vote counting.

A fourth consequence of the automatic trigger provision prohibits the jurisdiction from utilizing any new voting qualification or proceduce without first either submitting it to the Attorney General for approval or obtaining a declaratory judgment in the District Court for the District of Columbia that the new procedure does or will not have the purpose or effect—the purpose or effect—of abridging the right to vote on account of race or color.

A jurisdiction to which the automatic trigger provision would otherwise apply can avoid suspension and related aspects of the act by establishing before the District Court for the District of Columbia that no "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."

It is this requirement which is referred to as "expiration" of the act. If the act is not extended, any State which suspended a literacy

test or similar device at its passage will, after August 6, 1970, not have used a test in any manner, discriminatory or otherwise, for 5 years and will be able to succeed in the appropriate suit. Such a jurisdiction will be able to reinstate all of the techniques and devices of discrimination which the act was passed to halt. Equal access to the voting booth will then have to be regained, precinct by precinct, through the courts.

S. 818, which I introduced January 31 on my behalf and on behalf of Senator Scott and Senator Fong, "extends" the act by changing the 5-year requirement to 10 years. An identical measure, S. 2456, bears the names of 38 cosponsors.

In the period since 1965, more than 800,000 Negro voters have been registered in the seven States to which the trigger provision applied. That the act's registration goal is far from attained, however, is evident from the latest available statistics, which indicate nonwhite registration lagging well behind white registration in those areas:

Mr. Chairman, I have the statistics. I won't read them fully, but I would like to submit them for the record. The source of these statistics, the Voter Education Project, Voter Registration in the South:

SUMMER 1968

A county-by-county analysis indicates that less than 40 percent of potential black voters are registered in some 90 counties and parishes in Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina, while the percentage is between 40 and 50 in 107 other counties and parishes.

Impressive evidence of the need for continuation of the act has been compiled by the Civil Rights Commission in its Political Participation Study, based on work from November 1966 through April 1968. That document indicates that the Negro vote has been diluted by switching to at-large elections, consolidating counties, gerrymandering, and by full-slate voting requirements. It further asserts that Negro candidates are thwarted by abolishing offices, extending terms of white incumbents, substituting appointment for election, increasing filing fees, adding requirements for getting on the ballot, and withholding information.

The commission found that black citizens have been excluded from party precinct meetings, wrongfully omitted from registration lists, harassed by election officials, and victimized by insufficient voting facilities. It determined that Negro voters have been given erroneous information and subjected to discriminatory disqualification on technical grounds, while Negro poll watchers have been interfered with and excluded.

Allegations of official voting fraud to prevent election of black candidates have been made. There has been a dearth of black election officials.

Finally, both physical and economic intimidation have apparently been used to frustrate the act's attempt to implement the 15th amendment.

Similar abuses were noted by the Civil Rights Commission observation of the May 13, 1969, municipal primary elections in Mississippi, and outlined in a June 3, 1969, staff report.

It is my understanding that the Commission will be before this subcommittee to substantiate its findings. For the moment, I think they speak for themselves and what they say should be compelling.

The President, during the last campaign, pledged to call up the best elements of the new South. Surely one of the primary ways to do so is to continue the gradual, positive and beneficial change being wrought by the act of 1965. That is not to say that other reforms and improvements should not be considered in good season. But first things should be put first. The confidence of the people that the positive gains of the past are to be preserved in the present should be maintained. With this confidence firmly fixed in our people, we can build more surely for the future.

Thank you very much, Mr. Chairman.

(The statistics above-referred to, follow:)

In the period since 1965, more than 800,000 Negro voters have been registered in the seven states to which the trigger provision applied. That the Act's registration goal is far from attained, however, is evident from the latest available statistics, which indicate nonwhite registration lagging well behind white registration in those areas:

	Percent white registration	Percent nonwhite registration
Alabama	82.5	56.7
Georgia	84.7	56.1
Louisiana	87.9	59.3
Mississippi	92.4	59.4
North Carolina	78.7	55.3
South Carolina	65.6	59.8
Virginia	67.0	58.4

Source: Voter education project, voter registration in the south, summer 1968.

Senator ERVIN. I might state these figures are very misleading. In many counties in North Carolina there was a completely new registration. There was one in my county, and I would venture to say over 99 percent of the residents are registered and I am proud to be able to say that about 97 percent of them voted in the last general election. My county is not one that is banned under the act. These North Carolina registration figures apparently have 61 counties included in this figure to which this Voting Rights Act of 1965 doesn't apply at all.

Senator, you made a statement about some laws which had been passed. You don't claim any of those laws have been passed in North Carolina?

Senator MATHIAS. I will not dispute the chairman's word. North Carolina is not involved in that, no, sir.

Senator ERVIN. I would say as far as North Carolina is concerned, the way the illiteracy test is administered under the State board of elections is that they give each voter about the shortest sentence they can find in the Constitution printed on a page, and then have a blank for him to copy it. In my judgment, anybody who has been to school for 4 years who is not a complete idiot, can pass the North Carolina literacy test.

Despite the decision of the district court and the permanency of the Supreme Court of the United States, it is a great shock to anybody in North Carolina who has any knowledge about the facts in Gaston County to even realize anybody claims there is any voter discrimination in the county.

Senator, where a State registers virtually every person in it 21 years of age and over, is there any relationship between the number of people who turn out and vote in an election and the question of discrimination?

Senator MATHIAS. There could be, yes, sir.

Senator ERVIN. How? Tell us. I would like to know.

Senator MATHIAS. Well, of course, many factors determine the voter turnout in any given election, the kind of candidates that are before the public, the kind of campaign that has been put on, the weather, rain.

Senator ERVIN. Yes.

Senator MATHIAS. All these things affect it. But, as I believe the Civil Rights Commission will testify presently to this committee, there are also means of intimidating particular kinds of voters: employers may or may not make it easy for a work crew to vote on a given day. We have instances of this kind of economic intimidation which is used. Other forms of suggestion are made to voters that it would or wouldn't be a good idea for them to appear at the polls in a given election under given circumstances.

In my statement, I attempted to summarize very briefly for the committee—because I didn't want to be redundant with the testimony coming from the Civil Rights Commission, which testimony, I think, will substantiate the fact that in some cases these practices still survive.

Senator ERVIN. Well, I don't give quite the credence to the Civil Rights Commission report that some people do, because it reported very solemnly some years ago that there was discrimination against blacks in Graham County, N.C., when there wasn't a single black residing in the county. But there is no way a State or county can tell people to come out and vote, is there?

Senator MATHIAS. Not under our system.

Senator ERVIN. As far as the State is concerned, if it registers all qualified voters, there can be no discrimination by the State.

Senator MATHIAS. That certainly is a goal that we ought to look forward to, 100-percent registration of all eligible voters.

Senator ERVIN. Now, your amendment, as I construe it, merely strikes out the word "five" and inserts the word "ten."

Senator MATHIAS. It extends the trigger provision for another 5 years.

Senator ERVIN. But it still operates on the basis of the 1964 election, does it?

Senator MATHIAS. Yes, it does.

Senator ERVIN. And since that time, we have had another election. Now, don't you see a little inconsistency in taking the 1964 figures and making them conclusive, although there has been another election?

Senator MATHIAS. I would say, Mr. Chairman, that if the record were clean in all other respects that conclusion would be correct. But the fact remains that there is considerable evidence that there hasn't been a total change in this picture, that there still are forms of intimidation, forms of discrimination in connection with voting, which are related to this whole area covered by the 1965 act. Extending the trigger provision will extend other provisions of the act and will continue to give some protection against such discrimination.

Senator ERVIN. If you have a trigger provision based on 1964 and then you have a 1968 election which rebuts the trigger, how can you say there is any relationship between the trigger of 1964 and the future?

Senator MATHIAS. Well, I think that establishes the base, that is parity. I think that if the record were—if the record were otherwise without a blemish—maybe we could do without the base. But there is so much smoke that I think we need to maintain the 1964 base.

Now, as I have said, I don't believe that this is the "be all" and "end all" in this area. This is one of the things I think that needs to be done to maintain confidence. People are wondering. They are anxious. They are worried and concerned as to whether or not we are going to maintain the gains of the past few years in the civil rights area.

Now, one of the ways to do it will be to extend this act. Then let's consider the other steps that need to be taken, because this, I think, will build a great deal of confidence.

Senator ERVIN. We have a trigger device of 1964 and the 1968 facts which rebut its assumptions. It seems to me that is a little legislative schizophrenia.

Senator MATHIAS. Well, I don't believe it is schizophrenia, Mr. Chairman, at all, because the 1965 act established a fact. The trigger which was automated in 1964 established a fact and a set of conditions. I believe the testimony of the Civil Rights Commission, which will be forthcoming, will indicate that many of those conditions are still in effect, not only as of 1968, but as of 1969, and this is really what we have to operate under.

Senator ERVIN. Why not amend the act to provide that the trigger device is going to be based on the 1968 election instead of 1964? In other words, why condemn a State for what was done in the past?

Senator MATHIAS. Well, for one thing we are dealing with the area, of customs and attitudes in which lasting change cannot be expected to occur rapidly. I think that under the 1965 act, using the 1964 statistics as a base, we have established the problem area, and I believe that the current evidence which will be before the Senate is that problems still exist in that area and that therefore, to alter the base, to go to the 1968 figures, which alters your area of concentration, your area of attention, would very seriously undermine the confidence of people in the determination of Government to make the 15th amendment a living, breathing part of our Constitution.

Senator ERVIN. Well, how would you rule as a judge if you had a case where X county in North Carolina, voted less than 50 percent of its adult population in 1964, the presidential race. Then there comes along evidence that in 1968 that X county voted 55 percent or 60 percent, or 70 percent of the adult population. How would you rule? That is all the evidence you have.

Senator MATHIAS. Well, the act, I think, makes it very simple for the judge to rule. It isn't without precedent in our society to establish a certain base period in which we express concern. All farm legislation relates back to a day certain in which you relate costs and farm produce prices.

We do set certain times within—we say that is a time which is a base period and we are going to work from that.

Senator ERVIN. I would just like to know how you would rule if you were a judge in that case.

Senator MATHIAS. Under the act it is clear the 1964 figures will be controlling.

Senator ERVIN. Don't you think that would be rather unjust?

Senator MATHIAS. I think that is primary evidence that there was a problem.

Senator ERVIN. Yes. The problem has been cured by the 1968 vote.

Senator MATHIAS. If the problem has been cured, then there will be no serious difficulty. But there would be evidence that there was reason for watchfulness during at least another 5-year period. I would be willing to be watchful for that further 5-year period.

Senator BAYH. Would the Senator yield just a moment?

Senator ERVIN. Yes.

Senator BAYH. Senator Ervin from North Carolina, of course, the prominent member of the judiciary in his State, speaks from great judicial authority.

Senator ERVIN. I am from North Carolina. I wouldn't be allowed to rule in this case.

Senator BAYH. I would like to ask the Senator from Maryland—I appreciate the Senator yielding—and perhaps if he was sitting on the bench and was asked to rule on such a case, that he would be concerned, would he not, about what was going to happen in 1972, and perhaps might state some evidence of what had happened between 1964 and 1968, such as the results that have been accomplished by the passage of the Voting Rights Act and might suggest to himself that if this act were to be repealed that there would be general regression from 1968 back to 1964 and prior to 1964, when we really want to move forward and do a better job.

I think the fact that we have to have this kind of legislation to make progress in this field is not good evidence. But we are being rather naive to suggest that progress made between 1964 and 1968 isn't the result of the act itself.

Senator MATHIAS. I think the Senator is exactly right, and the point I made in my statement is that there is enough evidence to believe that if the motivation provided by the act is removed, allowed to expire, that there can be a considerable amount of backsliding. This is the thing that is making people concerned and worried, this is the thing which is sapping confidence; this is the thing we can prevent by simply extending the act for 5 years.

Senator ERVIN. You say you want to move forward, but you want to stay with 1964.

Senator MATHIAS. I would like to say, Mr. Chairman, that I want to move forward, forward from the solid base that was established under the 1965 act. I think that the act has proved itself in the very fact that the Senator cites. The improvement of the 1968 figures over the 1964 figures clearly makes the case that the 1965 act has been an effective piece of legislation.

On that basis, I think, having preserved that forward thrust of 1965, we can then go forward to think about other things.

Senator ERVIN. I doubt seriously whether a single person registered in North Carolina on account of the 1965 act.

Senator MATHIAS. Well, the chairman is certainly the expert on North Carolina.

Senator ERVIN. I don't see why people should not be rewarded for what you consider to be good action instead of being punished. If they have the past sins——

Senator MATHIAS. Mr. Chairman, I think you put your finger on your problem right here. If they were all sins of the past, which has been repented of, and they had gone out and sinned no more, then we would have no problem here. I think we could all agree that we don't need this legislation any more.

But the evidence that is available does indicate that, as the Senator from Indiana suggested, if you remove the motivation of the act you are going to have some backsliders. We want to keep them all up forward of the church, if we can.

Senator ERVIN. I am sorry, but I don't think the North Carolinians are going to backslide.

Senator BAYH. I want to get the record corrected, if I gave the inference that North Carolinians would backslide more than anybody else. I have no objection to the nationwide program. I don't like to see a person discriminated against whether he is North, South, East, or West. I must say, and I certainly don't intend to infer that anyone fits in this category, such as the Senator from North Carolina, but I do intend to infer that some people represent this nationwide plan not to provide a nationwide plan for a foolproof system, but to prevent—but an effort to try to destroy the progress that we have made.

I think we are really dealing—and I don't want to interrupt the very enlightening colloquy that is going on here—but I think we are really dealing with fire, dynamite, if we permit ourselves to give the slightest impression to those people who for so long have been discriminated against and now have been given first-class citizenship, and now we are going to take it from them, and I think we are asking for revolution, and if we proceed along that way we are liable to get it.

I think we should be very concerned, this Congress and this Senate and this committee, Mr. Chairman, is determined that we are going to continue the progress that has been made. If there has been progress made in North Carolina, we salute North Carolina, but we don't want to risk giving anyone the impression that we are going to lower the standard now that we have raised it.

Senator ERVIN. Senator, on what kind of a basis can you justify saying "Close all the courts in the land except one." How can you have Congress condemn people by legislative fiat without a trial, and then say in order to reacquire the power to exercise their rights under the U.S. Constitution they must sojourn to one court?

Don't you think that is a rather shabby form of due process?

Senator MATHIAS. Mr. Chairman, again, it is not without precedent under our system. This is the seat of Government, so designated constitutionally. There are certain acts of Government of which this is a very important one, which are appropriately litigated in the seat of Government, and I think it is appropriate. I would like to revert a moment.

You place great evidence on the progress from 1964 to 1968. I put great weight on that, too. I think it is very important. But when you consider that progress in the areas covered by the act, covered incidentally by general law, they just happen to fall within the statistics. The disturbing thing is that even though there is a considerable over-

all advance that black registration is still 20 to 30 percent behind white registration in these areas.

There is Alabama, with 82 percent white registration against 56 black; Georgia, with 84 percent white against 56 black. In all of these cases there has been progress since 1965, but a difference of 20 to 30 percent between black and white persists.

I think that if I were the hypothetical judge—I guess we are, all of us, constitutionally ineligible to be judges, so we don't have to be hypothetical judges.

Senator ERVIN. You live in Maryland and the law forbids you from being a judge and forbids any judges in Maryland from having anything to do with it.

Senator MATHIAS. As I say, we are constitutionally ineligible for at least the terms we are elected. But in those cases, I would consider not only the raw figure, not only the gross figure, but I would consider the gap that exists between your white registration and your black registration. Even with the advances that have been made, that is still a substantial figure.

Senator ERVIN. Senator, how do you justify closing all of the courts in the United States except one court?

Senator MATHIAS. Well, my recollection of the rationale being first considered was not that it was an attempt to deprive any courts of jurisdiction, but that it was a matter which was properly dealt with at the seat of government due to the importance of the subject, and the necessity of being able to expeditiously resolve cases upon which elections might depend.

Senator ERVIN. Couldn't you get an early trial in the court next door to you instead of coming, as people of Mississippi would have to do, a thousand miles to the District of Columbia.

Senator MATHIAS. Well, my understanding now—my recollection over 5 years may not be as sharp as it should be—but it is my recollection that there was some evidence suggesting at that time, or some opinion suggesting at that time, that you might not get quite as early a hearing at some other places.

Senator ERVIN. You might have to produce evidence. Don't you agree with me?

Senator MATHIAS. The Congress has to act on its best judgment in these matters.

Senator ERVIN. Sometimes Congress acts on its worst judgment.

Senator MATHIAS. Sometimes we make very grave errors.

Senator ERVIN. I would like to know on what basis you justify a provision in the law saying that Federal judges in seven States shall not have jurisdiction of cases arising in those States, but that judges that sit anywhere from up to a thousand miles away should be the only judge having power to act.

Senator MATHIAS. I believe, Mr. Chairman, what the law says is that judges of 50 States don't sit on this.

Senator ERVIN. Under this kind of a scheme you could give Congress the power to give a Federal district court sitting in the isle of Guam the jurisdiction of every civil case arising in the United States.

Senator MATHIAS. Well, the Congress, we both agreed has no range as that.

Senator ERVIN. Don't you think that all courts should be open to try controversies?

Senator MATHIAS. I think it is appropriate, Mr. Chairman, to in some cases, and I haven't made any exhaustive study of those cases where legislation does provide for sole jurisdiction in the District here, but——

Senator ERVIN. I know of one statute, in the *Yeagers* case, and that was where the court was sitting, in effect, as an administrative board on OPA to prevent it from having different rulings all over the country. There was one court, the Special Circuit Court of Appeals. Outside of that, I know of no statute that gives exclusive jurisdiction to one court over all others.

I think it is a shabby form of due process of law, because I don't think you can get a fair trial where you have to transport your witnesses long distances.

I was in hopes that some of the advocates of this law would at least concede that Federal judges sitting in North Carolina and other States have enough character to be trusted to try cases.

Senator MATHIAS. Mr. Chairman, I think that is an unfortunate inference.

Senator ERVIN. What is the inference?

Senator MATHIAS. I think we have tried to spell it out, that the provision insures a desirable degree of uniformity. There is a desirable degree of speed. I don't think improper speed, but you can move with dispatch. You have your appellate system right up to the Supreme Court here. In a case with a State election, congressional election, municipal election, whatever it may be, dependent upon the outcome of a given controversy, I think you could move with considerable dispatch.

You also don't get a series of conflicting judgments.

Senator ERVIN. On that argument, you could abolish the system of the Circuit Court of Appeals by putting all the circuits here in Washington, D.C. I think you should have 10 circuits to hand down opinions. As a lawyer, that is an intolerable provision. As a matter of fact, when this statute first came over from the House, subpenas from the district court up here were effective for only 100 miles.

It was amended in the Senate as the result of my agitating on this point, but it was amended to give the judges discretion to issue subpenas beyond 100 miles. Do you think any man ought to have to depend on the discretion of the court for the right to produce witnesses?

Senator MATHIAS. Mr. Chairman, I can say this with the greatest possible respect and affection: you consider this to be an intolerable provision of the law, and I don't think it is one that anybody welcomes having in the law. But it addresses itself to problems which are also intolerable. It is out of a deep feeling of conviction about the impossibility of tolerating conditions that you have to sometimes do hard things. Perhaps this is one of the hard things which has to be done.

What are you going to tolerate?

Senator ERVIN. I would not tolerate prostitution in the judicial process as this act does. A crap-shooter is given more consideration and has got more legal rights than the State of North Carolina has under this statute. You couldn't try to crap-shooter shooting crap in North Carolina in the District of Columbia.

I would hope that the law would be amended so as to remove this insult upon every Federal judge in seven States.

Do you think the provision that a State legislature has to come, hat-in-hand, to the Attorney General of the United States, an executive officer, before it can make its law effective——

Senator MATHIAS. I think that, frankly, Mr. Chairman, is an extraordinary provision of the law, but I think it is required by the extraordinary circumstances.

Senator ERVIN. In other words, give judicial power to an executive office?

Senator MATHIAS. Mr. Chairman, I think that we ought to have the record clear here, both in the case of the courts in the District and the case of the actions of the Attorney General. I don't know of any case in which they have abused the powers granted in section 4.

Senator ERVIN. Well, it is not a question of abuse, as I see it. I don't think the power ought to be vested. I think it is a question of separation of powers under the Constitution. I am glad to say my State has never come here, hat-in-hand, and asked for anything.

That is all.

Do you have anything?

Senator HRUSKA. I have no questions.

Senator BAYH. Thank you.

Senator ERVIN. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Senator Mathias, I am certainly in favor of everybody voting, and that has been my record since I have been in public life. If there is any obstruction in my State to voting, I would certainly be in favor of it being removed.

Do you have any evidence that there is any discrimination in South Carolina and any people who are not allowed to vote? I am asking you if you have any evidence of that kind?

Senator MATHIAS. Senator, the report of the U.S. Commission on Civil Rights——

Senator THURMOND. Who is that sitting to your right? Would you identify him for the record?

Senator MATHIAS. This is Mr. Darling. He is a member of my personal staff.

Senator THURMOND. Of your own staff?

Senator MATHIAS. Yes.

The political participation report of the Commission on Civil Rights, which was submitted to the President in May of 1968, has information on Richland County, S.C., Dorchester County, and Williamsburg County. It will all be before the committee, and I will be glad to outline it. But it does mention South Carolina, since that is your request.

Senator THURMOND. What page is that mentioned on?

Senator MATHIAS. Well, pages 61, 62, 63.

Senator THURMOND. Is the allegation that people are not allowed to register or not allowed to vote?

Senator MATHIAS. The allegation goes to various kinds of political activities, discrimination against people who are registered, exclusion from precinct meetings, for example. I just cite this as one instance.

Senator THURMOND. I don't believe it is true. The Civil Rights Commission a few years ago, and I will state, made an absolutely false statement. For instance, there is one county, McCormick County. They

alleged there was discrimination in the Democratic administration. They sent the FBI people down there for weeks and they didn't find any discrimination at all.

I am confident that it is incorrect here.

It is generally known, I think, that anybody in South Carolina can register who is qualified, and anybody can vote who is qualified. I am sure it is the policy of public officials, State, county, and Federal officials, that this be done.

You wouldn't care to elaborate any more on that point; would you?

Senator MATHIAS. I think that the record will speak for itself, and I think——

Senator THURMOND. In the statement which you are making—this is coming from the report of the Civil Rights Commission and not from your own knowledge?

Senator MATHIAS. That is correct.

Senator THURMOND. And you don't have any other information except from the Civil Rights Commission?

Senator MATHIAS. This is the primary source.

Senator THURMOND. Anyone in South Carolina can vote if he can read or write the Constitution, which is a very simple requirement. I have read where many States have much higher voting requirements. New York State, for instance, has a much higher literacy requirement.

Do you think it is fair to have a literacy requirement in one State and not in another?

Senator MATHIAS. The 15th amendment, Senator, goes to the question of tests, literacy tests or otherwise, which deny the right to vote on account of race, color, or previous condition of servitude.

The question is whether the New York test, for example, has been applied so as to violate the provisions of the 15th amendment.

Senator ERVIN. I think the New York test was put under the 14th amendment.

Senator MATHIAS. Any test of any sort.

Senator ERVIN. It is a rather miraculous decision that the fifth section of the 14th amendment, which merely empowers Congress to adopt legislation appropriate to enforce the 14th amendment, allows Congress to nullify State law in perfect harmony with the 14th amendment and then to set up a Federal standard of qualification for voting which the Congress is forbidden to pass by section 2 of article I, the first section of article II, the 10th amendment, and the 17th amendment.

Senator, excuse me. These figures—I will show you what wonderful figures they are. In the county which adjoins my county they have a Negro voting age population of 1,723. That is 19——

Senator MATHIAS. Which list is the chairman referring to?

Senator ERVIN. This Voting Registration in the South, a publication of the Southern Regional Council. In other words, although that county has only 1,723 blacks of voting age, it has 1,958 registered, according to these figures, and Burke County, my county, according to these figures, has only 3,296 blacks of voting age, but it has 4,591 of them registered. So they are wonderful figures.

Senator MATHIAS. I think, Mr. Chairman—and understand, I——

Senator ERVIN. You didn't compile the figures?

Senator MATHIAS. I didn't compile the figures, but it is my understanding that due to the age of the census tract, the fact that we are

only 1 year from a new census and some census figures refer back to the previous figures, you do get some anomalies which don't affect the basic thrust of the conclusions from the statistics.

Senator ERVIN. That theory even goes further back than the 1961 figure. It goes to the 1960. But they don't say that in here.

Have you finished?

Senator THURMOND. No.

Senator Mathias——

Senator MATHIAS. Excuse me, Senator, for just a minute.

If you notice on the introductory page of the voter registration statement, it is explained that the figures, population figures, are based on the 1960 census and thus registration figures might exceed population figures in counties experiencing considerable growth. So I think that explains the apparent anomalies.

Senator THURMOND. You spoke of Richland County. I have just had a chance to look at this report. I notice it reads this way: "Negroes reportedly participated fully in precinct meetings."

Now, they are speaking of a Democratic precinct meeting. That is in three counties. The other two counties, Negroes were reported either outright excluded or denied the right to participate fully. That is precinct meetings.

Now, that is a meeting, a precinct meeting. I remind you that is Democratic precinct meetings.

Senator MATHIAS. I get the point, Senator.

Senator THURMOND. Now, in Richland County, that is the county you referred to. "Negroes maintained control of Democratic Party offices in precincts they had control in, in the past, such as wards 18 and 19 in Columbia."

"Negro leaders also reported gains in precincts dominated by whites, in which Negroes constituted a majority of the population."

Then further down, "approximately 200 Negroes attended the February Democratic Party precinct meeting in rural Hopkins precinct in South Richland County. Only three or four white people were present. Negroes were elected to all the precinct offices. Two Negroes and one white person were elected to the county convention." I don't see anything in here that indicates they were denied the right to register or the right to vote.

In some cases, it seems they are denied or excluded from some of these Democratic precinct meetings or something of that kind.

Senator MATHIAS. Well, Senator, you asked me what reference there was to South Carolina in this report and I did cite you just a few examples.

If you turn to the next page, you go into Dorchester County. I don't know whether we want to read this whole report. But look at Dorchester County. The Negro voters were denied an equal chance to participate.

Senator THURMOND. In what?

Senator MATHIAS. 1966 Democratic Party precinct meeting in rural Ridgeville.

Senator THURMOND. That is Democratic Party precinct meeting, but that is not the right to register or vote. That is the Democrats denying them the right to participate.

Senator MATHIAS. Selective examples of interference with the total elective process. It is not just registration. After all, Senator, we talked

a few minutes ago about 100-percent registration, and the fact that 100-percent registration doesn't produce 100-percent results at the polls, because, for many reasons, including the weather, and that some of these reasons are very important.

That is why there is, of course, a provision for observers in the 1965——

Senator THURMOND. If there is any information about anybody being denied the right to register or vote in my State, I would certainly like to know it, and I am sure that officials in our State would like to know it, because I know of no policy or any desire of any public official to try to prevent people from registering or voting. In looking through this part on South Carolina, I don't see any such statement of any kind, except in a few instances where it said they didn't participate fully in Democratic precinct meetings.

Senator ERVIN. I think it is wrong to exclude people from precinct meetings and also wrong to exclude people from the judicial system of the United States.

Senator THURMOND. I concur in the statement of the chairman on that, and I want to state that as of October 5, 1968, this is the registration of whites and Negroes, 200,778 Negroes, 652,096 white. I have the report here of the secretary of state. That is given on page 61 of the supplemental report of the secretary of state to the General Assembly. That is not too far from the percentage of population in South Carolina. The percentage of population, I believe, is about 38 percent or around there.

This is almost a third of those who registered there to vote. So I just want to say that there is certainly no discrimination in my State, and I would see no reason for South Carolina to be punished when there is no discrimination.

The only reason that South Carolina was included in this law before, if I understand, were two reasons: first, they voted for Goldwater, and second, only about 48 percent of those who registered actually voted. If 50 percent had voted, they wouldn't have been under the law, as I interpreted it.

I don't think there is any discrimination.

Now, the distinguished Senator, I am sure, is familiar with article I, section 2, of the Constitution, which provides that the electors in each State shall have the qualifications of requisite to elect all the most numerous branches of the State legislature.

Now, he is familiar with that section?

Senator MATHIAS. Yes.

Senator THURMOND. In simple words, what does that mean?

Senator MATHIAS. Well, I think the words speak for themselves, Senator. But I think perhaps the point that you are getting to is that those words certainly are to be construed in 1969 in relation to the amendments to the Constitution which have succeeded over the years and that do have impact on the original body of the organic law of the Constitution.

It seems to me that whatever construction the Senator might put on those particular words would have to be in the light not only of the words that you have just read, but also the amendments.

Senator THURMOND. Well, it simply means this, doesn't it, that a voter in each State must have the qualifications necessary for that

same voter to vote for the House of Representatives of the State which is the most numerous body. That is what he means, isn't it?

Senator MATHIAS. As amended by the 15th amendment, for example, which would have further impact.

Senator THURMOND. How would the 15th amendment amend that?

Senator MATHIAS. To the extent that a State might establish the right to vote for the most numerous branch of the State legislature, which was inconsistent with the 15th amendment, that State law would be null and void.

Senator THURMOND. It can't amend——

Senator ERVIN. It looks like it would be restored by the 17th, which is exactly the same phraseology. The Senator from South Carolina has ascertained what I have ascertained, that under this act the Supreme Court of the United States has repudiated the doctrine that, in interpreting the Constitution, you are to consider the Constitution in harmony and give force and effect to each part in the solution.

But it has held that under the 15th amendment and under section 5 of the 14th amendment, Congress now has the power to abolish any parts of the Constitution that are displeasing to the Court or the Congress on any subjects that these two amendments refer to, and that means anything, because the 14th amendment protects all dealings between States and citizens.

Senator THURMOND. I don't construe that the 15th amendment amends article VI, section 1. I never heard that suggestion, but if it did, the 17th came along and reaffirmed it. There would be no question about it. It is generally known and acknowledged by most students of the Constitution that voting qualifications are fixed by each State, the legislative of each State fixing voting qualifications, just as New York State may have seventh grade or high school education requirements.

My State has a very simple requirement, only to be able to read and write. Some other States may have a fifth grade requirement. If this section is valid and States can fix voter qualifications, then how did the 1965 Voting Rights Act, which was a statute and not an amendment to the Constitution, have the effect of amending the Constitution.

The Congress could have proposed a constitutional amendment for consideration of the States and then three-fourths of the States could have adopted it and amended the Constitution in this way. But that was not done. This was merely a statute. I am thoroughly convinced that this law has been unconstitutional from its very beginning.

Furthermore, doesn't the Senator feel that in the law that applies to all States, and if one State should be in error today, another State should be in error tomorrow, and no one can tell what will happen in the future, and shouldn't all States receive equal treatment? That is what the Constitution says.

Senator MATHIAS. I believe that, Senator.

Senator THURMOND. If that is the case, I am sure the Senator would not have any objection to the recommendations by the Nixon administration to treat all States alike.

Senator MATHIAS. As I have said, I have no objection to considering many reforms and improvements in our election laws. I do believe it is important to establish a basis of confidence, by extending this law,

which I might say is, of course, a general law applicable to any of the 50 States which happen to fall within its purview.

Senator THURMOND. Again, I want to say that I think the Voting Rights Act of 1965 was discriminatory. It was unjust and unfair and should be allowed to expire, but if it is to be continued or the principles to be continued, the policies contained in it, then, it should apply to all States so if there is any difficulty in any State, North, South, East, or West, the same law would apply to anybody. I think any fair-minded man would want that to be done.

Thank you very much.

Mr. Chairman, I have been called to a Rules Committee for a vote. Will you excuse me?

Senator ERVIN. I will have to disagree with my good friend from Maryland in one respect. I think this doesn't apply to all States alike. I think this was deliberately picked out to apply to Southern States, and——

Senator MATHIAS. I gather that the chairman is making an observation and not a question?

Senator ERVIN. Yes; I am making an observation, which I think is true.

It wouldn't have been politically possible to pass a law like this and apply it to all States.

Senator HRUSKA. Mr. Chairman, aren't we about to embark on an effort to do that by the bill introduced on June 30 by Senator Dirksen, so that the law will be applicable to the 50 States without discrimination?

Senator ERVIN. Absolutely. As I stated in my opening statement, I think this is an improvement in one respect because it applies that unconstitutionality to all 50 States alike.

Senator HRUSKA. I would like to address a question to the Senator from Maryland. If section 4(a) and 4(b), 4(d) and 4(e) are repealed, and section 5 is changed as proposed in S. 2507 giving the Attorney General expanded injunction power; would this power not reach any situation in any part of the United States where voting irregularities or improper devices or improper practices are employed?

Senator MATHIAS. Well, I would say, Senator, that the important thrust of that proposed change, is that it casts the burden of proof on the other side. It could allow delay and in a given situation—we have in Maryland, for instance, had election questions arise which had to be decided immediately, before the election day—this could allow greater delay.

And I would say further to the Senator that the power being given to the Attorney General to seek injunctive relief doesn't add anything of great substance which isn't already in the act.

Senator HRUSKA. That is not the only remedy available, however. As the present law would be amended by S. 2507, section 8 would still provide for examiners and observers. It is actually stronger in its proposed amended form than the present law, and I shall read what that added strength is.

In the first place, part of the opening sentence in section 8 reads: "Whenever an examiner is serving under this act in any political subdivision, the Civil Service Commission may." This portion is stricken, and replaced by the words, "Whenever the Attorney General deter-

mines with respect to any political subdivision that in his judgment the designation of observers is necessary or appropriate to enforce the guarantees of the 15th amendment, the Civil Service Commission shall." The language then reverts to the language of the present law as follows: "assign at the request of the Attorney General one or more persons who may be officers of the United States"—and so on.

At the end of the present section (a) S. 2507 adds: "A determination of the Attorney General under this section shall not be reviewable in any court."

The effect of this proposed amendment is to make this procedure available in any of the 50 States as opposed to making it available on a trigger basis in six or seven States.

Now, in what way do you think that the enforcement procedures in the six or seven States or in all 50 States would be impaired by reason of the amendments which are contained in S. 2507?

Senator MATHIAS. Well, you know, Senator, the most succinct answer to that question was given by our colleague in the other body, Representative McCulloch, of Ohio, who has a distinguished record in this field and who said—as nearly as I can quote him—that the change is a remedy that addresses itself to no existing wrongs, and which weakens the remedies for wrongs that clearly do exist.

I think that that is as short a summary as I could make. It is theoretically, of course, desirable to have the opportunity to insure that there are no deprivations of the right to vote on the ground of color, race, or previous condition of servitude in any one of the 50 States. The act of 1965 attempted to establish where the trouble spots were and to deal with them, rather than to grant to the Justice Department what may be superfluous powers, which I don't think any one of us wants to grant to the Justice Department or any other department.

Senator HRUSKA. Under both the existing act and S. 2507 whenever the Attorney General certifies with respect to any political subdivision that he has received complaints in writing from 20 or more residents of such political subdivision alleging they have been denied the right to vote, then the Civil Service Commission shall appoint as many examiners as necessary to enforce the guarantees of the 15th amendment.

Now, if you cannot find 20 voters who are willing to explain that they have been denied the right to register or to vote, maybe the conditions are not such as should be subject to court injunction. But upon the complaint of 20 people within that political subdivision, the same powers may be used that have been used so effectively these last 4 years, resulting in the registration of 800,000 additional voters.

Now, in what way would the Attorney General's powers be impaired by the elimination of the trigger provision contained in the existing act?

Senator MATHIAS. Are we talking strictly about examiners and observers?

Senator HRUSKA. It is the legislation we are talking about.

Senator MATHIAS. In case of examiners or observers?

Senator HRUSKA. Yes. Where the rights of individuals to register and vote have been allegedly impaired.

Senator MATHIAS. In the case of provision for examiners and observers, I see no substantial difference except in the coverage area.

I would have no objection to having the Attorney General have that power all over the country, but I just don't see that the evidence before the Congress makes it a necessary thing.

But I don't see that it is objectionable, except the chairman and I think, at least, agree on the fact that any superfluous powers that are granted are per se objectionable.

Senator HRUSKA. Well, of course, the chairman did point——

Senator MATHIAS. I don't mean to put words in the chairman's mouth.

Senator ERVIN. The chairman has always believed the laws ought to be uniform and the States ought to possess some power.

Senator HRUSKA. The chairman did cite one example, a county in New York——

Senator MATHIAS. I think you cited a 1.3 point difference in the voting turnout. That sounds like the margin by which I was first elected to the Congress, 1.3 percent, I think. It made a lot of difference to me.

Senator HRUSKA. Well, he did cite the situation where Hyde County, N.C. voted 49.7 percent of eligible voters in 1964, and New York County voted 51.3 percent. If it had rained heavily that day and the people in New York County had not come out to the polls, it would have dropped below 50 percent. They would have been just as derelict as anybody else.

Senator MATHIAS. Absolutely, which points out this is a nationwide bill.

Senator HRUSKA. Yet it is not covered by the present law and the trigger device. However the law, as it would be amended by S. 2507 would make it applicable to any place.

Senator MATHIAS. It is applicable to any place that falls within the test today.

Senator ERVIN. If I may interject myself, the test and the trigger device would apply to a number of congressional districts in New York State if it had been applied on the basis of congressional districts instead of counties.

Senator HRUSKA. Well, I think, Senator Mathias, that you would recognize that the law, as it would be amended by S. 2507, would not impair the Attorney General's power to send in observers and examiners.

Senator MATHIAS. It extends it. My only observation is that I am not convinced of the necessity of the extension. I have no great objection to it.

Senator HRUSKA. You are not convinced of what?

Senator MATHIAS. That there is any necessity for the extension.

Senator HRUSKA. In this age when we don't like to discriminate, wouldn't it be better to have the law apply to all States equally? After all, the Southern States are not conquered provinces or colonies.

Senator MATHIAS. I would remind the Senator the 1965 act applies to the 50 States and sets up certain tests, and the areas will fall within those tests are the areas in which the act is operating. We say under the wage and hour laws, if business does a certain volume, a certain dollar volume in fiscal year or calender year, then that business is subject to Federal jurisdiction if they do. If they do one cent less, they are not subject to the particular legislation.

Senator ERVIN. I believe the Senator will find out, if he looks, that there are several counties north of the Mason-Dixon line that fell under this act and the Department of Justice immediately consented to judgment that they be excluded from it. This act was deliberately contrived to apply to Southern States and to let out the State of Texas, which has about the unfairest voting record in the country.

Senator MATHIAS. I believe the Senator refers to Hawaii, Alaska, and Arizona, which had some partial coverage under the act and which did comply with the provisions of the act. Those instances just prove the point that it is a nationwide act and they had to comply before the provisions of the act were held to be inoperative under the conditions there existing. But they had to comply in Hawaii, in Alaska, and in Arizona.

Mr. HRUSKA. Wouldn't the impact of S. 2507, be broader than the present law? The opening part of section 4 States: "Prior to January 1, 1974, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device."

The definition of "test or device" will remain the same as it now stands under present law.

So, S. 2507 will apply to the same types of practices, but apply to these practices in all 50 States rather than in just six or seven.

Senator MATHIAS. Well, the Senator has just a minute ago said that we are dealing, after all, with Southern States and not with provinces or colonies. I think what you are suggesting, of course, is that we further whittle down whatever sovereignty remains in the States of the Union. We are saying we can't have these tests. All the extension of the bill would provide is that you can't violate the 15th amendment by applying a literacy test, which test is otherwise within the right of the State.

That is what we are trying to get at. If Maryland had a literacy test or New York had a literacy test, or Vermont, or Oregon, or Washington, or Minnesota, or——

Senator HRUSKA. New York has, Texas has.

Senator MATHIAS. They didn't use the test to discriminate.

What is the complaint?

Senator HRUSKA. I want the record to show that this Senator is not trying to whittle down anything, including State sovereignty. If there is any whittling down, it is done by the Supreme Court, as in the *Gaston County* case. S. 2507 is simply a reflection of what the Supreme Court has done.

Senator MATHIAS. Wouldn't the Senator agree that by the act—the Senator from South Carolina was raising the questions of the provisions of article I of the Constitution, which empower the State to establish certain standards for voting within those States.

I pointed out that that is, of course, affected by the provisions of the 15th amendment. But when you say you can't have any tests, then it seems you are really raising article I questions.

Senator HRUSKA. Well, thank you, Senator. You have contributed a lot of useful material during the course of your testimony.

Thank you, Mr. Chairman.

Senator ERVIN. Thank you.

Senator BAYH. Mr. Chairman, may I make one observation?

Senator ERVIN. Yes.

Senator BAYH. Our distinguished colleague, of course, was a member of the House Judiciary Committee when this matter was discussed. Our colleague from South Carolina discussed one reason for the inclusion of this provision in triggering qualifications in this act is because his State of South Carolina voted for Goldwater.

I don't remember that ever being raised in the committee, in this committee, when we discussed it.

Senator MATHIAS. I have a very positive recollection that it was never mentioned in the House Judiciary Committee, but I understood that to be the Senator's observation and not a part of colloquy between the witness and the committee.

Senator BAYH. I think we failed, we omitted covering some of the States that Mr. Goldwater did, in effect, carry. I just think it is important to clarify what we are trying to do, because seldom perfection is obtained.

As I recall the discussion, or at least I should confine this to this one Senator's interpretation, and this thought being in enthusiastic support of the Voting Rights Act. We were of the opinion that there was discrimination. Instead of taking away the right to vote, we tried to give him the most effective tool to determine his own destiny and to remove some of the other discriminatory acts perpetrated upon a broad number of people in this country.

What we were trying to do in the 1965 Voting Rights Act was to try to use a minimum amount of Federal control and get a maximum amount of effectiveness placed where the biggest problem existed. I don't think we can very well ignore either what has been going on or the effectiveness of this act if we realize as has been brought forward by our distinguished witness, as well as others, that after the effectiveness of this act, the effective date of this act, we were able to register over 800,000 American citizens and give them the right to vote. How can we be so naive as to suggest there wasn't anything wrong, nor that this act didn't accomplish some worthwhile goal when we now have 800,000 Americans who have the right to vote who were denied this right before.

Senator ERVIN. Well, the Senator——

Senator BAYH. Mr. Chairman, I just close in saying I appreciate the fortitude and courage of our colleague from Maryland. I concur in his thoughts and hope that we can extend this measure. After we have extended the measure and guaranteed that we are going to continue progressing down the road which has resulted in the additional franchise of over 500,000 American voters, then I think we can go back and find ways in which we can strengthen and do an even better job so that citizens, North, South, East, and West, will be given the full right of citizenship, the right to vote.

Senator ERVIN. I think the Senator does a lot of assuming when he assumes that 800,000 people registered on account of this act, especially as many as registered in 60 counties in North Carolina, in which the act didn't apply.

Senator BAYH. I think we are being—let's not say "naive"—but let me just express my own opinion.

Senator ERVIN. I am naive. I never thought the Congress would pass a law condemning people of violating a provision of the Con-

stitution without a judicial trial, and then provide that they be condemned until they journey to one court only. I think that is as bad discrimination as the other.

Senator BAYH. I might disagree with my colleague's judgment from time to time, and he might disagree with me, but I would never call him naive.

Senator ERVIN. I couldn't think the Congress of the United States would pass a law condemning a whole section of the country without a judicial trial and then tell them they can only come up and prove their innocence in one court in the District of Columbia. I never thought Congress would do a thing like that.

Thank the Lord they can't do that to a crap shooter or moonshiner.

Senator BAYH. I don't think we want to tolerate moonshing or crap shooting. I ask this committee to look at the record. I don't think it is a mere matter of coincidence that they were able to get 800,000 Americans to register.

Despite the fact they said there wasn't any discrimination in this country, this civil rights article that is full of air—but for some reason or other, after the passage of this act, and only after the passage of this act, we were able to bring pressure to bear to get this job done.

Senator ERVIN. Hundreds of thousands of these 800,000 people were not old enough at the passage of the act.

Senator BAYH. Well, how many hundreds of thousands, I wonder?

Senator ERVIN. I would say a considerable portion of them.

Senator THURMOND. Mr. Chairman, I would like the record to note that each year the number of Negro voters in South Carolina has been increasing. After all, years ago Negroes did not vote in many States.

Senator BAYH. Will the Senator repeat that?

Senator THURMOND. Many years ago many Negroes did not vote in many States. They made tremendous progress. There is no race in the history of mankind that has made as much progress as the Negro race in America. I repeat that, too. I think each year, more and more, people have been getting better education. They have been taking more interest in government. Therefore, more and more are voting. Then, as new voters become of age, they are eligible, too. They are accounted for. You can't give credit to the 1965 Voting Rights Act at all. It may have played some little part, I wouldn't deny it. But I think the progress in my State would have come about anyway, because we have had large numbers of voters voting there for many, many years.

Senator HRUSKA. I think there is much to what the Senator from Indiana said, and I wouldn't want to detract from his contention in any way if this present law has related beneficially upon voters who otherwise would not have had a chance to vote.

But I want to call attention to the Senator from Indiana my judgment that S. 2057 amendment would not impair the strength or effectiveness of the present law when it is necessary to apply examiners for registrants or whatever. It is on that basis that I say that it would be a good bill because it would remove things that are of some burden and are of some odious attributes in the minds of some of the States, and they would be treated like all other States.

If the other States do not sin or transgress, then of course the bill would not apply to them. But it certainly would apply just as effec-

tively under the amended form as proposed as it can apply now. To that extent I would speak on behalf of S. 2507.

Senator MATHIAS. Mr. Chairman, I am very grateful to you for the time and courtesy and hospitality of this committee.

Mr. BASKIR. Mr. Chairman, the next witness is Mrs. Frankie Freeman, member of the Civil Rights Commission. Mrs. Freeman is accompanied by Howard A. Glickstein and John Kester.

STATEMENT OF MRS. FRANKIE FREEMAN, MEMBER, CIVIL RIGHTS COMMISSION, ACCOMPANIED BY HOWARD A. GLICKSTEIN AND JOHN G. KESTER

Mrs. FREEMAN. Mr. Chairman and members of the subcommittee, I am Mrs. Frankie M. Freeman, a member of the U.S. Commission on Civil Rights. I am also the associate general counsel of the St. Louis Housing and Land Clearance Authorities. With me are Mr. Howard A. Glickstein, staff director-designate of the Commission, and Mr. John G. Kester, the Commission's acting general counsel. I appreciate the opportunity to speak to you this morning in support of S. 818 and S. 2456, bills to continue the protection of the Voting Rights Act of 1965.

The Commission on Civil Rights was established by Congress in 1957. Its duties include investigating denials of the right to vote because of race, color, religion, or national origin, and investigating certain allegations of vote fraud. From its first days, the Commission has recognized the right to vote as crucial. The Commission's first hearing was held to investigate denials of voting rights.

Since that time it has conducted other hearings and issued a number of reports on voting. It has continued to watch voting procedures carefully since the passage of the Voting Rights Act of 1965. Last year it issued a comprehensive report on "Political Participation," and most recently sent staff attorneys to observe the May 1969, municipal primary elections in Mississippi.

My experience on the Commission has convinced me that the Voting Rights Act of 1965 must be extended, and not weakened. I should like briefly to recall to you the events which led to passage of the 1965 act; to describe its key provisions; and to explain the need for its continued protection.

The 15th amendment was ratified in 1870. It has two sections. The first declares that, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

The second section gives Congress power to enforce the amendment "by appropriate legislation."

Yet through a long series of devices, ranging from grandfather clauses, to literacy tests to requirements of good moral character, the Southern States continued to deny the vote to their Negro citizens. In 1956 in the 11 Southern States, only 25 percent of the 5 million Negroes of voting age were registered.

In 1957 Congress made its first attempt since the post-Civil War era to end the unconstitutional disfranchisement of the Negro. The Civil Rights Act of that year, as well as those of 1960, and 1964, included provisions attempting to make State officials at least apply their re-

strictive voting standards to white people and black people alike. But many State and local voting officials continued to ignore the Constitution, and the slow and painful process of case-by-case litigation achieved almost nothing. Even if the courts finally held a State law or practice invalid, the State was free to adopt other devices to continue the disfranchisement of its Negro citizens.

The Department of Justice brought approximately 50 lawsuits between 1957 and 1964 to enjoin discriminatory practices by registration officials. Yet by 1964 only 23 percent of voting age Negroes were registered in Alabama; 32 percent in Louisiana; 6.7 percent in Mississippi. And of the approximately 5 million voting age Negroes in the South, only 36,000 had been registered in the nearly 50 counties where the Department of Justice had brought lawsuits.

In 1965, Congress responded in a new way to the longstanding violations of the 15th amendment by enacting the Voting Rights Act. The act, in the words of the Supreme Court, "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral processes in parts of our country for nearly a century." (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 308 (1966)). Let me review its principal provisions.

A State or political subdivision is covered by the act if both of two circumstances exist: first, that on November 1, 1964, it applied literacy tests, "good moral character" prerequisities or similar requirements as conditions to voting; and, second, either that less than 50 percent of its persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent voted in the presidential election of 1964. Six States are now covered—Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia—as are 39 counties of North Carolina, one county in Hawaii, and one county in Arizona.

If a State or political subdivision is covered by the act, then four consequences follow.

First, it may not use any test or device to limit voting eligibility.

Second, the Attorney General may under specified circumstances have Federal examiners sent to any county included in the jurisdictions covered by the act. These examiners list applicants who are found to have the qualifications prescribed by valid State law. Persons thus listed are then fully qualified to vote.

Third, the Attorney General may send Federal observers to any county designated for examiners, to observe the polling places and the counting of the vote.

Finally, section 5 of the act prohibits a State or political subdivision from applying any new voting qualification or procedure without first obtaining either the acquiescence of the Attorney General or a declaratory judgment from the U.S. District Court for the District of Columbia that the new practice, "does not have the purpose and will not have the effect of denying or abriding the right to vote on account of race or color." The burden of proving the nondiscriminatory purpose and effect is on the governmental body seeking exemption.

But the act contains an escape clause, which now threatens all that the act has accomplished. To avert this danger is the purpose of S. 818 and S. 2456, in support of which I appear here today. By section 4(a) a State or political subdivision can obtain a declaratory judgment

removing itself from coverage on showing that for the preceding 5 years it has not used a literacy test or other device to deny the right to vote on account of race or color.

All the States and counties now covered by the act presumably stopped using literacy tests and other devices upon the passage of the Voting Rights Act in 1965. Therefore, on August 6, 1970, they will not have done so for 5 years, and will be able to escape coverage completely by bringing the requisite suit. They could then resume the use of literacy tests and other devises. No more examiners could be sent to list eligible voters who had been turned away by local elections. And the State would no longer have to show in advance the constitutionality of changes in its voting laws. It could, if it chose, strike the names of all voters currently on the rolls, and order new registration under new laws which could be tested only through litigation after the fact.

S. 818 and S. 2456 would increase the period of nondiscrimination necessary to escape coverage from 5 to 10 years—the period suggested in the Voting Rights Act as it was introduced in 1965—and thus would keep the act effective for 5 more years.

As the Commission's 1968 report, "Political Participation" documents, there has been considerable progress since the passage of the Voting Rights Act. The increase in black registration and in the number of Negroes who are candidates for public office and who are elected to office is impressive. But full equality is far from a reality. This is demonstrated by low registration figures, few black officeholders, and much evidence of continued hostility to efforts of black people to vote.

Although black voter registration is much higher now than it was before the passage of the Voting Rights Act, it still lags well behind white registration in all the States affected by the act. Table 1 gives the most recent voter registration statistics we have for these States.

Within these States there are many individual counties in which black registration is especially low.

For example, in Alabama, less than half the Negroes of voting age are registered in 27 of the 67 counties. In five counties, Negro registration is less than 35 percent.

In 24 of Mississippi's 82 counties, Negro registration is less than half; in six counties, it is less than 35 percent.

In half of South Carolina's 46 counties Negro registration is less than half. It is less than 35 percent in three.

I should like to submit for the record a list of the counties with low Negro registration in the States covered by the Voting Rights Act.

(The information above referred to, follows:)

COUNTIES IN WHICH NEGRO VOTER REGISTRATION IS LESS THAN 35 PERCENT IN STATES COVERED BY THE VOTING RIGHTS ACT [1]

County	Designated for Federal examiners [2]	Negro voting age population [3]	Negro registration [4]	Percent Negro registration
ALABAMA				
Baldwin	No	4,527	1,435	31.6
Chambers	No	6,497	1,610	24.7
Houston	No	6,899	1,951	28.3
Marshall	No	637	208	32.6
Morgan	No	4,159	1,423	34.2
Total		22,719	6,627	29.2
GEORGIA				
Baldwin	No	9,235	2,304	24.9
Bleckley	No	1,380	309	22.4
Brooks	No	3,711	959	25.8
Calhoun	No	2,393	674	28.1
Chattahoochee	No	1,830	131	7.2
Clinch	No	1,256	387	30.8
Dawson	No	1	0	0
Decatur	No	5,515	1,235	22.3
Early	No	3,277	984	30.0
Echols	No	246	24	9.7
Forsyth	No	4	0	0
Glascock	No	351	22	6.2
Hart	No	1,832	446	24.3
Lowndes	No	8,459	2,835	33.5
Madison	No	989	269	27.1
Marion	No	1,609	296	18.4
Miller	No	946	193	20.4
Mitchell	No	4,971	1,535	30.8
Oconee	No	681	155	22.8
Oglethorpe	No	1,709	476	27.9
Pulaski	No	1,843	632	34.2
Quitman	No	707	213	30.1
Randolph	No	3,663	1,266	34.6
Stewart	No	2,681	795	29.8
Talbot	No	2,507	686	24.4
Taylor	No	2,004	679	33.9
Towns	No	1	0	0
Troup	No	8,577	2,974	34.6
Union	No	1	0	0
Upson	No	3,615	1,016	28.1
Webster	No	975	266	27.2
Worth	No	3,776	1,038	27.4
Total		80,745	22,800	28.2
LOUISIANA				
Franklin	No	4,433	797	18.0
Morehouse	No	7,208	2,054	28.5
Richland	No	4,608	1,170	25.4
West Carroll	No	1,389	397	28.6
Total		17,638	4,418	25.0
MISSISSIPPI				
Clarke	No	2,988	763	25.3
Clay	Yes	4,444	1,481	33.5
Kemper	No	3,221	938	29.1
Lowndes	No	8,362	2,785	33.0
Union	No	1,626	408	25.1
Winston	Yes	3,611	728	20.2
Total		24,252	7,103	29.3
NORTH CAROLINA [5]				
Harnett	No	6,150	990	16.1
Onslow	No	5,015	1,651	32.9
Wayne	No	15,754	5,456	34.6
Wilson	No	10,770	3,473	32.2
Total		37,689	11,570	30.7
SOUTH CAROLINA				
Anderson	No	9,598	2,720	28.3
Edgefield	No	3,764	1,102	29.3
York	No	10,196	3,408	33.4
Total		23,558	7,230	30.7

[1] Data for Virginia are unavailable.
[2] Source: Department of Justice.
[3] Source: 1960 census.
[4] Source: Voter education project, Southern Regional Council, Inc., Voter registration in the South, summer 1968.
[5] Only 39 counties in North Carolina are covered by the Voting Rights Act.

COUNTIES IN WHICH NEGRO VOTER REGISTRATION IS 35 TO 50 PERCENT IN STATES COVERED BY THE VOTING RIGHTS ACT [1]

County	Designated for Federal examiners [2]	Negro voting age population [3]	Negro registration [4]	Percent Negro registration
ALABAMA				
Blount	No	378	179	47.0
Butler	No	4,820	1,898	39.3
Calhoun	No	9,036	4,520	50.3
Chilton	No	1,947	890	45.7
Clarke	No	5,833	2,737	46.9
Clay	No	926	429	46.3
Cleburne	No	385	174	45.1
Coffee	No	2,985	1,069	35.8
Covington	No	2,876	1,086	37.7
Cullman	No	825	126	44.2
Escambia	No	5,685	2,322	40.6
Geneva	No	1,606	645	40.2
Lamar	No	1,027	395	38.5
Lauderdale	No	3,726	1,481	39.7
Lee	No	8,913	3,469	38.9
Limestone	No	3,579	1,339	37.4
Macon	No	11,886	5,704	48.0
Pickens	No	4,373	1,769	40.5
Russell	No	10,531	4,292	40.8
St. Clair	No	2,035	1,002	49.2
Talladega	No	9,333	4,360	46.7
Tallapoosa	No	4,999	2,272	45.4
Tuscaloosa	No	15,332	6,123	39.9
Total		112,496	48,282	42.9
GEORGIA				
Banks	No	213	81	38.0
Barrow	No	1,332	504	37.8
Ben Hill	No	2,436	1,158	47.5
Burke	No	6,600	2,847	43.1
Butts	No	2,099	1,011	48.1
Clay	No	1,441	608	42.1
Clayton	No	2,456	958	39.0
Columbia	No	2,364	1,036	43.8
Crawford	No	1,611	784	48.7
Effingham	No	1,756	645	36.7
Elbert	No	3,127	1,338	42.7
Floyd	No	5,949	2,810	47.2
Gilmer	No	7	3	42.8
Glynn	No	6,762	3,019	44.6
Grady	No	3,364	1,448	43.0
Hall	No	2,789	1,274	45.6
Harris	No	3,102	1,375	44.3
Jenkins	No	2,210	940	42.5
Lincoln	No	1,336	650	48.6
McDuffie	No	2,740	1,245	45.4
Macon	No	4,077	1,831	44.9
Meriwether	No	4,990	2,075	41.5
Morgan	No	2,469	1,176	47.6
Murray	No	51	25	49.0
Muscogee	No	22,549	10,968	48.7
Peach	No	4,562	1,887	41.3
Pike	No	1,643	741	45.1
Putnam	No	2,204	1,012	45.9
Schley	No	903	341	37.8
Seminole	No	1,255	446	35.5
Sumter	No	6,710	3,218	47.9
Thomas	No	7,644	3,113	40.7
Tift	No	3,513	1,742	49.5
Toombs	No	2,444	1,055	43.2
Turner	No	1,535	627	40.8
Twiggs	No	2,255	1,041	46.2
Walton	No	3,076	1,479	48.1
Washington	No	5,451	2,311	42.4
Wilcox	No	1,282	628	48.9
Wilkes	No	3,101	1,092	35.2
Wilkinson	No	2,279	1,038	47.7
Total		137,687	61,650	44.8
LOUISIANA				
Bossier	Yes	6,847	3,338	48.8
Claiborne	No	5,032	2,154	42.8
East Feliciana	Yes	6,081	2,440	40.1
Lincoln	No	5,723	2,572	44.9
Orleans	No	125,752	59,260	47.1
Ouachita	Yes	16,377	8,155	49.8
Plaquemines	Yes	2,897	1,448	50.0
West Feliciana	Yes	4,553	2,054	45.1
Total		173,262	81,421	47.0

Footnotes at end of table, p. 33.

COUNTIES IN WHICH NEGRO VOTER REGISTRATION IS 35 TO 50 PERCENT IN STATES COVERED BY THE VOTING RIGHTS ACT[1]—Continued

County	Designated for Federal examiners[2]	Negro voting age population[3]	Negro registration[4]	Percent Negro registration
MISSISSIPPI				
Adams	No	9,340	4,576	49.0
De Soto	Yes	6,246	2,869	45.9
Humphreys	Yes	5,561	2,684	48.3
Jones	Yes	7,427	3,347	45.1
Lauderdale	No	11,924	5,832	48.9
Lee	No	5,130	1,980	38.6
Monroe	No	5,610	2,337	41.6
Newton	Yes	3,018	1,411	46.8
Pearl River	No	2,473	1,223	49.4
Pontotoc	No	1,519	569	37.5
Quitman	No	5,673	2,708	47.7
Rankin	Yes	6,944	2,445	35.2
Scott	No	3,752	1,586	42.3
Sunflower	Yes[5]	13,524	5,665	41.9
Tunica	No	5,822	2,179	37.4
Washington	No	20,619	9,056	43.9
Wayne	No	2,556	1,225	47.9
Yazoo	No	8,719	3,442	39.5
Total		125,857	55,134	43.8
NORTH CAROLINA				
Anson	No	5,218	2,000	38.3
Beaufort	No	6,196	2,501	40.4
Bladen	No	5,147	2,392	46.5
Caswell	No	4,129	2,039	49.4
Chowan	No	2,507	1,032	41.2
Cleveland	No	6,474	3,188	49.2
Craven	No	8,242	3,665	44.5
Cumberland	No	18,789	7,722	41.1
Edgecombe	No	12,330	5,103	41.4
Franklin	No	5,554	2,690	48.4
Gates	No	2,344	893	38.1
Granville	No	6,956	3,162	45.2
Greene	No	3,268	1,558	47.7
Halifax	No	13,766	5,872	42.7
Lenoir	No	10,293	4,707	45.7
Pasquotank	No	4,936	1,870	37.9
Pitt	No	13,575	6,165	45.4
Scotland	No	4,686	1,727	36.9
Union	No	4,423	1,641	37.1
Total		138,873	59,927	43.2
SOUTH CAROLINA				
Abbeville	No	3,215	1,192	37.1
Aiken	No	10,040	4,209	41.9
Calhoun	No	3,318	1,421	42.8
Charleston	No	35,499	17,403	49.0
Darlington	No	9,900	4,676	47.2
Dillon	No	5,529	2,269	48.3
Greenville	No	18,605	8,408	45.2
Greenwood	No	6,764	2,570	38.0
Horry	No	7,429	3,686	49.6
Jasper	No	3,333	1,575	47.2
Kershaw	No	5,903	2,449	41.5
Laurens	No	6,818	2,822	41.4
Lee	No	5,446	2,638	48.4
McCormick	No	2,248	1,121	49.9
Marion	No	7,684	3,620	47.1
Newberry	No	4,954	2,090	42.2
Oconee	No	2,230	1,116	50.0
Pickens	No	2,356	1,084	46.0
Spartanburg	No	17,047	6,877	40.3
Sumter	No	15,380	7,501	48.8
Union	No	4,125	2,024	49.1
Total		177,823	81,151	45.7

[1] Data for Virginia are unavailable.
[2] Source: Department of Justice.
[3] Source: 1960 census.
[4] Source: Voter education project, Southern Regional Council, Inc., voter registration in the South, summer, 1968.
[5] Although this county has been designated, no Federal examiners have ever been sent there.
[6] Only 39 counties in North Carolina are covered by the Voting Rights Act.

Senator ERVIN. Will you tell me how you got the figures of the population of those counties?

Mrs. FREEMAN. The population is from the 1960 census and the voter registration statistics are from 1968.

Senator ERVIN. But the voter registration figures do not include all the registrations in those States for the 1968 election. They stop in the summertime.

Mrs. FREEMAN. Of 1968.

Senator ERVIN. So the figures cannot possibly be accurate?

Mrs. FREEMAN. They were accurate as of the time they were compiled.

Senator ERVIN. But, you know that most people register—a lot of people register in the fall. Most States have a registration book open in the fall.

Mrs. FREEMAN. That is right.

Senator ERVIN. And these figures stop in the middle of the summer.

Mrs. FREEMAN. Of 1968.

Senator ERVIN. These figures do not disclose how many people registered between the midsummer and the general election in November?

Mrs. FREEMAN. We will refer to other reports concerning our findings as I go along with this statement. I think that that will answer your question.

Senator ERVIN. Well, the figures that you have—these figures stop in midsummer.

Mrs. FREEMAN. Of 1968.

Senator ERVIN. And those figures do not show what number of people were registered after the midsummer before the general election?

Mrs. FREEMAN. They will not show 1969.

Senator ERVIN. In other words, they are inaccurate?

Mrs. FREEMAN. They may be incomplete. They are not inaccurate.

Senator ERVIN. If they are incomplete, they are inaccurate. I would say that things that are not complete, they are inaccurate.

Mr. BAYH. If I might interrupt just a minute. I am sorry, Mrs. Freeman, but we need to put this in proper perspective. It is pretty difficult to keep any figure accurate with growing population and efforts made to increase registration, I am sure, being made in North Carolina and other places. It is only fair to assume that because you stopped the registration figures in midsummer that those registered in the election period were not included in the figures, as the Senator from North Carolina specified. I think you would also have to—making everything consistent, the population growth from 1960 to the summer of 1968, these numbers are not included, also?

Mrs. FREEMAN. This is the point I was making when I said they were incomplete. It is almost impossible to have completely updated statistics.

Senator BAYH. It is possible the population growth would make the percentage figures even lower than they are now.

Mrs. FREEMAN. It may be that they will be worse, based on some of the things we bring out.

Senator ERVIN. One thing is certain: nobody can put that person on the registration book unless that person goes to the registrar and registers, can they?

Mrs. FREEMAN. This is true. But our findings also show that there were people who went to the registrar, and this is what the political participation report shows, that difficulties continue.

Senator ERVIN. Do you think any North Carolinians went to the registrar and weren't allowed to register?

Mrs. FREEMAN. I don't think we have any cases, specific cases. I made note of what you said earlier. If we do have any, we will certainly bring those to your attention. I don't recall that we had any specific complaints that they weren't registered.

Senator ERVIN. I have lived in North Carolina all my life, and since I have been in the Senate I have never heard any complaints of anybody not being allowed to register, except some brought by Attorney General Brownell, in 1957, in three precincts in North Carolina. He claimed the basis for those cases was the FBI. I asked for the FBI figures so I could interpret them and they wouldn't give them to me.

So I called the State board of elections in those three precincts and they informed me every one of those people was registered. Everyone was registered in time to vote in the primary and also the election. I have not heard of a single person in North Carolina, since I have been in the U.S. Senate—and that is 15 years—that has ever been wrongfully denied the right to register—any person of any race.

I would like to have some evidence of our sins that exist. Excuse the interruption.

Mrs. FREEMAN. The figures I have presented indicate that the Voting Rights Act has only partially achieved its purpose. One reason has been the failure of the Department of Justice to make full use of the power to send Federal examiners. Of the 43 counties in the seven Southern States in which black registration is less than 35 percent, only two have had Federal examiners. There are 130 counties in which Negro registration is between 35 and 50 percent. Examiners have been sent to only 10 of these counties.

Even when examiners have been sent, their presence often has not been adequately publicized. For example, staff attorneys of the Commission on Civil Rights reporting on the May 1969 municipal primary elections in Mississippi discovered that when the Federal examiner arrived in Holmes County in March, he apparently made no effort to publicize his presence. He was discovered by accident on his last day there. Predictably, he did not list a single voter during his visit. I would like to submit for the record the report prepared by the Commission staff attorneys, along with a letter from the Assistant Attorney General promising better public notice in the future.

(The documents above referred to follow:)

DEPARTMENT OF JUSTICE,
Washington, June 26, 1969.

Mr. HOWARD A. GLICKSTEIN,
Staff Director,
U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: This is to acknowledge your letter of June 4, 1969, addressed to the Attorney General, and the accompanying report by the Commission, concerning the May 13, 1969 municipal primary elections in Mississippi.

We have given careful consideration to the recommendations made by you and the Commission with regards to the federal examiner and observer program. In cooperation with the Civil Service Commission, we will attempt to provide better notice of future openings of examiner offices. As your report noted, our

past practice of notifying leaders in the Negro community has often proven inadequate.

We are also requesting the Civil Service Commission to devise a distinctive name badge to be worn by federal observers to insure that they, and the function they are serving, are clearly identifiable.

However, with regards to the suggestion that we announce in advance of elections the polling places to which observers will be assigned, we feel that the adoption of such a policy would too greatly restrict our flexibility. As you know, our final determinations of the specific polling places to which observers will be assigned are frequently not made until twelve or less hours before the polls open. This is necessitated by our practice of analyzing not only information obtained during the weeks preceding the election, but also the conditions and factors existing on the eve of the election. Of particular concern to us is the adequacy of instructions given local polling officials. Often the meetings at which these instructions are given are not held until the day before the election.

In addition, we believe that prior announcement of observer assignments should be avoided because of the possible influence it may have on the election. In Louisiana, where an unauthorized disclosure of observer assignments was made, it appeared to have had an adverse effect on Negro candidates. It insured a greater turnout of white voters and the casting of votes along more rigid racial lines as a result of racial appeals made on the basis of that disclosure. In any event, we do not believe that the observer program should be operated in a manner which might have a political effect on the outcome of an otherwise fair election.

We also do not believe it is advisable to adopt the recommendation that federal observers intervene in the local election process when they believe that an infraction of state or federal laws has occurred. To do so would clearly exceed their authority as set out in the Voting Rights Act. Congress has limited their function solely to observing the election processes and to reporting on their observations to the Attorney General.

Furthermore, while the observers are trained to carry out their statutory functions, they are not qualified to make the combination factual and legal determination the recommendation would require. As a result, we intend to follow our past practice of having only attorneys of this Division deal with local officials concerning election day problems and irregularities.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

U.S. COMMISSION ON CIVIL RIGHTS STAFF REPORT, MAY 13, 1969, MUNICIPAL ELECTIONS IN MISSISSIPPI

Primary elections were held on May 13, 1969 by numerous Mississippi municipalities to choose candidates for the June 3, 1969 general election. The U.S. Commission on Civil Rights sent two attorneys to the state for a week to observe the elections and speak with many of the black candidates who sought political office and their supporters.

On May 13, 1969 Commission staff attorneys observed the conduct of the election in Fayette, Jefferson County; Woodville, Wilkinson County; Gloster, Amite County; Lexington, Durant, Goodman, and Pickens, Holmes County; and Belzoni, Humphreys County. Commission staff visited the polling places throughout the day and kept in contact with black candidates and their supporters in these cities. The rest of the week they spoke with black candidates and their supporters in other Mississippi towns. In all they spoke with black candidates or their campaign workers in 20 towns scattered among a total of 15 counties.

Most of the black candidates interviewed, regardless of whether they won or lost and regardless of whether they believed the election had been fair, believed that there would not have been as fair an election had it not been for the presence of the Federal Observers and the presence of numerous lawyers and others serving as poll watchers. Although there were criticisms of the manner in which the Federal Observers carried out their duties, not one black candidate in a county where Federal Observers were present believed the election would have been run in an honest manner were it not for the presence of these observers. In counties where Federal Observers were not present, there was a division of opinion as to whether there had been an honest election.

For convenience in reporting, the problems uncovered have been divided into four general areas:

1. Registration to vote.
2. Qualification as a candidate.
3. The conduct of the election.
4. The role of Federal Observers.

REGISTRATION TO VOTE

In many of the towns visited by the Commission staff, it was reported that black persons no longer have fears of adverse consequences if they register to vote. This was not true everywhere, however. In Woodville, for example, a black candidate stated that people were still afraid to register to vote in Wilkinson County. As an example of the fear that still exists in the Woodville area, he noted that when three college students from Michigan State University who served as poll watchers for black candidates during the election had to leave the town very late at night, local black residents insisted that they be escorted to McComb by the Deacons of Defense. In Itta Bena there were reports of threats to bomb a black candidate's headquarters the night before the election. A guard was placed around the headquarters by local black persons the entire night. It was also noted in Woodville that several candidates who had held jobs either with the school system or the county had recently lost their jobs as a result of seeking elective office or because they were actively involved with the NAACP. Their contracts were not renewed after their involvement had become common knowledge.

A black candidate in Moorhead, in Sunflower County, stated that some black persons were afraid to register to vote for fear that white persons would take economic reprisals against them. A similar reluctance to register was reported in rural areas of Quitman County by a black candidate for office in Marks.

Problems in registering to vote for the city elections were widespread. Difficulties were reported in Summit, Pike County; Bolton and Edwards, Hinds County; Clarksdale, Coahoma County; Durant, Lexington and Goodman, Holmes County and Leland, Washington County.

A black candidate for office in Summit stated that black persons desiring to vote had difficulty in finding the Summit city clerk in order to register with him. Under Mississippi law, a voter must register with the county registrar and with the city clerk in order to vote in municipal elections. Section 3211 of the Mississippi Code provides that the registrar "shall register the electors of his county at any time" and section 3374-61 makes this provision applicable to municipal clerks, how act as registrars for municipal elections. Until the deadline for registering for the primary election had passed, the city clerk in Summit, who has another full-time job, was only available for registration between 3 p.m. and 7 p.m. on Tuesdays and Wednesdays. In the future, however, the clerk in Summit has reportedly agreed to register voters at any time, except on Sundays. Pike, the county in which Summit is located, has not been designated for Federal Examiners. It was reported that the town clerk in Edwards is in his office only from 9 a.m. to 11 a.m. Monday through Friday. Thus, it is very difficult for people who work during the day to register in the city.

In several of the towns noted have, county clerks did not inform the newly registered voter that it was necessary for him to register in the city as well. Thus, large numbers of black persons were unable to vote in municipal elections because they had not registered in the city, even though they had registered at the county courthouse.

In one town where no primary was held, but where black candidates were running as independents, two black voters alleged that the city clerk was present when they registered with the county clerk, and that he told them he would take care of the city registration for them. He did not, however, and their ballots were challenged. One black voter was told by the same city clerk, when she saw him in 1966 after having been listed by the Federal Examiner, that she already was on the city books. Her name, however, was not on the list and thus her ballot was challenged.

In another town, witnesses reported that the county clerk harassed black persons who attempted to register with her. In July 1968, a local civil rights volunteer took a crippled black woman and four other black persons (two to register, and two to help the crippled woman) to the clerk's office. The clerk refused to allow the crippled woman to sit while she was registering, instead forcing her to walk from table to table for different parts of the registration process. This took about

15 minutes, the clerk asserting that, after all, the woman would have to stand while voting. On two occasions—July 1968 and February 1969—this clerk allegedly sent a deputy out to buy spray deodorizer while black persons were being registered.

Another widespread problem was that a large number of names listed by the Federal Examiners were not placed on the city rolls. As a consequence many persons who had been listed by the Federal Examiners had their ballots challenged, while others, anticipating challenge, did not cast ballots at all. Such problems were reported in Woodville, Wilkinson County; Vicksburg, Warren County; Edwards and Bolton, Hinds County; Clarksdale and Jonestown, Coahoma County; Itta Bena, Leflore County; Marks, Quitman County; and Lexington, Durant and Goodman, Holmes County. In some of these cases the Federal Examiners failed to transmit the names of persons listed by them to the appropriate city officials.

In March, local campaign workers discovered that the names of 150 black persons in Itta Bena who had registered with the Federal Examiner were not on the city lists. This was brought to the attention of the Civil Service Commission office in Jackson. That office allegedly was able to get 108 of the names placed on the city books for the elections, but apparently determined or assumed that the 42 others lived outside Itta Bena. At the May 13 primary, an additional 12 black persons were allegedly turned away because they were not on the city lists, although they too had been listed by the Federal Examiner.

In one town, persons listed by the Federal Examiner, but whose names were not on the registration books, were permitted to cast challenged votes. When a ballot is challenged, the Democratic Executive Committee decides whether to count it. The chairman of the Democratic Executive Committee in that town is alleged to have said, in reference to challenges by poll watchers for black candidates: "Let them challenge all they want because the challenge comes through me and I will handle them the way I want."

When the Federal Examiner arrived in Holmes County in March, he apparently made no effort to publicize his presence. Commission staff talked to many local black persons—candidates and campaign managers as well as voters—who did not know he was in Lexington until his presence was discovered by accident on his last day there. Predictably, he did not list anyone during his visit to Lexington.

Lack of such publicity was a widespread problem throughout Mississippi. Little or no advance publicity was given in any of the counties. While some civil rights leaders were apparently informed of the presence of Federal Examiners, in most cases nothing else was done. As could be expected, few persons were listed by the examiners. A list showing the counties in Mississippi where examiners were sent and the number of persons listed is attached.

QUALIFICATION AS A CANDIDATE

In several towns primaries were not held even though black candidates had sought to run and thought they had qualified. The absence of a Democratic Party Executive Committee in those communities required candidates to use a different procedure for qualifying and the black candidates were not informed of this procedure.

In Friars Point, for example, where the Justice Department subsequently on May 17 filed a suit, black candidates sought to qualify for the primary by filing their papers with the County Democratic Party Executive Committee. The local newspapers allegedly reported that the black candidates had qualified for the primary. Shortly before the primary, however, it was announced that the black candidates had not qualified for the primary, because they allegedly had not complied with certain statutory requirements. Despite the fact that they had allegedly filed their papers several weeks before the deadline for qualifying either in the Democratic primary or as independents, they were not notified that they had not qualified until after these deadlines had passed. The Justice Department suit charged that "without general notice to the public, [the defendants] altered the procedure for qualifying." This was done without obtaining the approval of the Attorney General as required by Section 5 of the Voting Rights Act of 1965.

In Centerville several black persons attempted to qualify to run in the May 13 primary for city positions. They filed the required notice with the city clerk in Centerville and with the Secretary of the Democratic Committee in Woodville. They were told by the clerk at the town hall in Centerville, that the town

did not have a primary election. They were not told, however, that there was a procedure for obtaining a primary election. To run in a municipal primary in a town without a Municipal Executive Committee it is necessary to petition the Chairman of the County Executive Committee to call a special meeting of registered voters. At this meeting a temporary Executive Committee is elected. This Committee runs the primary election. They learned from civil rights lawyers in Jackson, however, that even though they were unable to run in the Democratic primary they could qualify as independents if they obtained signatures from 75 registered voters. Three candidates were able to get the necessary signatures, even though they learned of this possibility the day before the filing deadline. Thus they were able to get on the ballot for the June general election. In North Carrollton, in Carroll County, and Pickens, in Holmes County, black candidates attempting to qualify as Democrats were told there was no primary and therefore had to qualify as independents. As in Centerville they were not told there was a procedure by which a primary could be held.

A black candidate in one town in Hinds County, however, was unable to qualify for election because she was unaware of the proper procedures to follow. She allegedly filed her papers to run for office with the town clerk before the filing deadline. Someone, however, told her that she had to take the papers to the Mayor. She returned to the town clerk, obtained her papers from him and took them to the Mayor who informed her that he had nothing to do with the election. She then went back to the clerk's office, but he had left. She returned the next day and gave the papers to the clerk, but was told that she was one day past the deadline and, therefore, the clerk refused to put her on the ballot.

In Woodville, black voters were totally excluded from a second unofficial "white primary." All the black candidates for the Democratic primary were defeated. However, black and white persons had qualified as independent candidates for mayor and alderman. Thus, there was a possibility that the white vote would be split since there were two white candidates and one black candidate for mayor and eight white and one black candidate for the five alderman positions. To avoid this, the county White Citizens Council sent a letter to all white voters asking them which white candidates they believed should withdraw from the race. They apparently were at least partially successful, as it was reported that one of the white candidates for mayor had withdrawn his name. A copy of the letter is attached to this report. In contrast to the tone of the letter, a campaign poster is attached illustrating the slogan used by several black candidates in the area: "Don't vote for a black man. Or a white man. Just a good man.... Doesn't that sound good."

In Canton, some black candidates qualified to run in the Democratic primary; others running as independents will appear on the ballot in the June 3 general election. The city, however, allegedly redistricted the municipal boundaries eliminating a large number of black persons and adding a number of white residents. The city did not, as required by the Voting Rights Act of 1965, submit these changes to the Attorney General or the District Court in Washington, D.C., for approval. A suit was brought in Federal court and on May 10, 1969, the holding of a primary and general election was enjoined.

THE CONDUCT OF THE ELECTION

On the day of the primary, election irregularities occurred in a large number of communities in which black candidates ran.

Among the most frequent irregularities were restrictions upon the activities of poll watchers for black candidates. Title 14, section 3128 of the Mississippi Code states:

"Each candidate shall have the right, either in person or by a representative to be named by him, to be present at the polling place, and the managers shall provide him or his representative with a suitable position from which he or his representative may be able to carefully inspect the manner in which the election is held. . . ."

Despite this provision, election officials in Marks allegedly required poll watchers representing the black candidates to sit over 20 feet from the election tables. From that distance, they could not see enough of what was happening to do more than tally the ballots voted. In Jonestown, the election officials at first challenged the right of the student volunteer poll watchers to be there. After reportedly telephoning an outside source, the officials allowed these poll watchers to remain, but seated them so far back of the polling place, at the insistence of the manager, that they could not see the names on the books and

thus could not carry out all of the normal functions of poll watchers. In Leland, where no Federal Observers were present, the election officials also allegedly required poll watchers for the black candidates to stand so far away from the tables that they were unable to check the qualifications of voters. And, although section 3164 of the Code specifically provides that candidates and their representatives have the right to observe and inspect the counting of the ballots, the poll watchers in Clarksdale were not allowed near the machines or tally tables during the tally of votes. They protested, but were not allowed closer.

Although many municipalities across the State had black election officials working at the polling places, only a few had more than a token number of black persons, and the black persons working in the polling places were under the supervision of the white election managers. In Woodville, Clarksdale, and other cities, white election managers were reluctant to render assistance to illiterates, although the courts have held that the Voting Rights Act of 1965 requires that this assistance be given, and that illiterates be informed of its availability. *United States* v. *Louisiana*, 265 F. Supp. 703 (1966), *aff'd per curiam*, 386 U.S. 270 (1967). In Vicksburg, a black election official was told that she could not help illiterates who asked for her assistance in voting. She was told that the election manager would appoint someone to assist illiterates needing assistance. He invariably appointed one of the operators of the voting machines, all of whom were white, despite the voters' request that a black election official assist them.

In Lexington, a black election official is reported to have told a student poll watcher that the election officials had been instructed not to give or offer help to voters until the voter needing assistance asked them. In polling places throughout the State, illiterate voters frequently seemed unaware that assistance was available, but quickly asked for it when poll watchers for the black candidates informed them of its availability. Instructions such as those allegedly given in Lexington deprive such voters of the means of voting as they wish.

Sec. 3272 of the Mississippi Code provides that voters who are blind or disabled "shall have the assistance of one of the managers or other person of his own selection" in the marking of his ballot. In one instance in Vicksburg, however, a poll watcher reported that a blind woman was denied assistance by the "person of her choosing"—her black sister. A white official insisted on casting her ballot for her.

In Itta Bena, white election officials assisting illiterates reportedly tried to influence the illiterates not to vote for the black candidates. It was also reported in Vicksburg, where no Federal Observers were present, that black voters who did not request assistance often had white election officials entering their booth under the pretense of giving assistance.

In Itta Bena, an armed white deputy sheriff, apparently there to maintain order, sat between the two tables being used for the election, allegedly harassing black persons. As a result, some left without voting. The election officials made no effort to moderate his conduct. Also in that city, a white election official allegedly demanded that four black women give her their marked ballots, rather than place them in the box. The women now fear that their ballots were never counted.

In Vicksburg, one of the polling places for a largely-black area was reportedly changed without publicity. When black persons showed up at their regular polling place to vote, the election officials stated that there had been a change, but refused to aid the voters in finding their proper voting place. As a consequence, many of these persons did not vote. In Greenwood, one black voter was not allowed to vote until she had "hounded" the election officials for several minutes, although her name was on the voting lists.

In Clarksdale, four black persons attempted to vote, but were turned away because their names were already marked as having voted. One of the student volunteers felt that some of these instances were explained by there being more than one person with the same name registered but the name appeared on the lists only once. At first, the election officials refused to permit the casting of a challenged ballot; later, they relented. A white voter in this situation was allegedly allowed to vote by machine upon his oral statement that he had not already voted. The officials ignored the challenge of the student volunteers. After that, a black voter in the same situation was also permitted to vote by machine.

A slightly different variation occurred in Vicksburg. A number of voters of a predominantly black ward, and presumably also some in predominantly white wards, were unable to find their names on any books; their names had apparently been dropped for some reason. When a poll watcher at this ward requested that these persons be permitted to cast challenged ballots he reportedly was told that this was not the custom in Vicksburg, apparently because the city used machines. It was not until 1:30 p.m., six and a half hours after the polls had opened, that paper ballots were furnished for those persons whose right to vote had been challenged notwithstanding sec. 3170 of the Mississippi Code which clearly establishes the procedure for the challenging of ballots.

In Lexington, local officials of the municipal Democratic Executive Committee allegedly purged the names of 83 black persons and 67 white persons from the poll books shortly before the election. An overwhelming majority of black voters in Holmes County had registered by being listed by the Federal Examiner. Although the local officials refused to give a list of those purged to representatives of the black candidates, it is likely that most of the blacks purged from the poll books had been listed by the Federal Examiner. Sections 7 and 9 of the Voting Rights Act of 1965 establish an exclusive procedure, including provision for a prompt hearing, by which allegedly unqualified voters listed by a Federal Examiner may be removed from a list. Even if intended in good faith, the alleged purge of the names of black voters from the poll books violated the procedural safeguards provided by the Voting Rights Act.

To challenge unqualified voters effectively, a candidate normally needs to be able to inspect the poll books some time in advance of the election, searching for names of persons still on them who are not currently qualified to vote. Sec. 3211 of the Mississippi Code requires that the "registrar shall keep his books open at his office," and sec. 3374-61 renders this provision applicable to municipal clerks. In one town in Holmes County, a black representative of the local black candidates stated that he had on three occasions attempted to see the voter registration books maintained by the city clerk in the clerk's office at a local bank. On each of these occasions, access to the books was allegedly denied, on the ground that business was too pressing. When white volunteers came to look at the books the day before the election, however, the clerk produced them at once.

In Edwards, Mississippi the chairman and a few of the other members of the Municipal Democratic Executive Committee met without informing the black members of the committee. At this meeting they appointed a number of Negroes closely aligned with the white power structure in the city to serve as election officials and to aid illiterate persons in voting.

The Commission staff was unable to document an earlier report from Vicksburg that election officials had told hundreds of black voters that it was unnecessary to vote for two candidates, that they could cast a single ballot for the black candidates. This would have been contrary to the full slate requirement, and such ballots would not be counted.

THE ROLE OF FEDERAL OBSERVERS

Notwithstanding the general agreement among the black candidates interviewed, that the May 13 primary would have been far more unfair if the Federal Observers and volunteer student and lawyer poll watchers had not been present, there were serious problems arising from the manner in which some of the Federal Observers conducted themselves and from the policies under which they operated.

In Clarksdale, for instance, the Federal Observers frequently did not observe the assistance being given to illiterate black voters. In Goodman, they stationed themselves in a location from which it was impossible to see several of the voting booths, and consequently did not know when black voters in that part of the polling place needed assistance or when it was being given to them. Seats from which they could have observed all of the events in the polling place were available. In Woodville, the volunteer poll watchers on several occasions suggested to black voters needing assistance that Federal Observers were present, and asked if the voters wanted an observer present while they received assistance in casting their vote. At least one observer, when told by a poll watcher that a voter desired him to observe, stated, "If the voter wants me, tell him to come over and get me."

In that town, a volunteer poll watcher—an out-of-state attorney—charged that the Federal Observers did not bother writing up a report of an incident in which a black woman was handed a ballot, walked over toward the booth, but appeared uncertain about what she should do. As she approached the table an election

official reportedly took the unmarked ballot out of her hand and placed it in the box. Despite vocal protests by poll watchers about this matter, the observers apparently felt the issue was too frivolous to report. During the counting of the ballots, a Commission staff attorney noticed that the Federal Observers, at first, were making a brief notation as to the reason each time there was a ballot on which votes were not counted. Later in the evening, however, he noticed that they appeared to have lost their interest, and failed to do this on several occasions.

Black candidates and poll watchers at the Woodville election were extremely critical of the role of the Federal Observers. One student from Michigan State University, a poll watcher for one of the black candidates, charged that the Federal Observers challenged their right to observe the election. After the poll watchers showed them the Mississippi statute which did not prohibit out-of-state people from acting as poll watchers, the Federal Observers challenged their right to stand near the table where the ballots and ballot box were kept. In both instances the local election officials upheld the right of the poll watchers.

The Commission in its 1968 *Political Participation* report criticized the Department of Justice policy of "keeping the Federal presence as inconspicuous as possible" when observers were sent into polling places. It recommended that the Attorney General "should announce publicly in advance of the election that Federal Observers will be present and should assure that the observers are identified as Federal officials."

This recommendation has never been implemented, and the Department kept secret, until the last minute, the cities and polling places in which Federal Observers would be present for the May 13 election. The reasons stated by the Commission for its stand in 1968, however, remain true today:

"The subdivisions where the assignment of observers is warranted are those in which there is a likelihood of discrimination at the polls. It is important for Negro voters in these subdivisions to know that observers will be present to deter local election officials from subjecting Negroes who attempt to vote to discrimination and the harassment, indignity, and humiliation which accompany it. . . ."

The Commission's recommendation that the observers be identified as Federal officials has, similarly, not been implemented. Across the State during the May 13 election, Federal Observers failed to identify themselves by word or by any kind of sign or official insignia. In its 1968 report, the Commission stated that "identification of the observers [would] serve to confirm to Negro voters that they will be afforded comparable treatment with other citizens at the polls." Without identification of the observers and advance notice of their presence, black voters feel no such assurance. In one community visited by a Commission staff attorney, a black candidate did not know, two days after the election, whether a Federal Observer had been present. In Itta Bena, poll watchers for the black candidates knew that Federal Observers were present, but did not know which of the white persons standing about they were.

In its 1968 report, the Commission recommended that the Attorney General should "instruct Federal Observers that they have a duty to point out to local election officials irregularities affecting Negro voters. . . ." One of the reasons for this recommendation was that under the Department of Justice policy that observers should take "only such steps as may be necessary to fulfill the observational function", and that the irregularities they observe should be reported first to the captain of the observer team, and then to a Department of Justice attorney, who will take it up with election officials, [m]uch or all of the election day may elapse . . . before the matter is settled."

In the May 13 primary, the Federal Observers acted only as passive recorders of events, refusing at all times to speak to the election officials about even the most blatant discrimination against black voters. A Commission staff attorney in Woodville was informed by a lawyer from the Civil Rights Division of the Department of Justice that it was Department policy that the Federal Observers were to speak with no one.

This meant that no Federal agent monitoring the election would speak to local officials about even the most obvious irregularities until the Justice Department attorney assigned to that county or pair of counties returned to the particular polling place. In Ittan Bena, this process allegedly took three hours from the first time an irregularity was brought to the attention of the Federal Observers by local poll watchers—at which time the observers admitted that the black voter turned away was fully qualified to vote—to the time when the Justice Department attorney arrived. In that time, a total of 26 voters in that situation had been turned away. Local candidates and their poll watchers were given no

information telling them how to get in touch with Department representatives more quickly.

Neither the observers nor the local election officials informed voters that they could have assistance in voting and that Federal Observers could watch the assistance being given. Only if a voter asked for such assistance or if he was unable to write his name was he told that such assistance was available. Since many illiterates are able to write their names but not able to read and understand the ballot, this limited provision of information left many black voters, needing assistance, ignorant of the possibility that assistance could be given and that Federal Observers could watch it as it was being given.

Although the stated policy was that the observers should talk with no one, a Commission staff attorney saw the observers in Woodville engage in animated conversation with the white election officials on numerous occasions. They did not seem to speak with poll watchers, black candidates or any local black people, however. Two observers there also refused to speak to the Commission staff attorney when he asked one for the number of persons who had voted and the other—the one who had allegedly challenged the right of the poll watchers for the black candidates to be there—for his name.

Some of the local black persons understandably felt that the observers were in sympathy with the white community. At one point in the afternoon, several poll watchers and at least one black candidate asked the Commission staff attorney if he could not get the Federal Observers out of the balloting place. On reflection, later however, these same persons agreed that there would have been widescale fraud but for the mere fact of the observers' presence.

SUMMARY

The election of some black persons to municipal office in Mississippi is evidence that some changes have occurred in Mississippi since the passage of the Voting Rights Act of 1965. Even with these victories, however, virtually all cities and towns in Mississippi will still be governed by all-white local governments.

Interviews with observations by staff attorneys suggest that this is in part due to the following:

1. Many black persons in Mississippi still fear economic or other reprisals if they register to vote or openly support black candidates.

2. Officials in some cases have made registration difficult for black persons by narrowly limiting hours for registration, by failing adequately to inform applicants of procedures required to vote in municipal elections, and in some cases by actually misinforming them as to these requirements.

3. Black persons continue to be excluded from serving as election officials in most areas of the State surveyed.

4. Officials sometimes failed to assist or misinformed black candidates seeking to obtain places on the ballot, and some were unable to run in the primary as a result.

5. The Voting Rights Act of 1965 establishes procedures to be followed before local officials change election requirements or procedures or remove from the poll books persons listed by the Federal Examiners. In many instances throughout Mississippi, local officials took such actions without observing the Act or any of the procedural safeguards provided by the election laws of the State of Mississippi.

6. The Federal Government neglected to take adequate steps to inform citizens of the presence of Federal Examiners and thus examiners listed relatively few voters in recent months.

7. Some Federal Examiners failed to transmit the names of persons listed by them to city voting officials, and as a result many black voters throughout the State had their ballots challenged or were turned away from the polls.

8. Although most black candiates believed that the mere presence of Federal Observers improved the honesty of election procedures, a number of election irregularities occurred even where Federal Observers were present.

9. The effectiveness of Federal Observers was limited by their failure to make their presence known to voters and by their failure to intervene at once when irregularities were observed.

LISTINGS BY FEDERAL EXAMINERS IN MISSISSIPPI, MARCH 1969

Federal Examiners were in Mississippi to list persons to vote on four Saturdays in March. This was the only listing in Mississippi by Federal Examiners in 1969 prior to the holding of the municipal elections. Of the 1,009 persons listed by the Examiners, 164 were listed for city elections only, that is, they were already registered to vote in other elections. Of the persons listed 913 were nonwhite and 96 were whites. The results are as follows: [1]

[A dash is used to indicate that no Federa lexaminer was in the county on that date]

County	Mar. 8	Mar. 15	Mar. 22	Mar. 29	Total
Amite	0	0	5	—	5
Benton	—	0	0	—	0
Carroll	0	1	1	—	2
Clay	0	0	0	—	0
Coahoma	—	0	0	—	0
De Soto	—	0	0	—	0
Forrest	—	0	0	—	0
Franklin	—	0	17	10	27
Hinds	0	35	43	80	158
Holmes	0	0	0	—	0
Humphreys	—	11	14	1	26
Jasper	—	2	1	—	3
Jefferson	—	8	0	—	8
Jefferson Davis	—	—	1	—	1
Jones	—	2	2	—	4
Leflore	23	56	78	108	265
Madison	0	19	68	68	155
Marshall	0	3	0	—	3
Neshoba	—	2	1	—	3
Newton	—	0	2	—	2
Noxubee	—	0	44	30	74
Oktibbeha	—	37	15	13	65
Rankin	—	0	0	—	0
Sharkey	3	9	19	10	41
Simpson	—	0	24	25	49
Walthall	—	13	6	22	41
Warren	—	12	8	16	36
Wilkinson	—	16	11	1	28
Winston	—	0	8	5	13
Total	26	226	368	389	1,009

MAY 20, 1969.

DEAR FELLOW CITIZEN OF WOODVILLE: Your local Citizens Council is gravely concerned about the political prospects in the Woodville Municipal General Election which will be held on June 3rd, and we feel sure that you, as a public spirited white citizen, are equally concerned.

First, may we emphasize the fact that we have no axes to grind nor political fortunes to favor or oppose as to individuals, but are taking this action purely and simply to endeavor to insure that white officials are elected on June 3rd.

As you doubtless know, the present prospects in the Mayor's race present two white candidates and one negro candidate. In the Alderman race, there are eight white candidates and one negro. In both instances, the negroes are thus virtually assured of election.

We feel that forgetting personal ambitions or desires, some of the white candidates should withdraw so that there will be only one white candidate for each office. It is our understanding that some of the candidates are agreeable to this, provided it can be ascertained which ones the majority of the white voters favor.

In an attempt to determine the wishes of the white voters of Woodville, we are therefore, conducting a "straw vote" election which we feel will be of tremendous assistance in working out a compromise—provided you, the voters, co-operate by taking part.

We are enclosing herewith an unofficial ballot which we ask that you mark in private, seal in the enclosed envelope, and return immediately by mail. You will note from the enclosure that there is no way your ballot can be identified, and your vote will thus be secret. As soon as possible, since the deadline for

Source: U.S. Civil Service Commission.

printing the Official Ballot is very near, we will open these envelopes and tabulate the vote—in the presence of all candidates or their representatives. From the resulting tally, we hope to be able to effect a compromise settlement of this grave issue which faces us all.

Please no not delay. Time is of the essence. Please mark and return the enclosed ballot today.

May we thank you in advance for your co-operation, and again assure you that our only motive in undertaking this project is public service in what we feel is the best interests of the Town of Woodville.

Sincerely,

WILKINSON COUNTY CITIZENS COUNCIL.

"STRAW BALLOT"

(Not an official ballot[1])

FOR MAYOR, TOWN OF WOODVILLE

(Vote for 1)

W. H. Catchings---------- ( )
Marvin N. Lewis---------- ( )

FOR ALDERMAN, TOWN OF WOODVILLE

(Vote for 4)

J. M. (Mac) Best---------- ( )
Thomas M. Bryan---------- ( )
Pat Cavin---------- ( )
Cage Chisholm---------- ( )
H. B. Curry---------- ( )
Anthony David---------- ( )
James (Jabbo) Herrington---------- ( )
Brandon Inman---------- ( )

[1] NOTE.—This is not an Official Ballot, but merely an attempt by the Citizens Council to ascertain the candidates preferred by the majority of the white voters of Woodville. See letter attached.

Mrs. Freeman. Hostility and resistance to Negro voting have not ended in the South. Our political participation report documents many reports since the Voting Rights Act of physical and economic intimidation in connection with the voting activities. The incidents continue.

Last fall in Leake County, Miss., the unfinished home of a black registration worker was bombed, nearly destroying it; a few days before, shots were fired into the home of another black person active in voter education. In Greene County, Ala., I have been informed, one black leader was recently chased out of the county by a carload of white men. Two black ministers active in civil rights have had threats made upon their lives. Black people in the county are still reluctant to register with local officials because they live on the land of whites and fear economic retaliation.

Nor is there reason to believe that the election officials who refused to register Negroes before 1965 would do so after 1970 unless compelled. Instead of accepting the 1965 act, many have violated or attempted to circumvent it whenever possible. Officials charged with managing elections in some areas of the South have withheld information from black party members about party precinct meetings and conventions, or have prevented them from participating fully.

They have omitted the names of registered Negroes from official voter lists. They have failed to provide adequate voting facilities in areas with greatly increased Negro voter registration. They have refused to provide or permit adequate assistance to illiterate Negro voters. They have given inadequate or erroneous instructions to black voters. They have disqualified ballots cast by Negroes on technical grounds. They have failed to afford black voters the same opportunity as white voters to cast absentee ballots. They have established polling places in locations, such as plantation stores, likely to discourage voting by Negroes. And they have maintained racially segregated voting facilities and voter lists.

There have also been many reports of dicrimination in the selection of election officials, of exclusion of or interference with black poll watchers, and of outright vote fraud. These incidents all are documented in the Commission's 1968 Report on Political Participation.

If Negroes do succeed in registering under the protection of the 1965 act, they find in such States as Mississippi and Alabama that the legislatures have done what they can to make those votes worth little. New State laws have mandated at-large elections where Negro strength is concentrated in particular election districts. Legislatures have passed laws facilitating the consolidation of predominantly Negro and predominantly white counties. They have gerrymandered lines of legislative districts to divide concentrations of Negro voting strength.

There are also new Mississippi and Alabama laws designed to prevent Negroes from running successfully for public office. Examples are laws increasing filing fees in elections where black candidates were running; abolishing or making appointive the offices sought by black candidates; extending the terms of office of incumbent white officials; withholding information about qualifying for office from black candidates; and withholding certification of their nominating petitions.

The response of these States to the Voting Rights Act shows both that it is starting to have effect, and that they cannot be relied on to treat Negro voter applicants fairly without it.

When the Voting Rights Act was enacted it was hoped that Negroes soon would have enough political strength in the States affected to no longer need special Federal protection. Measured by the number of black elected officials, there has been progress, but it has been limited.

In 1965, there were almost no Negroes holding elected office in the seven Southern States covered in whole or in part by the act. As table 2 shows, there are now 302. However, in Alabama, Louisiana, Mississippi, and South Carolina, the majority of those black officials are in communities, usually small ones, in which the majority of the population is black.

The conditions that brought about the passage of the Voting Rights Act 4 years ago persist to a great degree. Some of them cannot be eradicated for generations—for how can literacy be an even-handed voting standard where Negroes have never had an equal opportunity to become literate? In 1968, only 52.2 percent of the Negroes in the South age 25 and over had completed 8 years or more of school; only 74.8 percent had completed 5 years or more. By contrast, 79.5 percent of the white population had completed 8 or more years of school; 92.7 had completed 5 years or more. Negro schools have been both segregated and inferior.

Not only have the Southern States failed to comply with the Constitution's requirement of integration in the public schools; they have not even lived up to the old Jim Crow standard of "separate but equal." They should not be permitted to use this denial of equal education to justify a denial of the right to vote as well.

As the Supreme Court recently held in *Gaston County* v. *United States*, 395 U.S. 285, (1969), "'Impartial' administration of the literacy test today would only perpetuate these inequities in a different form."

The barriers Negroes face to voting would be, without the Voting Rights Act, as great today as in 1965. Congress in that year found a substantially effective response to unconstitutional racial discrimination in voting. That response must be the same today.

I should like to add a final word concerning section 5, because that vital section is threatened with repeal by S. 2507, a bill currently before this subcommittee. Without section 5, States hostile to Negro voting would be able to make endless changes in their election laws and procedures in order to frustrate Negro political participation. The slow pace of litigation would never be able to keep up.

Such behavior by State legislatures is not conjectural. It was done many times before the 1965 act. It was the reason Congress put section 5 into the act. As the Supreme Court observed, "Not underestimating the ingenuity of those bent on preventing Negroes from voting, Congress therefore enacted section 5 * * * ." *Allen* v. *State Board of Elections*, *393* U.S. *544*, 22 L. Ed. 2d 1, 89 S. Ct. *817* (1969).

For example, in 1962 a Federal court of appeals ordered the registrars of Forrest County, Miss., to give Negro applicants the same assistance and the same relief from trivial errors on applications which white applicants had enjoyed in the past. The Mississippi legislature promptly responded by requiring applicants to complete registration forms without assistance or error, and added a good-morals and public-challenge provision to the registration laws.

In a letter to the Attorney General dated June 28, 1969, the Reverend Theodore M. Hesburgh, Chairman of the Commission on Civil Rights, warned that elimination of section 5 would be "a distinct retreat. It is an open invitation to those States which denied the vote to minority citizens in the past to resume doing so in the future, through insertion of disingenuous technicalities and changes in their election laws."

I entirely concur in the Chairman's views, and ask that his letter be made a part of the record.

(The letter above referred to, follows:)

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C. June 28, 1969.

Hon. JOHN N. MITCHELL,
Attorney General,
Washington, D.C.

DEAR ATTORNEY GENERAL: I am writing to express my deep concern about the amendments to the Voting Rights Act which you proposed to the Subcommittee of the House Judiciary Committee on Thursday, June 26, 1969. The Commission staff is preparing a more detailed analysis which will be provided to you.

Your fourth proposal—to eliminate existing protection against manipulative changes in voting laws—is in no sense an advance in protection of the voting rights of American citizens. It is a distinct retreat. It is an open invitation to those States which denied the vote to minority citizens in the past to resume doing so in the future, through insertion of disingenuous technicalities and changes in their election laws.

Under the present act, they cannot make such changes without prior approval of the United States District Court for the District of Columbia or of the Justice Department. Even so, at least one municipality in Mississippi's election last month changed election procedures without approval and in violation of the law, a defiance which your statement recognizes has not been unusual. Your proposed alternative would turn back the clock to 1957, relying on the slow process of litigation to try to keep up with rapidly enacted changes in the laws. It would mean that the Department of Justice would not have notice of such changes before they were into effect. The inadequacy of litigation as the sole technique of protecting the right to vote was recognized by Congress when it passed the Voting Rights Act of 1965. Now is not the time to gut one of that act's key provisions.

I am also disturbed by your fifth proposal, which would add to the United States Government yet another new Federal commission, this one called a "national advisory commission" to concern itself with voting discrimination and corrupt practices relating to voting. You state that this new agency would be set up to study the effects which literacy tests have on minority groups, to study the problem of election frauds, and to report to Congress its findings and recommendations for any new legislation pertaining to the right to vote.

I am unable to understand what purpose such a new commission would serve that is not already within the authority granted by the Congress to the United States Commission on Civil Rights. The Commission on Civil Rights is, as you know, a bipartisan, independent agency, proposed by President Eisenhower and Attorney General Brownell in 1956 and established by Congress in 1957. Attorney General Brownell said at that time:

"When there are charges that by one means or another the vote is being denied, we must find out all of the facts—the extent, the methods, the results. . . . The study should be objective and free from partisanship."

Under its statute as amended, the Commission on Civil Rights has been directed to:

"investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or of the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election. . . ." 78 Stat. 251, 42 U.S.C. § 1975c(a)(5).

Thus the Commission on Civil Rights has an ample mandate to investigate fraud in such elections, as well as to:

"investigate allegations in writin gand under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin. . . ." 71 Stat. 635, as amended, 42 U.S.C. § 1975c(a)(1).

The Commission has been vigorous over the years in investigating denials of the franchise and fraudulent election processes. Indeed, it was work by this Commission which helped lay the factual base for the Civil Rights Acts of 1960 and 1964 as well as the 1965 Voting Rights Act. Our investigations have not been confined to cases of election fraud which involve discrimination against members of minority groups, though we have consistently found that the most flagrant frauds and abuses were directed against minorities.

Our investigations have not flagged. You have been provided a copy of a recent staff memorandum on the May 1969 elections in Mississippi. The Commission's numerous hearings and reports are filled with the results of our research on voting. Our publications which deal especially with voting rights include:

Political Participation (1968)
The Voting Rights Act of 1965: The First Months (1965)
Voting in Mississippi (1965)
Voting (1961)
Report of the Commission (1959)

The Commission's budget proposal for fiscal year 1970 already requests funds for a study of political participation of minority groups outside the South.

The Commission on Civil Rights, as you know, has recommended abolition of literacy requirements for voting throughout the nation. I gather from your testimony that you agree. Certainly, however, this recommendation would not prevent the Commission from re-examining that question thoroughly and with an open mind if Congress so desires.

It is generally conceded that the Commission on Civil Rights has developed great expertise in investigating complaints of violations of voting rights and in recommendng steps for their correction. Indeed, the document on voting complaints outside the states covered by the 1965 Act, which you submitted for the record of the Subcommittee, was a staff paper of this Commission. It would be totally incongruous to establish a new body, staff it, and fund it in order to duplicate the tasks which the Commission on Civil Rights was established under President Eisenhower to perform and continues to perform.

President Nixon on January 30 spoke of the need for: "cutting expenditures, increasing efficiency in Government operations, abolishing unnecessary agencies and eliminating duplication of efforts."

At a time when funds for all domestic programs are severely limited, and when the President in April asked his Advisory Council on Executive Organization to look for ways to eliminate duplication and waste, it would make no sense to spend millions of dollars, lose valuable start-up and staffing time, and add still another agency to the federal bureaucracy to do a job that, to the extent our funds permit, is already being done. If more effort needs to be put forth, the Commission on Civil Rights stands ready to use its skilled staff and years of experience, to the extent Congress will provide the money. This nation should not waste the limited domestic funds which are available. I hope you will withdraw the proposal.

Sincerely yours,

THEODORE M. HESBURGH, *Chairman.*

MRS. FREEMAN. I also concur in his opposition to the provision of S. 2507 which would create a new Federal commission to study voting; such a commission is entirely unnecessary in light of the existing jurisdiction and long experience of the Commission on Civil Rights. There are other provisions of S. 2507, such as a ban on literacy tests nationwide, which I and the Commission would support.

But the primary concern right now must be extension of the full range of protections which the Voting Right Act affords. I would like at this time to submit for the record a Commission staff memorandum which analyzes in detail the principal provisions of S. 2507.

(The document referred to follows:)

CIVIL RIGHTS COMMISSION STAFF MEMORANDUM—ANALYSIS OF S. 2507, A BILL TO AMEND THE VOTING RIGHTS ACT OF 1965

JULY 8, 1969.

On August 6, 1970, the States and counties now covered by the Voting Rights Act of 1965, 79 Stat. 437, 42 U.S.C. §§ 1973–1973p (Supp. III 1965-67), will have been subject to its provisions for five years, and so by terms of the Act will be able to escape from its coverage. The United States Commission on Civil Rights in a letter from the Chairman to the President dated March 28, 1969, expressed its support for extension of the coverage period of the existing Act, and documented the need with a staff memorandum, a copy of which is attached. The Commission's concern was further expressed in testimony before Subcommittee Number 5 of the Committee on the Judiciary, House of Representatives, by the Acting Staff Director on May 14, 1969.

In testimony before the Subcommittee on June 26 and July 1, 1969, Attorney General John N. Mitchell indicated his opposition to H.R. 4249,[1] a bill to extend coverage of the Voting Rights Act for five years beyond its 1970 expiration. He proposed as an alternative a bill which was subsequently introduced in the Senate as S. 2507. That bill would diminish the protection of the existing Act in a number of respects, while adding other provisions dealing with matters not within the 1965 Act's coverage. This memorandum analyzes the principal provisions of S. 2507, and comments upon their utility and their effect on the protections which voters now enjoy under the 1965 Act.

I. ELIMINATION OF REQUIREMENT FOR PRIOR APPROVAL OF VOTING LAW CHANGES

A. Present Law

Under Section 5 of the Voting Rights Act of 1965, when a State or political subdivision covered by the Act seeks to change its voting qualifications or procedures, it must either obtain the approval of the Attorney General of the United States or initiate a suit in the U.S. District Court for the District of Columbia. If the Attorney General objects to the changes, they may not be enforced until the court rules that they do not have the purpose and will not have the effect of denying to any person the right to vote because of his race or color. If the Attorney General does not object, the new qualifications or procedures may be enforced 60 days after their submission.[2] States and subdivisions covered by the standards of the 1965 Act are those which in 1964 had a combination of literacy or other requirements for voting, and voting registration of participation by less than half the adult population. They are Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 39 counties of North Carolina, one county of Arizona, and one county of Hawaii.[3]

B. S. 2507 Proposed Change

Section 3 of S. 2507 would repeal this provision of the existing law. Instead it would authorize the Attorney General to seek an injunction in a three-judge Federal district court against the enforcement of any voting qualification or procedure which has the purpose or effect of abridging the right to vote on account of race. Unlike Section 5 of the Voting Rights Act, this section would not be restricted to States covered by the 1965 Act.

C. Analysis of Proposed Change

Repeal of Section 5 and substitution of the new provision would have several disadvantages:

1. *Tedious and Time-Consuming Litigation.*—The proposal flies in the face of the experience Congress had in mind when it enacted Section 5 in 1965. Until the Voting Rights Act of 1965, private citizens (and, after 1957, the Attorney General) could sue to set aside laws and practices which denied the right to vote on the basis of race. Past studies have shown the inadequacy of civil litigation as a means of protecting Negro voting rights from officially sanctioned destruction.[4] The most eloquent testimony of the ineffectiveness of prior methods of protection is the fact that in 1964 in the seven States covered by the Act, only 29 percent of the adult Negro population was registered to vote, compared with 73 percent of adult whites.[5]

In *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), the Supreme Court discussed why the case-by-case method of litigation against voting discrimination had proved ineffective. The Court stated:

"Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow. . . . Even where favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult

---

[1] S. 818, S. 2456, H.R. 5181, and H.R. 5538 are in substance identical with H.R. 4249.

[2] Since the passage of the Voting Rights Act of 1965 approximately 225 voting laws have been submitted to the Attorney General for approval, according to the Department of Justice. The Attorney General has objected to only four of the laws submitted. Three of the four objections involved the statutes before the Supreme Court in the *Allen* case, discussed below.

[3] The State of Alaska and some isolated counties elsewhere have removed themselves from coverage under the Act according to the procedures of Section 4.

[4] See *e.g.*, 1961 Report of the U.S. Commission on Civil Rights, Vol. 1, *Voting*.

[5] See U.S. Commission on Civil Rights, *Political Participation* 222 (1968).

new tests designed to prolong the existing disparity between white and Negro registration." *Id.* at 314 (footnote omitted).

To prevent such disingenuous changes in voting laws, Congress enacted Section 5. Under it individuals and the Government no longer need initiate time-consuming litigation to stop discriminatory practices, and then if ultimately successful find that the victory is meaningless because the State can simply adopt new discriminatory laws, in an endless cycle. The Voting Rights Act assures that the validity, of voting laws will be tested before, not after, they are put into effect. As the Supreme Court said, "Not underestimating the ingenuity of those bent on preventing Negroes from voting, Congress therefore enacted § 5. . . ." *Allen* v. *State Board of Elections*, 37 U.S. Law Week 4168 (1969).

2. *Misplaced Burden of Proof.*—Under the proposed legislation the Attorney General or a private litigant would bear the burden and have to devote considerable resources to proving that a particular change in State law is discriminatory. Under the present Section 5, the burden of proof that a practice or procedure is not discriminatory is on the State or political subdivision. Given the history in some States of repression of any attempts by black people to gain political power, and the greater familiarity of the State with the purpose and effect of its legislation, this is where the burden should remain. As the Supreme Court observed: "After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966). Under S. 2507 the shift would be undone.

3. *Increasing Difficulties for Private Litigants.*—An important gain in voter protection under the 1965 Act was the right of individuals to sue to enforce Section 5, regardless of inaction by the Department of Justice. This right was clarified recently when the Supreme Court interpreted Section 5 in *Allen* v. *State Board of Elections, supra.* In such suits the private litigants need establish only that a State has not complied with Section 5, in order to block changes in legislation. With their vigilance, Section 5 will be even more effective if retained, since enforcement will no longer depend entirely on the resources, knowledge and priorities of the Department of Justice.

4. *Past Violations Must Not Be Condoned.*—The Attorney General in his statement observed at page 5 that: "Where local officials have passed discriminatory laws, generally they have not been submitted to the Department of Justice." He suggested in testimony before the Subcommittee that this was one reason why the section should be repealed.

It should be remembered above all that most States have obeyed Section 5, and sought approval of changes in their voting laws. Like most laws, Section 5 achieves its purpose because people obey it. As for the instances in which there have been violations, there are two reasons that instances of noncompliance would not support the section's elimination.

First, until the *Allen* decision, referred to previously, it had been unclear whether Section 5 applied to all election law changes in the covered States, or only to those changes which dealt with voting and registration. Thus neither Mississippi or Virginia, the States involved in the *Allen* case, had submitted to the Attorney General or sought approval from the District Court of the District of Columbia for statutes altering such matters as whether elective offices are to be appointive, requirements for filing by candidates, and procedures concerning assistance to voters unable to mark ballots. Because the Court has now made clear that Section 5 has a very wide scope, States can now be expected to submit more statutes for approval.

Second, if a State continues to ignore Section 5, the remedy under the existing law is simple. Either the Attorney General or a private litigant can sue in any Federal district court to enjoin the State's change in law for failure to follow the dictates of Section 5. Such a lawsuit is very expeditious. The only proof required is that the new State provision relates to voting, that it has modified the law in effect as of November 1, 1964, and that it has not been submitted to the Attorney General or the District Court of the District of Columbia. No proof is required that the change has a discriminatory effect. On this showing, injunction follows as a matter of course. A recent example of the effectiveness of this procedure occurred in Mississippi, where a Federal district court enjoined a municipal primary election in Mississippi because the city expanded its corporate limits—allegedly to dilute the black vote by adding white areas to the town—without submitting the changes to the Attorney General or the District Court in the District of Columbia.

The burden of such litigation is slight, the proof simple, the likelihood of obtaining immediate relief great. Prevention of such flagrant noncompliance with the law would not overburden the Department of Justice. Normally the cure for cases of outright defiance of the law is not repeal of the law, but rather more vigorous enforcement.

5. Attorney General's Power to Sue Adds Nothing of Substance.—S. 2507, after eliminating the simple enforcement procedure described above, would substitute a section authorizing the Attorney General to sue in Federal court whenever he believes a State has enacted or is administering any voting procedure with the purpose or effect of denying the franchise on grounds of race. But the Attorney General already has the authority to bring such suits. Section 2 of the Voting Rights Act of 1965 provides that:

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

And Section 12(d) of the same Act provides that:

"Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2 . . . the Attorney General may institute . . . an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order. . . ."

Similar powers were included in the Civil Rights Act of 1957, 71 Stat. 634. Thus the new section would give the Attorney General no powers in addition to those granted by the Voting Rights Act and its predecessors. His access to a three-judge forum and the right of direct appeal to the Supreme Court were granted in the Civil Rights Act of 1964. Most importantly, under the present law, lawsuits with or without direct appeal are unnecessary since Section 5 preserves the status quo until legality is decided without need to resort to litigation.

II. EXPANDED POWER TO SEND EXAMINERS AND OBSERVERS

A. Present Law

Under Section 6 of the present Voting Rights Act, the Attorney General may direct that Federal examiners be sent to any State or county covered by the Act if he has received 20 meritorious complaints from that jurisdiction alleging voter discrimination, or if he believes that appointment of examiners is necessary to enforce the right to vote. Examiners prepare lists of applicants eligible to vote, whom State officials are required to register.

In addition, the present Act in Section 8 provides for appointment of Federal observers to watch for irregularities in polling places and in the tabulation of votes. Observers may be sent only to jurisdictions which have been designated for appointment of examiners.

B. S. 2507 Proposed Change

S. 2507 in its Section 4 would allow the Attorney General to send Federal examiners to register voters in any State, county or city in the United States, again subject to either receipt of 20 complaints or his belief that examiners are needed to prevent voting discrimination. He would not be confined to the States and counties covered by the Act.

In addition S. 2507 in its Section 5 would authorize the Attorney General to send Federal observers to any political subdivision in the United States in which he believed their presence was necessary or appropriate to prevent voter discrimination. He would not be limited to subdivisions covered by the Act and designated for appointment of examiners.

C. Analysis of Proposed Change

The expanded authority to send examiners and observers is in no way objectionable: the Attorney General should have power to send examiners and observers wherever they may be needed. However, no evidence has been presented to show that examiners and observers are not needed more vitally in the seven States to which they can now be sent. In addition, under Section 3 of the Act, the Attorney General may obtain appointment of examiners in other jurisdictions as part of interlocutory relief in suits to enforce voting rights under the Fifteenth Amendment.

The power to send examiners has been used sparingly—too sparingly—even under the 1965 Act. Two of the seven States covered by the Act have never had a county designated for the appointment of examiners, and two others have had only five between them. If the Attorney General has made so little use of the power to appoint examiners in the areas covered by the Act, where the need has been great, it seems unlikely he will have cause to use the proposed authority outside those areas where no need has yet been shown.

The same comments apply to the expanded power to send observers. The present requirement that observers be sent only to jurisdiction designated for examiners has not restricted them to places where examiners actually are present, since the Attorney General has found it sufficient simply to designate counties for appointment of examiners in order to send observers, without actually having examiners dispatched. Authority to dispatch observers throughout the Nation adds little to the power to deal with voter discrimination in the States where it has been known to exist. Thus the proposed change is unobjectionable, but its practical usefulness is at best speculative.

III. NATIONWIDE SUSPENSION OF LITERACY TESTS

A. Present Law

Under existing decisions States are permitted to condition the right to vote on literacy and certain reasonable requirements, provided they are not applied in a discriminatory fashion. Although there are serious arguments that literacy tests no matter how fairly applied violate the Constitution, and some recent cases may cast doubt on their constitutionality,[6] no decision has yet so held.[7] As a consequence literacy tests and similar prerequisites for voting persist in 20 States.

The Voting Rights Act of 1965 forbids the use of such tests in any State or county or other political subdivision which used such a test as of November 1, 1964, and in which either less than 50 percent of the voting age population was registered in that date, or less than 50 percent actually voted in the 1964 Presidential election. A State or subdivision may be removed from coverage by proving in court that it has not for five years applied a tests or device with the purpose or effect of denying the vote because of race or color.

B. S. 2507 Proposed Change

Section 2(a) of S. 2507 would suspend the use of literacy tests or other similar devices anywhere in the United States until January 1, 1974.

C. Analysis of Proposed Change

Th proposed nationwide ban on literacy tests is an improvement over existing law, but it does not go far enough, and it is in no sense an effective substitute for the present Act's Section 5, discussed earlier, which deals with changes in voting laws which do not involve literacy tests or similar devices.

The United States Commission on Civil Rights recommended a complete ban on literacy tests as early as 1961. Most recently in a letter to the President, dated March 28, 1969, Chairman Theodore M. Hesburgh stated:

"The lives and fortunes of illiterates are no less affected by the actions of local, State and Federal governments than those of their more fortunate brethren. Most States, perhaps for this reason, do not impose a literacy test as a prerequisite to voting.

"Today, with television so widely available, it is possible for one with little formal education to be a well-informed and intelligent member of the electorate."

He also referred to a recent decision affirmed by the Supreme Court which held that "it would be incongruous to allow a State or county to disfranchise people for inability to pass a literacy test, when that ability was denied them as a result of discriminatory State action." *Gaston County* v. *United States*, 288 F. Supp. 678, 689 (D.D.C. 1968), *aff'd*, 37 U.S. Law Week 4178 (1969). That incongruity would not be lessened appreciably, in a country whose Constitution guarantees "the equal protection of the laws," if persons who were illegally denied an equal education in one State moved away only to find themselves denied the franchise in another.

---

[6] Compare *Gaston County* v. *United States*, 37 U.S. Law Week 4478 (1969); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966).

[7] In *Lassiter* v. *Northampton Board of Elections*, 360 U.S. 45 (1959) the Supreme Court affirmed a judgment upholding application of a literacy test absent a showing that it perpetuated discrimination in violation of the Fifteenth Amendment.

Moreover, in 1963 a special President's Commission on Registration and Voting Participation also recommended such a ban.[5] While Congress through hearings before the appropriate committees of the House of Representatives and Senate may wish to make further inquiry into the wisdom of such a ban, probably no significant new information would be gained by having a third Commission to study the same issue. If further study is believed necessary, the Commission on Civil Rights is of course prepared and qualified to look at the question once more.

IV. NEW VOTING RIGHTS STUDY COMMISSION

A. Present Law

The United States Commission on Civil Rights is authorized by Congress to investigate complaints that citizens are being denied the right to vote by reason of their race, color, religion or national origin. It is also authorized to investigate complaints that because of fraudulent practices or discrimination citizens are being denied the right to vote or have their votes properly counted in Federal elections. The Commission from its inception in 1957 has devoted a large part of its resources to investigating voting rights denials and reporting to the President and Congress on changes on the laws and their administration which are necessary to protect the right to vote. The Commission's publications which deal especially with voting include its 1959 Report, *Voting* (1961), *Voting in Mississippi* (1965), *The Voting Rights Act . . . The First Months* (1965), and *Political Participation* (1968). As Senator Dirksen recently observed in speaking of voting protection and literacy tests:

"It was in 1957, when a new conscience made itself felt in the United States, resulting in the creation of a Civil Rights Commission to explore the whole question. . . .

"The Commission on Civil Rights consisted of outstanding talent and it made a thorough examination of the matter." *Congressional Record*, June 30, 1969, p. S7300.

B. S. 2597 Proposed Change

Section 7 of the proposed legislation would add to the Federal government a new temporary commission to be called the National Advisory Commission on Voting Rights. It would have a chairman and eight members, all appointed by the President, an Executive Director also a Presidential appointee, and a staff and budget of presently undisclosed dimensions. No provision would be made for bipartisan representation, nor would there be any requirement that the Senate advise and consent to nominations. The new Commission would be charged to make a study of the effects of laws restricting the right to vote and of fraudulent and corrupt practices upon voting rights, reporting with recommendations by January 15, 1973.

C. Analysis of Proposed Change

The new commission as proposed would duplicate the tasks which have been and are currently being performed by the Commission on Civil Rights. It would lack the staff and expertise in the voting field which the Commission on Civil Rights has acquired, and would terminate in 1973 within two weeks of the date presently set for the final report of the existing Commission. In addition, the proposed additional commission would lack the legislative mandate to study the broad problems of political participation, and would instead be limited to a narrow focus on legislative barriers and fraudulent practices. The experience of the Commission on Civil Rights has shown that the issues of voting rights are more complex, and cannot be understood apart from a consideration of the educational, economic, historical and social context in which those rights are exercised.

In other ways the proposed commission, besides being duplicative would not be as effective as the present Commission on Civil Rights. It would lack the present Commission's power to subpoena witnesses and documents. Its members and staff would probably lack the years of familiarity with voting laws and problems on which the present Commission draws. And unlike the present Commission it would not be required to be bipartisan with members subject to Senate confirmation. As former Attorney General Brownell observed in 1956, urging the establishment of the bipartisan Commission on Civil Rights:

"When there are charges that by one means or another the vote is being denied, we must find out all of the facts--the extent, the methods, the re-

[5] Report of the President's Commission on Registration and Voting Participation (1963).

sults. . . . The study should be objective and free from partisanship." H.R. Rep. 291, 85th Cong., 1st Sess. (1957).

Finally, there has already been one investigation of voting by an independent commission, carried on in 1963 by the President's Commission on Registration and Voting Participation at a time when the jurisdiction of the Commission on Civil Rights in the voting area was narrower than its present statutory mandate. The 1963 Commission was charged with investigating the reasons for low voter participation and recommending solutions for this problem, except that it was not to consider "matters placed under the jurisdiction of the Commission on Civil Rights." During its investigation the 1963 Commission:

"made a detailed analysis of the election laws and practices of the 50 states and . . . studied the electoral systems of other democracies. It . . . solicited the opinions of many hundreds of citizens in the fields of national, state and local government, politics, civic and social work and political science. Staff members of the Commission . . . interviewed a number of officials directly concerned with election administration at the state, county, and municipal levels." [9]

The 1963 Commission recommended the adoption of 21 detailed standards, including a nationwide ban on literacy tests. Many of the subjects on which the 1963 Commission made recommendations would be restudied by the new Federal commission proposed in S. 2507.

V. ELIMINATION OF RESIDENCY REQUIREMENTS IN PRESIDENTIAL ELECTIONS

A. Present Law

In our mobile society, it has been estimated that as many as one-third of all households move each year, many of them across jurisdictional lines. At present the residence requirements to vote in elections for electors for President and Vice-President are the same as those for voting in elections in the jurisdiction of residence. Since many jurisdictions require as much as a full year of residence for eligibility to vote, many millions of recently arrived voters are unable to vote in Presidential elections. The Census Bureau has estimated that as many as 5.5 million persons were disfranchised in this way in 1968.

B. S. 2507 Proposed Change

In its Section 2, S. 2507 would provide that if a newly arrived resident may vote in an election for President or Vice President (by which presumably is meant in election for electors for President or Vice-President) in his new State or political subdivision of residence if he moved there before September 1 of the election year, or in his former state if he moved after September 1 and was qualified to vote at the former residence.

C. *Analysis of Proposed Change*

The constitutionality of existing state laws which disfranchise new residents in Presidential elections is uncertain, and probably will be decided by the Supreme Court next term.[10] Watever the Court's ruling, such restrictions serve no rational policy as applied to election of officials whose constituency is national in scope, and should be abolished. Such was one of the recommendations of the 1963 special commission. The Commission on Civil Rights through the Chairman's March 28, 1969, letter to the President stated:

"Other barriers to the free exercise of the right to vote should also be examined to determine whether they infringe rights under the Fourteenth or Fifteenth Amendements and therefore should be elimated by Congress. For example, residency requirements seem unreasonable when applied to presidential elections, for which familiarity with local issues and personalities is irrelevant. The Commission is especially concerned because the burden of such requirements falls heavily on migrant workers, mainly Mexican Americans from the Southwest, who are often unable to vote either in their home State or in the State in which they are working. In addition, long residency requirements disfranchise a large number of well educated young adults, who tend to be more mobile then the population generally."

Elimination of residency requirements in Presidential elections would correct a longstanding injustice.

---

[9] Report of the President's Commission on Registration and Voting Participation, iii (1963).

[10] See *Hall v. Beals, prob. jur. noted,* 37 U.S. Law Week 3298 (1969), (No. 950, O.T. 1968).

VI. SPECIAL SURVEYS OF VOTER PARTICIPATION

A. *Present Law*

Title VIII of the Civil Rights Act of 1964, 78 Stat. 266, provides for a survey of voting and voter registration by the Secretary of Commerce in areas recommended by the Commission on Civil Rights. The survey, and the 1970 Census, shall compile voting data by race and national origin.[11]

B. *S. 2507 Proposed Change*

In its Section 17(c) the bill proposes that the Secretary of Commerce make special surveys to collect data regarding voting by race, national original, and income groups, and transmit the data with the results of the 1970 Census to the proposed new advisory commisison on voting rights.

C. *Analysis of Proposed Change*

The proposed Section 17(c) adds nothing new to existing authority for a voting survey except the provision that the data would be collected by income group as well as by national origin. While this added information would be welcome, it also would be provided through a simple amendment to Title VIII.

Title VIII, however, has never been implemented. It directed an immediate survey as well as one "in connection with" the 1970 Census. For reasons of economy, it was decided in 1966 that the immediate survey would not be done. Funds for the latter survey have not been requested by the President or appropriated by Congress.

Since the enactment of Title VIII the Commission on Civil Rights has fulfilled its statutory duty of specifying the areas to be covered by the survey. This designation has been updated and will be updated again whenever there is indication that the survey will be carried out.

In addition, the Commission on Civil Rights has continually urged that Title VIII be implemented. On February 17, 1969, the Commission sent a letter to Secretary of Commerce Maurice Stans asking him to request Bureau of Budget approval for funds for the Title VIII survey. On February 18, 1969, the Commission wrote to Attorney General John N. Mitchell enclosing a copy of the letter to Mr. Stans and indicating that if funds are not to be made available for the Title VIII survey, then Title VIII should be repealed, since there would be "no useful purpose" in having Title VIII continue to remain a dead letter on the books.

On March 6, 1969, the Secretary of Commerce replied to the Commission that he had resubmitted the request for funds to the Bureau of the Budget. However, the Commission subsequently learned that this request had been denied.

On April 3, 1969, Assistant Attorney General Jerris Leonard responded to the Commission's February 18 letter to the Attorney General. Mr. Leonard stated:

"We recognize that it would be useful to have the results of a survey of the scope recommended by the Commission. However, because of the expense involved, we are unable to share your view that such a project should be undertaken. Assuming that the cost of the survey would amount to several million dollars, we do not feel that an expenditure of this magnitude can be justified."

Copies of these four letters are attached.

The Attorney General, by proposing in S. 2507 surveys as called for in Title VIII, apparently now considers the type of survey called for by Title VIII a valuable one and will cooperate in its implementation. It is to be hoped that this change of position by the Department of Justice will encourage Congress to

---

[11] Sec. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of Section 9 and Chapter 7 of Title 13, United States Code, shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this title: *Provided, however*, that no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information. 78 Stat. 268 (1964).

appropriate the funds for this important project which it authorized in 1964, and that the Department of Justice will propose the funding legislation called for.

VII. CONCLUSION

In his testimony the Attorney General indicated his willingness that the Congress, if it desires, deal first with extending the existing protections of the Voting Rights Act, and then consider as a separate matter the several substantive changes proposed in S. 2507. That would be a wise course. Some provisions of S. 2507, particularly the proposed repeal of existing safeguards against biased changes in voting laws, would drastically reduce existing voting rights protection. Others, such as the proposed new commission to study voting rights and the proposed surveys, duplicate matters covered under existing laws and are unnecessary. And still others, such as the elimination of residency requirements in Presidential elections, should be adopted.

The assortment of provisions in S. 2507 should be considered on their individual merits, and those which would weaken voting rights protection should be eliminated. Existing voting rights protection should be continued in full force.

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., March 28, 1969.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: As you are aware, key provisions of the Voting Rights Act of 1965 will cease to be applicable in August 1970 unless the Act is extended. Several bills to extend the Act have been introduced in Congress this session.

The Voting Rights Act at present suspends the use of literacy tests and other voter registration tests and devices in Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia and 39 counties in North Carolina. It empowers the Attorney General to send Federal examiners into these areas to list persons qualified to vote and to assign Federal observers to monitor elections. Covered States and counties also are required, before applying any new legislation with respect to voting, to seek court approval or to submit such legislation to the Attorney General for his determination that it does not violate the Fifteenth Amendment.

After August 6, 1970, these States and counties will be free to petition a three-judge Federal district court in the District of Columbia for the right to escape from these provisions of the Act. They will be permitted to do so if the court finds that no test or device has been used in the State during the preceding five years for the purpose or with the effect of discrimination. This will permit States and counties to reinstitute the types of tests that were outlawed by the Voting Rights Act because they had been used to disfranchise Negroes.

A report of the U.S. Commission on Civil Rights, *Political Participation*, published in May 1968, documented many continuing barriers to the participation of Negroes in the South in the political process, including measures or practices diluting the votes of Negroes, preventing Negroes from becoming candidates, discriminating against Negro registrants and poll watchers, and discriminating against Negroes in the appointment of election officials. Intimidation and economic dependence in many areas of the South continue to prevent Negroes from exercising their franchise or running for office fully and freely. Field research by Commission staff in Mississippi last summer indicates that the problems described in the Commission's report persist. Though much progress has been made in eliminating the gap between the proportion of whites and Negroes of voting age who are registered, a significant disparity still exists. There are many individual counties in which Negro registration is especially low. These conditions, which are more fully elaborated in an enclosed staff memorandum, necessitate, at a minimum, the continuation of the ban on tests and of the authority of the Attorney General to send examiners and observers.

In addition to backing extension of the Voting Rights Act, the Administration, in the Commission's view, should give consideration to proposing legislation dealing more broadly with the right to vote, including legislation banning the use of literacy tests nationwide.

A wide gap exists nationally between the quality of the public education afforded to white students and the quality of the public education available to Negroes, Mexican Americans and members of other minority groups. Studies such as the Office of Education's Coleman Report, *Equality of Educational Opportunity*, and the Commission's *Racial Isolation in the Public Schools* show the

educationally harmful effects upon Negro students of attending schools isolated by race and social class. Evidence at our recent hearing in San Antonio, Texas indicated that similar damage is being done to Mexican American students. In addition, evidence at Commission hearings in Cleveland, Boston, Rochester, Montgomery and San Antonio indicates that schools attended predominantly by minority students often have inferior facilities.

In a recent case, *Gaston County* v. *United States*, a three-judge Federal court specifically found that the inferior education afforded Negroes in a North Carolina county affected their literacy rate as compared to that of white persons. As the court in the *Gaston County* case said, "[i]t would be incongruous to allow a State or county to disfranchise people for inability to pass a literacy test, when that ability was denied them as a result of discriminatory State action."

There is much to be said for the view that it is unfair to deny a voice in their own government to those who cannot read or write. The lives and fortunes of illiterates are no less affected by the actions of local, State and Federal governments than those of their more fortunate brethren. Most States, perhaps for this reason, do not impose a literacy test as a prerequisite to voting.

Today, with television so widely available, it is possible for one with little formal education to be a well-informed and intelligent member of the electorate. Although a State may nevertheless have an otherwise valid interest in a literate electorate, this interest cannot justify a State's use of a disability created in part by its own dereliction as the basis for disfranchisement.

Other barriers to the free exercise of the right to vote should also be examined to determine whether they infringe rights under the Fourteenth or Fifteenth Amendments and therefore should be eliminated by Congress. For example, residency requirements seem unreasonable when applied to presidential elections, for which familiarity with local issues and personalities is irrelevant. The Commission is especially concerned because the burden of such requirements falls heavily on migrant workers, mainly Mexican Americans from the Southwest, who are often unable to vote either in their home State or in the State in which they are working. In addition, long residency requirements disfranchise a large number of well educated young adults, who tend to be more mobile than the population generally. The proposed Residency Voting Act of 1967 would have allowed persons who become residents of a State by September 1 of a presidential election year to vote for President in that year's election. We feel that this would be a reasonable requirement.

Eight years ago, in its 1961 Report, the Commission recommended that Congress "enact legislation providing that all citizens of the United States shall have a right to vote in Federal or State elections which shall not be denied or in any way abridged or interfered with by the United States or by any State for any cause except for inability to meet reasonable age or length-of-residence requirements uniformly applied to all persons within a State, legal confinement at the time of registration or election, or conviction of a felony. . . ."

The Commission believes that consideration should now be given to implementation of this recommendation. Commissioner Rankin was not present at the Commission meeting when the subject matter of this letter was considered.

Respectfully yours,

THEODORE M. HESBURGH, *Chairman.*

Enclosure.

STAFF MEMORANDUM

EXTENSION AND EXPANSION OF THE VOTING RIGHTS ACT OF 1965

Section 4(a) of the Voting Rights Act, 42 U.S.C. § 1973b(a) (Supp. II, 1967), provides that:

> [N]o citizens shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. . . .

The phrase "test or device" is defined by the Act to mean (Section 4(c), 42 U.S.C. § 1973b(c) (Supp. II, 1967)):

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

Under the formula of Section 4(b) of the Act, 42 U.S.C. § 1973b(b) (Supp. II, 1967), literacy test and other discriminatory voter registration tests and requirements were suspended in six Southern States (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia) and in 40 counties in North Carolina.[2] By the terms of the Voting Rights Act, after August 6, 1970, these States and political subdivisions will be free to petition a three-judge Federal district court in the District of Columbia for the right to resume the use of such tests. They will be permitted to do so, according to the Act, if the district court finds that no test or device has been used in the State during the preceding five years for the purpose or with the effect of discrimination.

In such event, the examiner and observer provisions and the provision requiring covered States to submit new voting laws to the Attorney General will also cease to apply to the State or locality involved.[3]

There are now before Congress four bills [4] which would extend these key provisions of the Act for another five years. The States and political subdivisions covered by Section 4(b) of the Act, therefore would not be able to petition the court until August 6, 1975, for the right to resume the use of the tests.

There were several reasons why Congress suspended the use of tests or devices in the covered areas. It appeared from the history of the adoption of such tests and devices and the record of their administration that they were not intended to, and did not, serve any purpose but to disfranchise Negroes. Many tests and devices used in these States, moreover, were not susceptible of fair administration, *e.g.*, the requirement that registered voters must vouch for new applicants in areas where almost no Negroes are registered and where whites cannot be found to vouch for Negroes.

In addition, many State laws setting high registration requirements had been enacted following a long period of racial discrimination in voter registration. Even fair administration of such laws would have frozen the white-Negro registration disparity created by past violations of the Fifteenth Amendment. It would have been unfair to apply these tests or devices to Negroes in States whose voting laws were enacted while large numbers of Negroes were illegally disfranchised and had no say in the adoption of the laws.

Also, the educational differences between whites and Negroes in the areas covered by the prohibitions—differences attributable at least in part to violations of the Fourteenth Amendment resulting from the education of Negroes in segregated, inferior schools—would have meant that equal application of the tests would abridge Fifteenth Amendment rights.

The solution of the Voting Rights Act was to enfranchise the Negroes on the same terms as the whites had been permitted to vote and then, after a period of time during which equal voting rights were exercised, permit the elected representatives of the people—presumably fairly representative of the black and white communities—to impose such qualifications as they desired.

Though much progress has been made in eliminating the gap between the proportion of whites and the proportion of Negroes of voting age who are registered, a significant disparity still exists.

---

[1] Section 14(c)(1) of the Act, 42 U.S.C. § 1973*l*(c)(1), provides that:

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

[2] U.S. Commission on Civil Rights, Political Participation 11 (1968). One North Carolina County, Wake, has been released from coverage, leaving 39. Letter from Stephen J. Pollak, Assistant Attorney General, Civil Rights Division, to David H. Hunter, April 2, 1968.

[3] Sections 3, 6 and 8, 42 U.S.C. §§ 1973c, 1973d and 1973f.

[4] These are S. 818, H.R. 4249, H.R. 5181, and H.R. 5538. There is no substantive difference among the bills.

VOTER REGISTRATION IN THE SOUTH, SPRING-SUMMER 1968 [3]

	Percent white registration	Percent nonwhite registration
Alabama	82.5	56.7
Georgia	84.7	56.1
Louisiana	87.9	59.3
Mississippi	92.4	59.4
North Carolina	78.7	55.3
South Carolina	65.6	50.8
Virginia	67.0	58.4

Not only does Negro registration trail white in each of the States included in the ban on tests or devices, but there are many individual counties and parishes where Negro registration is especially low.[4]

In Alabama, less than half the Negroes of voting age are registered in 27 of the 107 counties. In five counties, Baldwin, 31.6; Chambers, 24.7; Houston, 28.3; Marshall, 32.6; and Morgan, 34.2; Negro registration is less than 35 percent.

There are 133 counties in Georgia with a Negro voting age population of 50 or more. In 68 of these, the Negro registration is less than 50 percent; in 21 [5] it is less than 35 percent.

In Louisiana, 11 out of 64 parishes have Negro registration of less than half. In four of these, registration is less than 35 percent. These are Franklin, 18.0; Morehouse, 28.5; Richland, 25.4; and West Carroll, 28.6.

In 24 of Mississippi's 82 counties, Negro registration —is less than half; in five counties it is less than 35 percent. These are Clarke, 25.5; Clay, 33.3; Kemper, 29.1; Lowndes, 33.0; and Winston, 20.2.

The use of tests or devices is now prohibited in 39 counties in North Carolina. Less than half of the Negroes of voting age are registered in 23 of these counties, and less than 35 percent in three—Harnett, 16.1; Wayne, 34.6; and Wilson, 32.2.

In half of South Carolina's 46 counties Negro registration is less than half. It is less than 35 percent in three: Anderson, 28.3; Edgefield, 29.3; and York, 33.4.[6]

The continued disparity between the registration of whites and that of Negroes is chargeable to previous unconstitutional discrimination. It is reasonable to assume that where Negro voter registration continues to lag, many persons, because of past experience with prohibited discrimination, are deterred from seeking to register to vote with local officials, and therefore, that disproportionately low Negro registration in a particular political subdivision covered by the Act is "reasonably attributable to violations of the Fifteenth Amendment". The reluctance to register with local officials is reflected in statistics published by the Commission which show generally higher Negro registration in counties in which Federal examiners have been present.[9] The Commission attributed this difference to the presence of the examiners, as well as to local registration drives.[10]

---

[3] Voter Education Project, Voter Registration in the South, Summer 1968.

[4] Statistics in the following discussion are from Voter Education Project, Voter Registration in the South, Summer 1968.

[5] Decatur, 22.3; Early 30.0; Echols, 9.7; Glascock, 6.2; Hart, 24.3; Lowndes, 33.5; Madison, 27.1; Marion, 18.4; Miller, 20.4; Mitchell, 30.8; Oconee, 22.8; Oglethorpe, 27.9; Pulaski, 34.2; Quitman, 30.1; Randolph, 34.6; Stewart, 29.8; Talbot, 24.4; Taylor, 33.9; Upson, 28.1; Webster, 27.2; and Worth, 27.4.

[6] Data for Virginia counties are not available.

[9] The Voting Rights Act provides that in political subdivisions where voter qualifications tests or devices are suspended, Federal examiners can be appointed by the Civil Service Commission to list applicants eligible to vote. The appointment may be ordered by the U.S. Attorney General upon his certification that he has received written complaints from 20 or more residents claiming voting rights discrimination and he believes them to be meritorious, or that in his judgment "the appointment of examiners is otherwise necessary to enforce the guarantee of the Fifteenth Amendment". Section 6, 42 U.S.C. § 1973d (Supp. II, 1967).

[10] U.S. Commission on Civil Rights, Political Participation 153-56 (1968). A copy of this report is attached.

NONWHITE VOTER REGISTRATION, 1957 [11]

[In percent]

	Examiner counties	Nonexaminer counties
Alabama	59.3	45.4
Georgia	62.8	52.5
Louisiana	53.5	60.2
Mississippi	70.9	50.3
South Carolina	71.6	50.5

As of March 1, 1969, examiners had been sent to 50 counties in five Southern States.[12] Examiners in these counties had listed to vote a total of 167,364 persons, including 157,567 nonwhites and 9,797 whites.[13]

In its report *Political Participation*, the Commission recommended that the "Attorney General . . . assign examiners under Section 6 of the Voting Rights Act to all political subdivisions where Negro registration is disproportionately low." [14] Because there remain so many counties which have not yet received the benefit of the presence of Federal examiners, it is imperative that the ban on the use of tests or devices be retained.

When the Voting Rights Act was enacted it was hoped that within five years Negroes would have enough political strength in the States affected no longer to need special Federal protection. Negro voting strength reflected in the makeup of State legislatures, it was thought, would prevent the reinstatement of any tests or devices that might tend to discriminate. Progress, unfortunately, has been slower than expected.

NEGROES IN STATE LEGISLATURES *

	House	Senate
Alabama	0	0
Georgia	12	2
Louisiana	1	0
Mississippi	1	0
North Carolina	1	0
South Carolina	0	0
Virginia	1	0

* Voter education project, Black Elected Officials in Southern States, iii (January 1969).

In addition to the fact that the number of Negroes elected to State legislatures has been small, white legislators at least in some parts of the South are not yet responsive to the increased Negro vote that has resulted from the implementation of the Voting Rights Act. As the *Political Participation* report shows, measures to dilute the Negro vote have been taken by State legislatures—as well as political party committee—in Alabama and Mississippi. The legislatures in these States have also promulgated laws to prevent Negroes from becoming candidates or obtaining office. Unless the Act is extended, States will be free to apply such laws without prior submission to the Attorney General.

It is also apparent that there is a continuing need for the presence of Federal observers at the polls. The *Political Participation* report documents many incidents of discrimination aganst Negro registrants and Negro poll watchers, as well as widespread discrimination in the selection of election officials.

There is reason to believe that there has been little progress since the publication of the Commission report. Field investigations by Commission staff last summer in Mississippi showed that the pattern of exclusion of and discrimination against Negroes at precinct meetings, county conventions and the State convention of the Mississippi Democratic Party still persists. At the 1968

[11] *Id.* at 222–25.
[12] U.S. Civil Service Commission, Cumulative Totals on Voting Rights Examining, Sept. 30, 1968. There was no listing by Federal examiners between then and March 1, 1969.
[13] *Id.* Of the total listed 3,038 have been removed pursuant to Section 9, 42 U.S.C. § 1973g (Supp. II, 1967).
[14] U.S. Commission on Civil Rights, Political Participation 180 (1968).

Democratic National Convention, the delegation of the Mississippi Democratic Party was not seated, and the challenge against the regular Democratic delegations of Alabama and Georiga were partially accepted, on account of the racially discriminatory practices of those parties.

If the requirements of the Voting Rights Act are allowed to expire, it appears likely that some Southern States will try to reduce the number of Negroes registered to vote. These States may require all voters to re-register. Re-registration can be a considerable burden for Negroes who were fearful and reluctant about going to the courthouse in the first place. Once the prohibitions of the Voting Rights Act are removed re-registration would be a means of reviewing the registration status of those Negroes who registered under the Act. Literacy tests and other tests and devices could be reactivated to disfranchise thousands of Negro voters.

One of the reasons for the plan on literacy tests was the disparity between the education of whites and Negroes that existed in 1965. In five years, this disparity could not have been eliminated without a massive literacy drive. Not only has such a campaign not taken place, but education remains generally segregated, and the education that Negro children are obtaining remains inferior.

To give an example of the extent of the problems facing the Negro child trying to obtain an education in the South, a copy of a Commission staff report prepared after the Commission hearing last spring in Montgomery, Alabama is attached. It shows the continued school segregation in the part of Alabama under study and an allocation of financial resources strongly favoring the white schools. In *Gaston County, North Carolina* v. *United States*[16] the Justice Department introduced evidence of unequal educational opportunity in Gaston County, North Carolina. The court concluded from the fact that only 51.7 percent of the county's Negroes over the age of 25 but 66.4 percent of the whites had more than a sixth grade education that "any literacy test imposed upon Negroes as a precondition to voting would have the effect of abridging the right of many Negroes to vote on account of race or color."[17]

As long as segregated and inferior education continues to exist in the South, or its effects remain in the adult voting population, the reinstitution of literacy tests cannot be justified. As Judge Skelly Wright said, "[i]t would be incongruous to allow a state or county to disfranchise people for an inability to pass a literacy test, when that ability was denied them as a result of discriminatory state action."[18]

In its *Political Participation* report the Commission said:[19]

> Congress should evaluate, after the 1968 elections, whether practices such as those described in this report persist in States and political subdivisions in which tests and devices are suspended. If such practices continue to exist, Congress should extend the suspension in such States and subdivisions for an additional period of time. In making its judgment, Congress should consider the facts in this report and whether remedial steps have been taken by the States and localities involved.

At a minimum, legislation should be enacted extending the Voting Rights Act for an additional period of years. It may well be that the segregated and inferior education which Negroes in this country have received—both North and South—dictates that Congress forbid the application of literacy tests nationwide. This could be accomplished through implementation of a recommendation which the Commission made in its 1961 report.[20] In its subsequent report *Racial Isolation in the Public Schools* the Commission found that, nationally, Negro and white students are receiving unequal educational opportunity.[21] There was con-

---

[16] 288 F. Supp. 678 (1968) (3-judge court), *prob. jur. noted*, 37 U.S.L.W. 3247 (U.S. Jan. 13, 1969) (No. 701).

[17] 288 F. Supp. at 688-89.

[18] *Id.* at 689.

[19] U.S. Commission on Civil Rights, Political Participation 189 (1968).

[20] That Congress, acting under section 2 of the 15th amendment and sections 2 and 5 of the 14th amendment, (a) declare that voter qualifications other than age, residence, confinement, and conviction of a crime are susceptible of use, and have been used, to deny the right to vote on grounds of race and color; and (b) enact legislation providing that all citizens of the United States shall have a right to vote in Federal or State elections which shall not be denied or in any way abridged or interfered with by the United States or by any State for any cause except for inability to meet reasonable age or length-of-residence requirements uniformly applied to all persons within a State, legal confinement at the time of registration or election, or conviction of a felony; such right to vote to include the right to register or otherwise qualify to vote, and to have one's vote counted. U.S. Commission on Civil Rights, Civil Rights: Excerpts from the 1961 United States Commission on Civil Rights Report 21.

[21] *See* U.S. Commission on Civil Rights, Racial Isolation in the Public Schools (1967).

siderable evidence adduced at the Commission's recent San Antonio hearing that Mexican Americans are receiving educational opportunity vastly inferior to that of Anglo students. This inequality has contributed to much lower levels of academic achievement and literacy among the Negro and Mexican American populations of this country than among the majority population.

Attachments.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 17, 1969.

HON. MAURICE STANS,
Secretary,
U.S. Department of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I am writing to you with regard to Title VIII of the Civil Rights Act of 1964, P.L. 88-352, 78 Stat. 266, which requires the Secretary of Commerce, in connection with the Nineteenth Decennial (1970) Census, to conduct a survey to compile registration and voting statistics in geographic areas recommended by the Commission on Civil Rights.

The Commission has fulfilled its statutory duty of designating areas for the survey, and we have revised our designation periodically in response to changed conditions and needs. Although the Bureau of the Census has cooperated with us in the planning of the Title VIII survey, no money has ever been appropriated for the implementation of the plans made.

On January 4, 1968, the Commission formally designated the areas to be included in the Title VIII survey. The Secretary of Commerce was notified of this action in a letter from the Chairman of the Commission, John A. Hannah, sent the next day. On June 24, 1968, a meeting of representatives of the Bureau of the Census, the Department of Commerce and the Commission was held. As a result of this meeting, preparatory funds were requested by the Bureau of the Census for Fiscal Year 1970 for a survey of voting and registration to be conducted in connection with the 1970 elections. These funds were disallowed by the Bureau of the Budget. (By letter dated August 15, 1968, Mr. Robert F. Drury, formerly Acting Director, Bureau of the Census, advised William L. Taylor, formerly Staff Director of the Commission, that the estimated costs of the survey by fiscal year would be as follows: $350,000 (1970), $5,075,000 (1971), $225,000 (1972)).

The action of the Bureau of the Budget does not negate the obligation of the Federal government to conduct the survey required by Title VIII. The Commission has not withdrawn its designation of the areas to be covered in the survey. These areas are described and listed in a letter dated December 22, 1967, from Mr. Taylor to Alexander B. Trowbridge, then Secretary of Commerce. A copy of this letter is enclosed.

Because of the President's desire to review the Fiscal Year 1970 budget proposals of the past administration (See letter dated January 24, 1969 from Budget Director Robert P. Mayo to the heads of the Executive Agencies) we consider this an appropriate time for you to review the request of the Department of Commerce to the Budget Bureau for preparatory funds to conduct the survey.

Title VIII of the Civil Rights Act of 1964 plainly requires a survey of registration and voting statistics to be conducted "in connection with the Nineteenth Decennial Census." If this survey is to be done in connection with the November 1970 elections, money must be available during Fiscal Year 1970 for planning and preparation. Therefore, we consider the Department of Commerce to be obligated to request funds at this time.

We continue to feel that the Title VIII survey will produce much important information which will be useful to the Department of Justice in enforcing the Voting Rights Act of 1965 and to the Congress in assessing the need for further legislation dealing with voting rights. The information, moreover, will be of value to the Commission in fulfilling its statutory duty of reporting and making recommendations to the President and Congress, and to private persons and groups interested in equal rights and in the political process.

There are still areas of the country where adequate statistics on voter registration and participation by black citizens are not available. Further, the extent of voting discrimination against Mexican American citizens has never accurately been measured. We receive many requests for the information which would be adduced by this survey, but currently we are unable to fulfill these requests. We continue to receive reports that barriers remain to black and Mexican

American voters freely casting their ballots and otherwise participating in the political process.

In May 1968, the Commission issued a new report entitled *Political Participation*, which was a study of Negro participation in the electoral and political processes in 10 Southern States since the passage of the Voting Rights Act of 1965. In this report, the Commission concluded that while many gains had been made by Negroes in the area of voter registration, obstacles still existed to Negroes freely registering, voting, running for office, and otherwise participating fully in the electoral process in many parts of the South.

In a letter dated June 6, 1968 to the then Secretary of Commerce, the Staff Director of the Commission explained how the passage by Congress of the Jury Selection and Service Act of 1968, P.L. 90-274, 82 Stat. 53, increased the importance of the Title VIII survey. That act requires each United States district court to adopt a plan for the selection of jurors and provides that the plan shall prescribe some source of names other than voter registration lists or lists of actual voters when those sources do not guarantee that persons will be selected for jury service in a nondiscriminatory manner and that those selected will represent a fair cross section of a community in the district or division where the court convenes. As a result of this provision, the fair administration of Federal justice in the South and Southwest depends, to some extent, upon the availability of accurate statistics on the extent to which Negroes, whites and Mexican Americans are registered to vote and are actually voting and the extent to which voter registration lists and lists of actual voters reflect continued discrimination and do not accurately represent a cross section of the community.

We therefore urge you, in response to Mr. Mayo's letter, to request the funds necessary in Fiscal Year 1970 for the Title VIII survey.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Acting Staff Director.

Enclosure.

FEBRUARY 18, 1969.

HON. JOHN N. MITCHELL,
Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The enclosed letter to the Secretary of Commerce reflects our current position regarding Title VIII of the Civil Rights Act of 1964.

Although Title VIII called for a survey of voter registration and participation to be taken after its enactment and for another survey in connection with the 1970 Census, the first survey was not conducted and no funds have yet been appropriated or requested by the President for the second. If no funds are appropriated for Fiscal Year 1970 it will be impossible for the survey to be made in connection with the 1970 Census.

As our letter to Secrtary Stans indicates, we continue to believe that the survey required by Title VIII will be useful. If funds are not provided, however, we recommend that legislation be introduced into Congress to repeal Title VIII. If the survey is not to be undertaken, we see no useful purpose in having Title VIII remain on the books.

If you would like to discuss this matter, I should be happy to arrange a meeting with you.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Acting Staff Director.

Enclosure.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 6, 1969.

Mr. HOWARD A. GLICKSTEIN,
Acting Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: This is in reply to your letter of February 17, 1969 regarding fiscal year 1970 preparatory funds for a survey to be taken under the provisions of Title VIII of the Civil Rights Act of 1964.

I have now completed my review of the fiscal year 1970 budget proposals in accordance with the Bureau of the Budget Director's letter of January 24, 1969.

As a result, I am resubmitting the request for $350,000 to allow the Bureau

of the Census to prepare for such a survey to be taken in connection with the November 1970 elections.

We will keep you informed regarding the status of the request.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce.

DEPARTMENT OF JUSTICE,
Washington, April 3, 1969.

Mr. HOWARD A. GLICKSTEIN,
Acting Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: Attorney General Mitchell has asked me to reply to your letter of February 18, 1969, concerning Title VIII of the Civil Rights Act of 1964. Please excuse our delay in responding.

Your letter to Secretary Stans recommended that he request, for fiscal 1970, the funds which would be required for preparation for the survey of voting and voter registration described in Title VIII. Your letter states that, in 1968, the Acting Director of the Bureau of the Census estimated that the cost of a survey with respect to the areas designated by the Commission on Civil Rights would be $350,000 in (fiscal) 1970, $5,075,000 in 1971 and $225,000 in 1976.

We recognize that it would be useful to have the results of a survey of the scope recommended by the Commissioin. However, because of the expense involved, we are unable to share your view that such a project should be undertaken. Assuming that the cost of the survey would amount to several million dollars, we do not feel that an expenditure of this magnitude can be justified.

A possible alternative could be to limit the extent of the survey and, in this way, to reduce the cost. It might, for example, be possible to select a representative sample of counties, *i.e.*, a much smaller number than was designated by the Commission in January 1968, and still obtain meaningful results. If you wish to consider this or other alternatives and feel that the Civil Rights Division could be of assistance, please feel free to call on us.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General Civil Rights Division.

Mrs. FREEMAN. By any standard the Voting Rights Act of 1965, in spite of less-than-vigorous use of the examiners' and observers' power, has been a successful piece of legislation. Between 1965 and 1968 an estimated 800,000 additional Negroes in the South have been able to exercise the franchise guaranteed them by the Constitution. This is an approximate doubling of southern Negro voter registration.

Yet the work of securing to all the right to vote regardless of race is unfinished. Negro registration remains far below that of whites. Hostility of white officials and legislators continues. In some parts of the United States, voting in an election remains for some of our citizens an act of moral and physical courage.

At the first Civil Rights Commission hearing in 1958, a young lady named Amelia JoAnne Adams, a graduate student in organic chemistry, testified that she had not been allowed to register to vote in Alabama. The chairman asked her why she wanted so much to register.

She replied:

Well, the Government of the United States is based on the fact that the governed govern, and only as long as the people are able to express their opinions through voting will the country be able to remain the great power that it is.

Mr. Chairman, in a time when one hears so many "demands" from so many groups, I speak in support of what surely must be the most modest demand of all—the demand of American citizens to elect their representatives and officials in the greatest democracy in the

world. In a time when there is so much talk of law and order, I speak to remind the Congress of its sworn duty to uphold the highest law of the land, the Constitution of the United States. That Constitution guarantees to all citizens the right to vote regardless of race or color.

Negroes in the South, under the protection of the Voting Rights Act, have at last begun to exercise the right to vote which for so long was illegally denied them. Next year will mark the 100th anniversary of the 15th amendment. In that centennial year, the promise so long broken and so recently redeemed, must not again be denied. I urge you to extend the Voting Rights Act.

Thank you.

Senator ERVIN. You state on page 13, the bottom paragraph of page 13—

> Between 1965 and 1968 an estimated 800,000 additional Negroes in the South have been able to exercise the franchise guaranteed them by the Constitution.

In what States have they registered?

Mrs. FREEMAN. In what States?

Senator ERVIN. Yes.

Mrs. FREEMAN. All of the States covered by the act.

Senator ERVIN. In other words, how many registered—how did Negro registration in North Carolina compare with Negro registration in Texas?

Mrs. FREEMAN. They didn't have a literacy test, but they had a poll tax, which was also a device.

Senator ERVIN. It has been held unconstitutional, so that doesn't apply.

Mrs. FREEMAN. That is right.

Senator ERVIN. How many Negroes qualified to vote in Texas since the act took effect?

Mrs. FREEMAN. 400,000 since the act. That is on page 222 of "Political Participation."

Senator ERVIN. In Arkansas?

Mrs. FREEMAN. In Arkansas, there were 121,000 registered since the act, as compared with 77,714 preact registrations.

Senator ERVIN. Do you have any figures that would show what the ages were of the 800,000 Negroes who have registered in the States covered by the act? I would like to know how many of those came of age between 1965 and 1968.

Mrs. FREEMAN. No; we don't have those figures.

Senator ERVIN. Well, that would shed a real light on the subject, I would think. You don't have those figures?

Mrs. FREEMAN. We would try to obtain them. We, of course, as you know, Senator, have limited resources in terms of our money, but we could try to obtain them. (See appendix, pp. 661, 662.)

Senator ERVIN. I think it would be very significant. There has been a lot of registration of whites as to——

Mrs. FREEMAN. There has been an increase in registration of whites, but the gap between white and black registration is still very large.

Senator ERVIN. Well, there is no way—I asked you awhile ago—there is no way in the world that the State can compel people to come and register?

Mrs. Freeman. It cannot do so, but the State can refrain from keeping them from registering. This is what is happening in many of the States.

Senator Ervin. I am interested in the good name of my State of North Carolina. I would like to have any figures that would indicate whether North Carolina has actively kept anybody from registering.

Mrs. Freeman. As I said earlier, we do not have such figures with respect to North Carolina. We have held hearings as recently as last year, when the Commission held hearings in Montgomery, Ala. We received testimony from witnesses who had told us that they had lived on plantations all of their lives and as soon as they had started voter education and registration activities they were evicted from the land.

So you see, we are still receiving complaints.

Senator Ervin. I asked you about North Carolina. North Carolina stands equally condemned with Alabama. Frankly, I am not aware of any discrimination against any person registered and voting in North Carolina on the basis of race.

Mrs. Freeman. As I said, I do not have a specific case. We just have information that there was discrimination in North Carolina before the passage of the act. I will ask that it be researched and submitted to you.

Senator Ervin. I would like to know in the present.

Mrs. Freeman. Mr. Glickstein has it now.

Mr. Glickstein. That question came up in 1965 when you were questioning Mr. Katzenbach. You asked him—I am reading from page 27 of the hearings before this committee in 1965—"Now, where do you have evidence of violation of the 15th amendment in any of the 34 counties in North Carolina?" Attorney General Katzenbach answered, "Halifax County, Senator." You said, "How many instances?" I will just paraphrase some of this. This is a case in the eastern district of North Carolina where Negro voters brought suit in Federal District Court.

"When was that suit brought?" "In May of 1964, Senator." "What happened to the suit? Do you have the title of it?" "Yes, it is *Austin v. Budds*, where the temporary restraining order was granted and a preliminary injunction was granted by Judge Larkins." "What happened to it?"

This is your comment: "Because judges issue preliminary injunctions as a matter of course in ex parte hearings." Attorney General Katzenbach: "It was eventually dissolved, sir." "Yes, in other words, it brought a suit for restraining order, and restraining order was issued upon ex parte. When the case came down it was resolved." Attorney General: "No, that is not quite correct. The preliminary injunction was issued after the hearing. Then, when the people were registered in accordance with that, the court subsequently, on motion to disolution, dissolved it.

"I would say that the court found there was a necessity for preliminary injunction, issued a preliminary injunction when the registrar, pursuant to that injunction, was behaving as he should not have in this instance. Subsequent to that, the court decided that the injunction no longer needed to stay in effect."

Senator Ervin. The case was dismissed, wasn't it?

Mr. Glickstein. After the court's order was complied with, yes.

Senator ERVIN. How many people were involved in the case, and did it involve more than one registrar?

Mr. GLICKSTEIN. Just involved one registrar.

Senator ERVIN. We have about 2,300 registrars in North Carolina. So do you have any other evidence?

Mr. GLICKSTEIN. I believe that is the only lawsuit that was brought in North Carolina.

Senator ERVIN. Well, we have 2,300 voting precincts in North Carolina, approximately.

Mr. GLICKSTEIN. I think the Justice Department did present to you in 1965 some additional information of investigations they were conducting in North Carolina.

Senator ERVIN. Oh, they investigate, but they never found anything.

Mrs. FREEMAN. I believe that is in the transcript of the hearings, also.

Senator ERVIN. So North Carolina should be kept under the act because of the one registrar out of 2300.

The Civil Rights Commission referred a few years ago and said in my county they had 104 percent of the people over 21 years of age registered.

Mrs. FREEMAN. That can happen when you fail to purge the voting registration list.

Senator ERVIN. We have purged it.

Mrs. FREEMAN. You have now.

Senator ERVIN. Yes, I think something like 97 percent of the people in my county voted in the last general election. They had several thousand registrations after these figures, to my own knowledge.

Anyway, in order for a person to get registered he has to go to the registration place and get registered.

Mrs. FREEMAN. Yes, he does.

Senator ERVIN. There are a lot of people who do not care enough about voting to go register, do they?

Mrs. FREEMAN. When we held hearings in Alabama and in Mississippi, in Jackson, Miss., in 1965, we received testimony from many witnesses who told that they had gone to try to register, but for all kinds of reasons and all kinds of devices they had been refused the right. They had tried and after a pattern of this continuing, plus the economic and physical reprisal, of course, it would be usual that some people wouldn't even try to make the effort.

This is one of the reasons we need to have this act extended.

Senator ERVIN. Why do you have to put North Carolina under it?

Mrs. FREEMAN. We think that in several counties in North Carolina, as I indicated, not more than 35 percent of the black people registered to vote, that in those counties the act still needs to apply, because if in the 5 years they are still only 35 percent, what we have demonstrated is a need for it to continue.

Senator ERVIN. Well, then, during 5 years there has been no literacy test in that county, and still the people haven't registered. So it is not the literacy test that is keeping them from registering.

Mrs. FREEMAN. Well, I suppose you would have more knowledge of North Carolina than I.

Senator ERVIN. Yes, I just don't have any knowledge of discrimination on the basis of race in North Carolina. I have also advocated that every person qualified to register should be able to vote, and the man

who denies him that privilege ought to be put in jail. But I don't see why we have to have all of the Federal judges in North Carolina not allowed to try cases to determine whether North Carolina is guilty, and why we have to come up here to the District of Columbia. I think that is a shabby form of due process of law.

I don't think a case can be adequately prepared for trial except in the locality where it arose.

Anyway, a State can register every person in the county, but there is no way a State can compel them to come out and vote, is there?

Mrs. FREEMAN. This is correct.

Senator ERVIN. Have you investigated discrimination in voting in Florida, Tennessee, Arkansas, and Texas?

Mrs. FREEMAN. In some instances we have. I don't think Florida is covered, because——

Senator ERVIN. None of these States are covered because Florida, Arizona, and Texas have no literacy test.

Mrs. FREEMAN. Our Political Participation report covers Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. It does not cover Texas.

Senator ERVIN. Is there anything about North Carolina in your Political Participation report itself, except the tables in the back of the book?

I have looked through it and I can't find where North Carolina is mentioned any other place.

Mrs. FREEMAN. Your question is, is there anything other than the tables in the back of the book referring to North Carolina?

Senator ERVIN. Yes.

Mrs. FREEMAN. On page 38—"Persons attending a meeting of Negroes and civil rights leaders in Rocky Mount, N.C., made a similar complaint about the operation of a North Carolina statute." This is referred to on page 38. They were referring—the previous paragraph refers to a statement by a Negro candidate in South Carolina.

Senator ERVIN. Now, I can't tell by that what they are complaining about except the North Carolina statute, what the complaint was about.

Mrs. FREEMAN. Well, you asked if there was any reference to it in other than the back of the book.

Senator ERVIN. I can't find anything in the book except talk about conditions alleged many, many years ago. That was referring to a law, as I understand it. The people were trying to vote for a candidate. Whether that is correct, I don't know.

Do you have any questions?

Senator BAYH. Yes, I would like to——

Senator ERVIN. Oh, I have one question.

The Civil Rights Commission was set up to look after the rights of minorities primarily, was it not?

Mrs. FREEMAN. That is included in its——

Senator ERVIN. What has the Civil Rights Commission ever done to secure rights for any American Indian?

Mrs. FREEMAN. The Civil Rights Commission is now conducting a survey. There are studies that are going on. One of the problems of the Civil Rights Commission is that there are many other minorities that it has not been able to give full attention to because of its inadequate resources.

As you know, we are restricted severely by the limitation on the budget. We would appreciate more appropriations to be able to do the kind of work that we need to do with respect to Indians.

Senator ERVIN. The Civil Rights Commission has been in existence since 1957, I believe.

Mr. GLICKSTEIN. Senator, in our 1961 Justice report we do have a chapter on problems of the Indians. Just at the beginning of this year you referred to us a complaint about police brutality charges brought by Indians in the State of Washington, I believe, and we sent a couple of our attorneys to the State of Washington to investigate that report. We prepared a very elaborate field report, which we forwarded to the Justice Department and urged the Justice Department to take appropriate action under the criminal law.

I believe we forwarded to you a copy of their report in that instance where you requested us to make that investigation.

Senator ERVIN. That was one instance. I would just like to know what the Civil Rights Commission has done about Indians. They are the oldest Americans, and I think the most ill treated.

Senator BAYH. If the Senator would yield, I would like at this time to compliment him. We do not agree on some of the things that have been said, but I would like to put in the record my thoughts that I know of no one in the Congress who has done more and who would like to deal with the problems of the constitutional rights of the Indian than the Senator from North Carolina.

Senator ERVIN. Thank you, Senator. I thank you for your assistance.

Senator BAYH. It has been willingly given and he will continue to have it. I think Mrs. Freeman hit the nail on the head when she mentioned the shortage of funds.

Senator ERVIN. You could let a few crumbs fall from the table.

Senator BAYH. Perhaps we have gotten to that point now where we have a few more crumbs, and with your leadership we can effectively get the job done.

If the Senator would yield, I would like to point to part of Mrs. Freeman's testimony which seems to me rather effectively rebuts some of the inferences made that a significant part of the 800,000 registered since this act was in effect are the result of the aging of the people who live there. I am sure that this is true, that citizens have become older, old enough to vote, and thus, have been registered. But I think we need to compare with what happened before, with what happened after the act was passed.

I would like to reiterate what you earlier said, and ask you to comment further on this, when you point out that the period between 1957 to 1961—and that you say by 1964 only 23 percent of voting age Negroes were registered in Alabama; 32 in Louisiana; 6.7 percent in Mississippi; and of the approximately 5 million voting age Negroes in the South, only 36,000.

Now, 5 million—36,000 out of 5 million have been registered in the nearly 50 counties where the Justice Department brought these lawsuits.

Now, is it fair to assume that during that process, during that time we also had the aging process, and that if that was a material factor that we would have had significantly larger number than 36,000 registered during that period of time.

Mrs. Freeman. Yes, Senator. The factor that was controlling, that has been found even by the Congress to be controlling, was that the inability of persons to be registered was racially motivated; the controlling factor was racial discrimination. This is reflected in the 6.7 percent figure in Mississippi. We found this when we held hearings in Jackson, Miss., in February of 1965.

Yet, there has been an increase in the registration that has gone on there, with the examiners that have been sent there, even though admittedly, very small in comparison to the need. There has been an increase of more than 40 percent in the number of persons now registered to vote as a result, and as a direct result, of the 1965 act over the number registered before the passage of the act.

This kind of figure demonstrates the need for the extension of the act.

Senator Bayh. I would like to ask your opinion, if I might, or the advice of counsel, perhaps. This should be directed not only to us, but to the Justice Department, as to the rather sad record of the examiner who arrived in Holmes County, to whom you referred, whose presence was discovered almost by accident on the last day of his presence.

Would you care to make some recommendation as to what can be done, what could be recommended by this committee, what we can do to make the presence of these Federal examiners more meaningful? It doesn't do any good for them to sit in some hotel room. Make this voting opportunity possible.

In light of the experience the Commission has had, what sort of action do you suggest they follow to make their presence known?

Mrs. Freeman. First of all, this matter was brought to the attention of the Department of Justice, and in a letter dated June 26, 1969, to the Staff Director, Mr. Leonard said:

> We have given careful consideration to the recommendations made by you and the Commission with regard to the Federal examiner and observer program. In cooperation with the Civil Service Commission, we will attempt to provide better notice of future openings of examiner offices. As your report noted, our past practice of notifying leaders in the Negro community has often proven inadequate.

In some instances, they have notified an individual and relied upon the word of mouth. We believe there are other techniques of notice that are usually given and should be applied in this case.

We had already brought that to the attention of the Department of Justice, and he has noted that and accepted the fact that this examiner did not give due notice of his presence there. And of course if the purpose of the examiner being there is to help the persons become registered, certainly they ought to know of his presence and they ought to know of it before he comes, in time to know where to come and when he will be there, the hours he will be there. And the time he is there should be consistent with what is reasonable.

Senator Bayh. Now, the Commission made specific itemized recommendations to the Justice Department.

Mrs. Freeman. Yes.

Senator Bayh. Are they included in that "Political Participation"?

Mrs. Freeman. Yes.

Senator Bayh. Mr. Chairman, could I ask permission to have those included in the record at this time? What page are they on, please, sir?

Mrs. FREEMAN. Our recommendations begin on page 180 and under recommendation No. 2 the Attorney General should announce publicly in advance of the election that Federal observers will be present and should be assured they are identified as Federal officials and that would——

Senator BAYH. I would like it, just to make sure we have that particular aspect on the record. I think that is all the recommendations. It wouldn't hurt to have them put in.

(The recommendations above-referred to, follow, being pages 180 through 190 of the Political Participation Report:)

RECOMMENDATIONS

ENFORCEMENT OF THE VOTING RIGHTS ACT OF 1965

1. The Attorney General should assign examiners under Section 6 of the Voting Rights Act to all political subdivisions where Negro registration is disproportionately low.

Section 6 of the Voting Rights Act of 1965 authorizes the U.S. Attorney General to designate political subdivisions for the appointment of Federal examiners where, in his judgment, the appointment is "necessary to enforce the guarantees of the fifteenth amendment." He is directed to consider in making this judgment, "among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment. . . ."

Suspension of voter registration tests in States and political subdivisions covered by the Act was predicated on a link between racial discrimination and low voter registration or low voting totals. It is reasonable to assume that where Negro voter registration continues to lag, many persons, because of past experience with prohibited discrimination, are deterred from seeking to register to vote with local officials, and, therefore, that disproportionately low Negro registration in a particular political subdivision covered by the Act is "reasonably attributable to violations of the fifteenth amendment." Only by affirmative efforts, including the assignment of examiners, can the continuing effects of past discrimination be overcome.

2. The Attorney General should request the Civil Service Commission to assign Federal observers under Section 8 of the Act to attend elections, including party precinct meetings and conventions at which party officials are elected, wherever there is reasonable cause to believe that discrimination will occur at the election. The Attorney General should announce publicly in advance of the election that Federal observers will be present and should assure that the observers are identified as Federal officials.

Although the Attorney General has made wide use of his power to request the Civil Service Commission to assign Federal observers, and these observers have served to deter discrimination at the polls, during 1966 and 1967 there were a number of political subdivisions in which election day discrimination was likely—including subdivisions in which Negro candidates were running and no Negroes had been appointed as election officials—to which observers were not sent. While these subdivisions had not previously been designated for Federal examiners—a precondition to the assignment of observers under the Act—the Attorney General could have, and has, designated subdivisions for examiners on the eve of the election.

The Attorney General has requested the Civil Service Commission to assign observers only to attend general, special, and primary elections. He has not requested observers to attend party precinct meetings or conventions at which party officials are elected, even though Section 8 of the Act provides for the assignment of observers "to enter and attend at any place for holding an election" in a subdivision in which an examiner is serving. Negroes have been excluded from, denied the opportunity to participate fully in, or denied information concerning the time and place of some of these meetings and conventions, including those held in a county in which an examiner was serving.

Where the Attorney General decides to request the assignment of observers to a particular political subdivision, he should announce publicly, in advance of election day, that observers will be present in the subdivision, and should

assure that the observers are identified as such. This is contrary to present Department of Justice policy, which favors keeping the Federal presence as inconspicious as possible in order to avoid triggering a reaction in hostile white persons which will be reflected in voting behavior and affect the outcome of the election. This possibility must be balanced against the benefits of increased publicity and identifiability.

The subdivisions where the assignment of observers is warranted are those in which there is a likelihood of discrimination at the polls. It is important for Negro voters in these subdivisions to know that observers will be present to deter local election officials from subjecting Negroes who attempt to vote to discrimination and the harassment, indignity, and humiliation which accompany it. Announcing the presence of Federal observers on the morning of election day is not sufficient to fully inform the Negro community and is not an adequate substitute for advance publication. Similarly, identification of the observers will serve to confirm to Negro voters that they will be afforded comparable treatment with other citizens at the polls.

Public announcement in advance of election day that observers will be present in a county should not affect the outcome of the election. Efforts can be made in advance to increase the understanding and appreciation within the white community of the role of Federal observers.

Local officials and the people generally should be made to understand that the presence of Federal observers is a good method for obtaining the agreement of everyone, Negro and white, that the election was a fair and an honest one. If the policy underlying the assignment of observers is made known to the community, the knowledge that observers will be present to assure that Negro registrants are allowed to vote should not alter white voting behavior any more than the presence of Federal examiners, who register the Negro voters and of whom the observers are a logical extension.

While it may be desirable for the Attorney General to know as closely as possible before the election the state of compliance by local officials with the Attorney General's criteria for the assignment of observers, there appears to be no reason why the determination whether to request the assignment of observers cannot be made known in advance of election day.

3. The Attroney General should take steps to secure in each State and political subdivision in which tests and devices are suspended, or in which discrimination prohibited by the Voting Rights Act has occurred, the appointment in each precinct of election officials broadly representative of the community, including the Negro community, either by informal means or by invoking remedies under the Act.

The appointment of Negro election officials in areas where Negroes comprise a substantial portion of the population is, and should be, a central objective of the Department of Justice. Affording Negroes a share in the management of the election process serves to reduce the possibilities of discrimination against Negro voters and violations of the Voting Rights Act, instill confidence in Negro voters that elections are fairly conducted, and minimize the need for Federal intrustion into the local election process. Care must be taken to insure that Negroes are appointed in more than token numbers, and that the Negroes selected are qualified and not chosen on the basis of whether their activities and opinions are acceptable to the white community.

Should the Department determine that it lacks the manpower to negotiate voluntary compliance in areas where discrimination in the selection of election officials is widespread, the Attorney General should consider the possibility of instituting lawsuits under the Voting Rights Act, including statewide suits, to obtain the appointment of election officials broadly representative of the com-community.

4. The Attorney General should make full use of the sanctions available under the Voting Rights Act and other Federal laws to eliminate other practices which deny or abridge the right to vote on account of race or color. Such practices include racial discrimination in the treatment of election officials, discrimination against candidates, campaign workers, and poll watchers because of their race, and exclusion of party members from precinct meetings or failure to accord them notice or equal participation because of their race. The Attorney General should bring suit seeing to withhold certification of an election wherever there is evidence of discrimination which may have affected the outcome of the election or deterred voting by Negroes.

Although much has been done, by informal means and through litigation, to secure compli... ...th the nondiscrimination requirements of the Voting Rights

Act and other Federal laws protecting the right to vote without discrimination (see 42 U.S.C. §§ 1971(a)-(c)), many problems remain and must be corrected. One effective sanction is the threat that an election infected with discrimination will be declared invalid. Courts have afforded such a remedy even where it has not been possible to determine whether the outcome of the election has been affected by the discrimination.[1] Where the outcome may have been affected, or where there is evidence that the discrimination is of such a nature as to deter Negroes from voting, the Attorney General should seek judicial relief withholding certification of the election and requiring the conduct of a new election free from discrimination.

5. The Attorney General should (1) instruct Federal observers that they have a duty to point out to local election officials irregularities affecting Negro voters and (2) take whatever other action may be necessary in States and political subdivisions covered by the Act to prevent such irregularities.

As Judge Wisdom said for a three-judge Federal district court in *United States v. Louisiana*,[2] "if an illiterate is entitled to vote, he is entitled to assistance at the polls which will make his vote meaningful." By the same token election officials should not be permitted, by their own acts or omissions, to disqualify illiterate Negro voters, whose voting is made possible or facilitated by the Voting Rights Act.

In some areas, even though Federal observers have been present, local election officials have engaged in various practices resulting in the denial of adequate assistance to Negro illiterates or in the disqualification of their ballots. These practices include (1) failing to inform Negro illiterates of their right to assistance; (2) refusing to assist Negro illiterates; (3) refusing to assist Negroe who can sign their names but are otherwise functionally illiterate; (4) refusing to supply the proper number of voting officials to assist Negro illiterates; (5) humiliating Negro illiterates who need or request assistance; (6) marking the ballots of Negro illiterates contrary to their wishes; (7) permitting Negro illiterates to mismark their own ballots; (8) failing to instruct Negro illiterates on the use of voting machines; (9) failing to point out to Negroes disqualifying errors in the marking or casting of their ballots; (10) denying to Negro illiterates the right to use sample ballots where permitted by State law; and (11) denying to Negro illiterates the right to have the assistance of bystanders where permitted by State law.

Observers currently are instructed not to intrude into the election process beyond taking such steps as may be necessary to fulfill the observational function. They are not instructed to point out and attempt to secure the correction of irregularities, although in practice some observers do point out at least some types of irregularities to election officials. In some cases irregularities have been stopped and the offending election official dismissed after the practices have been reported to the captain of the observer team, then to a Department of Justice attorney, and then taken up with officials charged with managing the elections. Much or all of the election day may elapse, however, before the matter is settled. Where the obligation of the election official is clear, and there is a violation in the presence of the observer, an effort should be made to correct it on the spot by pointing out the irregularity to the official.

6. The Attorney General should promptly and fully enforce Section 5 of the Act, which prohibits States or political subdivisions in which tests and devices are suspended from enacting or administering without the approval of the U.S. District Court for the District of Columbia or the U.S. Attorney General, any standard, practice, or procedure with respect to voting different from that in force on November 1, 1964. Section 5 should be invoked against both statutes and party rules enacted after that date, including those governing elections, election districts, and qualifying and running for office.

Failure to enforce the flat prohibition of Section 5 in the face of repeated violations—most notably in Mississippi—is bound to encourage the enactment and enforcement of additional measures having the purpose or effect of diluting or inhibiting the Negro vote or making it more difficult for Negroes to run for office. Swift and comprehensive enforcement of Section 5 is required to make it clear that such stratagems cannot succeed. The provisions of Section 5, construed in

---

[1] Bell v. Southwell, 376 F. 2d 659 (5th Cir. 1967); Brown v. Post, Civil No. 12, 471, W.D. La., Jan. 24, 1968.

[2] 265 F. Supp. 703, 708 (E.D. La. 1966), *aff'd per curiam*, 386 U.S. 270 (1967), discussed Part V, note 55 supra.

light of decisions of the Supreme Court, fairly admit of an interpretation that Section 5 covers party rules as well as State statutes.[3] Section 5 and judicial decisions construing it, can fairly be said to encompass—as standards or procedures "with respect to voting"—all measures governing elections, election districts, and qualifying and running for office.[4]

7. *If the Attorney General determines or the courts rule that he lacks power to take any of the actions specified in (1) through (6) above, he should seek amending legislation to authorize him to take such action.*

8. *The President should request and Congress should appropriate additional funds to permit the hiring of sufficient personnel to carry out the foregoing recommendations and otherwise fully enforce the rights of all citizens to full and equal political participation regardless of race.*

The program evolved by the Department of Justice to enforce the Voting Rights Act is hampered by limitations of staff. These limitations are reflected in the absence of lawsuits in areas where they are needed to curb violations of the Act, and in the inability to cover adequately all geographical and substantive areas in which discrimination and violations of the Act are occurring. The process of informal negotiation and persuasion requires the presence of attorneys in large numbers to deal with local officials. In 1967 an effort to assure that personnel would be assigned to deal with problems of discrimination in the North as well as the South resulted in a reduction in the number of attorneys assigned exclusively to the South.

FEDERAL PROGRAMS OF AFFIRMATIVE ASSISTANCE

1. The resources of the Executive branch should be explored for the purpose of establishing an affirmative program to encourage persons to register and vote. Such a program should: (a) assure better dissemination of information concerning the right to vote and the requirements of registration, and (b) provide training and education to foster better understanding of the rights and duties of citizenship and the significance of voting, and to encourage persons to register and vote. Congress should repeal the 1967 amendment to the Economic Opportunity Act of 1964 prohibiting the use of program funds and personnel for nonpartisan voter registration activity.

In two 1965 reports, Voting in Mississippi and The Voting Rights Act . . . The First Months, the Commission recommended an affirmative Federal program of citizenship training and voter registration. Now, as then, there are counties in the South where Negro voter registration is disproportionately low. In these areas, the effects of past discrimination against Negroes in the voter registration process have not yet been overcome. Although private civil rights organizations have an important role in this area, they lack the resources to finance and direct voter registration drives in all such counties, and few political party organizations have undertaken major drives to register Negro voters. The right to vote will not be realized fully unless the burden of taking affirmative action to encourage registration is shared by the Federal Government. Assistance and encouragement should not be confined to one class of citizens, but should be offered to all citizens regardless of race. Such a nonpartisan program is no more "political" in nature than Federal programs to remove obstacles to registration and voting, including proposed measures to eliminate residence requirements for voting in Presidential elections.

To assure better dissemination of registration and voting information, consideration should be given to the use of branch facilities and personnel of such agencies as the Post Office and the Department of Agriculture. To provide citizenship training and voter education and to encourage persons to register to vote, consideration should be given to the use of programs of adult education, literacy, and community action which are administered by the Department of Health, Education, and Welfare, the Department of Agriculture, the Department of Labor, and the Office of Economic Opportunity.

Implementation of such an affirmative citizenship training and voter registration program would be hindered by a 1967 amendment to the Economic Opportunity Act of 1964 which prohibits the use of funds or personnel for the Administration's war on poverty in connection with "any voter registration activity." While there is a legitimate interest in prohibiting use of Government funds or personnel for partisan political purposes, the injunction should not be so broad

---

[3] See Appendix II, p. 198, infra.

[4] See Sellers v. Trussell, 257 F. Supp. 915 (M.D. Ala. 1966) (opinion of Judge Rives), discussed pp. 41–42 supra.

as to cover politically neutral voter registration and citizenship training efforts necessary in some areas to remedy historic patterns of discrimination.

2. The Federal Government should publish and disseminate information about qualifying for office, the rights of candidates and voters, and the duties of election officials in those States in which tests and devices are suspended.

In some areas prospective Negro candidates have had difficulty obtaining information about how to qualify to run for public and party office and other election information. In those States in which tests and devices are suspended, the Federal Government itself should provide this information. Under the Federal Voting Assistance Act of 1955, the Department of Defense currently provides information on State laws concerning voting and elections to members of the armed forces and Executive agencies of the Federal Government and their spouses and dependents.

3. The Federal Government should encourage the growth of local legal services programs, particularly in rural areas, and these should be authorized to render assistance to candidates in securing election information.

Because many prospective Negro candidates cannot afford private attorneys, and because of the limited number of attorneys in the South willing to advise Negroes in civil rights or political matters, local legal services programs operated by the Office of Economic Opportunity could play an important role in guiding prospective Negro candidates through the procedural requirements of running for office and in securing other election information. Funding of legal services programs is spotty throughout the South, and there are few programs in rural areas. More funds should be made available for such programs, particularly in the rural South.

FEDERAL PROGRAMS TO REDUCE ECONOMIC DEPENDENCE

The Federal Government should undertake to reduce the economic dependence of Negroes to permit them to participate freely in voting and political activity.

It should be recognized that many of the problems described in this report can be overcome only by eliminating the economic dependence of Southern Negroes upon white landlords, white employers, and white sources of credit—dependence which deters Negroes from voting freely and seeking political office. To the extent that existing programs are capable of contributing to a reduction of such dependence, they should be fully implemented. The Commission is conducting investigations of problems of economic insecurity facing Negroes in the South and hopes to contribute along with other agencies to an understanding of the specific steps that should be taken to deal with such problems.

NATIONAL POLITICAL PARTIES

The national political parties should take immediate steps to require State political party organizations, as a precondition to the seating of their delegations at their national conventions, to—

(1) eliminate all vestiges of discrimination at every level of party activity including primary elections, meetings, and conventions, and the election and appointment of party officials;

(2) publicize fully, in such manner as to assure adequate notice to all interested parties (a) the time and place of all public meetings of the party at every level, in places accessible to, and large enough to accommodate, all party members; (b) a full description of the legal and practical procedures for selection of party officers and representatives at every level; and (c) a full description of the legal and practical qualifications for all officers and representatives of the party at every level; and

(3) take affirmative steps to open activities to all party members regardless of race.

Prompt action by the national political parties before and at their forthcoming conventions could obviate the need for legislation by Congress to establish specific guidelines covering the activities of political parties to assure the accomplishment of these objectives.

As this report documents, Negroes continue to be excluded from full and equal participation in political party affairs, including precinct mass meetings and conventions, in some areas of the South. While some State party committees have taken affirmative steps of varying scope to overcome past discrimination by encouraging Negro participation, progress overall has been limited.

The national party organizations have not promulgated public and binding rules that afford full and equal participation in every aspect of party affairs -

whether or not directly related to the choice of delegates to the national conventions. These rules should provide for the denial to the offending State party organization of the right to have its delegation seated at the national party convention and, in appropriate circumstances, the seating of a challenging delegation pledged to afford full and equal participation to Negroes. Absent such action by the national party organizations, it may be necessary for Congress to implement further the 15th amendment by promulgating specific guidelines governing the activities of political parties to insure that this objective is achieved.

New Legislation to Prevent Discrimination and Intimidation

1. Congress should (a) broaden the Civil Rights Act of 1968 to provide criminal penalties for intimidation of campaign workers and to reach economic as well as physical intimidation; (b) authorize victims of intimidation in connection with all forms of protected political activity to bring civil actions for damages and injunctive relief; and (c) provide that where a claim of intimidation in connection with voting or political activity is made in a civil case, a rebuttable presumption of unlawful motive shall arise upon a showing that the defendant has applied or threatened any physical or economic sanction against the plaintiff related in time to his voting or other political activity.

Present Federal statutes are inadequate to protect Negroes who seek to exercise their right to vote and engage in political activity from harassment and intimidation by physical or economic means. While Section 11(b) of the Voting Rights Act, taken with Section 12 of the Act, provides penalties for intimidation of persons "for voting or attempting to vote," "for urging or aiding any person to vote or attempt to vote," and for exercising powers and duties under the Act, the provision does not expressly cover persons acting as candidates, campaign workers, poll watchers, or election officials.

The recently enacted Civil Rights Act of 1968 provides criminal penalties for intimidation of persons engaging in "voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election." This bill, however, does not cover campaign workers, extends only to intimidation by "force or threat of force" and therefore does not cover economic intimidation, and does not provide for civil actions for damages or injunctive relief.

Civil cases brought by the Department of Justice to protect persons exercising voting rights from intimidation, especially economic harassment, often have not been successful because of the difficulties of proving the motive of the defendant. It would be reasonable and would facilitate proof, to establish a rebuttable presumption of unlawful motive when the alleged intimidatory act and the exercise of protected rights are closely related in time.

2. Congress should evaluate, after the 1968 elections, whether practices such as those described in this report persist in States and political subdivisions in which tests and devices are suspended. If such practices continue to exist, Congress should extend the suspension in such States and subdivisions for an additional period of time. In making its judgment, Congress should consider the facts in this report and whether remedial steps have been taken by the States and localities involved.

By the terms of the Voting Rights Act, after August 6, 1970, States and political subsdivsions in which voter registration tests were suspended will be free to petition a three-judge Federal district court in the District of Columbia for the right to resume the use of such tests. They will be permitted to do so if the district court finds that no test or device has been used in the State during the preceding five years for the purpose of discrimination. This provision will permit almost all States and subdivisions where these tests are now suspended to restore the use of literacy and constitutional interpretation tests, moral character tests, and voucher devices, and to require persons now on the registration rolls to meet such tests as a condition of voting in the future.

After the 1968 elections Congress should evaluate whether to fully implement the 15th amendment it is appropriate to continue suspension of these tests and devices. One of the factors which Congress should consider is whether practices such as those described in this report continue to exist. The purpose of suspending tests in the Voting Rights Act was to secure full enfranchisement of Negro citizens. So long as barriers continue to exist the Federal Government cannot with confidence allow reinstitution of the tests.

3. In its evaluation Congress should determine whether the steps taken by the Department of Justice and the voluntary actions of political parties have eliminated patterns of discrimination against Negro voters and candidates in particular political subdivisions. If Congress determines that these actions have not proved effective, it should consider legislation giving the Federal Government greater control over the electoral process, including provisions authorizing Federal observers to render assistance to voters in marking and casting their ballots where the Attorney General determines that such assistance is necessary to secure 15th amendment rights.

Experience under the Voting Rights Act indicates that although there has been significant general progress, officials in some counties continue to flout the law. In 1965, Congress enlarged Federal control of the registration process when experience demonstrated that discrimination persisted under earlier statutes despite extensive litigation. Similarly, if resistance continues to be maintained notwithstanding the Voting Rights Act and its enforcement, it may become necessary for Congress to give the Federal Government greater control over the electoral process in these hard-core areas. Such legislation might include provisions authorizing Federal observers to render assistance to voters in marking or casting their ballots where the Attorney General makes a specific determination that such assistance is necessary to secure 15th amendment rights.

Senator BAYH. I would specifically like to have what the Justice Department can do to make sure that these examiners' presence is worthwhile.

Senator ERVIN. I notice in the figures of voter registration in the South in the summer of 1968, it shows in the 11 Southern States that of 20,906,735 whites of voting age, the number that were registered was 15,702,000, with a total of 4,394,374 whites of voting age not registered. Why were they not registered?

Mrs. FREEMAN. We don't have those.

Senator ERVIN. Well, you saw no impediments to white registration in the South?

Mrs. FREEMAN. No, we have not found any impediments to white registration in the South. This is why we felt there should be no impediment to black registration in the South.

Senator ERVIN. Isn't it conceivable that those 4,396,335 whites who are old enough to vote who didn't register since there was no impediment applicable, that they just were indifferent?

Mrs. FREEMAN. We know in our investigation, that the black persons, many of the black persons, were impeded because of restrictions, overt, and some not so overt. We know that the gap was very great and that it is still great. If the discrimination would be eliminated and everybody would be equal, if there would be no economic reprisal, no threat of physical reprisals in the millenium when that comes; then perhaps you might have 100-percent registration white and 100-percent registration black.

Senator ERVIN. Yes; but there is no discrimination against these white people, and I would like to know why 4,395,735 didn't go out and register.

Mrs. FREEMAN. We still have valid provisions that may cut down on the number of either black or white with respect to residence requirements.

Senator ERVIN. Not that many move. That is almost one-fourth.

Mrs. FREEMAN. We found in San Antonio that there were a large number of migrant workers and that, of course, is true in many of the other places in the South.

Senator ERVIN. But it is illogical. Now, you draw the conclusion that the failure to register of blacks is due to discrimination, but the failure of white people to register is not due to discrimination.

Mrs. FREEMAN. In many counties, this is exactly true.

Senator ERVIN. So I think it is quite conceivable that a lot of colored people do not care any more about voting than a lot of white people.

Mrs. FREEMAN. That may also be true, but there still is a gap, a very large gap, between the percentage and numbers of black voters and black registrants, and white, and we want to remove that gap.

Senator ERVIN. Well, how are you going to do it if they don't go out and register?

Mrs. FREEMAN. We want to extend the Voting Rights Act of 1965, and then I believe the community will get them registered.

Senator ERVIN. There were a lot of white people registered under the Voting Rights Act of 1965.

Mrs. FREEMAN. That is fine.

Senator ERVIN. You claim they were registered only because of the Voting Rights Act of 1965?

Mrs. FREEMAN. There are many factors that one takes into consideration in deciding whether he is going to pursue his right to vote. Because I think it is very basic.

Senator ERVIN. Well, I think it takes two sets of figures, one set of figures proves discrimination and the other doesn't, it proves the opposite thing.

Mrs. FREEMAN. Very definitely, we have very serious figures that prove discrimination, Senator.

Senator ERVIN. I think you at least could give us some reason why almost one-fourth of the eligible white persons in the South don't go out and register.

Senator BAYH. Mr. Chairman, may I ask your indulgence to impose a thought here?

Senator ERVIN. Yes.

Senator BAYH. I wonder, idealistic as your goal is, Mrs. Freeman, is the millennium of 100-percent participation, white and black, is not a bit unrealistic. What we are not—as I see it, and I ask your thoughts—I think the Senator from North Carolina is stressing a very important fact that there is no law that guarantees that everybody that should vote is going to vote, but as I see it, we are really not trying to make people vote, white or black, but we are trying to create an environment as well as the legal framework on which black or white can vote if they want to.

Mrs. FREEMAN. That is the point. We want to secure the right and if the right is secured—and we have found that the right has been denied—after securing the right, there must be a climate that is created and maintained so that the person for whom the right is secured realizes and believes that he is free to exercise that right. If he believes this and he still then chooses not to exercise the right, then at least the burden has shifted from the State to the individual responsibility of citizenship.

Senator BAYH. I think when the Senator of North Carolina suggests that he knows of no discrimination in North Carolina, I think he is speaking honestly. I found him to be a man of great integrity,

and I am not familiar with the past history of North Carolina. But I must say we have evidence abundant of plan after plan, incident after incident, in some of these other States where everybody conceivable, from the State legislature on down to the local registrar, the local poll watcher, tries to influence the black citizens of those communities not to exercise their constitutional right to vote. I think anyone who has read the record certainly can make a reasonable interpretation that this has in fact gone on.

It has been lessened because of the Voting Rights Act, but it still is prevalent and lurking behind the scenes, if it were not for the—perhaps threat is too strong a word, but is a good word—the Federal Government is going to see that this stops. Is this a fair assessment?

Mrs. FREEMAN. That is right.

Senator BAYH. Let me ask one other question.

Senator, you have been very indulgent.

Senator Kennedy has one question to make as one of the originators of this bill, as well as other civil rights legislation.

Can you give us a thought about the environment that exists? In other words, is it fair to suggest that much of the reason for lack of voting prior to this time and even some of it now is still a latent fear of what may happen? I recall reading some place where Vernon Jordon, director of the voter education project, told of an experience he had talking with an elderly Negro gentleman, in which he asked this gentleman, "Why is it that you haven't registered before?" He said that he knew that trouble was coming and he said, "Well, why is it that you have been brave enough to register now under the new act?" He said, "Well, I don't think trouble is coming like it used to."

Isn't it an environment, an attitude, where we are removing some of this fear and we are really not going to get the job done, that the Senator from North Carolina accurately points out the difficulties, until we remove all of this fear and until a person goes out and does what he has the right to do?

Mrs. FREEMAN. That is right, and it will take time because the fear has gone on for so long. As I indicated, one of the witnesses that we heard just a year ago was evicted from his home because he had engaged in voter education. Well, what is the impact of that? He is evicted, so other persons who see what happened to him, they don't dare, they are afraid.

This is why the climate has to be changed.

Senator ERVIN. Of course, you can make a pretty good distinction if you know you can draw the inference that when a black man doesn't vote, this is because of discrimination, but when a white man doesn't vote, no one knows why he doesn't vote.

Senator BAYH. This book tells of illiterate Negro citizens who were denied the right to take people of their own race whom they knew and trusted into that voting booth to help them vote, and it tells of no exclusion of white people on this. It tells that an effort was made on the part of many people, not all, to deny voting rights; we say we are going to lessen the burden of proof and let you vote, and we are going to keep that up to 100 percent.

Senator ERVIN. You are not talking about the State of California?

Senator BAYH. As the Senator was talking to a staff aide, I wanted you to be fully aware of the fact that it may do you irreparable damage, but as I said a moment ago, I thought you were a man of in-

tegrity, and you were a man from North Carolina, and you were speaking on what you thought to be the truth. I am not familiar. We don't have evidence, really, in this record, of what has gone on in North Carolina, but we have ample evidence of other places, and I don't think we can just ignore this.

Senator ERVIN. If somebody merits condemnation, don't condemn the innocent.

Senator BAYH. We don't want to condemn the innocent, but we would like to have a little more help condemning the guilty.

Senator ERVIN. You have got all the laws in the world already.

Senator BAYH. We want to keep what we have, though. That is the reason we are here.

Thank you.

Senator ERVIN. That is all.

Senator KENNEDY. Mr. Chairman, I first of all want to acknowledge what Senator Bayh has mentioned before in expressing our appreciation to you, Mr. Chairman, for calling these hearings expeditiously. I think all of us know that you have serious reservations about many provisions of the act, but once again, you have, I think, demonstrated great responsibility and leadership in calling these hearings.

As one who has been interested in the problems of the Indians of this country, I think those of us who have served on this committee saw the leadership you provided in the Indian Bill of Rights and realized full well the sincerity of your inquiries on that matter. The attitude toward the first American citizens has been a national disgrace.

I think if we were to ask our friends in the Civil Rights Commission to manifest a greater energy, even with the kinds of limited resources in their budget of some $2 million, and a greater interest in these problems. I think we fulfill our responsibility to a greater extent by increasing the opportunities for you to do the kind of job that needs to be done, providing you with the resources and personnel to make the kinds of inquiry and study that really should be done.

I am hopeful and continue to work toward expanding the kinds of resources which should be made available to you, because I believe in the work that you have achieved and accomplished.

One of the things, I didn't have an opportunity to listen to your testimony, and I regret that and the fact I hadn't had a chance to review it earlier today, but I will take the opportunity to do so. I have only been in the hearing this morning for a limited period of time.

But one of the things that strikes me, in listening to the exchanges which have taken place here this morning, really is, does the discrimination still exist in certain parts of our country, and what can really be done about this. I think we would all be impressed by the good faith and the willingness of many people in the South to try and really meet the letter and the spirit of the law of the 1965 act, but nonetheless, in looking at the record, I think we would have to say that there are patterns of discrimination which still exist in many parts of our country.

I think one of the clearest manifestations of this—and is the activity of the Justice Department in bringing the cases that we have brought over the period of recent years, even since the passage of the Voting Rights Act. I think this has been a very clear manifestation that there

are a number of incidents where the patterns of discrimination still exist.

I would think that this would certainly reinforce what I have heard earlier this morning, your testimony in disclaiming that there are these problems of discrimination which exist in certain parts of our country, certainly with regard to individuals and perhaps even laws which exist in parts of our Nation, and in Boston and in other parts of our Nation.

Nevertheless, I would certainly think on a matter as important and significant as this and as basic in terms of voting, which is so fundamental and which the Founding Fathers and the Supreme Court have described as the basic right of all citizens, that we really have an overriding consideration to insure to the greatest degree possible the elimination of these barriers to what is really the first American right.

It seems to me, in really a fair appraisal, even of the current situation, that there does continue to be a crucial and critical need for the maintenance of the 1965 Voting Rights Act. Significant progress has been made, but once again, we know that there really have only been a limited number of elections which have taken place, that what we are attempting to overcome is the long years of patterns and practices of discrimination, that this really has been a significant and important step in providing franchisement for those who have been disenfranchised and that we must continue to move in this direction.

I just want to commend you for your comments and statements, and say that I think, to the degree that I have had a chance to listen to them, they have been reasoned and responsible, and the limited degree that I have had a chance to familiarize myself with the material, it has been extremely useful, certainly to me and to the members of the committee.

Mrs. FREEMAN. Senator, I stated earlier that in Alabama less than half of the Negroes of voting age are registered in 27 of the 67 counties. In five counties Negro registration is less than 25 percent. In 24 Mississippi counties, there is Negro registration of less than half. In six counties it is less than 35 percent.

In half of South Carolina's 46 counties, Negro registration is less than half. It is less than 35 percent in three.

Senator ERVIN. The three North Carolina counties where you say it is less than 35——

Mrs. FREEMAN. In half of South Carolina's 46 counties, Negro registration is less than half. It is less than 35 percent in three South Carolina——

Senator ERVIN. Oh, I thought you were talking about North Carolina.

Mrs. FREEMAN. These figures demonstrate, in our opinion, the need, as the Senator said, for the continued operation of the Voting Rights Act of 1965.

Senator KENNEDY. Well, I want to just express my appreciation for your coming.

Just in a final area—and I don't know whether you would be interested in making some kind of comment about this or not—although this will be the first opportunity we have to solicit your views and the views of the Commission—I don't know whether you are prepared to speak for the Commission or not—but the attitudes

of the Commission in terms of the recent statements and declarations of the guidelines which have been recently promulgated, would you be prepared to give any comment about your attitude toward the new guidelines?

Mrs. Freeman. Well, the Commission believes that the guidelines should be strengthened and fully enforced. We were distressed by reports that the guidelines would be weakened and that there would be less enforcement than in the past, because in the past there needed to be some greater enforcement. We believe that there should be full enforcement of the guidelines and that they should be strengthened. Certainly any date that would be a deferral of the expiration date, we took exception to that, and we communicated our position in that regard to the President.

Senator Kennedy. Would you be prepared to comment now about the recent guidelines which have been stated? Would you be prepared to make any comment on whether you feel that they are weaker?

Mrs. Freeman. I believe that the expiration date, which had originally been there, is no longer there, and this is the position that we took exception to, and that we would regret that the administration would weaken the guidelines.

Statements have been made to the effect that there is no intent to weaken the enforcement and, of course, I suppose we would have to wait and see on this. But we would object to any weakening of the guidelines. We would hope there would be strengthening of the guidelines and greater enforcement.

Senator Kennedy. Just in a final comment, are we to gather from your comment, your testimony this morning, that if there is a lapse of the Voting Rights Act that you have a very genuine fear that in many of the areas of our country that there will be a return to the status quo prior to 1965?

Mrs. Freeman. I think this would be very damaging to the United States and to the minority in this country.

Senator Kennedy. Thank you very much, Mr. Chairman.

Senator Ervin. Mrs. Freeman, I have asked you, don't you think it is rather an insult to the Federal Judiciary in seven Southern States to deny them the jurisdiction to try cases arising in those States?

Mrs. Freeman. When this matter came before the Supreme Court of the United States it was considered, and the Supreme Court determined that Congress, in passing the law, did so within its powers, and I would concur with that, Senator.

Senator Ervin. Under that decision, Congress could pass a law providing all civil cases arising in the United States be tried in the district court, sitting in the Isle of Guam. Do you think that affords very much protection for the American people?

Mrs. Freeman. It depends on the factual situation that made Congress take that action. The situation the Congress dealt with in 1965 was discrimination for which there had to be a remedy, and Congress made this determination. The Supreme Court has upheld it.

Senator Ervin. And the Supreme Court also said in that same case that the prohibition against the bill of attainder didn't apply to State officials, which was quite a remarkable thing in view of the fact that in its most recent decision on that very point, they had applied it to

protect Federal officials. So they discriminated against judges in this case in order to stop discriminating in voting. They discriminated against the judiciary in seven different States.

I do not agree with that. They don't allow the judges to try cases. I think discrimination consists of treating like situations in a different manner, and that is exactly what they did, in favor of the District of Columbia against the judiciary in seven States.

Don't you think that if the bill is introduced they ought to at least open the doors in all Federal courts, to give the people the right to prove their innocence of wrong-doing?

Mrs. FREEMAN. I would support it——

Senator ERVIN. And make witnesses available?

Mrs. FREEMAN. I would support the bill as it is, that the U.S. district court, the District of Columbia——

Senator ERVIN. In other words, you think that the courts of the seven States should remain nailed shut?

Mrs. FREEMAN. I believe that the circumstances which made the Congress enact this legislation still persist.

Senator ERVIN. Is your feeling based on the fact that you don't think southerners who happen to hold Federal judgeships can be trusted to enforce the law?

Mrs. FREEMAN. I don't believe it was the legislative intent.

Senator ERVIN. I wish somebody will tell me what the legislative intent was.

Senator BAYH. May I ask a question?

We have had a lot of talk about law and order, and I think law and order is a many-faceted thing, encompasses justice, and I think the willingness of the population to accept the verdict of a court or jury, to accept the results of a judicial process is absolutely indispensable in any system of law and justice. Without trying to spread a blanket over all members of the southern judiciary, let me—I think this would be totally unfair—let me say if this decision as to whether a person was entitled to vote or register or have poll watchers was left to certain members of the judiciary in the South, would the broad numbers of black people who live in the South feel they were getting justice?

Mrs. FREEMAN. They would not, and I think one of the problems has been, as we indicated in the report, that even with the extensive litigation that the Justice Department has instituted in the South, the effect has been very minimal and if your question goes to the confidence of the black community——

Senator BAYH. Confidence.

Mrs. FREEMAN (continuing). As to whether they can obtain justice, the fact has been that there has been unequal law enforcement in many of those States, that when they have been beaten up or denied the vote, they have nowhere to go, and this included the judiciary.

Senator BAYH. Mr. Chairman, I think——

Senator ERVIN. I might say the same thing about the Supreme Court under the *Hill* v. *Lubbock* case, that it protected the Federal officials, but they held in the *South Carolina* case it didn't protect State officials. So that is application of the Constitution.

Senator BAYH. I am not sure this committee should go on the record as saying a little inequality should bring on more.

Senator ERVIN. Don't you think the test should be brought down to 1968 elections?

Mrs. FREEMAN. No, no, no. I do not think so, because the problem was identified in 1964. That has not been corrected yet. After it has been corrected, then it can be reviewed again.

Senator ERVIN. It has been corrected by the 1964 standards in many States and counties.

Mrs. FREEMAN. There is still a gap, Mr. Chairman. There is still a large gap.

Senator ERVIN. But the act says, if they fail to vote 50 percent in 1964, they came under the terms of the act. Now, many of them voted more than 50 percent in 1968, and you would still keep them under——

Mrs. FREEMAN. Yes, because we have a fear and a very real fear, and basis for this, that if this act would expire, all of the progress that has been made would be wiped out very quickly.

Senator ERVIN. What are you going to do with a case where more than 50 percent voted in 1968, how does the presumption endure under those circumstances?

Mrs. FREEMAN. We would leave that to the court to determine.

Senator ERVIN. Well, if you were the court and had to determine it, I guess you would hold that the presumption would not be rebutted by exactly the opposite of the presumption of facts?

Mrs. FREEMAN. We would still leave it to the court to determine.

Senator ERVIN. Well, I think that in any event this disgraceful insult to the judiciary of the seven States would be due for amendment. I think in any event the test should be 1968 and not 1964. That is my own opinion. My State legislation submitted a constitutional amendment to abolish the literacy test in North Carolina. When it is abolished they will find out there is no great change. There is no way to get people to register or go and vote. That is the trouble with the people in this country, in my judgment.

Senator KENNEDY. As I understand, in the consideration of giving the jurisdiction here to the court, the Attorney General makes a finding about the State action or legislation, which exists, and the right for appeal is here within the District Court. The evidence would be presented to the Attorney General in any event while a State or locality is making its representation.

Mrs. FREEMAN. And if the Attorney General found that it did not have effect——

Senator KENNEDY. That is right. Then he wouldn't be making the finding in the first place. Is that what we are really doing by providing the jurisdiction here, we are providing the appellate jurisdiction which is here within the District? It doesn't seem to me to be any real reflection on the judiciary.

Mrs. FREEMAN. I don't believe the Congress would reflect on the Federal judiciary.

Senator ERVIN. I believe the Senator has misconstrued the act. You don't appeal from the Attorney General. You have to bring separate suits. The Attorney General condemns you without trial, without evidence, on the basis of failures. Then you are guilty and then you have to come and bring witnesses.

In some cases you come a thousand miles if you want to get out from under the act, and notwithstanding the fact that Gaston County proved exactly that there was no discrimination during the preceding 5 years, the court amended the act and added another requirement.

Senator KENNEDY. The Attorney General then has made a finding or has not made a finding, or it is the basis made by the Attorney General here in the District in which this subsequent suit is originated.

I still feel that this is in no way any kind of reflection on the judiciary and parts of our country, but it is a sound orderly procedure. I am in complete agreement with the position that you have taken.

Mrs. FREEMAN. Thank you.

Senator KENNEDY. I have no further questions.

Senator ERVIN. We have two other witnesses today, but I want to hear the debate on the ABM. We have no hearing scheduled for tomorrow. We will recess until tomorrow if those witnesses can come back.

I believe you are one, Mr. Mitchell?

Mr. MITCHELL. Yes. If you want me to come back tomorrow, I will be glad to do that.

Senator ERVIN. Mr. Speiser?

Mr. SPEISER. Yes, sir.

Senator ERVIN. I will recess until 10 o'clock tomorrow.

(Whereupon, at 1:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, July 10, 1969.)

Page 88 blank

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

THURSDAY, JULY 10, 1969

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 4200, New Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin (presiding), Bayh, and Thurmond.

Also present: Lawrence M. Baskir, chief counsel, and Lewis W. Evans, counsel.

Senator ERVIN. The subcommittee will come to order. Here is a statement Senator Schweiker has asked me to put in the record:

STATEMENT BY SENATOR RICHARD S. SCHWEIKER ON THE VOTING RIGHTS ACT OF 1965

(Submitted to the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, Thursday, July 10, 1969)

Mr. Chairman, and members of the committee, the issue of whether to extend the Voting Rights Act of 1965 in its entirety for another 5 years, or whether to let it expire, has become a particularly crucial one for the Congress, and is extremely important for our nation. I want to relate to you my strong support for extending the Act and urge prompt approval.

I am a co-sponsor of S. 2029, the Omnibus Civil Rights Act, because of my belief that comprehensive legislation in a number of areas is necessary to continue bringing equal rights to our people in fact, and not just in theory. This bill includes a title to extend the Voting Rights Act.

I am also a co-sponsor of S. 2456, one of the bills now before you for consideration, which deals only with the Voting Rights Act issue, because I believe that extension of the 1965 Act has paramount priority, for practical and symbolic reasons.

Practically, the Voting Rights Act has worked. Attorney General Mitchell testified recently that more than 800,000 Negro voters have been registered in the seven States included in the Act since it was passed in 1965. What better proof is there that the bill should be extended than this significant rise in voting registration. We all know of many bills, which while impressive in theory, have not worked in practice, and I have consistently opposed retention of such ineffective legislation.

But when an Act such as Voting Rights Act has been dramatically effective, then we should not waste time with theoretical debates about substituting improvements. Rather we should immediately extend it, and then consider whether any additional amendments or improvements can be added, such as extending the provisions to cover every State.

Symbolically, the fact that voter registration has increased under this Act has given a measure of confidence to the black people of our country that we in Congress are concerned with their progress in achieving equal rights.

I fear strongly, however, that if we do not extend this Act, the black people of America will believe that Congress is turning its back on them. Whether in fact we are slowing down the pace in civil rights becomes a moot point so long as the

impression throughout the country is that we are. Simple extension of the Voting Rights Act will prevent outright the negative effects that a failure to extend it could bring.

What is equally important to consider is that we are not talking about a complicated civil rights issue. We are debating the most elementary right of a democracy—the right to vote.

Discussions of replacing the Voting Rights Act of 1965 with broader plans only deal with theoretical abstractions which serve to dull the progress which in fact has been made because of this Act.

Mr. Chairman, the points I have been making concerning the symbolic importance of extending the Voting Rights Act are even more important at this particular time. Recent discussions of civil rights issues, including the Voting Rights Act, and desegregation guidelines, have become widely publicized, and the public impression is that the Administration and the Congress are slowing down civil rights progress.

I can only speak for myself, and the Congress, but I think it extremely important that we make the record very clear that we are not forgetting civil rights but on the contrary are deeply concerned with bringing about more progress.

Extension of the Voting Rights Act is a perfect vehicle for demonstration of our commitment to equal rights for all Americans, because it has been an effective act which deserves retention on the merits alone.

But we cannot ignore the symbolic issue, which is so important at the present time. Our country cannot afford the disillusionment and loss of faith in its leaders that would result from failure to extend the Act.

I lend my fullest support to its extension for another five years.

Will counsel call the first witness.

Mr. BASKIR. Mr. Chairman, the first witness this morning is Mr. Clarence Mitchell, representing the Leadership Conference on Civil Rights; and with him Mr. Joseph L. Rauh, Jr., general counsel of the conference.

CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; ACCOMPANIED BY JOSEPH L. RAUH, JR., GENERAL COUNSEL

Mr. MITCHELL. Mr. Chairman, I am Clarence Mitchell, director of the Washington Bureau of the National Association for the Advancement of Colored People. I am also appearing as the legislative chairman for the Leadership Conference on Civil Rights, which is a group of over 125 organizations united for the purpose of seeking action on civil rights.

Accompanying me is Joseph L. Rauh, Jr., who is the unpaid general counsel for the Leadership Conference on Civil Rights and my friend of many years.

I would like to start, Mr. Chairman, if I may, with a little observation that, based on my years of being in Washington and my knowledge of your deep interest in many projects on which sometimes we are in agreement, I know you will recall that during the debate on the 1968 civil rights bill there came a time in the Senate when you offered your amendment on the rights of Indians. That amendment was overwhelmingly approved in the Senate. We did not offer opposition to it because we thought it was a good amendment, although we knew that it was going to present problems for us in the House.

It did present problems for us in the House. When we got to the House the chairman of the Committee on Interior and Insular Affairs and the ranking Republican member both sought to hold up our

bill on the ground that this amendment was not germane and also that the Indians themselves did not want it.

We were able to save the situation, because, serving in the House is Congressman Ben Reifel, who is a Sioux Indian from South Dakota, registered member of the Rosebud Sioux Tribe. He came in and presented eloquent testimony in behalf of this amendment, and we were able to get the entire bill through, plus that amendment.

I also think it is important in these times to reassert for the record that in spite of all of the problems that we have faced, I personally have an unshaken and unshakable faith in the Government of the United States and the power of our constitution and our laws to right wrongs. I wish to mention a most recent experience. We had our national convention in the city of Jackson, Miss., just last week. Because of the 1964 Civil Rights Act we were able to meet in the hotels of that city on a completely nondiscriminatory basis. It was a great pleasure to listen to a speech made by a young white Mississipian, Mr. Wilkinsen, who is the manager of one of the oldest hotels in that city and one of the best, the Heidelberg Hotel. He came to our convention and personally extended a welcome to our delegates. He presented the board chairman, Bishop Stephen Spotswood, with a gavel and expressed the hope sometime in the future, if our plans would permit it, we would return to the city of Jackson again.

I had the personal opportunity as a member of our organization, serving in a liaison capacity with the local police force, to work with several members of the Jackson Police Force. One of them was Chief Armstrong, who is now head of the traffic division in that city, but I had first known him from 15 years ago or more when I was in Jackson under different circumstances. At that time he was a member of the foot patrol, I believe. Also a young detective lieutenant, Lieutenant Black. We worked together daily on the normal problems that come in connection with the holding of a large convention in a metropolitan center. We had the assistance of the Jackson Police Force, which is integrated. They had some very fine young men, some of whom were college graduates, both colored and white, working on that force.

I think it is important, Mr. Chairman to note that experience because I believe that could not have come about in this country if we had not been working steadily within the framework of the constitutional law, with the assistance of such things as the 1964 act and the 1965 Voting Rights Act. I am very happy that today we have an opportunity to seek extension of the important provision of the 1965 act that is under consideration in this subcommittee.

I would like at the outset to offer for the record a headnote from the case of the *State of South Carolina* v. *Katzenbach*, because in that case it seemed to me that there was laid to rest the constitutional question of whether the Congress acted properly in establishing a procedure under which certain States of the Union will be covered by this law. The provision that I am reading is as follows:

Provisions of the Voting Rights Act of 1965 pertaining to suspension of eligibility tests or devices, review of proposed operation of voter qualification and procedures, appointing of Federal voting examiners, examination of applicants for registration, challenges to eligibility listings, termination of listing procedures and enforcement proceedings in criminal contempt cases are appropriate means for carrying out Congress' constitutional responsibilities under the Fifteenth Amendment and were consonant with all other provisions of the constitution.

It states clearly that the constitutional propriety of Voting Rights Act of 1965 was to be judged with reference to historical experience, which it reflected.

Senator ERVIN. That is a very unique decision. Prior to *South Carolina* v. *Katzenbach* it was held that the Constitution should be interpreted to be a harmonious document composed of provisions of equal dignity. It was held in the *South Carolina* case that the second section of the 15th amendment gave Congress the power to suspend without a judicial trial the right of a State to set a literacy test under the power it had under the second section of the First Article of the Constitution, under the 17th amendment, and under the first section of the second article and under the 10th amendment. In other words, we have for the first time the Supreme Court of the United States adopting the theory that the Constitution of the United States consist of a set of mutually repugnant provisions of unequal dignity and that the second section of the 15th amendment gave Congress so much power that it could virtually nullify, at least for the time being, the other sections of the Constitution.

I don't take much consolation out of such a decision.

Mr. MITCHELL. Well, Mr. Chairman, I of course do not agree with your formulation, but I respect your right to differ. However, I offered this for another purpose. This is now the settled law of the land, the case law under the Constitution. When the administration proposes, as it does propose, to depart from the formula which the Congress adopted in this situation, it is not merely seeking to overturn a law passed by the Congress, but it is also seeking to overturn a decision of the U.S. Supreme Court, which protects the right to vote.

If you find it objectionable with reference to the States that it now covers, it seems to me under your formulation the administration has compounded what you consider to be grievous because it says that we not only have this power under the 15th amendment which the Congress has asserted, but it is saying that we have the power even when race is not necessarily a factor to move into the States and correct discriminatory practices.

Now, so far as I am concerned, I am delighted that they would be thinking along those lines, but I think it is clear that if we do undertake to depart from what has already been agreed upon and what is settled law by a decision of the Supreme Court, we are going to open a whole new battlefront. If we do we will be engaged in that struggle long past the expiration date of the present law. This is why, in my judgment, the administration's action as evidenced by S. 2507 is an action that can be diversionary, disruptive, and destructive, because if it continues along the line that it is following, the date of August 6, 1970, will arrive and pass, and we will not have a voting rights law which bans literacy test and we will also revert to the condition that made it necessary for us to act in the first place.

Senator ERVIN. Well, you can't get an argument with me about the administration's bill. I think the two bills, as far as proper interpretation of the Constitution is concerned, are about as alike as two peas in the same pod. But I think if Congress can suspend section 2 of article 1 of the Constitution, the second section of article 2 of the Constitution, the 10th amendment and the 17th amendment, as it

did in the Voting Rights Act of 1965, then it can also suspend those same four provisions enabling the power of all the States to prescribe qualifications for voting. In the South Carolina case, the Supreme Court held that the prohibition against bills of attainder doesn't apply to State officials. It held that due process of law doesn't apply with the same force to public officials as it does to individuals. But I have never found any decision to support that. In fact, I have searched very diligently for it. If this be correct, then all the Congress has to do is pass a law providing that the States should be abolished by a suit brought by the Attorney General. The Attorney General could bring a suit and he doesn't have to give the State any notice about it and the allegations made by the Attorney General in his conclusions could be conclusive.

Mr. MITCHELL. I would say, Mr. Chairman, of course I don't agree with your formulation. What I think Congress and the Court has done jointly is to reconcile the Constitution in any way that does justice to people who are victims of wrong. But I could not say that I could ever envision the day when Congress would abolish the States—certainly not the State of North Carolina, certainly, as long as you are in the Senate, because I think they would have a long, long fight ahead. I don't think they could win on the basis of your past record.

Senator ERVIN. All I can say is thanks for the compliment. But they held that they could abolish the constitutional powers vested in the State of North Carolina by these four sections of the Constitution, as I mentioned. We are held to that by a legislative declaration of guilt without a judicial trial. It held that if North Carolina wants to get out from under the act, it has to come to one court. It has held that no North Carolina member of the North Carolina Federal judiciary can be trusted to try the case. I would say in North Carolina we are talking about at least 39 of our counties. They made us a very—not second-class ingredients of government, but I would say down about a zero ingredient of government.

Mr. MITCHELL. I would say, and this I base on what I will quote in my testimony later, and also on a long distance telephone call I had last night to the State of North Carolina of what the Government of the United States has done is, it has come to the rescue of the good people, both white and colored, in the State of North Carolina who want to make sure that everybody enjoys the right to vote. I think that in view of the increase in registration in the State of North Carolina because of this statute that for generations there will be people of both races in the State of North Carolina who will be glad that this has been done.

Senator ERVIN. I am glad we agree on the administration bill about the qualifications of people that vote for presidential elections. It has no reference to the 15th amendment. But I don't think there is a single new vote added to the list of North Carolina on account of the 1965 Voting Rights Act.

Mr. MITCHELL. Well, I am prepared to say that such has happened, and I do have that later in my testimony. That is why I made that call last night to North Carolina.

The bills which we support, S. 2456 and its companion bill introduced by Senator Mathias and Senator Fong, would strike out the word "5" years in each place where they appear in the first and third para-

graph of section 4 of the Voting Rights Act of 1965, 42 U.S.C. 1973 BA, and inserting in lieu thereof "10" years. In order that there will be no mistake about what we support, we cite the appropriate section in full. With your permission, Mr. Chairman, I won't read it. I will just ask that it be included in the record.

Senator ERVIN. That will be all right.

(The section follows:)

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

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

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

Mr. MITCHELL. The wording of this subsection would remain unchanged. We have heard several suggestions to change the date of November 1, 1964, in subsection B to a later date. Such a change would be a travesty in that it would reduce the coverage of the law, especially in those areas where diligent effort by citizens has increased the voter registration in the face of great odds.

Perhaps the most dramatic example of the effectiveness of the 1965 Voting Rights Act is the recent victory of Charles Evers in his race for May or Fayette, Miss. For many years the State of Mississippi has been synonymous with terror, oppression, and total deprivation of all the Negro's constitutional rights. Mr. Evers' own brother, Medgar was murdered by an assassin. There is a long, tragic, and bloody history of how that State has tolerated and encouraged the consignment of colored Americans to a subhuman status. Although the great and small cities of Mississippi were notorious for their mistreatment of colored people, the small towns justly earned the reputation of being worse than the large cities of that State. It is, therefore, especially gratifying that Mr. Evers won in a small community and that the entire campaign was conducted in a spirit of fairness.

I would also like to state for the record that immediately after he won, Mr. Evers announced that he would work to make his community a place of fairness and prosperity for all people without regard to race or color. He has already embarked on a campaign

to attract business and money to his town in order that it may be a credit to the State and to the Nation.

Mr. Evers is one of approximately 100 men and women who have been elected to public office in the South. At our convention in Mississippi I had the pleasure of sharing the platform with some 25 colored people who have been elected to public office in Mississippi and who are now serving. It was announced at that convention that nearly 100 had been elected to various public offices in that State.

In contrast to the turmoil and hostility that plague some areas of the country, many of the men and women, white and black, who live in the States affected by the 1965 act are making quiet but determined efforts to move forward in a spirit of brotherhood and goodwill.

These elections have provided high drama in many communities. For example, while the mayor of Leesville, La., was personally leading his police force, he happens to be white, in arresting NAACP officials on May 17, a colored man, Rufus Mayfield was being elected as the first of his race to serve in the city council of Lake Charles, La. It is important to note that the NAACP officials were being arrested because they had set up a tent for the purpose of receiving complaints of Negro servicemen stationed at Fort Polk, La.

The Evers victory and the action of the Leesville mayor should serve to remind us that while the 1965 Voting Rights Act opened the door for progress, the battle is by no means over. It is still possible to be jailed for exercising even the most obvious constitutional rights in many of the States of the so-called Old South. Vernon Dahmer, who died from injuries after his store was burned to the ground and peppered with a hail of bullets in Hattiesburg, Miss., was a leader of a registration and vote drive. Like many others before him he paid with his life for the right to vote.

Mr. Dahmer had announced on January 9, 1966, that he would receive poll tax payments at his grocery store from persons wishing to register to vote. On January 10 he was dead of wounds received in the firebombing of his store, his home and his car. Those who have been determined to deny the right to vote have not spared victims merely because they were white. Let us not forget that on August 20, 1965, Jonathan M. Daniels, a white man, was shot and killed just after he had been freed from jail in Lowndes County, Ala. A Roman Catholic priest with him was also severely wounded but recovered. Mrs. Viola Liuzzo, who was also white, was shot and killed on the night of March 25, 1965, while ferrying marchers in her car from Montgomery, Ala., to their homes in Selma, Ala.

These crimes have been supplemented by official State action designed to prevent Negroes from voting. This subcommittee, and especially the senior members, know the long and shameful record of State sanctioned obstruction. Immediately after passage of the 1965 Voting Rights Act the Mississippi Legislature, meeting in regular and special sessions, passed 12 bills and resolutions which subtantially altered the State's election laws. Alabama, Louisiana, Mississippi, and South Carolina have all resorted to various devices to slow down or prevent registration, voting and election to public office. These devices, include abolishing offices, switching to so-called at large elections, consolidation of counties, full slate voting, barring or intimidating poll watchers, and giving misleading information to would be voters.

Senator ERVIN. That is not North Carolina?

Mr. MITCHELL. No.

Senator ERVIN. One of these statutes was the Mississippi statute which changed the law that the superintendent of public instruction, who had been elected by the countywide vote of the people, would now be selected by a board?

Mr. MITCHELL. That is correct.

Senator ERVIN. I think it was probably a sensible change. While I am a great believer in democracy, I believe a board, even if it is a board of education, can tell better than the people at large the qualifications of an educator.

Mr. MITCHELL. I think it is really the same problem as if you saw the bank president going into the bank at high noon with the books under his arms. You would realize this was a legitimate purpose. But if you saw him at midnight under the cover of darkness you might think otherwise.

Senator ERVIN. The Mississippi Legislature passed this in darkness.

Mr. MITCHELL. Well, it was originated in secrecy.

Senator BAYH. Senator, do you have a moment?

Do you suppose, Mr. Mitchell, there is any relationship in the passage of this law to the fact that with the registration figures have shown primarily in response to the 1965 Voting Rights Act, some Negroes are going to be elected superintendent of public instruction?

Mr. MITCHELL. I think there is a very direct relationship, and I would say that the action of the State of Mississippi in this respect is exactly like the actions of politicians who want to maintain and control the world over as long as the rule is working for them. They want it. But as soon as it might work against their selfish interest they want to change the rule. This is why section 5 of the Voting Rights Act is so important, because when the rule changers get busy and conduct these schemes for the purpose of depriving people of the benefits of this statute, we have a referee in the Attorney General and in the U.S. District Court in the District of Columbia, which can be used to try to prevent a wrong from occurring.

Senator BAYH. Suppose that the same good intentions, improved quality of Government, were in the minds of the legislators as when they made changes in some instances previously accepted, election of county commissioners from districts to countywide choice, and that there is no relationship to the fact that the Negro registration is high—the election in districts would elect Negroes from those districts where you have predominant Negro voters, whereas countywise there would be no Negroes elected as county commissioner?

Mr. MITCHELL. I think that is an absolute correct description of what happens. The thing that amazes me is that after all these years that the Negroes have lived in the United States that there are still people who would think that we are so dumb that we don't understand what is happening when things like that occur.

We have been around and we know all the little dodges that take place in these things.

Now, of course, somebody can get up on a platform and defend this action as a great statesmanlike venture.

Senator BAYH. It is a rather interesting coincidence that this statesmanlike venture took place just at the time when Negro citizens were

for the first time in history getting a chance to elect people at those grassroots levels that were so important as far as day-to-day government is concerned.

Mr. MITCHELL. That is right. We have no illusions. We know that they may be called statesmen. We know they really aren't acting in a statesmanlike manner. We know it is a political flimflam that is being used to deprive us of rights given to us under the laws and Constitution.

Senator ERVIN. Could you tell me whether the board that was given the power by that proposed statute was elected by the people?

Mr. MITCHELL. The board that was formerly carrying out the function?

Senator ERVIN. No: the board that was given power to select the superintendent of public instruction instead of having it left to the people.

Mr. MITCHELL. I don't know the answer to that.

Senator ERVIN. It might be interesting to find out.

Mr. MITCHELL. I wouldn't waste time trying to find out what that was, because I have no illusions about the State of Mississippi. I realize you may see it from a different point of view from what I see it, but I know when this kind of thing is done there is one purpose, and that is to prevent Negroes from holding what we rightfully are entitled to hold.

Senator ERVIN. Do you think any time a law is changed anywhere to make a superintendent of public instruction selected by a board rather than the voters at large, that is because of the desire to discriminate against Negroes rather than put the selection of the superintendent in the more competent hands?

Mr. MITCHELL. No; I do not. I would say that you have to consider each matter in the circumstances of the situation, and in the circumstances of the situation that I am describing I have no doubt that the sole purpose of that was to keep the Negroes from holding office.

Senator BAYH. If the Senator will yield, I think we have to look not only at each individual instance and let each case stand on its two legs or three legs, or four, but we have to look at the county case, too, which you referred to in Alabama, in which an obvious effort to take these individual commissioners where Negroes could be elected in those areas, where Negroes are the preponderance of the voters, and put them on a countywide election so that there would be no elections. They have to take another example where the qualifications to get your name on the ballot as an independent candidate was changed when the black voters began to take advantage of this, when they couldn't get access to one of the key party ballots. You have to take all of those things into consideration.

Mr. MITCHELL. Actually, the next item in my testimony I will illustrate the continuity of these attempts to defy the law by what happened at Friar's Point, Miss.

On May 17, 1969, the Department of Justice asked a Federal court to block a June 3 town election in Friar's Point unless a slate of Negro candidates is placed on the ballot.

The Department of Justice charges that the Municipal Election Commission changed the qualification procedure for candidates and the city clerk failed to notify the Negroes of the change in time for

them to be placed on the ballot, in violation of the Voting Rights Act of 1965 and the 15th amendment to the Constitution.

Prior to this year, candidates for city offices have qualified to be placed on the ballot by notifying the clerk and filing a statement that they were not subversives.

After a slate of six Negroes complied with this procedure to be placed on the ballots as candidates for mayor, town marshal, and four alderman posts, the defendants "without general notice to the public, altered the procedure for qualifying."

The new procedure required petitions to be filed by candidates and the clerk failed to notify the slate of Negro candidates and did not furnish them forms for the petitions as she did for the other candidates.

The change in procedure was made without the approval of the Attorney General, or the Court, as required by the Voting Rights Act of 1965. It was argued by the Justice Department that the change would "deny and abridge the right of Negroes to vote on account of their race by denying them the right to vote for the candidates of their choice."

I might say there was a happy ending to that case which I have included as a footnote to my testimony at the end on page 9. The election was held. The slate of Negro candidates did get on the ballot. This particular slate lost, but two other Negroes who entered the contest were elected.

Even without the sanction of law, slowdowns, indifference and hostility have been used to keep down registration. Barnwell County, S.C., is a good illustration of how unofficial efforts to intimidate have been used to back up official action. In 1965, large numbers of would-be colored registrants were kept waiting in a line and finally not permitted to register. Some of those who were not permitted to register began picketing and were arrested on a charge of parading without a permit. The Negroes then staged a register and vote rally in an open field. At the same time the Ku Klux Klan held a rally beside the main road that the Negroes had to use going to and coming from the rally.

Now, it happens, Mr. Chairman and members of the committee, I was a speaker at that rally and I was transported from the place where I got off my plane to Barnwell County to the open field where these people were gathered. This was in the daylight and the only road that we could use passed by a large advertisement saying there would be a Ku Klux Klan meeting that night.

Senator ERVIN. There were two rallies. Are you speaking of the Ku Klux Klan rally or the other one?

Mr. MITCHELL. I think the Klan needed to hear me more than the people I was addressing myself to. I would have been happy to talk to them, but I don't think they had a ticket of admission for me.

But in any event——

Senator BAYH. Excuse me. They didn't have a sheet that fit, maybe.

Mr. MITCHELL. The interesting thing was in the daylight we went through this Klan group that was staging the meeting, but when our meeting ended, we had to come back over that same road, as I said, and by that time the Ku Klux Klan meeting was in progress. There

was a huge electric cross, which shows that they have gotten modern in some respects. They had a huge electric cross which was lit up, and several speakers were around, and everybody was in full regalia, parading back and forth.

Interestingly, I discovered that Klansmen are human, and like the rest of us, because some of them were going to the restroom at the filling station and some were drinking cokes and eating popsicles and things of that sort.

But the whole point is that in that atmosphere, there is the unofficial effort to say to the Negro "all right, if you are going to insist on holding these rallies for the purpose of registration and voting, then we are going to do this to intimidate you."

Fortunately, the Negroes aren't intimidated any more. They know how to take care of themselves in situations of that kind. But it is interesting that the Klan has not given up. It still tries to the effective, and of course, it can be effective when it outnumbers the Negroes about 100 to 1, as they usually do, and visits them under the cover of darkness.

The Virginia State Conference of NAACP branches made a statewide check on registration conditions in 1967, 2 years after the Voting Rights Act became law. Insufficient time to register and inconvenience of the place of registration were the most common complaints.

In Lancaster County it was necessary to make an appointment in order to register. In Southampton County registration was on Thursdays only. In Halifax County the registration dates were set at the "convenience of the registrar." In one county a "registrar stopped registering to go play golf."

With so many risks of losing the progress that has been made since the 1965 Voting Rights Act became law, it is imperative that the ban against literacy tests be extended before the end of this session of the Congress. There are those who suggest that the law can be improved. This may be so, but let us extend the law that we know can and does work before seeking a change that may not get through Congress until after the present ban against literacy tests expires.

Now, at this point, Mr. Chairman, I would like to read a telegram which comes from the State of North Carolina. As you know, in the city of Charlotte there is a colored member of the city council, Fred Alexander. His brother, Kelly Alexander, is the president of our North Carolina State Conference of Branches.

His telegram says—and it is addressed to me: It is basic and fundamental for Negroes in the State of North Carolina to fully participate in the political process for the voting rights bill to be extended. This State should be included, because traditionally in the black belt counties registrars have systematically discriminated against illiterate and literate Negroes who desire to register so they can vote. We hope you will urge the Congress to extend this bill for equality and justice at the ballot box.

It is signed Kelly M. Alexander.

Senator ERVIN. I know Kelly Alexander very well, and I also know his brother, Fred, who has been elected to the city council of Charlotte several times, and he is a very fine councilman.

I am very sorry Mr. Alexander didn't specify the counties, because there are 100 counties in North Carolina, and he undertook to do something which Edmund Burke said couldn't be done. He didn't know how to draw an indictment against a whole people.

It would be rather interesting if you contact him again and find out what counties he claims discrimination is in of the 100 counties. It is a little too much.

Mr. MITCHELL. I assumed that question might arise, Mr. Chairman, and I have excerpted some things which will identify some counties.

Senator ERVIN. We have been called to a meeting of the full committee. So I think this will be a good time to suspend temporarily. I understand that the meeting will be rather short, if we get several Senators together and have a short session.

We will go to the full committee and return just as soon as possible. That will give you an opportunity to look up any questions on behalf of my fine constituents.

(Whereupon, there was a short recess.)

Senator ERVIN. You may proceed Mr. Mitchell.

Mr. MITCHELL. Mr. Chairman, at the point where a recess was declared, I was about to begin talking about specific problems in the State of North Carolina and supplement Mr. Alexander's telegram about the continuous nature of this deprivation of the right to vote on the basis of literacy tests.

You will recall that in 1957 you were good enough to permit Charles McLane, who is a NAACP field representative, to testify at length in connection with the consideration of the 1957 voting rights bill. In this testimony, he presented a number of instances which appear in the hearings on the civil rights bill, starting at——

Senator ERVIN. Let's don't go back to the Middle Ages.

Mr. MITCHELL. Well, this was the neomodern age, I would say, Mr. Chairman, and I think it has to be mentioned in order to show that the same kind of conduct has been continuing right through the years.

Senator ERVIN. Tell us about the continuing conduct down there at the present moment.

Mr. MITCHELL. Well, I will do that, but in order to make it fit into context I would just like to identify that part of the record, because in the thing that I am doing, I do base it on what happened in the record, too.

This hearing starts on page 503 of that hearing record. Now, in the testimony presented at that time in Bertie County, Mr. McLean pointed out that he found the courthouse door locked when the Negroes were trying to register. That appears on page 515 and apparently the same general type of practice continues in that county in trying to discourage, or at least it continued up until the passage of the 1965 Voting Rights Act.

It is interesting, also, to note that according to the Civil Rights Commission report, the white registration in that county is 100 percent, while the nonwhite registration, even with the voting rights law, is only 52.

Senator ERVIN. It is 74.9.

Mr. MITCHELL. No.

Senator ERVIN. You are going back 10 years.

Mr. MITCHELL. No: I am reading the 1968 Civil Rights——

Senator ERVIN. Eleven years, twelve years, and the evidence showed Mr. McLean was assistant registrar in one of our largest counties, in Forsythe County, and he certainly didn't discriminate against anybody.

Mr. MITCHELL. The evidence also showed that in the surrounding area it was discriminatory. I have a little illustration of how that continued.

Senator ERVIN. I will let you put it in, but I think it is so far-fetched. He testified he went to Bertie County to the office of the registrar, and the door was locked. We had a new registration in my county last year, and I voted. I went all the way from Washington to my hometown to register, and I went to the office of the registrar and it was locked. He had gone home to lunch.

Mr. MITCHELL. Well, that isn't what you thought at that time, Mr. Chairman, because at that time Mr. McLean and the banker went down there. They rattled the doors of the courthouse and finally——

Senator ERVIN. Let me tell you, I rattled the door, too.

Mr. MITCHELL. Finally, a Mr. Perry, who was inside and peeped around the corner, according to the testimony, they opened the door and then, of course, he really didn't register anybody at the time, but at least Mr. McLean proved he was there. Your conclusion at that time was the registrar might have had a drink or might have had his lady friend in there.

Senator ERVIN. Neither you nor Mr. McLean can make that supposition on my part.

Mr. MITCHELL. Well, the point is that not only was the door locked, but the registrar was inside and had locked it to keep the Negroes from registering. Now, I do not know whether he had his lady friend or was engaged in some other pastime.

The fact is, he wasn't doing his duty. That is to register people.

That kind of practice continues and has continued.

Senator ERVIN. Mr. Mitchell, what evidence do you have of that?

Mr. MITCHELL. I would say, Mr. McLean.

Senator ERVIN. You don't know of your own knowledge? Take Bertie County, the case that you talked about. The figures put in here, doesn't include registration from mid-July on to November of last year. The figures put in here by the representative of the Civil Rights Commission showed that in Bertie County 74.9 percent of all the Negroes of 21 years age and up were registered.

I don't know how many were added after that. The percentage of blacks registered in Bertie County in midsummer last year is virtually the same as the percentage of people who came out to vote in Massachusetts when their favorite son, Jack Kennedy, was candidate for President on the Democratic ticket and the Republican candidate for Vice President, Henry Cabot Lodge of Massachusetts, was also running. And it is equivalent to the percentage of people who voted in 1960 in the State of California when that son of the Golden West, Mr. Nixon, was running for President on the Republican ticket.

Mr. MITCHELL. Well, that may be, Mr. Chairman, but I have—and I would like to insert in the record, with your permission, a clipping from the Winston-Salem, N.C. Journal of October 29, 1964, which is just before the voting rights law went into effect, in which 25 Negroes who were trying to register in Woodville Township precinct in Bertie County were denied the right to register, and it was only after Mr. McLean brought this to the attention of the State authorities that these Negroes were permitted to register.

I would like to offer a telegram from Mr. Roy L. Powell, who is the chairman of the Bertie County Board of Elections, to Mr. McLean.

dated October 29, 1964, in which he said, well, maybe something was wrong and that we would register these Negroes if they came back.

The terrible part about this is they were out there waiting to be registered. They were denied the right to register. The registrar said, "Well, I didn't know they were on the register. They were just hanging around." But when the State intervened to make sure that these people could register, it was necessary for these people to fill out affidavits showing that they were there for the purpose of trying to register.

All of this redtape is the kind of thing that has made the Voting Rights Act necessary.

Mr. Chairman, you may not be willing to admit it, but the fact is, in North Carolina, you have got two kinds of conduct. You have got the kind of conduct that you stand for, where you give everybody proper consideration, and you have got the kind of conduct that the elements that do not want democracy stand for, and they are there. We cannot get around it. The record shows it.

Senator ERVIN. Tell me one person in North Carolina who has ever solicited the aid of our State board of elections who was qualified to vote, and was not registered and did not vote. He couldn't tell me a single one.

Mr. MITCHELL. I could tell you one, the *Lassiter* case, which went to the Supreme Court. In that case, as you will remember, the person took the position that they should not be required to take a literacy test. This was in Northampton County. That they should not be required to take a literacy test at all.

Now, the problem there was that there were two things involved: one was under your North Carolina law you have a grandfather clause which makes it unnecessary for—well, the practical effect of it is that a white person, if he comes under that grandfather clause, doesn't have to take the test.

Senator ERVIN. Don't you know the grandfather clause had been outlawed by the Supreme Court of the United States years and years ago?

Mr. MITCHELL. It was, in the *Lassiter* case, but you are still following it with respect to the literacy test.

Senator ERVIN. No, no; it has been taken out of our State constitution.

Mr. MITCHELL. When?

Senator ERVIN. I don't remember the exact year, but——

Mr. MITCHELL. The reason I ask you, the *Lassiter* case was in 1962.

Senator ERVIN. The *Lassiter* case was where the person claimed that a literacy test was automatically unconstitutional. There was no discrimination in that case, none whatsoever.

Mr. MITCHELL. The Court didn't say there wasn't.

Senator ERVIN. No; I beg your pardon. I bet my hopes of salvation on the fact that Justice Douglas——

Mr. MITCHELL. I don't want you to take that risk, Senator.

Senator ERVIN. I am willing to take it, because in the very voting rights case, the Supreme Court said the question of discrimination was not raised in the *Lassiter* case and the Supreme Court of the United States, by a unanimous opinion written by Justice Douglas, said that North Carolina literacy test was perfectly in harmony with the Constitution of the United States.

So if there is any discrimination there, the Supreme Court joined in it.

Mr. MITCHELL. What the Supreme Court said—and this is what gives us trouble with this proposal made by Senator Dirksen—is that a literacy test, standing by itself, would not be discriminatory, but a literacy test which was used in a discriminatory manner so that it had a different application to colored people from what it had to white people, would be discriminatory. That is what you have in Northampton County. It just happened that the question wasn't raised the right way at the time the case was filed, but the subsequent events show very clearly that the literacy test, as it applied in Northampton County, was a test which was discriminatory.

Now, I happened to talk last night with Mr. Jack Faison, who is the president of our Northampton County N.A.A.C.P. He said that prior to the passage of the 1965 act, schoolteachers, college students, and others were turned down for not passing so-called literacy tests, and that sometimes these tests were given by people who had not even finished high school.

Now, he says at this time, of course, Negro registration is 47 percent of the total. The Negro population in that county outnumbers the white population, or at least is very close to it. He said it would be a disaster to have the Voting Rights Act no longer applicable, because that is the only reason why they have been able to get these colored people registered.

I would be glad to ask him to give me an affidavit which I can submit for the record, if you care to have me to do so.

Senator ERVIN. I want somebody to find out something that can be proved. That is a broadside charge.

Here is what the figures show for the Northampton County. It shows that 74.2 percent—this is in the middle of last summer, months before the registration period ended—that 74.2 percent of all the blacks in Northampton were duly registered.

Mr. MITCHELL. That isn't the figure that I have, but even assuming——

Senator ERVIN. That is what the Commission on Civil Rights is quoting, the same thing you quote to put in here.

Mr. MITCHELL. I can rely on what Mr. Faison, who lives there, says.

Senator ERVIN. He didn't specify any township.

Mr. MITCHELL. He specified his own township. But in the hearing——

Senator ERVIN. He didn't name a single person, and I would challenge the fact that any schoolteacher has been turned down for registration in Northampton County.

Mr. MITCHELL. Mr. Chairman, I respectfully say that it is very unrealistic to take that position, in view of the long list of things that we have submitted. The problem is, when we submit the specific names you say, well, some other kind of reason why they were turned down, and maybe they didn't understand what the situation was.

If we don't submit the specific names, you say, well, you can't prove your case.

I think that it really is not quite cricket to take the position that there have not been Negroes turned down because of the failure to pass literacy tests.

For example, I have——

Senator ERVIN. Mr. Mitchell, I have lived in North Carolina all my life, and I think I am a fair-minded person. I try to be.

Mr. MITCHELL. I believe you are.

Senator ERVIN. I spent 15 years of my life trying to pass on the facts as a judge. I don't know a single case of a single individual who has been denied the right to register and vote in North Carolina who appealed to the authorities since I have been a Member of the Senate.

Mr. MITCHELL. Now, you see what you have done here. You have put in that a proviso, and this is what saves what you are saying. What you are saying, Senator, is that there might have been discrimination against them down in the precinct, but when they appealed to the State authorities they got a remedy.

Now, I don't deny that. I have, for example, this case which came from Bertie County, on page 510 of that record, in which we said a man named Riley Lee Mackie was denied the right to register. He was a Navy veteran and a graduate of State Teachers College. When we showed you his handwriting, you said, "Did you see Mackie write this?" And Mr. McLean said, "Yes, I saw Riley Lee Mackie write that."

"He wrote that along with another writing."

Then you said, "The reason I asked is that it is surprising, because it looks like a woman's handwriting. I presume Riley Lee Mackie is a man, by his name," and Mr. McLean said, "Yes, he is a man, and a pretty good-sized man."

Well, my point is that eventually Mr. Mackie did get registered after, as you say, he appealed to the State authorities. But this means that only a trickle of Negroes got registered under that process. The 1965 Voting Rights Act made it possible for a substantial number to be registered. I would say you will never really come to grips with this problem if every time colored people try to register to vote they must go up to the State, make out affidavits, come back to the place of registration and get registered.

Why not like everybody else?

Senator ERVIN. Mr. Mitchell, in a very large percentage of the counties in North Carolina, including my own, we allow people to register the entire year. They can go any day in the year and register. I have to say that I am rather proud of my State and I think it has been the policy of my State government, just like my own policy, that every man who is qualified to vote under the laws of North Carolina, regardless of his race or his religion or national origin or anything else, is permitted to register.

All of these things are fictitious now.

Mr. MITCHELL. Oh, no, Mr. Chairman.

Senator ERVIN. I want to show you what people have tried to do with North Carolina.

Way back in 1957, Attorney General Brownell, a member of the Cabinet of the United States, came down here with the voting rights bill. He said it was necessary to pass it because of the three instances in North Carolina that occurred in May 1956. One of them in one precinct in Greene County, another a precinct in Camden County, another in a precinct in Brunswick County. He said these people were denied the right to register.

He based it on FBI reports. I asked him for the FBI reports. He said, they are confidential. I said, well, I think it is a matter of fair-play that when an Attorney General of the United States comes down here and bases some testimony on FBI reports that the members of the committee are entitled to see them, to see whether he is making the correct interpretation. That same afternoon I called my State Board of Elections and I called the chairman of the county board of elections in those three counties, and I found in every one of those three cases that these people were orginally denied the right to register by the precinct registrar, that in every one of those three cases that they were reversed by the State board of elections, and the county board of elections, and they registered in time to vote in that primary.

When I found that out, I asked him to come back to the committee to testify and he wouldn't come. Then I asked him to tell me whether the fact that these things had been corrected were in the FBI report. I never could get any information on that point.

And yet, that is the way my State is slandered.

Mr. MITCHELL. Well, your State isn't slandered, Senator Ervin, because we came in afterward and presented a great many more cases. For example, we told you about the locked courthouse door in Bertie County. We told you about that young man I spoke of and 15 other persons being turned down in Currituck County; in Camden County, the registrar gave the dictation so fast that high school graduates couldn't pass; in Greene County, there was a man who had 22 questions in the Bullhead precinct in which he was asked, among other things, if the NAACP attacks the Government, which side would you be on? That is on page 509.

And in Northampton——

Senator ERVIN. When was that?

Mr. MITCHELL. This was in the hearing on page- ——

Senator ERVIN. What year?

Mr. MITCHELL. 1957.

Senator ERVIN. Oh, Lord.

Mr. MITCHELL. I can see what the problem is, Senator, when we have the specific record. It is disqualified.

Senator ERVIN. At that same time you brought a boy up from Halifax County and had him to testify that he had been a student at North Carolina College in Durham and he had attempted to register and they wouldn't register him. Also, to show economic discrimination, that he had given a check to pay his bill at a filling station and his check had been turned down.

Lo and behold, it turned out that his case had been tried. He brought a suit in the Superior Court of Halifax County, and his case was tried by a jury which included eight white jurors and four black jurors. They unanimously decided he had not been discriminated against. And lo and behold, it turned out further that the check he had drawn was drawn not on a white bank, but on Mechanics and Farmers Bank of Durham, which was headed by John H. Wheeler, who I am satisfied you know as a man of your race. And he was turned down for lack of sufficient funds by a colored man.

Mr. MITCHELL. You see, Senator, you are now doing what I hoped wouldn't happen in this hearing. That is really a diversionary introduction, because it does not alter the fact that on page 509 of the

hearing we told you about Bullhead County, and that was really a name that intrigued me.

Senator ERVIN. Bullhead what?

Mr. MITCHELL. Bullhead precinct in Greene County, where they had these 22 questions, one of which was if the NAACP attacks the Government, would you support the Government or the NAACP, and sometimes the question was, "If the NAACP attacks the Government, on which side would you be on?"

Now, this was brought to your attention, and it is true that the State officials intervened and corrected this. But this is another example of delay encountered by Negroes.

We also had Wake County. You brought up in Wake County the fact that Charles McLean is a registrar and he is——

Senator ERVIN. He is in Forsyth.

Mr. MITCHELL. That is right. That is Forsyth. In this particular county that I have reference to, Wake, there is a Zebulon precinct where, according to the records here—this happens to be a newspaper clipping—three persons took the examination while the sheriff and constable looked on, watching them take the examination.

After they failed the examination, one of your own officials, as indicated in this, one of these newspaper stories, said that he was amazed that the registrars had so much power, that there just wouldn't be any way to overcome the registrar's decision that a person hadn't passed.

Here they have the constable looking on and the sheriff looking on, and still they said the person didn't pass the test.

Senator ERVIN. What year was that?

Mr. MITCHELL. That was in—I will have to get that clipping. It is more recent. It was a newspaper clipping.

But, Mr. McLean, in a letter dated October 29, 1964, lists a number of these places, that is, counties, where these things have occurred, and he took them up with the State authorities, and as you have indicated, he did get redress for the specific people who were involved.

But the important thing is that you do not affect the masses of the people, whereas under the Voting Rights Act we have reached the masses of the people, and this is what has made it possible to get the voter registration increased.

I would like to offer, if I may, Mr. McLean's telegram which is October 23, 1964, which is addressed to Mr. Roy L. Powell. I guess maybe you know who he is. He is in post office box 254.

Senator ERVIN. He was chairman of the board of elections of one of the counties there, I believe, in Northampton.

Mr. MITCHELL. Mr. McLean says: "Several Negroes were at the polling place in Lewiston, N.C., Bertie County, October 24, 1964, for the purpose of registering. At 5:29 when the registering closed, they had not had a chance to register. Some arrived before noon. I observed the delay by their registrar, taking about 3 hours to examine two Negroes, then only ruling one was qualified. The Attorney General has ruled that the persons waiting to register, when registration closes, are entitled to an opportunity to register."

Now, as you have indicated, when your State officials heard about that they intervened and made it possible for those people to be taken care of. But they had to fill out affidavits in order to be allowed to register.

Senator ERVIN. That is the one you told us about again. That is not a new incident.

Mr. MITCHELL. He says the same thing happened in Camden, Caswell, Currituck, Franklin, Granville, Hyde, Lee, Martin, Nash, Northampton, Pamlico, Pitt, Person, Tyrrell, and Warren. This is in a letter that I would like to offer for the record, if I may, and in which he indicates that you have got the same kind of problem.

Now, we can't go on just indefinitely assembling lists of people. It seems to me we made a good-faith effort to show that in some of these areas there is this problem. It can be pretended that it doesn't exist, but the fact is that the Negroes are there. They try to register. They do not get registered unless the Federal law makes it possible.

Senator ERVIN. The fact is, also, you can't name me a single person in North Carolina who was denied the right to register and vote since 1960.

Mr. MITCHELL. Oh, no. You see, you are changing your position on that.

Senator ERVIN. No; I am not.

Mr. MITCHELL. You said at first that I could not name you a single person who had been denied the right to register who did not get redress by going to the State authorities. Now, if I understood you this time, you are saying that since 1960, I can't name anybody who was denied the right to register.

Well, this is 1964 that I just raised, and all these Negroes were denied the right to register.

Senator ERVIN. You don't have a specific instance there. You enumerated as an instance of blacks at Lewiston in Bertie County, and it appears that the State attorney general ruled they were entitled to register and vote, and they were registered and voted.

These other things—this happened here and there and everywhere, and nothing specific. Now, none of these things happened after they came to the attention of the State board of elections. The State board of elections handed down a ruling that a person could not be required to answer any questions about his understanding or about such things as whose side he would be on between a war between the NAACP and the Government, etc. That all one could do would be to give him a piece of paper with a printed sentence, one sentence from the Constitution, and a blank line to copy it there. I say that under the literacy test as administered in North Carolina, several years before the Voting Rights Act of 1965 was passed, that anybody who had gone as high as the fourth grade in school could pass the literacy test as administered in North Carolina.

Mr. Mitchell, I don't see how, if that is true, we have the kind of situation that Mr. McLean has described and the kind of situation that Mr. Faison has described in Northampton County.

Senator ERVIN. Mr. McLean testified under my examination that in every instance where he called these matters to the attention of the State board of elections, they had been corrected.

Mr. MITCHELL. Well, that is true, but this is a very onerous thing to inflict on Negroes, that if a white person goes there he gets registered. If a Negro goes there, he has to appeal his case to a State board, fill out an affidavit, and then go back and get registered.

Now, if you won't admit——

Senator ERVIN. You don't have to do that.

Mr. MITCHELL. Well, you don't have to do it now because of the 1965 Voting Rights Act. It is just a difference between having a policeman on the corner when a fellow is getting ready to commit an assault, and not having one. The Federal Government is in the role of the policeman and, of course, as long as the Federal Government is there, they are going to act right. But you take away the Federal Government by permitting this ban against literacy tests to expire and you will have them back there visiting their lady friends behind the locked doors of the courthouse.

You will have them denying Navy veterans the right to vote. You will have registrars giving fast dictation so that Negroes can't pass, and Bullhead, with 20 questions about NAACP, and the war.

Senator ERVIN. You have been in the past so far and now you are going into the future.

Mr. MITCHELL. There is a question that those who do not study the past may be condemned to live it in the future. I do not want to be in that position.

I think it is clear, Senator, that you have got a lot of wonderful people in North Carolina, and I have the good fortune to have a daughter-in-law, a beautiful girl, who comes from the State of North Carolina. So I have some personal connections with the State and some interest in it.

But I am not blind to the fact that in the State of North Carolina, say, if you are in Winston-Salem things are great, but if you get out into some of those counties things are different. I have here, a place where it is called Knightdale, which according to the Raleigh News and Observer, February 15, 1967, is the most popular meetingplace for the Ku Klux Klan. Literally hundreds of Klansmen come there all the time to stage their festivities. The paper published a picture of a burned out cross, and that kind of thing.

I think you would certainly think that would not be a very healthy place for Negroes to be asserting the right to vote.

Senator ERVIN. That is in Wake County, and I would say Negroes have been registering and voting in Wake County without hindrance as far back as I remember Wake County.

Mr. MITCHELL. In Raleigh in Wake County.

Senator ERVIN. I will also call attention to the fact that under the Voting Rights Act, if less than 50 percent of the population of a county failed to vote, then it came under the Voting Rights Act. Wake County, which is a strong Democratic county, usually votes in the primary, and they failed to vote 50 percent in the general election. But to get them on the 50 percent provision the Census Bureau had to go down there and count everybody in the State's prison, most of whom didn't reside in the Wake County area and couldn't have gotten to the polls without going through the walls of the State prison.

They counted all of the patients in the North Carolina hospital for the mentally ill, Dorothy Dix, most of whom came from other counties and who couldn't have voted under North Carolina law because of their infirmity even if they got to the polls. And they counted the college students. The Department of Justice, which is not very merciful in these cases, thought that was just a little bit too rank, so they exempted Wake County from that Voting Rights Act.

Mr. MITCHELL. Could I ask you what year you said Negroes had been voting in Wake County, since what year?

Senator ERVIN. As far back as I remember Wake County.

Mr. MITCHELL. On page 516, it said for three Negroes trying hard to vote, the answer was still no today. The answer came for the second time in a week to Walter Holden. It came at Zebulon City Hall in the late afternoon under somewhat tense surroundings.

This time three Negroes were told they could not register for next Tuesday's election after taking the test in reading and writing of the State constitution. Last Saturday the three complained they had been refused even the right to take the examination. Because of their protest the chairman and members of the Wake County Board of Election came to Zebulon Tuesday afternoon. Chairman James C. Little, Jr., and Republican member William Briggs were here. Little had said earlier to see that Negroes got a proper examination and if they could pass that proper examination they would be registered.

While a deputy sheriff and constable looked on, the three Holdens took that examination from the registrar, Mrs. I. D. Guild. When the tests were over, Mrs. Guild delivered the verdict. All three were disqualified and Chairman Little had to admit that there was little the board of elections could do about the refusal. He said, I got a little lesson in election law today. That lesson is the registrar is the sole judge of a person's fitness, education, or otherwise, to cast a ballot in North Carolina.

Now, you can say that they never denied the Negroes the right to register, but the record speaks otherwise.

Senator ERVIN. What year was that?

Mr. MITCHELL. The hearing in 1957. I admit, in Raleigh, where things are very fine, they do have a large number of Negroes registered, but in the surrounding area, the county where Negroes also live, that is where we have got the problem.

I certainly have no desire to reflect on the State of North Carolina. I just feel that these things ought to be brought out, because it would be my prediction that if we do not allow the voting rights law to be extended, we will be right back in the conditions that we faced before. I would also predict that the Negroes will not take that, and I don't blame them for not taking it.

I think if we go back to a situation where registrars did give fast dictation, or somebody would come up and say we will lock the courthouse door so you can't get in, I think there are some Negroes who would break down that courthouse door and I can't say I blame them.

Senator ERVIN. The North Carolina State Board abolished all such practices as that before the passage of the Civil Rights Act of 1965. We have approximately 2,300 voting precincts in North Carolina. North Carolina people feel the way I do. Anybody should be allowed to vote who is qualified. But we do feel that our legislature ought to be able to pass a law, which it has the power to pass, without permission from the Attorney General of the United States. Sovereign States have to come up here, hat in hand, to beg the Attorney General of the United States, an executive officer, who has no judicial capacity, to make new laws.

Mr. MITCHELL. I would just agree with that, because as you know, the law provides an alternative remedy. A State can either go to the Attorney General or it can petition in court for relief under the law.

It seems to me that when you consider all of these things that these same people have done to the Negroes, how they have spent the State's money for the purpose of discriminating against them, how they have not given them fair opportunities in court, I think that they are getting off very light when they have an opportunity to come up and present it in court or to the Attorney General.

I don't think they have to come up here, hat in hand, as American citizens, to a legitimate American forum and seek redress in an orderly way for what they consider to be a grievance.

Senator ERVIN. I understand you approve of the law, but the people who voted the Declaration of Independence gave as one of the reasons the United States should secede from England, that we had to get permission from people over in England to carry our laws into effect.

Furthermore, I don't think it is a very nice to nail shut all the doors in the Federal judiciary in North Carolina and in other States and make people journey anywhere from 200 miles to 1,000 miles to get access to a judicial tribunal. I think that is prostitution of judicial process, that it is inconsistent with fairplay, and it is rather an insult to the Federal judiciary.

Mr. MITCHELL. No, Mr. Chairman, I don't think it is. I think we may as well get down to the facts of this matter. Attorney General Brownell, when he came in here to ask for passage of the Voting Rights Act of 1957, testified that they had a criminal statute for prosecuting people who denied others the right to vote, but they couldn't get convictions.

So he asked for civil remedy and he got it.

After he got the civil remedy it was necessary to come back to the Congress of the United States to get another law passed because voting officials were throwing away all of the voting records so the Attorney General and the Justice Department couldn't find out what had happened. Then we amended the law to preserve the voting records.

Then the States devised some other program for keeping Negroes from voting by these complicated questions, and things of that sort. So that the Congress finally did what a Congress ought to do: that is, it recognized there was a wrong and it provided a remedy. It faced up to the fact, I am happy to say, that one of those judges, even though they are Federal judges, in many cases are not going to give a fair consideration to this kind of a problem. The mere fact that they don judicial robes does not put them in a position where they are going to divorce themselves from the customs of their communities.

This is a fact of life. I think in facing that fact, the only thing that Congress could do would be to try to provide a forum where there would be impartial treatment.

Senator ERVIN. I can't conceive of Frank Johnson of Montgomery not being fair, or Judge Albert Tuttle.

Mr. MITCHELL. They are exceptions.

Senator ERVIN. But you came up here and I am not going to mention the names of all the judges.

Mr. MITCHELL. I certainly can conceive of Judge Cox being in the unfair category in Mississippi.

Senator ERVIN. The Attorney General of the United States Brownell, came down here and said he couldn't get a conviction of a criminal

statute anywhere in the South of an official violating the election law, and I asked him the question, have you ever tried to get one, and he said no.

Mr. MITCHELL. That is right, and the reason he had——

Senator ERVIN. The same thing was testified to by Mr. Rogers, his successor, now the Secretary of State. It was testified to by Attorney General Kennedy. It was testified to by Attorney General Katzenbach, if I recall the record, and by Attorney General Ramsey Clark.

I put to each one of them whether or not they tried to get a conviction in a criminal case for denial of the right to vote, and they all admitted they hadn't.

Mr. MITCHELL. There are two factors involved in that. The first is that other attorneys general have tried to get criminal convictions and didn't. In addition, I think we have just got to face the fact that it is very hard for a white man in the United States to put another white man in jail for denying a Negro the right to vote.

Now, I think it is an uncomfortable fact of life we have to face, and we have faced up to it by proposing the alternative, which is a civil proceeding where you don't have to put anybody in jail, which is a court order which requires them to act.

But even with those court orders, Congress had to come back and provide a further remedy. So that whatever is happening in this situation now is the logical result of a pattern of continued and unmitigated defiance of law on the part of those who are covered by this statute.

Senator ERVIN. I don't believe there has been any finding of this sort.

Mr. MITCHELL. What about the *Gaston County* case?

Senator ERVIN. The *Gaston County* case. I know Gaston County well. I live within 53 miles of it. Everybody who is familiar with Gaston County knows that the blacks in Gaston County vote Democratic, and they know that the Democratic registrars have put every one of them on the registration books, and there has been no discrimination.

Mr. MITCHELL. The case said they had been discriminating against Negroes for 25 years in the manner of education and then had expected them to pass the literacy test.

Senator ERVIN. Here is what Judge Gash said in his opinion on page 690 of *Gaston County* v. *United States of America*, reported in 288, Federal Supplement.

Mr. MITCHELL. I was speaking of the Supreme Court.

Senator ERVIN. He said, indeed, there is no evidence of any Negro who has been denied registration because of his race.

Mr. MITCHELL. I was speaking of the Supreme Court case, and in the Supreme Court decision it was held that the State had been denying Negroes educational opportunity, on the facts of the case, for 25 years, and it was unfair to ask them to pas a literacy test. For that reason Gaston County couldn't get out from coverage of the Voting Rights Act.

Senator ERVIN. That is what Judge Gash said.

Mr. MITCHELL. It is true, but that is a lower court.

Senator ERVIN. Gaston County was included because of this 50-percent voting provision.

Mr. MITCHELL. That is right.

Senator ERVIN. Now, I think you concede that there is no way that you can compel a man to come out and vote.

Mr. MITCHELL. There is no way you can compel him, but there are a whole lot of ways you can keep him from voting, and North Carolina is an expert in all of them.

Senator ERVIN. That is an assertion without evidence.

Mr. MITCHELL. It is an assertion based on this record. What about locking the courthouse door, the fast dictation, the 22 questions asking whether you would go to war against the Government of the United States on the side of N.A.A.C.P.

Isn't that a fact?

Senator ERVIN. You can register every person in the county, but there is no way you can make 50 percent of them come out and vote.

Mr. MITCHELL. You can go out and get them, but——

Senator ERVIN. So you have an artificial presumption. I maintain there is no rational relation to the fact of less than 50 percent coming out and voting and discrimination. You can give Gaston County this artificial presumption, and anybody who knows anything about Gaston County, as I do, knows that there has been no discrimination in voting against Negroes in Gaston County within the memory of any living man.

Yet, we have Gaston County, by an artificial presumption, violating the 15th amendment. I would say that does not tend to give people knowing the facts very much confidence in the Voting Rights Act of 1965 or in the Federal judiciary.

Mr. MITCHELL. Well, I would say your version of that undoubtedly is based on your knowledge of the State of North Carolina. But I would say also, on the basis of this record, where we went into detail, giving what had been happening in the past and where we bring it up to date about what is happening as late as 1964, it certainly seems to me to be very clear that something is wrong down there which is keeping those people from registering.

The fact is, when we passed the 1965 Voting Rights Act, the registration began to increase. It began to increase because we no longer had these people who would give this fast dictation or lock up the courthouse door with the lady friend, and that kind of thing. You have a situation where you can bring in the Federal Government to assist in the registration process.

Senator ERVIN. The figures show that in 1967, there was no overwhelming registration of members of your race in North Carolina. There were only 19,404.

Mr. MITCHELL. In what year?

Senator ERVIN. In other words, in 1962—go back a little—according to the Civil Rights Commission, there were 258,000 Negroes registered in North Carolina. In 1967, after the Voting Rights Act had been in effect for approximately 2 years there were 277,404 Negroes registered in North Carolina, making a difference of only 19,404 people brought on the books.

Mr. MITCHELL. Do you have the figure?

Senator ERVIN. Undoubtedly that many blacks became 21 years of age between 1962 and 1967.

Mr. MITCHELL. Do you have the figure for Northampton County, Senator, because there is a Black Belt county, and I have from Mr.

Faison, as late as last night, that as of now 47 percent of the Negroes are registered.

Senator ERVIN. Well, your thinking is very much out of harmony with what the Civil Rights Commission put in evidence, because they showed in Northampton County at the middle of last summer, which was several months before the registration period closed and several months before the general election was held, that the percentage of Negroes registered in Northampton County was 74.2 percent.

Mr. MITCHELL. I said these are 47 percent of the total of all races. That is what Mr. Faison told me last night.

Senator ERVIN. Either he or the Civil Rights Commission is haywire.

Mr. MITCHELL. It shows that there has been an increase in that Black Belt county, where formerly they were denying Negroes the right to vote by asking a whole lot of questions, and now there has been an increase since we got the 1965 Voting Rights Act.

Senator ERVIN. I am just pointing out, or trying to, that all this talk about 800,000 new Negro registrations in the South is the result of this act, is to a large extent an insupportable fact, because in North Carolina there was an increase between 1962 and 1968, according to these figures of the Civil Rights Commission and other available evidence, of from 248,000 in 1962 to 305,000 in 1968, which was an increase of only 47,000.

It stands to reason that a large part of that increase was people coming of age.

Mr. MITCHELL. I think all that shows, Senator, is that in spite of the fact the we got our Voting Rights Act, there are still some officials in North Carolina who are probably trying to keep people from voting. I think Mr. McLane's material and the other things that I refer to show that even though the law has been passed, there are still people trying to throw monkey wrenches and prevent registration.

I think what is needed is heavy assignment of examiners down there in order that we can give everybody who wants a chance to register an opportunity to do so, so we won't have the kind of situation like what happend to those 25 people who were outside and had been out there since noon in that precinct, but they weren't allowed to register until somebody sent up to the State to get permission.

Senator ERVIN. The figures given by the Civil Rights Commission show that there are almost 4,500,000 white people of the age of 21 years and up, or the age of 18, counting Georgia, that are not registered. Now, why are they not registered?

Mr. MITCHELL. You know, a long time ago I learned a very important lesson from you. In a hearing somebody made an observation that he was speculating on. You said, you can't go inside people's heads to find out why they don't do things. Well, I can't go inside the heads of those white people and find out why they didn't register.

But I do know that in the figures which the Civil Rights Commission has submitted, they show a number of counties in your State where the white registration is 100 percent. They say 100 percent in Bertie, they say 100 percent in Northampton, 100 percent plus, whatever that means.

Senator ERVIN. There are approximately 500,000 white people in North Carolina now registered. Caldwell County shows 100 percent plus, of Negro registration. On the first page of the North Carolina

material that is from the Civil Rights Commission there is no white county which has that registration.

Mr. MITCHELL. Caldwell?

Senator ERVIN. I beg your pardon, Allegheny County and Bladen and Bertie and Brunswick. Then it shows also in Catawba County you have more than 100-percent registration of blacks there.

Mr. MITCHELL. In Caldwell County they have got 25,520 white people and 1,723 colored people. So I don't think that shows much, if 1,723 got registered, but what would distress me is in these other counties where you have a large number of Negroes who outnumber the white population and still the Negro registration percentagewise isn't as great as the white.

Senator ERVIN. Before we go any further we should stop this thing. I don't think we are shedding much light, either one of us.

But we have got 1,723 Negroes in Caldwell County of the age of 21 years and 1,957, which is approximately 250 more than that registered. That is doing pretty good.

Mr. MITCHELL. Well, I think I can also give people a plus for exceeding the number of registered voters on the rolls.

Senator ERVIN. In Hartford County, there are 3,296 black of the age 21 years and up, and 4,591 are registered, making far more than 100 percent. So there is surely no discrimination in those two counties.

Mr. MITCHELL. I wouldn't want to let the record pass without differing with you on whether or not we are shedding light on this question. I would say I think that has been a million candle power light on the State of North Carolina, and it ought to be possible for people to see, on the basis of what I have said, that there has been extensive discrimination against Negroes by giving them fast dictation, locking up the courthouse doors, making them answer foolish questions, and that kind of thing, and the only thing which saved the situation is the passage of the 1965 Voting Rights Act.

Senator ERVIN. The light that you shed on the subject—we went back about 12 years to shed it—and then you have got into the future. I have a high respect for your attainment, but I don't believe you are gifted with prophetic power.

Let me ask you one more question. Now, this 50-percent device, would you be willing to change this law and provide that the formulas be based upon the 1968 election rather than the 1964 election?

Mr. MITCHELL. No; that would be a fatal mistake, because that would exclude just about everybody and it would be the equivalent of giving an amnesty to everybody in jail, letting them out, because the fact is that just about all of the worst discriminators who are now covered by the law would not be covered if that were done.

Senator ERVIN. In other words, what was a sign of racism, the test of racism, in 1964 would not be applicable to 1968?

Mr. MITCHELL. It only shows they have been on good behavior while their conduct is covered by the law. I think we don't have sufficient proof that if we remove the law that the improvement in conduct will continue. I think if we are going to——

Senator ERVIN. That is also an exercise of your prophetic power.

Mr. MITCHELL. It is not an exercise of prophetic power. This is based on experience. When you have to do as I do down there in South Carolina, go through the Ku Klux Klan when they seem to be in control,

and when somebody suggests don't stand on the outside of the car on this dark road because you might get shot—I don't think there is anything prophetic about that. This is a grim reality.

Senator ERVIN. That is back into the past.

Mr. MITCHELL. This was just last year.

Senator ERVIN. Well, thank you very much.

I would like to reiterate that I think a man of any race ought to be allowed to vote, and any man that denies him that right should be put in prison for it. But I do think it is very unfortunate that we have to have a few States picked out for discriminatory legislation. They allow crapshooters and moonshiners and murderers and other people to be tried in localities where their crimes are committed, but they don't allow Southern States to have trials in the nearest court.

I think, as I said before, that is about the shabbiest form of due process law ever devised. This is supposed to be a civilized society.

Mr. MITCHELL. I think that crapshooting and all those other things, while serious crimes, do not begin to approach the seriousness of the offense of denying the people the right to vote in a democracy, and I think it is clear that the only way we are going to remedy this problem is to have some applications on the law that would be more effective than those we have had in the past. This has been effective.

Senator ERVIN. To nail shut the door of the temple of justice?

Mr. MITCHELL. I would like to ask you, Senator: Is there any difference between nailing shut the temple of justice and locking the door so Negroes can't register to vote in North Carolina?

Senator ERVIN. Yes; that was done by some recalcitrant individual down in North Carolina, and this is done by the Congress of the United States. I think it is a whole lot less evil for one individual to lock the door of his office than it is for the Congress of the United States to lock the doors of the courthouses.

Mr. MITCHELL. That depends on whether you are the man who is denied the right to vote. I think the man denied the right to vote is in the worst position, being locked out of the courthouse.

Senator BAYH. Mr. Chairman, are you going to let the witness finish his statement?

Mr. MITCHELL. I have finished. I would just like to ask that it be included in the record in the event that I left anything out.

Senator THURMOND. Mr. Chairman, I don't have very many questions.

Mr. Mitchell, on page 7 of your statement you said, concerning South Carolina, "Even without the sanction of law, slowdowns, indifference, and hostility have been used to keep down registration. Barnwell County, S.C., is a good illustration of how unofficial efforts to intimidate have been used to back up official action. In 1965, large numbers of would-be colored registrants were kept waiting in a line and finally not permitted to register. Some of those who were not permited to register began picketing and were arrested on a charge of parading without a permit. The Negroes then staged a register and vote rally in an open field. At the same time the Ku Klux Klan held a rally beside the main road that the Negroes had to use going to and coming from the rally."

Is that your statement?

Mr. MITCHELL. That is my statement, Senator.

Senator THURMOND. After learning of this statement, I called a member of the legislature from Barnwell County, the Honorable Solomon Blatt, who incidentally is speaker of the house of representatives of South Carolina and lives in Barnwell County and who knows the situation in Barnwell County firsthand. Mr. Blatt is of Jewish descent, a very fair, able, and fine man and is highly respected. He has been speaker of the house longer than any man in the history of South Carolina. Mr. Blatt said your statement is false. Mr. Blatt stated that he also conferred with Senator Edgar A. Brown, the State senator from that senatorial district.

Mr. MITCHELL. I know him.

Senator THURMOND. And Mr. Brown takes the same position and substantiates his statement. Mr. Blatt says that he and Mr. Brown both were around there, that the FBI had agents there, that there were two Federal registrars there, the chief of the South Carolina law enforcement division was there, and that they had 20 registration officials from that county present to register people.

Mr. MITCHELL. That is after we had brought it to the attention of the Department of Justice. That is true. Now, I am glad that you mentioned Mr. Brown, because he was the chief offender. It was Mr. Brown who not only interfered with the Negroes who were trying to get registered in the first instance, but he even attempted to make it impossible for us to get examiners. This is all documented in the South Carolina papers and I would be happy to submit for the record the clippings bearing on this.

Insofar as a meeting is concerned, Mr. Blatt may say my statement is false, but it doesn't make a bit of difference to me what he says, because I know, I was there, I went down to Barnwell County, I was in that field, I saw the Ku Klux Klan and I, of my own knowledge know that registering the Negroes did not happen until after we had brought this matter to the Department of Justice and the Department of Justice intervened. Now, they can say whatever they please. I couldn't care less. But I know the fact is that they are the worst of the discriminators. Mr. Blatt has been trading on the fact that he is a person of the Jewish faith for years. He comes up here and opposes the civil rights bills, but that does not excuse him because he is Jewish no more than it excuses the Negro for discriminating. I think it shameful that he tries to hide behind the fact that he is a member of a minority group while being a party to the kind of discrimination that we have experienced in the State of South Carolina.

Senator THURMOND. Did you see anyone denied the right to register when you were down there?

Mr. MITCHELL. When I was there it was on a Sunday and it was the day the meeting was held. But the information on what was going on was supplied.

Senator THURMOND. Do you know of anyone denied the right to register in Barnwell County or any other county in South Carolina?

Mr. MITCHELL. I will say it this way: The Rev. I. D. Newman, who was the State Secretary of NAACP at that time, furnished the names of those in that particular group who were denied registration. They turned this over to the Department of Justice and it was because of that documentation that the examiners were assigned. I did

not see this with my own eyes, but if records mean anything, the fact that it was submitted to the Justice Department and there were pictures in the newspapers showing these Negroes waiting in line, certainly seems to me to be evidence. Of course, we can pretend that it doesn't exist. But I feel this is what we have been up against all the time. Somebody gets hurt and killed and people say, well, he just fell over a cliff. He wasn't really murdered. This is the way things go.

Senator THURMOND. I understood Mr. Blatt was very friendly and is very friendly to the Negro, and I am amazed to hear what you say about him.

Mr. MITCHELL. I haven't felt he was friendly when he came up here and testified against the civil rights bill.

Senator THURMOND. Mr. Blatt also said that the registrars helped the people to register there until after the time for closing. He kept the office open for longer than usual in order to register everybody.

Mr. MITCHELL. After the Federal Government got after him, that is right.

Senator THURMOND. He also said at the time the office finally closed there was no one there who wanted to register. He also said—and the question was asked twice, if anyone wanted to register and that no one said they wanted to register. There were no other people there to register when the office finally closed after being kept open longer than the usual hours.

After they finally closed registration he says that a carload of people came up and said they had been denied the right to register, and he said that an FBI agent who was nearby said that that was not true, that they had not been denied the right to register, and they got the impression that this carload of people waited until after the office had closed and then came up and pretended they had been denied the right to register, and that was when the FBI agent said that they had not been denied the right to register.

Now, that is Mr. Blatt's statement and I shall try to get a written statement from him or have him come up in person if you deny it. Do you deny his statement?

Mr. MITCHELL. I am not going to answer that question that way. I will reaffirm what I have said in my testimony, and I offer to come up here before this committee with Mr. Blatt to reaffirm what I have said under oath. I challenge him to do the same thing and turn that over to whatever prosecuting agent there is to indict the giver of false information for perjury.

Senator THURMOND. I have just gotten word that Senator Brown said that he will be willing to prepare a statement and send up or come himself.

Mr. MITCHELL. That would please me.

Senator THURMOND. I shall request the chairman to allow Senator Brown and Speaker Blatt to appear here as witnesses if they can come, and if not, then to file their statements, Mr. Chairman, if that meets with your approval.

(See Mr. Brown's statement in the appendix.)

Mr. MITCHELL. I repeat my offer, Senator Thurmond, that I still stand by what I have said in this statement under oath.

Senator THURMOND. Now, I want to also say that Speaker Blatt says there was no Klan rally at Barnwell.

Mr. MITCHELL. I was there.

Senator THURMOND. Whatever kind of rally, it was at Swansea rather than Barnwell on the way down rather than at Barnwell where this registration was going on.

Mr. MITCHELL. Well, I will tell you, Senator——

Senator THURMOND. Think well, now.

Mr. MITCHELL. I am going to think well, and I always do. I am not an expert on the geography of South Carolina.

Senator THURMOND. You were in Barnwell and you say there was a Klan rally there. I want to know whether you stand by that or not.

Mr. MITCHELL. I got off a plane in Columbia, I believe it was. Rev. Newman picked me up in a car. As I understand it, that was the only road that you could use, and I saw with my own eyes a big red banner of the Ku Klux Klan inviting everyone to the meeting, and I saw with my own eyes various officials around advertising it. I got a little flier which said there was going to be a rally.

On the way back that night we had to come back that same road, and we got to some community where, as I said, these Klansmen were all out in force and in uniform. I saw that with my own eyes.

As I said, I am not sufficiently expert.

Senator THURMOND. I am asking you if the statement you make that there was a Klan rally at Barnwell was correct or if, upon reflection, that could have been some other place and not where these people were registering? You give the impression that the Klan was intimidating the people there to register and if the Klan rally was not even held at the place of registration, then how can——

Mr. MITCHELL. Let me reread this. The Negroes then staged a register and vote rally in an open field. At the same time the Ku Klux Klan held a rally beside the main road that the Negroes had to use going to and coming from the really.

I didn't say it was in Barnwell County, but I couldn't miss it— at least I didn't miss it on the way to the rally, and I was told by our NAACP counsel, who was also with us, that this was the only road that you could take to get from Columbia to the site where we held the rally in Barnwell County.

Of course, it is entirely possible that the county line is 2 feet from where we held the rally in Barnwell. The Klan might have gone that 2 feet and been in a different county, but geographically and physically that didn't make any difference. People could see them.

Senator THURMOND. They were there close to the registration?

Mr. MITCHELL. I didn't say the registration. I said the voter registration rally was held at a place where you passed the Klan in order to get to the open field in Barnwell County.

Senator THURMOND. Now, Mr. Mitchell, think well. Now, as a matter of fact, you don't know, or if you do know—that that alleged rally was held in another county, in the next county which was 30 miles away.

Mr. MITCHELL. Oh, no, no, no. The fact is that we passed through it, whatever it is, and it was related to the fact that we were down there on the register and vote tally. You have the advantage of me, of course, because I am sure as a Senator from South Carolina you know intimately the geography of the State of South Carolina. But to a person who is faced with the Ku Klux Klan holding a rally, it

doesn't make any difference whether the rally is 2 feet away or 100 yards away. The fact is that a rally was held and simultaneously with the register and vote mass voting which the NAACP was holding.

Senator THURMOND. You were there and saw it.

Mr. MITCHELL. I was there.

Senator THURMOND That was a Sunday?

Mr. MITCHELL. It was a Sunday.

Senator THURMOND. That was the day they were registering people?

Mr. MITCHELL. I did not say that. I said that was the day the rally was held, and the rally, incidentally, was held after all this.

Senator THURMOND You gave me the impression that you were down there and Negroes were denied the right to register. Now you say it was another day entirely.

Mr. MITCHELL. I didn't say "Niggers," I said "Negroes."

Senator THURMOND. Negroes, then.

Mr. MITCHELL. In any event, the fact is that there have been a long series of acts which denied these people the right to vote. They were on the phone almost every———

Senator THURMOND. I am not speaking about any alleged—I am asking you about specific facts that you mentioned.

Mr. MITCHELL. I am talking about specific facts. There were a long series of telephone calls from South Carolina to me and from me to the Justice Department in which we were begging the Justice Department to send examiners down there in that county. The newspapers were full of the stories and I can supply those accounts. It was only after we had been insisting that something should be done that we held this rally for the purpose of letting the people know that we were going to stick with them in their right to vote. That was the purpose of the rally, and of course it was held on a Sunday. I didn't say there should be any registration on Sunday or that they have been denied the right to vote on Sunday. I said that there was a rally and that is exactly what happened.

Senator THURMOND. Don't you know that the people who go to Barnwell to register would not go in the next county and come back into Barnwell to register?

Mr. MITCHELL. I don't know where they would go.

Senator THURMOND. That doesn't make sense, and if anyone knows the geography as I know it he will know it doesn't make sense.

Mr. MITCHELL. I think it makes sense that if you live there you would register in Barnwell County. I also know there were a lot of people there who were not from Barnwell County. They came from all over, and I would assume many other areas were involved.

As a matter of fact, the Justice Department assigned examiners to another county down there before they assigned the examiners to Barnwell.

Senator THURMOND. Now, in your statement you urge the continuation of the status quo.

Mr. MITCHELL. Which page?

Senator THURMOND. In your statement you urge this voting rights bill of 1965 be continued. You urge the continuation of the status quo, which is arbitrary and political punishment of a certain portion of this country. If the Congress goes along with you on this that

would mean that Negroes would be subject to literacy tests in all but a few of the States. Don't you have any concern for those Negroes who may be discriminated against in all of the other States of the Union?

Mr. MITCHELL. Well, Senator, I am concerned about all people who are denied the right to vote, no matter what their race.

Senator THURMOND. Would you object to this bill being applied nationwide, to every State?

Mr. MITCHELL. May I answer your first question first. Let me say that I asked for what page it was you had reference to, and you said I was advocating the status quo. I realize you are just distilling that out of my entire statement.

Senator THURMOND. The voting rights bill.

Mr. MITCHELL. If I may formulate it, I would say we are asking for the continuation of a voting rights statute which has been wonderfully effective in getting people the right to vote. I would say that it is unfortunate on the part of the advocates of the administration bill to pretend that there is something wrong up in the State of New York or the State of Maine where you only have a handful of Negroes, which makes it necessary now to come in and revise the voting rights law in a way that would apply to the whole country. To be honest with you, Senator, because it is the only way I know how to be, it is clear that this is being done by the Nixon administration as the means of saying to you—because you—because you left the Democratic Party and are in the Republican Party—that we are going to do things the way Senator Thurmond wants them done. This is a free country. I don't quarrel with the President for saying they are going to stand with you in your approach to civil rights matters. But I would say that the Voting Rights Act is a thing which has been made necessary by the kind of troubles that we have had in South Carolina. We haven't had those troubles in Maine. We haven't had those troubles in New York. It just doesn't make sense for people to come in here——

Senator THURMOND. If you would confine your answer to what I asked you it would save time.

I want to ask you this now: Do you ascribe an ulterior motive to the Nixon administration in advocating that this bill apply nationwide to all States and all people alike rather than to a continuation of a punitive measure that applies to only a few States?

Mr. MITCHELL. First I would say the measure is not punitive. It is a proper measure. It is legally correct. I would say that regardless of whether the Nixon administration has an ulterior motive or not, a disastrous result would follow if this Voting Rights Act were to expire. I would say once we have extended the voting rights law, then it seems to me all of these noble objectives ought to be adhered to and we ought to see how they could become the law.

Senator THURMOND. You can save a lot of time if you just answer what we ask you.

Mr. MITCHELL. It is not possible.

Senator THURMOND. I realize you are on the podium and you want the television and all those other things, but we have got other things to do. We want to get through.

Senator BAYH. If the Senator will yield. I think the witness is completely legitimate. I think the Senator is within his realm to pursue

this question, but I think it is totally unfair to ask the witness to be——.

Senator THURMOND. Senator Bayh wants the limelight, too. He is running next year, but that is not the question.

Senator BAYH. Senator, I don't run for 6 more years.

Senator THURMOND. I beg your pardon. It is the other Senator. But you are getting ready when the time comes.

Senator BAYH. The Senator from South Carolina doesn't want the limelight.

Senator THURMOND. I will ask my questions and then the distinguished Senator from Indiana can ask his questions.

Senator BAYH. I will be glad to, but I don't want to sit here and deny the witness the right to defend himself.

Senator THURMOND. I am not going to deny this man of any rights. I have never tried to deny anybody of any right. He has a right to answer questions, but at the same time, there is no use in going around the world on every question asked him.

Senator BAYH. That is a matter of interpretation as to whether he is going around the world.

Mr. MITCHELL. May I just interrupt and say this?

Senator THURMOND. I haven't asked you a question.

Mr. MITCHELL. No, I am just making an observation in a friendly spirit.

I can say I understand from your point of view the way you asked me the question would undoubtedly support your argument. From my point of view I want to give an answer that will support my view. It will always be that way.

Senator THURMOND. I think you have supported your position very well.

Mr. MITCHELL. Thank you.

Senator THURMOND. Now, the witnesses who have appeared before this subcommittee have said if the present law is allowed to die a natural death as the Congress intended, then certainly all Negroes now registered and voting would be suddenly removed from voting status. This reasoning and this suggestion cannot stand up under examination. In South Carolina, and immediately prior to the general election of 1968, there were 200,778 Negroes registered. In that election 187,486 votes were cast for the Humphrey-Muskie ticket. It is evident based on close observation of this election that most of the votes received by the Democratic standard bearer were cast by Negro voters. However, the voters also voted for local and statewide offices and may of the present officeholders in South Carolina, including the general assembly, which is the lawmaking branch of the government, which were elected by all or a portion of the voters that voted for the national Democratic ticket.

To argue or even to suggest that politicians who were elected by the Negro voters in South Carolina are suddenly going to commit political suicide by taking the vote away from their supporters is blatently absurd and politically untenable.

You should be knowledgeable in the area of politics, Mr. Mitchell, and I am surprised that the witnesses here have overlooked this elementary fact of political life, aren't you?

Mr. MITCHELL. No, sir; and I would like to call to your attention the fact that in the city of West Columbia they are trying to change the

boundaries of the wards. In the city of Clover they are trying to convert the election of district councilmen to councilmen at large. In the city of West Columbia they are trying to convert to councilmen at large. In Greenville they are trying to elect alderman on the at large basis.

To me, on the basis of my experience with South Carolina politics, I would think that this is being done for purposes of diluting the Negro vote. But let's assume it isn't. If it isn't, these people can come up and present their side of it either to the Attorney General or to the court, and then these laws will go into effect. But it is my opinion that in South Carolina, on the basis of what I know about that State—and we have had a terribly long fight with the State of South Carolina, even going back to the time when you were Governor, to try to get the Negroes their right to vote. That would be the——

Senator THURMOND. You know I have never taken any steps to deny any man the right to register and vote if you know my record. I want to say this, just what you said about the different towns and the way they are going to have their elections and so forth, that isn't it a matter of fact that that is to comply with the one man-one vote, something that a lot of people do not agree with the decision at all? But if they try to comply with it, well, then they will be condemned.

Mr. MITCHELL. That may be. All they have to do is come up and explain what that is. It will remove the suspicion, but you see——

Senator THURMOND. In your statement you refer to the recent victory of Charles Evers in Mississippi and that if the present act is not extended the Negroes cannot get elected to public office. Let me point out to you that Negroes have run in many elections in South Carolina, and in some cases they have been elected and in some they have been rejected. Just because a Negro doesn't get elected doesn't mean they are being discriminated against, Mr. Mitchell.

Mr. MITCHELL. It means he is being discriminated against if half of his associates who are Negro are denied the right to vote.

Senator THURMOND. Are you alleging that takes place in South Carolina?

Mr. MITCHELL. I allege it may not be taking place now because of the Voting Rights Act, but up to the time——

Senator THURMOND. Before you got the Votng Rights Act.

Mr. MITCHELL. We could fill this room with the record of the discrimination in the State of South Carolina. As a matter of fact, it was South Carolina which was even denying Negroes the right to register and vote in the Democratic primary. As I remember, that was either at or near the time you were Governor.

Senator THURMOND. Years ago it was a white primary. It was closed to the Negroes, and after it was opened——

Mr. MITCHELL. Only after we took it to court.

Senator THURMOND. I haven't heard where they discriminated or denied any Negroes the right to vote.

Mr. MITCHELL. They have. They took it to court.

Senator THURMOND. Do you have knowledge of any people who have been denied the right to register and vote? We will have them investigated. We would like to know. And even what happened years ago. If those things had been corrected—do you want to continually charge a State and a people with any alleged injustice that occurred many

years ago? Why don't you commend them for any improvements they make?

Mr. MITCHELL. You weren't here when I was commending the State of Mississippi for the improvements which I have personally experienced while I was down there in the city of Jackson. I am always ready to cite the good things that have been done. I am ready to cite the good things in the State of South Carolina. But I am not going to be so blind and naive as to pretend that we haven't had one awful time with the State of South Carolina and others just with the elementary effort of the Negroes getting the right to vote. South Carolina has fought us all the way, and they have been very worthy opponents. It has been a good fight. But now that it appears we have won we don't want to have a situation develop where the White House gives back to South Carolina all the rights to discriminate that we have succeeded in wresting from them with the court action and the——

Senator THURMOND. We are not asking the White House to give us back anything. We are asking that South Carolina be given the same treatment as Indiana, New York, Washington, D.C., and every other State. We ask them to be put on the same basis. We are not on the same basis now simply because my State voted for Goldwater in 1964 and the other States voted for Goldwater. This act was drawn to punish the States who voted for Goldwater.

Senator ERVIN. Let me interject. My State didn't vote for him.

Senator THURMOND. Your State is under this act, isn't it?

Senator ERVIN. My State, yes, as much as they could get under.

Senator THURMOND. Well, anyway, I stand corrected in whatever respect the distinguished Senator from North Carolina says.

Now, we have heard testimony concerning why the so-called voting rights should remain in effect for 5 more years. This act is nothing more than a device created to inflict political punishment upon one section of the country and to promote it is to admit one supports this political harassment in voter registration and participation in the election process. No evidence, much less any proof, has been submitted which would justify the position that the advocates of the extension have taken. There was an attempt by one witness to prove that discrimination against Negro voters existed in South Carolina and certain alleged evidence was cited in the publication of the Civil Rights Commission, dated 1968. But upon examination of this so-called evidence, it was discovered that it did not prove what it was introduced to prove. This publication, entitled "Political Participation," is not the most objective publication ever produced, and it attempts to indict entire States by a few references to blatantly hearsay evidence which is without verification.

The statistics cited in the book to prove that Negro population is unregistered to vote, are in the case of South Carolina, based on unofficial 1964 newspaper accounts on figures published 2 years ago. These figures simply do not reflect the situation and cannot be allowed as evidence to support the argument that the present law should be continued.

There has been no evidence or proof of any case of discrimination against one trying to register or to vote. The reason there is nothing before the subcommittee is simply because none exists. Even though there have never been——

Senator ERVIN. Would you preside? I have got to go, and then would you recess until 2:30? I have got a luncheon engagement with some North Carolinans. I am about 25 minutes late.

Senator THURMOND. There has never been a case of discrimination in my State.

It has been clearly demonstrated by political logic that the Negro will not be disenfranchised in South Carolina if the present law is not extended, and yet we must suffer the political platitudes of those who have made statements that are exceeded in their lack of accuracy and factual content by their vote-getting appeal. Attempts have been made to accuse and convict Southern States without any evidence or proof.

I think it is clear, based on the record before us, that the advocates of the extension of the present law have failed to carry the burden of proof, and in fact have not even made a prima facie case.

I want to say this: In my State the white population is 1,051,022 people. That is about 55 percent, 65.1. The Negro population is 800—this is the 1960 census—829,291, 34.8 percent.

Now, the latest figures we have for registration are June 15, 1969, less than a month ago. The Negroes registered to vote are 200,771. The whites are 642,102, which is almost 29 percent. So the Negroes registered to vote are almost in proportion to the same percentage as the Negro population is to the white population of the State.

I know of no one that is denied the right to vote. We don't deny people the right to vote in South Carolina. We don't want to deny them the right to vote. We want everybody to vote. We think it is their duty to vote if they are qualified to vote. We think it is very unfair and very unjust to place South Carolina in the position to be scorned at with an indication that you are discriminating.

The only reason we are under this law is about 48 percent of the people voted out of those registered. If 50 percent voted we wouldn't be under this law. There is no discrimination alleged back then. But the law as it is now is just and this law should either be repealed entirely, and I assure you that insofar as South Carolina is concerned, the Negroes will be allowed to vote.

Mr. MITCHELL. Senator, may I just say this: I think that it is important for the record to show that I am aware of the fact that we are irreconcilable opponents in this matter. I have had the interesting experience of being present when you filibustered all night against the 1957 voting rights act, and I am aware of your concept, as published in one of the publications out of your office, about the validity of the 13th, 14th, and 15th amendments and things of that sort. I say that merely to recognize that we are opponents who could never agree on the interpretation of the same set of facts on voting in South Carolina.

So I would simply say for the record that I am in total disagreement with your formulation. I think the 1965 act is a magnificent law. It is my belief that if it is allowed to expire the State of South Carolina will revert to its previous practices, and I appeal to the Nation not to be put in a position of pretending that it is going after discrimination in Maine where it doesn't exist and do something that will not enable us to reach the problems in South Carolina where they have existed and will exist unless we have this law.

Senator THURMOND. Again, I challenge you to get up the names of people in the 1964 election who were denied the right to register and vote if you can do so.

Now, I want to say this: I must say I was surprised that you made this statement today, although I don't agree with you, I have respect for your personality as an individual.

Mr. MITCHELL. Thank you.

Senator THURMOND. I was surprised to hear you say that if Negroes are handicapped in registering that you would favor breaking down the courthouse door and registering them anyway.

Mr. MITCHELL. No, I didn't say it quite that way, although it could be interpreted that way.

Senator THURMOND. I have always considered you a lawful man and that you wanted to follow the legal process.

Mr. MITCHELL. In the situations that I discussed the courthouse door had been locked and if the Government of the United States would not provide a remedy by continuing this statute there would be Negroes who would break down the door in order to be able to get in to register.

Senator THURMOND. You said you would favor doing that?

Mr. MITCHELL. I could not blame them.

Senator THURMOND. You said you favor doing that?

Mr. MITCHELL. If that is the way you interpret it, I would.

Senator THURMOND. Now, is that still your position? Would you still favor breaking down the courthouse door and registering people, or would you favor going about it in a legal way?

Mr. MITCHELL. I would say that we have always in the NAACP favored the legal approach. That is the reason why we are here asking for the continuation of this law. But, if in addition to the lawlessness of the State of South Carolina which deprives us the right to vote, the Government of the United States were to become a partner in that lawlessness and permit a registrar to block the doors to keep us from registering and voting, then I would think you certainly couldn't blame people if they shoved open the door to get in, and I would say that I believe you would do that.

I believe if they tried to say to you in the Senate of the United States that you could not enter that Chamber for some reason I think you would not stand there on ceremony. I think you would go on in there regardless of who was trying to keep you out.

Senator THURMOND. Thank you, Mr. Mitchell.

Now, I understand the next witness——

Senator BAYH. Mr. Chairman, I have not asked the witness any questions. I sat here very patiently for the first time in 7 years in the Senate. I had one of my colleagues accuse me, when I disagreed with him in good faith, of playing to the television cameras, which is quite contrary of the courtesy of my senior Senator from South Carolina. But I think I should be allowed——

Senator THURMOND. Well, I think you know the spirit in which that was said.

Senator BAYH. Quite frankly, I don't think the Senator meant it in the spirit which probably was naturally inferred.

Senator THURMOND. I did not intend to impugn the motives of the Senator from Indiana. I will say this, I have got to get to the floor.

Senator Ervin asked me to continue. I will turn the hearing over to him.

There is one more witness who wishes to testify, the Liberty lobby. I don't know whether they will wish to come back. Could you hear them?

Senator BAYH. I will be glad to. Counsel tells us we are going to have very full questions.

Senator THURMOND. Senator Bayh is willing to stay here. The witnesses for Liberty Lobby, do they wish to proceed or——

Senator BAYH. Mr. Chairman, I will be glad to sit here and listen to this witness until such time as we might be called to the floor.

Tomorrow we have the Attorney General of the United States testifying. It is going to take all day. I will be glad to sit here.

Senator THURMOND. If I understand, Senator Ervin is willing to come back and will come back to hear any other witnesses after lunch. So if you will continue, if you wish, with this witness and then adjourn at 2 o'clock and then let Senator Ervin take over with the next witness—2:30 I understand.

Senator BAYH. I would like to check with Senator Ervin in the meantime. It is my judgment and also the clerk's that he would rather proceed and get this over with. It is about 1:30.

I don't mind going without lunch.

Senator THURMOND. Well, that is not the question. Senator Ervin will have to make that decision.

Senator BAYH. Maybe we can proceed with these witnesses while we get his opinion.

Senator THURMOND. You can proceed, and these witnesses, I will ask them if they want to come back after lunch or follow them.

Senator BAYH. Since when are witnesses given prerogative over Members of the Senate?

Senator THURMOND. Well, it is lunchtime and we generally stop at 1. We have gone to 1:30 now, and I don't see any use in trying to push people around.

Senator BAYH. I think that is what is being done.

Senator THURMOND. You are saying that is what I am doing?

Senator BAYH. I will not make the same mistake. I do not make that inference, but I do want to see this measure proceed with full dispatch. I want to see these witnesses testify.

Senator THURMOND. We will solve it this way: When you finish with this witness the Liberty Lobby can come back, unless Senator Ervin changes that.

Senator BAYH. If Senator Ervin wants us to terminate it right now that is fine with me, but I hope that is not his wish.

Senator THURMOND. I will give them a chance to come back at 2:30 until Senator Ervin directs that the hearing go ahead.

Senator BAYH. Mr. Mitchell and Mr. Rauh, let me say I for one appreciate the patience that you have exhibited, which is characteristic of other times when you have testified not only before this committee and others, and you have always been very helpful.

It has been this Senator's observation that although you have not always agreed with some of your interrogators, you have tried to direct your answers to questions and tried to paint the picture as you saw it.

Mr. Mitchell, I would like to personally congratulate you on receiving the NAACP Spingarn Medal recently which was given as we all know, to the outstanding member of your race who has made the most significant accomplishments in 1 year. I would like to ask some questions, because I think perhaps at this stage of the game the questions might have lead a bit far afield as far as what we are trying to accomplish in extending the 1965 Voting Rights Act.

The inference was made--not unique to this set of questioning—was made yesterday that some sinister effort was made to try to incorporate within the province of this act all those States that were listed in the Goldwater column in 1964. You were in on much of the planning, and certainly the testimony, and know the basis, the thought process behind this.

Did you hear this expressed in any way back in 1965?

Mr. MITCHELL. Never, Senator Bayh. The problem that we faced was very simple.

In 1957 we tried to correct voting discrimination with a statute. That was not sufficient.

In 1960 the proposal was made by Mr. Rauh, who is with me, and by Members of the House and Senate that we ought to try to set up a system in which we would have examiners appointed by the executive branch of Government to register or rather determine qualifications of voting and then give those names to the regular State registrars in order that these people, their qualifications, having been ascertained, could vote. We were not successful in getting that incorporated into the law.

Instead, there was incorporated a provision under which a court, after hearing all of the evidence, could exercise its prerogative and appoint referees for the purpose of registering voters. The courts did not take advantage of that part of the law.

They were very slow, so that instead of getting a sizable impact on voting, we got only a trickle.

Then it was that the Congress, after seeing that the previous statutes were not adequate, decided that it would try the formula that is used. Never in all of the meetings that I attended or all of the hearings that were held was there anything that even remotely related to the Goldwater campaign.

Senator BAYH. Do you recall the type of support you had in 1965? Would it be fair to say that it was strong bipartisan support from both Democrats and Republicans on this measure, on the major thrust of all who supported it?

Mr. MITCHELL. I would certainly say that, Senator Bayh. This was a piece of legislation as near to being unanimously supported in the Congress that any piece of legislation could be, and not only did it have the support of able persons like yourself who worked out of great conviction all across the board, but even some of the skeptics who were not in favor of giving the Negroes the right, say, to go into a restaurant or to live in a house of their choice favored the 1965 act.

These people were in favor of giving them the right to vote.

As I say, it was as near to being a unanimous bipartisan statute as we could possibly get in the Congress.

Senator BAYH. Thank you. That was my observation, but I think all of our observations can't help but be covered a little bit by our

own philosophical beliefs, and I try, as I think most of us do—I may have missed the mark as far as objectivity is concerned.

There has been some discussion that now that the measure has been passed—it has been in effect for 4 years—why should we use the 1964 standards, why shouldn't we have new standards and start out from the 1964 elections on force?

Could you give me your suggestions, or Mr. Rauh?

Mr. MITCHELL. I would yield to Mr. Rauh.

Mr. RAUH. Senator, you have to use the 1964 basis, because what does it prove if people lived up to the 1965 law? The only basis you have for determining which States are likely to utilize literacy tests and other devices to prevent people from registering and voting is the 1964 situation. The 1968 situation is to a high degree an artificial situation created by a law under which examiners went in and other methods such as abolishing tests were used to get registration.

What sets apart the States that are covered was not Goldwater; what sets them apart was the long record of violations of law that you had for years, really from the Civil War to 1964. You cannot get away from 1964 as your base.

I think that Mr. Mitchell's magnificent performance this morning in pointing out just how bad the situation before 1964 actually was is the best possible proof that you have got to use the 1964 figures to determine where the problem is.

That is all we are doing. That is all the 1964 figures do. They determine where the problem is. From there on, if there are no violations, the law isn't going to hurt anybody.

I wish it were as simple as Senator Ervin and Senator Thurmond made it, that there is no discrimination. There is no violation of law, then, either.

Senator BAYH. This gets us into the general area of whether the 1965 act has accomplished results or not. I take it that you gentlemen assume that there are sufficient results: (1) the law permits registration; and (2) to remove it would perhaps cause a regress which would erode the progress already made as well as prevent further progress from being made.

Mr. RAUH. I think that is right.

Mr. Mitchell and I have been through each of the voting rights laws. This probably was the greatest success as far as results were concerned. This was the one that worked.

I think it might rival public accommodations, but this voting bill was at least as great a success as any we have had in the field of civil rights. To change one whit from this success would seem to us to be a disastrous move—either not to extend it or to weaken it in any way like the administration bill does.

Senator BAYH. Let's look for a moment at what you judge to be the progress. There are contained in the report of the Commission on Civil Rights that you are familiar with statistics—I refer to pages 222 and 223—registration by State, all counties, 1960 voting age population, preact registration, nonwhite, 1,530,634; nonwhite, postact registration, 2,810,763.

Now, there has been considerable reference to the fact that this is the result of people becoming 21 years and older. What is your judgment about this?

Mr. RATH. Well, it is nonsense, Senator. Take Mississippi as the best example. We, at the 1964 Democratic Convention, were arguing for the seating of a largely Negro delegation. We had the facts as of that moment. Only 6 percent of the Negroes in Mississippi were registered and today 60 percent of the Negroes of Mississippi are registered. How anybody could suggest that that is a coincidence, that for 100 years we had gotten up to 6 percent and then in 4 years we get to 60 percent, to say that is a coincidence I just think is nonsense. Obviously it is this statute and this statute alone that has done it.

For example, in the worst places in Mississippi they sent examiners. In the worst places in South Carolina they sent in examiners. These are Federal officials who did the job, put the people on the registration lists.

To suggest that these Federal officials had nothing to do with it just cannot be correct, and I can't honestly believe that any of these estimable gentlemen that were questioning Mr. Mitchell really believes that everybody got registered suddenly just by some shift in population. You know, if there is no other available reason for a change, the one that is suggested, such as the law, can usually be counted on as being the real reason. No one has suggested how it happened except for the law; therefore, I think the law did it.

Mr. MITCHELL. Senator, could I just make this observation with respect to the county that I was referring to in South Carolina, Barnwell County.

When we had the problem in Barnwell County there were, I think, two other counties in South Carolina which had similar problems, and the Justice Department made an administrative decision to send the examiners to those other counties first rather than to Barnwell County. It is my recollection that the Justice Department made that decision because the Department thought that the local people would cooperate and would register Negroes if they were told, well, we have got the goods on you and let's see you try to straighten this out with your local machinery.

But the local people didn't do that. Therefore, it was necessary to put Federal examiners in there.

Senator BAYH. That was in Barnwell County?

Mr. MITCHELL. Yes, where they finally eventually had to put one in there. I would say this was a pattern by the Department of Justice in the handling of this statute. They had tried always to give the States the maximum opportunity to cooperate, and when the States did not they then assigned examiners and then when we get the people registered——

Senator BAYH. Now, I think this goes to another point in your testimony which I addressed to Mrs. Freeman of the Civil Rights Commission yesterday.

You refer to—I think you used the terminology—"quiet but determined effort which is being made by Negro citizens throughout the South to try to work within the confines of the law." This would infer that the law creates a better environment, that it creates an atmosphere in which Negro citizens feel they can achieve justice and get the rights that are theirs.

It seems to me—without phrasing my question that way—do you feel that this is a factor, that the whole matter of law and order and

peace and tranquility is aided and abetted by this law which gives to the black citizens some hope of getting equal treatment?

Mr. MITCHELL. I certainly do, Senator Bayh, and this is very serious. You see, in trying to register the vote in the South, the Negroes have been deprived of their jobs, they have been deprived of their homes, and some of them have been killed.

So that to them, this is a very serious matter.

In all the years that I have been with the NAACP I have found that those people have constantly looked to Washington for remedy. We finally got that remedy from Washington. We are making it work by getting people elected to office and by participating in political conventions and things of that sort. So I think more and more they are reaffirming their conviction that you can get a remedy by following a lawful process. If we take that away from them it is not possible to know what those people would do, because, after all, we have a firm conviction that the law is important.

But it seems to me it would be surrending to those forces that say the law is no good, don't rely on the courts, don't rely on the Congress, go out and burn things down because that is the only way you can get results.

I think that all of us who really believe in the democratic process who want to keep this country moving forward have a sacred obligation to see to it that this law is continued, to see to it that it works so we do not surrender to those who would resort to anarchy in order to get the result. Because in my judgment the path of anarchy is an unacceptable and disastrous way of doing things.

Senator BAYH. I think those of us who—let's say those who would stand in the way of the progress which has been made, not only in this area but in other areas in the last 4 or 5 or 6 years, are going to have to bear the consequences.

I hope these consequences don't come to pass. It is like seeing the light at the end of the tunnel. You can see the light and plot your way, but if somebody closes the tunnel you lose your way.

As far as breaking down the courthouse door, you wouldn't blame them?

Mr. MITCHELL. That is right.

Senator BAYH. I have two more quick questions.

You have been very patient.

The provisions of S. 2507, of course, would make applicable the law to all 50 States plus the District of Columbia. I would like to address a question to Mr. Raub, if I might.

I want to ask Mr. Raub to be thinking a moment, if you will. This will be an entirely new concept. I would like for you to give us the benefit of your thoughts as a lawyer as to what changes would really occur between the change in the present act and the Nixon proposal, who would lose authority, who would gain it, what in your judgment would be the impact of that new law if we went ahead with that?

Before we get to that, as one of the leading spokesmen of your race and an official of the NAACP, having been in the middle of this caldron for a number of years, having been responsible for many of the recommendations that are contained herein as well as other documents, when a complaint exists I suppose that the NAACP soon finds out about it?

Mr. MITCHELL. That is true.

Senator BAYH. What type of complaints as far as voting rights have you had and have you forwarded to the Justice Department these other 33 States and the District of Columbia?

Mr. MITCHELL. We have not had any complaints that you could fairly say on their face revealed racial discrimination in voting rights. We have had problems where various political operators do things not because Negroes were involved, but because they thought that the increased registration of Negroes would take away from them some of their political power.

So they rearranged districts by gerrymandering, and I think in the State of Indiana there was a case which involved the city of Gary where some people had tried to put white people on books who shouldn't be on the books as a means of trying to keep a Negro candidate from winning. But there has not been the sustained State sanction of strong-arm enforcement as a result of Negro efforts to vote in the States of Maine, New York, California, and others where the administration seeks to apply this law.

Senator BAYH. Is it fair to say in none of these other cases have you been able to find a consistent pattern which is solid enough to merit a conclusion?

Mr. MITCHELL. I would say that is very true, Senator Bayh. In my judgment, we would want to see the maximum opportunity for everybody to vote.

If literacy tests are impediments to anybody, white, green, or red, we would want to see that done. But to pretend it is necessary to expand this law to include Maine and New York because we are going to protect the right of Negroes to vote is so incredibly absurd that it is hard to believe that reasonable people would come up here with that kind of an argument.

I think it is a great disservice to the country for the Attorney General and the administration to do this.

It is my opinion—and I say this with some sorrow—that the administration was confronted with a political promise, and it is endeavoring to keep that political promise first and thereafter trying to justify it on a legal basis. So that it really amounts to an absurdity. I just wish they hadn't done it.

Now that they have done it, I hope they will be sportsmen enough to say, all right, we will take an extension of the present voting rights law. One that becomes law, then we will come back and talk about all these other things. If they do that, we are on the same team, trying to get the same results.

But what they are doing now is trying to create a situation where we will wind up with nothing, and the Negroes will not have any kind of protection in the right to vote.

Senator BAYH. Is it fair to say that you would be willing to accept the program or law, then, that would do more than perhaps we are able to do to guarantee you that whenever there is discrimination for any cause, be it black or white, Republican versus Democrat, liberal versus conservative, that this is done away with, but you don't want to see the present resources which are limited, dissipated in such a way that we cannot continue the programs being made in those areas where the problems are greatest?

Mr. MITCHELL. That is exactly what I think.

Senator BAYH. Where will we go in S. 2507?

Mr. RAUH. Senator Bayh, I would like to seperate that into two questions. I think that is what you have in mind.

The first point is the one Mr. Mitchell answered—namely, S. 2507 is not a possibility. The effort to get S. 2507 will mean that there is no law, and we will lose the extension of the Voting Rights Act of 1965. I agree with everything Mr. Mitchell says on that.

Without going into the motivations of the administration in sending up this bill, certainly its result would be no bill at all. But I take it that is not the real question you are asking me.

The question to me is what does S. 2507 do to the existing law in the States in which it is applicable. I was going to say, as I was sitting here thinking about the question you mentioned a little earlier, that S. 2507 guts the Voting Rights Act of 1965. That might be a little stronger than it should be, and I want to get the thing absolutely precise. S. 2507 very badly weakens the 1965 law, and it may approach gutting.

First, S. 2507 leaves out completely section 5 of the Voting Rights Act of 1965. That section is as important almost as any section in the existing law. Section 5 prevents a State or a subdivision, under the guise of changing rules that look innocent, prevents them from using those innocent devices—I think you referred to them earlier—from using those innocent devices to take away Negro rights.

For example, changing the electoral areas so you will avoid a voting pattern where a Negro could be elected, changing from elective to appointive officials, all of these things that the Civil Rights Commission documented so well last year all would just go through like a hot knife through butter if S. 2507 became law.

What stops these things now is they have got to come for approval to the Attorney General or the district court here, people who are sympathetic to civil rights. That wouldn't happen under S. 2507. Under S. 2507 the Attorney General each time would have to get the facts, start a suit in hostile territory, and in all probability the election would be over by the time he could get a decision.

The Attorney General was very frank about this. He said, "Let's reverse the burden of proof." I don't think in this area, where we have had so much wrongdoing, that you can afford to reverse the burden of proof. So I would say, No. 1, taking out section 5 would be a disaster, and that is what S. 2507 does.

Senator BAYH. All right. If you are going to go on to the section, you direct that question at section 5.

The *Allen* case, as I recall, deals with the right of an individual to bring the suit. Do you think that would be changed by removing section 5 and changing the burden, or would an individual still have to sue?

Mr. RAUH. He might have the right to bring suit, but it would be a very fragile right. If he brought a suit down in Mississippi against a change in the boundaries in which the voting occurred and he had to go and get all the proof that that action was motivated racially, it is a right academically but it is not a practical right.

The way this is enforced now is simply the practical way of stopping action aimed at Negroes. It is the only way that you can get this kind of enforcement. The very fact that there is some considerable hostility

from the States that have done the discriminating is the best proof of its efficiency.

Senator BAYH. One other question about section 5, and that is directed at what happens to the Negro voter while the case is being pursued? As I understand it, under the present section 5, while the case is being pursued, the issues being adjudicated, the voter in question gets to vote; whereas if that were not the case the voter would be taken off the rolls during all that period, which could very conveniently occur just prior to an election; is that your assessment of that?

Mr. RAUH. Precisely. I would say that the voter might not be taken off the rolls literally. He might be effectively taken off the rolls by a device. If you suddenly threw in a whole white area to outvote the Negroes, you may in effect be taking the Negro off the rolls. I am not suggesting that they would be able practically to take everybody off the rolls in this intervening period, but it could have the same effect.

For example, suppose you changed from an elective office to an appointive office. You in effect take the man off the rolls even though you don't actually scratch his name from the registration. That would go on through the whole period when you were litigating.

Now, it works the other way. They cannot make the change while they are litigating. It is exactly that fact that makes section 5 one of the most or even maybe the most important part of this Civil Rights Act of 1965.

Then, going to the second point, I am not even sure the administration is clear on this, and I want to be fair to them. I do not think in S. 2507 we have an unreviewable right to put in examiners. Under the present law, when the Attorney General sends in examiners, that is unreviewable in the courts. So you get it quickly, efficiently.

Under S. 2507 I don't believe that the sending in of examiners by the Attorney General is unreviewable. In section 5 of S. 2507 it does say that section 8 of existing law is amended as follows: "A determination of the Attorney General under this section shall not be reviewable in any court," but that section deals with observers. I am rather inclined to think that as the law is drafted the courts would hold that S. 2507 permits review of sending in examiners. This was one of the most fundamental things in the Voting Rights Act of 1965—that the Attorney General had an unreviewable right to send in the examiner. You had to move fast and you sent in a civil service employee. The examiner took the registration of the people and they got on the registration rolls.

It seems to me that S. 2507 would permit that determination to be reviewed in the local courts. Whether that was the intention of the Attorney General I can't say, but I don't see how a reasonable man can read S. 2507 any differently.

Senator BAYH. Do you feel the unreviewable right that is granted deals only with observers?

Mr. RAUH. That is the way the statute is set up. I would say you might want to ask the Attorney General if he really meant to make it that way. I would say you have a chance to ask the Attorney General tomorrow whether he really meant that result.

But I would suggest to you that he would have a hard time showing that it didn't mean that. Maybe he would like to change it. I only say that as it is drafted that problem is very much in the situation.

Third, S. 2507 repeals section 4E. Section 4E is the provision that a sixth grade education is adequate for literacy in areas of American flag schools. It was the Robert Kennedy-Jack Javits' amendment on behalf of the Puerto Ricans. The point, of course, was that a lot of them had been educated in Spanish-speaking schools, and it wasn't quite fair to hold them to the same standards as people educated in English-speaking schools, both of them being U.S. schools.

Senator BAYH. Plus in most of the areas in which they resided, as I recall—if you will excuse me—publications are in their own language and in which they had the opportunity to hear the election and all issues adequately debated in a language in which they were fluent.

Mr. RAUH. Precisely.

The administration says, well, we did away with all literacy tests so there is no problem. But their bill is for a very limited period. In other words, this section 4E won't go back into effect when the literacy test ban of S. 2507 expires.

What you have here is a permanent repeal of the protection for the Spanish-speaking population with no assurance that, even if you pass S. 2507 at the end of 1973 you would either have a further ban on the literacy test or that you would go back to section 4E. They have thrown away rights that we have won and without protecting them for the future.

One thing Mr. Mitchell has taught me is never give up anything in this civil rights fight, because you can't tell when you will need it. Very often I would say to him when we were lobbying for things in the past, I would say, "Oh, I don't think that makes any difference."

He would say, "Well, you can't be sure, someday you may be using that provision." It turns out to be true. Some of the things in the earlier laws we felt were no longer needed have turned out to be useful. I hate to give up 4E just to do away with all literacy tests for a limited period.

Fourth, S. 2507 completely repeals section 4A, and this means that the provision under which the courts would ordinarily retain jurisdiction in cases like the *Gaston County* case would no longer be in effect.

Now, this again might not make any immediate problem for us, but what if Congress passed S. 2507, but then the Congress in 1973 doesn't extend the literacy test ban. Then you are back without any of the advantages of the *Gaston County* case.

Now, the *Gaston County* case is very important. What it holds in effect is that if a school area had run segregated schools with the schools for the Negroes less good than the white schools, then obviously it is discrimination to have a literacy test.

Everybody is talking about that case, saying it is very revolutionary. I don't think it is revolutionary. I think obviously, if one has a poorer education than anybody else, the literacy test discriminates against the man with the poorer education.

What S. 2507 does, like in the Spanish-speaking situation, it throws this safeguard away so that if you don't continue the ban on literacy in 1973 you won't have the advantage of the Gaston County decision.

Now, those are four of the most obvious defects in S. 2507 as concerns its amendments to the Voting Rights Act in the States where it applies.

I want to reiterate that all apart from these matters it is a mistake, as Mr. Mitchell pointed out, to mix up extension of what we have in

time with extension in geography. We ought to be able to go ahead and settle the extension in time of what we have now and then go on to the extension in geography where S. 2507 would be helpful.

For myself, I can say flatly I am against the literacy test anywhere. If this comes up next year, I would like to be up here testifying for the constitutionality of barring the literacy test in any place. But I cannot now see the extension in time of the Civil Rights Act of 1965 defeated because of all of these geographic extensions. They are not feasible in this Congress. We need the time extension now. We need it this year. Obviously there are so many complications with the geographical extension, 50 attorneys general of 50 States coming in here telling us what is wrong. But even on the narrowest point that you asked me the question of how does S. 2507 affect existing law, my answer is that it dangerously weakens it and it may be possible to say although I don't want to overstate it—that it borders on gutting it.

Senator BAYH. Thank you very much.

Gentlemen, you have been very patient.

Suppose you gentlemen can get a sandwich in half an hour. I have been advised Senator Ervin would like to ask some further questions.

We will recess until 2:30. We will hear those who didn't have a chance to testify, the Liberty Lobby.

(Thereupon, at 2:05 p.m., the committee recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

Senator ERVIN. The Civil Rights Commission yesterday offered figures which showed that in the 11 Southern States there are 4,394,735 whites in the South of voting age, not registered, and 1,904,100 Negroes of voting age, not registered. This was supposed to show that those 1,904,100 Negroes of voting age not registered were not registered because of discrimination, but the 4,394,735 whites who were not registered were not registered for other reasons.

Now, I don't accept that illogical logic, because I think that these 4,394,735 whites not registered were largely not registered because, just like the old brown mule, they just didn't give a damn about it.

I am of the opinion that the 1,900,000 Negroes who were not registered were not registered for the same reason.

Mr. MITCHELL. I could only fall back on my old statement that I made earlier today, which is really something I have taken out of your lexicon, Senator Ervin, and that is it is difficult to go inside people's heads and find out what is the reason why they do things if they don't say so.

Senator ERVIN. But in one case you don't hesitate to go inside their heads to find out what their motive was.

Now, there are some right interesting things, while we are on the subject of the logic of the situation.

According to the theoretical wording of this statute, it applied to the Northern States just like it did to the Southern. And it would have so applied, but the Department of Justice was very quick to consent to dismissing the Northern States from it. This is right interesting. Let me quote:

First and foremost, it is clear that Negro voting in most Deep South counties subjected to both literacy test suspension and on-scene enrollment by Fed-

eral registrars is now higher than Negro vote participation in the ghettoes of the two Northern cities, New York and Los Angeles, where literacy tests are still in use.

Across the Black Belt of the Deep South 50 to 75 percent of eligible Negroes are typically registered in counties where literacy tests were suspended and to which Federal examiners and observers may be sent. This contrasted with much lower figures for New York City where registration and enrollment rise have proved unsuccessful in the face of literacy test obstacles.

Consider the 1968 voter turnout in New York ghettoes. In the core ghettoes of Harlem, Bedford-Stuyvesant, the south Bronx and Brownsville, Ocean City, five nearly all-Negro assembly districts, the 55th, the 56th, the 67th, the 77th, the 78th, cast an average of only 18,000 votes in 1968, despite 1960 census eligible voter numbers of 45,000 to 55,000.

On an average less than 25,000 votes were registered in these districts. As indicated, New York and California are the only two big city States with heavy Negro populations and with literacy tests, and Negro voter participation is lower than the participation in other big cities and States where Negro voting is unhampered by tests.

Accordingly, statistics from such districts may be used to compare New York and California Negro vote turnouts with those of the other States. In the 9 Northern big city States, Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Michigan, Illinois, Missouri, and California, there were only 10 Congressional Districts where less than 100,000 votes were cast for Congress in 1968. Of the 10, one was in California and 8 were in New York. These districts were the 21st California, the 11th 12th, 13th, 18th, 19th, 20th, 21st, and 22d New York, which included most or part of all the major Negro ghetto areas, Watts, Harlem, Brownsville, Ocean Hill, Bedford-Stuyvesant and the South Bronx.

In the largely Negro Watts Congressional District of California, the 21st, only 95,000 persons voted in 1968, less than half the turnout in the average white Congressional District. These statistics illustrate a prima facie relationship between Northern literacy tests and ghetto Negro nonvoting, but it is possible to go a step further.

In 1968 the two Congressional Districts in the Nation with the lowest turnout were not in the Deep South. They were smack in the heart of New York's black literacy test handicapped ghetto. The two districts were the 12th Bedford-Stuyvesant and the 18th, Harlem.

In 1968 they cast only 52,000 and 46,000 votes respectively.

Now, if those conditions existed in the South they would have been conclusive evidence of discrimination in voting, but in New York and California they are not. So how illogical can logic be? But any kind of an excuse will justify to browbeat the South even where the figures are worse. They show no discrimination on the part of New York or California.

Mr. MITCHELL. Senator, I would like to comment on that, if I may.

Senator ERVIN. That is the reason I read it to you, so you can comment.

Mr. MITCHELL. I am trying to do it in the spirit that I was seeking to evidence when I started my testimony.

It is a spirit of holding out the olive branch in a manner that I think you and I have the same objective. I think both of us want to see our country give to everybody an equal chance. In my opinion the right to vote is so fundamental that everybody ought to have it.

In that spirit, when the administration first proposed this idea of extending literacy tests, the ban against literacy tests to areas other than the presently covered States, I not only talked with various lawyers in those States, such as Maine, New York, California, but I also talked with our people who are lay members of NAACP who are engaged in register and vote campaigns and things of that sort. They were unable to produce and had never heard of a single instance in which an individual who wanted to vote was denied the right to vote because he could not pass a literacy test.

They did say that there had been some instances where the literacy test was so simple that anybody could pass it and those who were asked to take it did pass.

Also, Mr. Celler, the chairman of the House Judiciary Committee, did introduce in the Record in the House some figures which had to do with the literacy test results in New York and the persons who did not get to vote because they could not pass a literacy test are very minuscule in number.

I think there is a failure to vote in large part in California, New York, Chicago, and other northern areas for a different reason. I think most of those people who are in those areas have forgotten their roots from which they have come. They are disorganized.

I think they would be far better off if they had not left the place from which they came in the first instance, and that is the South, because in my judgment, with the application of the Voting Rights Act, with the application of the 1964 Civil Rights Act, and the other civil rights laws, there is stirring in the South a tremendously new and wonderful thing, which in my judgment will make it one of the great bastions of civil liberties and civil rights if we can just keep on a course to which we are now directed.

I really feel that our problems in some of the northern communities, violence, social disorder, other things will begin to disappear as we make it possible for people to stay in the place of their origin and make that place attractive. I think we are on that road and I think in the next 10 years, assuming we continue to extend the proper safeguards, that we will see that.

Senator ERVIN. Well, you see, despite your fairness, all the inferences are adverse to the South. I draw the inference from your statement that some of the riots were due to the Southern people. Yet the only one where they had an investigation in depth was in the riots in Chicago. And the White newspaper chain, which is not pro-Southern in its attitude, conducted an investigation and ran a series of articles and it said that the riots in Detroit were not participated in by people who had moved to Detroit from the South, that they were carried on and participated in by people who were born and bred and educated in Detroit.

Mr. MITCHELL. Well, I didn't mean to transfer the blame to migrant people. What I really mean is the factors which contribute to social unrest and violence are things like overcrowding, they are things like deprivation of opportunity and various kinds of frustrations. If we just deal with the question of overcrowding, for example, anybody who goes into Harlem can see that the density of the population there is intolerable.

Why is it that way? It is that way because thousands of people come in there searching for opportunity. So that if something starts on a street corner which probably in Winston-Salem would not amount to anything because there are not a whole lot of people around, automatically the sheer density of the population makes it possible in minutes to have a crowd and in that period of time almost anything can happen.

So, what I really mean is not that the newly arrived migrants are responsible. I merely mean that the overcrowding and other problems that flow from the population concentrations create a situation which.

in my judgment, will be relieved when people begin to act normally and stay in certain places because those will be places of opportunity.

Just to give you this illustration, there would be no reason for a young Negro boy to leave Jackson, Miss., now in order to get on the police force as he would have had to do 10 years ago. They have some of the finest young men that I have ever met on that police force, college graduates, athletes and that sort of thing. So, that means this particular person who otherwise might have gone to New York or Philadelphia or Washington seeking an opportunity no longer has to do this.

That, to me, is the great source of encouragement.

I think of your own State of North Carolina, which I say I now am bound to by ties of affection because I have a beautiful daughter-in-law from that State. I feel that the developments in North Carolina are tremendous. I think the Negroes there are showing a kind of maturity and ability which makes them a part of the whole State fabric. All I am hoping for is that we can continue to make use of these things which have made that result possible.

Senator ERVIN. Well, I have no doubt that your results and mine are the same.

As a North Carolinian, I am rather disadvantaged. We have these conditions in the North, as illustrated in the statement about Watts and New York, where the voter turnout is less than in the South. They have a law that would cover them. But the Department of Justice exempts them from the law and applies it to my State. It lumps my State with some States where there is more evidence of offenses of discrimination. We have a law that discriminates against my State. It denies us access to the courts. It prostitutes the judicial process which I think is about the worst thing that can be done.

It says our laws can't go into effect without official approval of the Attorney General of the United States. It says we are going to condemn you on the basis of 1964 instead of on the basis of 1968. It lets Congress condemn my people on the basis of sets of figures, the figures of which are far better than the figures in New York districts I am talking about and in California.

Now, there is a lot of congestion in the northern areas. I have watched politicians a long time, and a lot of those people moved there because the politician tells them they have freedom and everything is better up there. Instead of those politicians doing something for their own people in their own locality they spend time advocating bills like this, which have horsewhipped the South. The same figures they use to condemn the South with don't apply to the North. This is a sectional bill.

I am not talking about you. I appreciate your position. But we get condemned on the basis of specious things as far as figures. This is all the condemnation they have.

Now, in my State we have got counties denied the right to use a law that is in perfect harmony with the Constitution. In the 1964 election a lot of the Democrats didn't like the Democratic candidate for President, Lyndon B. Johnson, and a lot of the people didn't like the Republican candidate for President, Barry Goldwater, and they didn't vote for President. But many of these counties voted more than 50 percent, yet we stand condemned.

The proponents of the renewal of this bill are not willing to judge us on the basis of what happened in 1968, which would have shown me pretty much the standards by which we are condemned. They insist on us being condemned by the 1964 formula, and that is not very just. It is illogical and it just—you just can't, from the standpoint of logic and from the standpoint of justice, have such discrimination as that against my State. It just can't be justified.

Mr. MITCHELL. I can't agree with you.

Senator ERVIN. I am conscious of that.

Mr. MITCHELL. I am reluctant, because of my feeling of affection for you, Senator Ervin. I am reluctant to differ with you, but I differ with you for this reason:

I know what the situation is in North Carolina. I get down there at least three times a year and I meet with the people who have the problems.

Senator ERVIN. I have lived there until my hair has gotten gray, and I believe I know more about North Carolina than you do.

Mr. MITCHELL. I am sure in the aggregate you do, but I don't believe you would know as much about what the Negroes are up against, otherwise you would not have said what you have said.

For example, in our State conferences of the NAACP we meet with the people who come from the various counties. On a Sunday afternoon last year we had our long meeting in one of the hotels down there in which we went over in great detail the different kinds of problems that people have. For example, one lady got up—I think she was from Anson County, I am not sure—but in any event, she got up and said that they have a problem there that if you live in a precinct and you move from your residence and then move to another residence within that precinct registrars object to your being allowed to register on the grounds that you have not lived at your present dwelling long enough to meet whatever the requirement is.

To me this is unreasonable.

Senator ERVIN. That applies to white and colored people alike.

Mr. MITCHELL. But apparently it is only enforced against Negroes. As I understand the situation, it is a little different from what it ought to be. As long as you are a resident within your precinct, at least in my State of Maryland, the fact that you move from one house to another within that precinct does not constitute a bar to your voting.

Senator ERVIN. It does in North Carolina if it is in a different precinct.

Mr. MITCHELL. This is what I am pointing out. Your law, if that is what it is, would not be a bar to letting a person register under those circumstances, but the officials tell them it is a bar. We had a long discussion on that and a number of counties got up and said the same thing was occurring.

Charles McLean undertook to try to get it straight with the top State officials. There used to be a Mr. Maxwell who was the top man. I don't know who it is now, but whoever it was, Charles was in touch with him. He undertook to try to get that straight.

I understand on the basis of my experience with the NAACP North Carolina people they bend over backward trying to be sure that they make use of all the available State machinery before they call on

the Federal Government for help, but they have had to call on the Federal Government for help and primarily in the same areas that have been set forth in this hearing that we had in 1957. You were very patient that day and you let us go down each one of these political entities. I am sorry to say that in most of those cases the situation that we described in 1957 continued right on up to the Voting Rights Act. If there is improvement I think it is because the Voting Rights Act was there.

Senator ERVIN. You and I get information from different sources. Mine is exactly the contrary, because prior to the Voting Rights Act, as I said this morning, my State board of elections changed the methods of administering the literacy test, and made it so simple that anybody who really was qualified to be in the fourth grade could have passed it.

We have different sources of information. But I really believe that I know more about North Carolina than anybody in the District of Columbia simply because I have been living there longer. So I just——

Mr. MITCHELL. You see it from a different angle.

Senator ERVIN. Yes, I think the State of North Carolina should be treated with more respect in the Congress than a crap shooter or murderer or moonshiner. Yet under this law all of those people are given rights that my State is denied. And we are condemned on the basis of a set of figures on which nobody in New York or California is condemned on.

Then they are not willing to let us have our rights in 1969, judged on the basis of our conduct in 1968. They want to judge it on the basis of conduct prior to that time. I say that is not fair.

Mr. MITCHELL. That, you see, Senator, I think you do have to separate yourself as a person from some of the policies that the State of North Carolina has pursued, because some of those policies are indefensible. It is not, in my judgment, anything onerous or burdensome to bring the State of North Carolina to a forum in the city of Washington for the purpose of determining whether the State of North Carolina is being fair on the matter of voter registration, because the record is replete with opposition to full citizenship for Negroes, not only in the area of voting rights, but in education and in a lot of other places.

Now, I think it is true that a large number of very influential and effective people have looked at that kind of condition. I think they are working to correct it. But I think we do have to admit that the official policy of the State for so many years has been one of not giving to Negroes proper treatment, that it only—in just elementary fairness you would want to get the case settled in a court where you would be likely to have somebody divorced from a local situation.

In my State, for example, if you go into a county where you are in a lawsuit and the parties from the lawsuit, as distinguished from the lawyers, say they don't believe they can get a fair trial before that judge. Automatically under the law of our State you transfer to another jurisdiction.

Senator ERVIN. You don't transfer a thousand miles away likes this one does.

Mr. MITCHELL. Everything is relative for the State of North Carolina, and it really shouldn't be a great burden to come to Washington.

Senator ERVIN. Suppose you, as a resident of the State of Maryland,

have a cause of action. Do you think it is not a disadvantage to you to nail shut the door to the courthouse of Maryland to that cause of action and require you to go to Minnesota and take your witnesses there?

Mr. MITCHELL. It depends on what the cause of action is, if you are trying to sue a corporation that doesn't have a resident agent in the State of Maryland and is not doing business within the meaning of the law of the State of Maryland, unfortunately you would have to go to the place where you can get at the corporation.

Senator ERVIN. I am talking about a person to be served right in the State of Maryland. You may not think that is—I think you do think it is unfair.

Mr. MITCHELL. If we were dealing with a crapshooter, let us say, who may not have more than $5 to his name, or one of the moonshiners, who I think are usually very poor people, although they are engaged in illegal activity, it would be manifestly unfair to require that those people travel 100 miles or a thousand miles to be tried.

But we are dealing with a State that is by no means a poor State, and we are dealing with lawyers and others representing that State who travel frequently to Washington on things far less important.

Senator ERVIN. How about the witnesses?

Mr. MITCHELL. I would say the witnesses should certainly come at the expense of the State if it is necessary to bring them. I can't see how it would be necessary to bring witnesses in most of these cases, because what you are asking for is a review of what legislature or the political entity had in mind when this law was passed.

Senator ERVIN. This bill said that if a State could prove to the district court that it hadn't practiced discrimination in a substantial manner for the past 5 years that it would be relieved from this bill. And yet Gaston County comes up here and the record shows that the judges state that there is no evidence that there has been any Negro discriminated against in Gaston County. Yet the court interposes something not in the act.

It says because in times past they have had separate schools, that that puts the colored population to a disadvantage. I think that statement is an insult to the Negro race in North Carolina, because we have had very competent Negro principals and Negro teachers, and to say they were incapable of teaching children to read and write is just an insult to them.

But evidently any kind of an insult can be accepted if it justifies prostitution of the judicial process.

Mr. MITCHELL. I think, Senator Ervin, that in the circumstances of that case the record was very clear. The record showed that over an extended period of time there had been a deprivation of educational opportunity on the basis of race, and once you have that set of facts, it seemed to me that the conclusion would be inescapable that one could not give people inferior education and then require them, as the case in your State to interpret, let us say, the Preamble of the Constitution, which a lot of lawyers would have trouble interpreting.

Senator ERVIN. Yes, I don't think the Supreme Court can interpret the Constitution in many cases. I don't think it did so in the voting rights cases.

Mr. MITCHELL. I am glad they don't have to vote in North Carolina, because they would be disenfranchised.

Senator ERVIN. They can read and write.

Mr. MITCHELL. But not to the satisfaction of the North Carolina registrars, which is the heart of this matter. You have got to prove it to the satisfaction of the registrar.

Senator ERVIN. I have to go to another meeting, and Senator——

Mr. MITCHELL. Before you go, I would like to ask a personal favor. I just want to turn around and see whether my family is here. They are.

My oldest son, when he was a little boy, came here with a church group and you were good enough to see all of them. He is a Senator in the Maryland State Legislature, and I would like to have him stand.

Senator ERVIN. Glad to see you, Gale.

Mr. MITCHELL. On the end is my oldest sister, Mrs. Matthews and my wife, Mrs. Mitchell, who is a lawyer, and my younger sister, who is a teacher, and my son Michael, who is back there. Mike is a second-year student at the University of Maryland Law School. I just wanted them to meet you.

They came over because Senator Tydings was nice enough to be saying things about me on the Senate floor today.

Senator ERVIN. I am certainly pleased to meet them. You and I have been on opposite sides of these questions for a good while and I can rejoice that you and I have been able to disagree without getting disagreeable.

Senator BAYH. Off the record.

(Discussion off the record.)

Senator BAYH. I appreciate having the chance to see your family recognized here, particularly since your pride and joy is a member of your Maryland State Legislature. I am proud.

Our next and hopefully concluding witness here this afternoon is Mr. Warren S. Richardson, the general counsel of the Liberty Lobby.

Mr. Richardson, you have been extremely patient. We really appreciate your patience and your willingness to let us have your thoughts.

STATEMENT OF WARREN S. RICHARDSON, GENERAL COUNSEL, LIBERTY LOBBY, WASHINGTON, D.C.

Mr. RICHARDSON. Senator, thank you.

I would like to introduce my associate, Jack McGann.

Senator BAYH. Mr. McGann, we are glad to see you.

Mr. RICHARDSON. While you are passing out bouquets I think you should recognize the great assistance the young lady here has performed. She went straight through without lunch. I am sure she was looking for a break.

I have one other suggestion. When we get involved in a long, drawn-out hearing in the future, maybe we can put in a requisition to have a basket lunch or something else served here for lunch. It seems like a long time between breakfast and lunch.

I would like to read the statement, because we have a position which is probably midway between what I shall refer to as your position and Senator Ervin's position in this matter. That puts us in the role of a peacemaker, and peacemakers always wind up by getting black eyes. So, if I may proceed with reading this I shall have a few other comments at the end.

Liberty Lobby supports these often repeated universal principles:

1. The electorate should be informed.

2. Any conditions attached to suffrage must be applicable to everyone, regardless of race, creed, or color.

3. Public education should be under State—not Federal—control and available to all people on the same basis, without regard to race, creed, or color.

One of the ways to determine whether a person has the ability to be informed is to test his ability to read and write. As Richard Wilson said in the Washington Star on March 23, 1965:

> Why is Congress not asked to abolish literacy requirements in all States altogether? The answer to that is clear. It is because literacy requirements have validity both in reason and in law. It makes sense that a voter should have at least an elementary ability to read and write the language of the country in which he resides. It makes sense that States should have the power to set reasonable minimum standards for voters, and the proposed law recognizes that by itself setting some standards. It hardly needs to be argued, also, that a Federal law should apply equally to the citizens of all States.

In 1965 many people predicted that the then proposed Voting Rights act would be, if enacted, unconstitutional. Liberty Lobby was one of those who so testified. At that time we were influenced by the proposition so clearly stated by Senator J. W. Fulbright, who said:

> Contrary to widespread belief, our system of government does not provide for an unqualified right to vote. The right to the ballot in the United States is derived from the laws, constitutional and statutory, of the several States which define the qualifications which must be met by an elector.

The right of the States to require passage of a literacy test as a prerequisite to voting is unquestioned. On numerous occasions the Supreme Court has held this type of qualification to be a proper exercise of State authority. The principle was most recently affirmed in the case of *Lassiter* v. *Northampton Election Board* decided in 1959 in which the Court said:

> We come then to the question whether a State may consistently with the 14th and 17th amendments apply a literacy test to all voters irrespective of race or color. The Court in *Guinn* v. *United States*, supra, at 366, disposed of the question in a few words, "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted." (Hearings before the Subcommittee on Constitutional Rights, Senate Judiciary Committee, 1962, p. 504)

Turning now to the case of *South Carolina* v. *Katzenbach*, 383 U.S. 301, we note that the Supreme Court held that sections 4(a)–(d), 5, 6(b), 7, 9, 13(a) and certain procedural portions of section 14 are constitutional. Section 4 deals with the literacy test, among other "tests or devices." In the *South Carolina* case former Chief Justice Warren, speaking for the majority, referred to the *Lassiter* case as follows:

> South Carolina assails the temporary suspension of existing voting qualifications, reciting the rule laid down by *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45, that literacy tests and related devices are not in themselves contrary to the 15th amendment. In that very case, however, the Court went on to say, "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot.

Also, the former Chief Justice stated the basic question as follows:

Has Congress exercised its powers under the 15th amendment in an appropriate manner with relations to the States?

Then, he answered the question in these words:

As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.

Followed by: The gist of the matter is that the 15th amendment supersedes contrary exertions of State power.

In short, the *South Carolina* case leaves the doctrine of *Lassiter* undisturbed except when a literary test interferes with the constitutional prohibition against racial discrimination.

What are the practical results of the 1965 act? As Attorney General Mitchell said in his testimony before the House Judiciary Committee on June 26, 1969:

The results of the 1965 act are impressive. Since 1965, more than 800,000 Negro voters have been registered in the seven States covered by the act. Moreover, according to the figures of the voter education project of the Southern Regional Council, more than 50 percent of the eligible Negroes are registered in every Southern State.

Also, the Attorney General said:

Thus, as a nation, we are faced with the anomalous situation where illiterate citizens in seven States have a right to vote while illiterate citizens in 43 States could be barred from the polls by literacy tests.

Furthermore, the Attorney General explained that on the basis of the 1965 act and the *Gaston County* ruling:

* * * the ban on literacy tests would continue for the foreseeable future in the States presently covered by the act, even if no new legislation were to be enacted by the Congress.

Again quoting the Attorney General on the subject of the case of *Gaston County* v. *United States*, we find:

The Supreme Court ruled (June 2, 1969) that offering today's Negro youth equal educational opportunities "will doubtless prepare them to meet future literacy tests on an equal basis." The Court added that equal education today "does nothing for their parents." It ruled that Gaston County has systematically denied its black citizens equal educational opportunity; and that "'Impartial' administration of the literacy test today would serve only to perpetuate those inequities in a different form." Accordingly, the Court held such tests unlawful under the Voting Rights Act.

How do we reconcile this desire to have everybody registered with the perfectly rational and legitimate goal of using a literacy test, bearing in mind the doctrine of the *Gaston County* case?

Our legislative approach must change. Or, to say it in the words of the Attorney General:

"While Congress may have sufficient reason to pass regional legislation in the 1965 act, I do not believe that this justification exists any longer. Circumstances have changed and I believe that our legislative approach must change."

The Congress of the United States is certainly capable of recognizing the changed situation and acting accordingly. Former Chief Justice Warren said, in the *South Carolina* case:

"Congress exercised its authority under the 15th amendment in an inventive manner when it enacted the Voting Rights Act of 1965." The Congress should act again in an "inventive manner."

As set forth in the *Gaston County* decision the real problem today is not with the children who have been given an equal educational opportunity, but with the parents. Why not reinstate the literacy tests for all new voters who are registering for the first time and allow the parents—people now 22 years of age or more—a 2-year period to register without regard to a literacy test? Keep the Federal election officials to protect the rights of prospective voters from any unfair application of the literacy test. This approach will reconcile the two goals—registration of everybody regardless of race, creed, color, and educational attainments, and the early return of a literacy test.

With the vast storehouse of legislative talent in the Congress, this approach, or another to accomplish the two goals, can certainly be worked out in an "inventive manner."

Now, having listened for 2 days to a great deal of testimony, I would like to add to that prepared statement the following observations:

First, we accept the facts as related by the prior witnesses, Mr. Mitchell's testimony and Mrs. Freeman, that there is a need to aid the Negroes in the South in getting registered.

Contrary to Senator Ervin, I am sorry he isn't here, I agree with Mr. Mitchell. We also accept the existence of the two Court cases. We accept them not merely on the fact that they do exist, but we have to live with them. This means that whether we like them or not they are here and we must take our future action in accord with them.

I might add that we think the Supreme Court engaged in a supreme act of brinksmanship in the way they dodged around declaring those tests unconstitutional in the *Lassiter* case by merely saying they are suspended. We took note throughout the written testimony, particularly, of this fact by using the terminology that the voting tests were "suspended." They were not declared illegal. Therefore, in this framework that confronts us; namely, the dire need to elevate the conditions of voting in those Southern States and the Supreme Court cases, we have in effect a tightly balanced situation.

How do we resolve it? Our solution will, we believe, give everyone a chance to save face. If we have the parents, socalled in the *Gaston County* case, registered and allow the reintroduction or the resumption of the literacy test for the incoming voters, we will accomplish both ends.

Now, I might also add that it is very unfortunate that the literacy test question has become so involved with race relations, because each is a subject unto itself and the literacy test, as the Supreme Court has said over and over, is a perfectly reasonable, logical test to qualify voters.

I was glad to see that Mr. Mitchell a few moments ago did mention in his comments about New York State, that the literacy test there was not as hazardous, was not an obstacle for the registration of anybody. I believe he used the word "minuscule."

It is this type of literacy test that we have in mind. I think the New York law—I am not positive—requires either a sixth grade education for passing the test and it may be passed in either English or Spanish.

We think that this would be in effect a face-saving compromise to allow the literacy test to be invoked and used as it properly should be, not as an instrument of racial discrimination, and at the same time

we will have Federal help for the registration of those Negroes who definitely need it.

I think it will be the summary of our concept of the testimony and our own position.

Senator BAYH. Thank you very much. I appreciate your examining this whole area and giving us your thoughts.

I notice your approach to this seems to be a well thought out approach.

I would like to ask you a question or two about procedural matters here. I just wondered, your statement seems to run contrary to the last sentence in the first part of your statement where you say that the board of policy, which I trust is a 20,000 member specifically voted—and overwhelming majority—to oppose civil rights laws. I haven't been in the Congress that long, but did your organization oppose the 1957 act?

Mr. RICHARDSON. Yes, Senator.

Senator BAYH. Did it oppose the 1960 act?

Mr. RICHARDSON. I think they have opposed them and the one that is most pertinent is this current act, the 1965 act. I think they predicted along with others, and, if I am not mistaken, with some Senators who testified that it would be declared unconstitutional.

Senator BAYH. But it hasn't.

Mr. RICHARDSON. No, and I mention that in the statement. We were wrong in the prediction.

Senator BAYH. You refer, then, in your statement—I don't want to put words in your mouth—but it seems to me your approach in this matter tends to broaden the often-repeated opinion, No. 2, any conditions attached to suffrance must be applicable to everyone, regardless of race, creed, or color, by recognizing not only are the conditions attached are important items, but the way these conditions are applied.

I understand you recognize that there has been and still is a need to be wary of discrimination; is that correct?

Mr. RICHARDSON. Yes, sir, absolutely.

I would say again, as I said before, we have no quarrel with the facts brought forth by Mr. Mitchell or Mrs. Freeman. We accept those.

Senator BAYH. On point 3 on public education, I know that the matter of State and Federal control is a very sensitive one. Apparently there is considerable thought in this administration as well as the last administration that that State control has not been able to accomplish the similar education without regard to race, creed, or color. Are you all willing to accept the need for Federal regulations in this area if you can't get equal education by State control?

Mr. RICHARDSON. Senator, about 10 days ago the Subcommittee on Education held a hearing at which we testified for the extension of the aid to education. We opposed the bill, the extension of aid in its current form, because it was too much control.

We suggested an alternative, and that, of course, is the primary thrust of that act, the aid and not the control. At least this is what the proponents say. They minimize the control and of course the opponents have maximized the element of control.

So we recognize the need for the aid which appears to be the primary goal in the education field. We have opposed the stringent, so-called guidelines which appear to be more excessive than necessary.

We do not, however, agree with the idea that a State should be allowed to administer their educational program in a discriminatory manner.

Senator BAYH. At some point we are going to have to get, if the State persists in pursuing this, at some point we are going to have to have some other kind of control, aren't we?

Mr. RICHARDSON. Well, we could again use former Chief Justice Warren's comment, "inventive" manner. It would seem to us that you could achieve your goal—we are now in the educational field.

Senator BAYH. I think it is directly related to the cause of the *Gaston* case which talks about the literacy level, and if we don't administer the educational system fairly and equally we are never going to escape from the decision of the *Gaston* case.

Mr. RICHARDSON. We put the *Gaston* case in this testimony deliberately because we believe it is involved, but your question I determined to be more directed at the mechanics of how to work the educational program at the Federal level.

Our concept would be that rather than so many guidelines and so much redtape control, that you should use the element of the carrot more than the stick; that is to say, withdraw these Federal funds.

Now, the withdrawal of Federal funds has not necessarily brought about a change in all of the school districts affected, but the record will show, I am sure, that in most of the States, even throughout the South, when the withdrawal of Federal funds has been made there has in fact been great steps made toward solving this problem.

I am not saying this is an easy problem, and we don't offer this as a simple, easy solution. We offer it to you as an approach. We feel that you, with your background in the legislature, and the staff could take it from here and conceive of a plan that would effectuate the same end without all of the control.

This is in education.

Senator BAYH. I much prefer the carrot to the stick, and the old adage about being able to draw more flies with honey than vinegar is very appropriate. The question is how do we apply the carrot.

It hasn't worked. You say it doesn't always work when you use a stick. But you seem to get more results when that is applied. I think it is unfortunate.

Mr. RICHARDSON. Getting back to the voting rights, if I may make a comment.

We agree with your result but disagree with your method. With Senator Ervin, we disagree with his result but share his alarm over the method. The Southern contingent certainly has a deep resentment over the method employed. It would further appear to us, at least by using our approach or one similar to it, that we could soften the method and achieve the same results.

Senator BAYH. I think it was unfortunate that it was necessary to enact this act. As I have said several times, I think that Senator Ervin approaches this whole matter in good faith, good conscience, and I think he is honest and sincere about his thoughts on this. There are wide numbers, I think increasing numbers of citizens in the southern part of this country who are searching for a way to get this job done.

But I don't see how we can ignore the terrible record. We just can't ignore the terrible record of the extremes to which State legis-

latures, county election boards, local registrars, the extremes to which they go. You can't ignore the fact that 50 counties, the Justice Department brought suits prior to the 1965 act, and only 36,000 registered black people.

Now, after the suits this number has greatly increased, and I think you have to take this into consideration. Nothing got results. Nothing prior to that time got results. Threats of suits got no results. It wasn't until we found this formula, antagonistic as it would be in those areas, we began getting results.

Mr. RICHARDSON. May I answer this?

I believe our suggestion encompasses all you said. We would not radically change the 1965 act in that respect. We are interested to see that results continue and we have suggested a campaign to register them regardless of their ability to read and write. Everybody from a given age up shall be registered, but beginning with the new voters, as they come to register for the first time the literacy test will be applied. Let the Southern States affected have the right to use a literacy test if they so choose, and maybe they won't. Nobody knows the ability at this point to invoke a literacy test such as New York.

Senator BAYH. Let's explore this suggestion, because I think it is novel indeed.

Your suggestion is to waive the literacy test for a 2-year period for anyone over 22, as I recall?

Mr. RICHARDSON. Yes.

Senator BAYH. But apply it to everyone 21 now and as they get older; is that correct?

Mr. RICHARDSON. As the new voters come in they will take the test. Bear in mind, again, we have to always go back to the fact we have this problem, we have the condition that exists with the *Gaston County* case.

Senator BAYH. I was going to say it seems to me that is inconsistent.

Mr. RICHARDSON. Well, not really, because I think that here I would take Senator Ervin's side of the argument that most of the Negro children are being educated. I won't get into an argument as to whether their education is comparable or not, but it is at least adequate to pass a fourth grade test in writing or reading. If we take the reverse side of the coin, as the Senator did earlier, you are doing great injustice to the teachers and the students if you assume automatically that they are unable to pass a New York type literacy test.

Senator BAYH. Are we saying New York type of test? What kind of test are we saying?

The Supreme Court specifically said that in those areas where there has not been equal education, the application of the literacy test, which is normally constitutional, is unconstitutional, and just creating this new formula does not deal with the high school dropouts or the 22-year-olds that have been educated in this unequal system.

I think the Court would frown on that.

Mr. RICHARDSON. Let me explain.

When you use the term "New York type test," I take into account what I understand to be the rule in New York: namely, that you can pass a test—put it that way—the test, by either producing a sixth grade certificate, having graduated from the sixth grade, or taking a rather easy test. I am not talking here about a literacy test which

requires interpreting the Constitution, as was mentioned a few minutes ago. As Mr. Mitchell said a Supreme Court Justice would be disenfranchised if he went to North Carolina. I am talking about a bona fide, reasonable literacy test that you and Senator Ervin, taking them from different points of view, would both agree is a fair test. Now, we come to the point of using the term "New York type test," because it apparently, as I understand Mr. Mitchell's testimony, is a fair, reasonable test and the people do not fail it because of their race. It is not a burdensome test. This is the type of thing that I am trying to get across. That type of test should be allowed, if the State wants to have it. Every State should have the ability to invoke such a test and apply it fairly. Let us emphasive that it has to be fair—they cannot have a Negro come in and ask him to interpret the Constitution and have the white men come in and ask him to read a comic strip. It must be the same test and applied fairly. There are no if's, and's, but's or maybe's.

Now, when we start out with that concept I think the Supreme Court would certainly say the test is not being used as an instrument of discrimination. The thrust of the Gaston County doctrine is that it is unfair to use a literacy test when you have a large portion of the population who can't pass it and the reason they can't pass it is because they have not been educated by the States.

Now, we cure that problem in our proposal by automatically registering everybody who would have any trouble. Incidentally, the 2-year term and 22 years of age are suggestions which could be changed. But the point is that those students coming out of an educational system now where they go through five, six, or eight grades could automatically become eligible to vote or become registered in New York without even taking a test. Those people who are below that grade level could take a simple test as they do in New York. This, in my view, would be constitutional, because the Supreme Court did not, in the *Gaston County* case rule the test unconstitutional. The Court merely said that such tests were suspended. They were suspended be ause they interfered with the basic right of the 15th amendment—voting.

Senator BAYH. You see, as far as working right now—hopefully the day will come when that would work. Right now we have one county in the very State as that case that is about to lose its Federal funds because it hasn't integrated its Federal education system. It isn't giving an equal educational system. It seems to me the people in that area would still fall under the limitation of the case.

Mr. RICHARDSON. Let me answer it this way. One of the real disagreeable parts about this whole subject is that literacy tests have become a political pawn imbued with race relations, which is bad. Let us not make the same mistake with education as we did with literacy tests.

Let us assume for the moment that your statement is correct and that unequal opportunities in education exist today. I am not saying that, but let's assume it is true. The point is that if a Negro student goes through high school and the State law for literacy test requires a sixth grade diploma, he is automatically registered. There is no test. On the other hand, if he only progressed to fourth grade, the test which then would be administered would be the same administered to a dropout in any other school.

Senator BAYH. You are again assuming the test adopted will be the one which says either reading or writing or has a sixth grade education.

Mr. RICHARDSON. We are using the New York model simply because I don't want to become involved in detail over whether that particular style or one in Iowa or whatever other States use a literacy test. I use it because Mr. Mitchell made the specific comment that the members of his organization in New York have said that there has been no problem. So I wanted to use an example that is devoid of problem.

Senator BAYH. The very presence of that sixth-grade criteria is critical, it seems to me, because then you don't have the situation of that individual registrar making a determination of what constitutes the ability to read and write. If a fellow came in and asked him if he could read and he said yes, and he gave him an article in the Chinese language, I think it was, and said can you read that and he said yes, he says what does it say, and he says aren't any Negroes going to vote here today. It is that criteria, that ability on the part of that registrar to make an independent judgment. If the sixth-grade requirement is met that is relatively easy to prove.

Mr. RICHARDSON. Are you saying that in New York the people who administer the test have that ability?

Senator BAYH. Pardon me?

Mr. RICHARDSON. Are you saying by your comments that the registrars in New York have that ability?

Senator BAYH. Yes.

Mr. RICHARDSON. They do? You see, there we have a fundamental misunderstanding. I understood the New York test to be uniformly inflexible to everybody; that the registrar didn't have the ability to select a difficult passage for Mr. A and a less difficult one for Mr. B.

Senator BAYH. You can use the same passage, but the registrar to have the power to determine how the person reacted. A sixth-grade limitation there is totally——

Mr. RICHARDSON. Again, the sixth-grade requirement, we use New York—I refer to this because I am trying to keep out of an argument over facts.

Senator BAYH. Well, fine. There is no need getting involved in details.

Mr. RICHARDSON. Mr. Mitchell said in New York they have no problem. So if now we are going to create a problem——

Senator BAYH. No. I am perfectly content with the New York law. I think the sixth-grade provision is really the saving grace about the New York law, because most cases take away the ability of an individual who wants to discriminate against a fellow who may be a high school graduate to rule independently that he can't read or write.

Mr. RICHARDSON. If we agree that is a good law to discuss it we can proceed with the idea.

Senator BAYH. I don't think there is any need in getting tied up in New York. It has been proven as one of the best.

The parents will be excluded for a 2-year period.

Mr. RICHARDSON. This again, in number of years, we offer as a suggestion. When we put something in writing—we had to put something—we selected 2 years. What would you consider reasonable? We will use that figure.

Senator BAYH. Well, I am frankly concerned about any, for this reason: All States reasonably have purging requirements to try to

keep the polls up to date, the voting lists up to date, voting lists just take your 2-year or 4-year or whatever it might be. A person could come in and register and then by not meeting the criteria, by moving, by not voting, could be removed from the list and then in trying to apply again after the expiration of this period be subjected to the same literacy test which he is not qualified to take.

Mr. RICHARDSON. We ought to be able to figure that out by using our brainpower. I don't know whether we can do it on the spot, but I offer their suggestion. For those people who are unable to pass the New York State literacy test in the original instance, let us give them a lifetime exemption from taking it. Perhaps this will solve the purging problem. I am not trying to come up with dodges on how to get around it, and I know you are not. So our question would be to figure out some way to put them on the rolls so they couldn't be purged if purging is a problem.

Senator BAYH. Are you at all concerned about, in those areas—here, again, we are looking for a way in which to change a thought process.

Mr. RICHARDSON. Right.

Senator BAYH. Apparently you agreed with the assessment made by the Attorney General, there is a real need for the 1965 act and there has been great progress under it?

Mr. RICHARDSON. That is right.

Senator BAYH. The Commonwealth agreed there has been a philosophical environment in which people are trying to discriminate against Negro voters?

Mr. RICHARDSON. Agreed.

Senator BAYH. What we are trying to get is to break into—get through a period to reorient the thinking of officials. Before we get through that, and the reason I am for the extension is that if we get through this period and another 5-year period and we begin to get the voting population in a position where they can vote for some of these people who prior to that time have been discriminated against, it is going to take away—prior to getting through that period it would seem to me that the very instituting of the literacy test could indeed greatly increase the need for Federal supervision.

Mr. RICHARDSON. What is your question?

Senator BAYH. Do you see this as a possibility?

Mr. RICHARDSON. Yes, sir, I certainly do.

Senator BAYH. But you are willing to go through the increased Federal supervision?

Mr. RICHARDSON. I would be and I am sure that Liberty Lobby would be willing to see that greater Federal intervention be used to accomplish this objective, bearing in mind that it is a two-pronged attack; namely that we reinstitute the test when we continue this intervention. As a matter of fact, in the written statement, we have a sentence about keeping your Federal people, have them there to protect that very group that we are talking about. We agree to that. In other words, it boils down to this simple proposition: We want two things accomplished: One is to have everybody registered, and because of the Supreme Court dicta or the holding and because there are a great many Negro citizens who are not now in a position to pass the test, we feel they should be put on the roles, just put on there. This is a mechanical thing. The second is that we do not like to see the States abused to the

extent they are. As a matter of fact, if you study the *South Carolina* case you will find that, speaking on another subject, the dissent by Mr. Justice Black—he is the one that first brought up this concept—the Southern States are little more than conquered provinces. He mentioned that in regard to section 5. We are talking about section 4. But as you can see by the questions asked by your compatriots, both sections are not well thought of by them.

Our position would be that we have the same objectives. But the method now being used is, to say the least, not welcomed in the South. If you project another 5 years and then another 5 after that, and another 10, we are going to come to the point where you gain the enmity of these people, and I think that we should take a new approach and figure out a way to get them on our side. This doesn't seem to do it, the 1965 act. It does the job which Mr. Mitchell and Mrs. Freeman and all agree have to be done, but it is not doing the job of ameliorating the white people who live in the South.

Now, I think that with the experiences gained to this point and with all of the legislative history that has been built up, we ought to be able to come out with a different approach which would be less objectionable. Nobody—and this is what I said in the very beginning—in the role of a peacemaker is popular with both sides. You will not like certain parts of the peace offering, and I am sure Senator Ervin won't like others, but there should be a little give, in my opinion, from the very hardnosed application that has been used here in the 1965 act as Justice Black mentioned. This is our plea that you consider the proposal. We are not infallible and we don't claim that our suggestion is the only solution. We suggest it as a method which might open your thinking process to come up with a different method.

Senator BAYH. I appreciate you giving us these thoughts, and I frankly want to find a way in which we can—maybe the white citizens of the South—we don't want to be punitive in our legislative activity, and we don't want to get the Federal Government involved in looking over their shoulders all the time. Under the present act the Federal Government doesn't look over your shoulder until there are complaints of discrimination. As long as they are permitted to vote, no problem. So I want to suggest that the only time the Federal Government gets involved is when there is this kind of activity.

I wish we could see the day right tomorrow when this type of activity would not be.

Mr. RICHARDSON. We didn't testify to this in our written statement, but since you brought it up, it would seem to me that something could be done about one of the biggest problems mentioned by Senator Ervin and Senator Thurmond: jurisdiction of these cases. That is the whole point of this dissent, which I am sure you have read, in the *South Carolina* case. It seems to me they have a good point and there should be a way to change the approach to give them back their sovereignty and at the same time accomplish the objective which the 1965 act has accomplished so far and to continue it. In other words, I am not convinced that we have done the best possible.

Senator BAYH. Are you at all concerned about—this may just be an area that you haven't thought about—about the fact that this would still not deal with the problem that we tried to deal with as far as the primary Puerto Rican system is concerned.

Mr. RICHARDSON. You mean the language?

Senator BAYH. Yes. Well, we waived the testing, the literacy testing. A person who had a sixth-grade education in an American-flag school in a different language than the English language——

Mr. RICHARDSON. That is no problem. In New York I believe they allow the citizens there to take the test in Spanish. Am I correct? I am not positive.

So if there is a second language for some of the citizens I see no reason why they can't take the test in that language. The important part of the literacy test is not that you trip somebody. This is again the unfortunate situation with literacy tests, they have become so identified as a tool to keep people from voting that we have lost sight of the true reason for using it. There is a valid purpose, and it is recognized by the Supreme Court and others. We don't want to see the test made so you can't pass it. If a person doesn't speak English and speaks Spanish, fine, test him in Spanish. Particularly in New York where there are newspapers which are written in Spanish. They have the same news we do. They can make intelligent votes. They don't have to speak English. There is no problem in our thought.

Senator BAYH. What are your thoughts about the Dirksen bill? I think it can be assumed from what you said earlier, but for the record, 2507, the administration bill——

Mr. RICHARDSON. We are opposed to it, because it abolishes the literacy test, and we feel that it should not be abolished. It should be left to each individual State to apply it as they see fit within the boundaries of the New York State concept. In other words, I don't want to be misquoted and leave you with the impression that we want to go back with a literacy test that requires the Negro to recite or interpret the Constitution and have the white man read a comic strip.

Senator BAYH. I think you have been very clear.

Mr. RICHARDSON. I want to make it abundantly clear.

Senator BAYH. Do you want to ask some questions on behalf of Senator Thurmond, Mr. Smith?

Mr. SMITH. There is one question Senator Thurmond wanted to ask you. I am going to ask you on his behalf.

We have noted with interest that you have stated you agree with the facts presented by Mr. Mitchell and that you are interested in continuing the results that have been obtained in the South, related results under the Voting Act of 1965, that is registration and participation by Negroes in the election process.

Now, speaking of an electoral process and obtaining results, Senator Thurmond pointed out this morning that over 197,000 people supported the National Democratic Party's ticket in 1968 and there were a little better than 200,000 Negroes registered in South Carolina at that particular time. We know, based on your observations, that most of those were cast by Negro votes. They also voted in a lot of local and statewide races. They just didn't vote in the presidential elections, they voted in other races. A lot of officeholders owe their political life to this vote. It has been inferred by various witnesses, not by yourself but by other witnesses, that in the event that the administration bill is passed, or in the event the present act is not extended for some reason or another, then, all of a sudden, 197,000—200,000 votes in South Carolina suddenly are going to disappear. They won't be there any more. They won't be participating in the elective process.

Now, I don't know who is going to cause them to disappear. Certainly it is not the lawmakers in the general assembly, many of whom were elected by this Negro vote. It seems to us to be illogical politically, illogical and untenable to hold a position that these people are suddenly going to cut their own political throats in order to disenfranchise a great number of people in South Carolina. We feel that this is illogical.

Do you have any thoughts on this particular observation?

Mr. RICHARDSON. Well, of course, I have heard the Senator earlier today, and I heard Mr. Mitchell's answer, and I suppose this is where my goal, as I cast myself earlier as a peacemaker, comes in. I think here I would disagree slightly with Mr. Mitchell on that. I don't think that we would revert to the same conditions which existed prior to, say, 1954.

Now, he has his reasons for saying it and he has been in the State and it is his professional life to follow it. I won't disagree with him, but I cannot believe in my own mind that after all of this that the people of South Carolina, for example, will bring vengeance upon the electorate in the manner you pose in the question. And our ability as a soothsayer—what was the word that Senator Ervin said—a prophetic, adviser, or something which he mentioned earlier——

Senator BAYH. That is confined to Members of the U.S. Senate.

Mr. RICHARDSON. Yes, sir; thank you.

Senator BAYH. You may put in the record that was said facetiously.

Mr. RICHARDSON. In any event, we are not endowed with it. We could be wrong, but I just don't feel that the many fine people I know personally and from working here on the Hill and who come from the South would take personal vengeance. This is what you are saying.

On the other hand, I would not engage in a dispute with it with Mr. Mitchell.

Mr. SMITH. On behalf of Senator Thurmond, I want to thank you for coming and appearing here today.

Senator Bayh, I appreciate the right to ask questions for Senator Thurmond.

Senator BAYH. That is all right. You know, none of us know what is going to happen. I know there are increasingly large numbers of white people—I haven't been in South Carolina recently, but I have been in some of the other States, and I know there is a reawakening and a realization as a need to move in this direction. It still seems to me that we have to recognize that right now.

In the last year or two there have been overt efforts made on the part of some and unfortunately it really isn't sufficient standard to say that the majority of counties in the State meet qualifications or do the job right. In my judgment we need to have a system that guarantees as much as it can that every county is giving every voter the right to vote if he meets the standards across the board. Yet we have, in the things concerned here, the effort made to take those county commissioner districts that were individually elected and now that the Negro citizen has a right to vote for a Negro commissioner and instead of going ahead with that, abolish the district and we elect them countywide.

Now, the reports made in the Civil Rights Commission report, and some of our colleagues on this committee do not look kindly on that

report. I would have to say that I would feel that those who made it did so in good faith, and perhaps the instances that they portray there are not characteristic of what is going on all over the States in question. But I don't believe they would contrive these instances where poll watchers were forced to leave precincts, where illiterate black voters denied to take a relative or someone they trusted into a voting booth with them, where location precinct caucuses were carefully hidden, where there was intimidation to keep black voters from going into these precinct caucuses, where people were reportedly thrown out of their houses when they went to the polls—the landlord threw them out. As long as we have this type of environment existing I think we have some need to do more than just treat these problems categorically. That is the feeling that many of us have when we think the temptation is going to be here.

Mr. RICHARDSON. May I comment?

Senator BAYH. Yes, please. I don't want to prolong this, but I——

Mr. RICHARDSON. Well, this is the interesting part of the whole thing, when you get down to the philosophy of it.

I would agree with you. I feel that it is very bad, but I would point out to you, Senator, that what you are talking about now—and I agree with it 100 percent—is what comes from the heart of an individual. Now, if a landlord throws a tenant out, to me it shows a lack of an understanding heart. What we are trying to do, it seems to me, talking philosophically, is to change the hearts of people. I think history will show that if we become repressive in our governmental actions we will not change their hearts. All you will do is drive them against the wall and they will fight back with like kind, fire with fire.

The burden of our approach here, we offer to you, is a compromise, you might say, not a compromise of goals but a compromise to effectuate the same goals with a different attitude. I would hate to think that if we make this law even stronger and stronger and stronger until we finally get that last person down there who has thrown a tenant out—I don't know what is going to happen. We have only hardened the position. We have not softened the position. This is the thing we are trying to accomplish. We want everyone to vote and everyone registered, because that is the only way our democratic system will work. But at the same time, the repressive nature against the South is such that you can see it yourself. I don't have to comment on it. This is what I think we should try to work out.

Senator BAYH. The changing of the hearts of individuals, of course, is what we are trying to do. My face isn't black and neither is yours, and neither is yours, Mr. Smith. So we can't very well express the feeling we would have if we had to go through this experience of being denied and our parents and grandparents being denied the right to vote just because our face is black.

I wonder—I think there is a lot in what you say, Mr. Smith, about the constituency involved in some of these State legislatures. I wonder if that constituency is sufficiently affected by new registered voters. I think when all of the prospective Negro voters are registered, as near as they can, not 100 percent—I don't think that is a reasonable goal—but they are registered, then the incentive is going to be there not to discriminate against them. But right now I don't think we have gone that far, and I think there may well be some white State legislators

who really don't want to discriminate, who really want to give the Negro the right to vote, but realizing the majority of their constituency that otherwise if they didn't have that Federal law saying thou shalt not discriminate, would yield to the temptation to go back and pass some law which would not be discriminatory on its face, such as a requirement that you had to reregister every 2 years, which is not an inconceivable type of vehicle that could be used—this would in effect undo everything that has been done. That is the type of thing that concerns me.

Mr. RICHARDSON. Getting back to your comment about none of us being of the Negro race and not knowing how we would act, I would hope we would be as gracious in that situation as Mr. Mitchell appears to be.

Senator BAYH. You know what, I doubt if many of us would be.

Mr. RICHARDSON. Well, I said I hope that we would be.

Senator BAYH. It is just so easy and it is so easy for those of us who haven't the foot in the center of that circle and haven't been treated that way to examine how we would act. It would be very trying.

I appreciate your patience and your willingness to give us your ideas. I know in the future you will follow our activities and I will be glad to hear from you at any time.

We will recess until tomorrow at 10 o'clock, and this will be in room 2228, tomorrow, which will be to hear the Attorney General.

Thank you.

(Whereupon, at 4:18 p.m., the committee was in recess, to reconvene tomorrow, Friday, July 11, 1969, at 10 a.m.)

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

FRIDAY, JULY 11, 1969

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 4200, New Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee) presiding.

Present: Senators Ervin (presiding), McCellan, Kennedy, Bayh, Byrd of West Virginia, Hruska and Thurmond.

Also present: Lawrence H. Baskir, chief counsel, Glenn Ketner and Lewis Evans, counsel, and Glenn Smith, of Senator Thurmond's staff.

Senator ERVIN. The subcommittee will come to order.

Counsel will call the first witness.

Mr. BASKIR. Mr. Chairman, the first witness this morning is Mr. Lawrence Speiser, director of the Washington office of the American Civil Liberties Union.

Senator ERVIN. I welcome you to the subcommittee. You may proceed in your own fashion.

STATEMENT OF LAWRENCE SPEISER, DIRECTOR OF THE WASHINGTON OFFICE OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. Thank you, Mr. Chairman. I have a prepared statement. I will not read all of it. I will try to summarize it. I would like to have it submitted for the record at the conclusion of my testimony.

I am here to testify on the three bills that are before the subcommittee, two of which would extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, literary, literacy tests and character tests, and the third, which is the administration proposal, S. 2507 which would amend the Voting Rights Act of 1965 in several respects.

The Voting Rights Act of 1965 was a major breakthrough in providing an effective instrument to meet the problem of racial discrimination against potential Negro voters. Prior to its enactment, it was clear that earlier laws, including the Civil Rights Acts of 1957, 1960, and 1964, had failed to remedy the persistent and outrageous denials of the right to vote to Negro citizens primarily in the South. Hundreds of thousands of Negroes were continuously disenfranchised in flagrant defiance of the provisions of the 15th amendment.

The major methods to disenfranchise them were the literacy tests, the tests requiring good moral character and the understanding of

parts of the State constitution and State laws, and similar devices which were utilized in Southern States.

As a result 57 percent of all voting age Negroes, 2,800,000 of them, living in 11 Southern States, were not registered to vote as late as November 1964.

The Voting Rights Act of 1965, as I said, was a major breakthrough because it suspended the use of these tests or devices in any State or any political subdivision in which less than 50 percent of the persons of voting age resided or voted during the presidential election of November 1964.

At the present time the Voting Rights Act has suspended the use of these tests or devices in Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia and 39 counties in North Carolina.

The result of the suspension is to require each of these States or political subdivisions, before the passage or the utilization of any new legislation affecting voting standards or procedures, to seek the approval of the Attorney General or the approval of the court in the District of Columbia.

If the court finds that no test or device has been used during the preceding 5 years for the purpose of or with the effect of discrimination, then the bar will be lifted. Since the Voting Rights Act of 1965 will be in effect for 5 years by August 6, 1970, unless it is extended all of these tests which have been suspended will be able to be reinstituted by the jurisdictions where they are now presently unenforced.

We believe this would permit history to repeat itself.

After the Civil War, Negroes participated in the political life of Southern States on a broad basis. In many States they attained some political power. Nevertheless, through a series of strategems, fraud and violence, Negroes were effectively cut out of all of the political life in the South.

Under pressure, intimidation, and lawless discrimination, most simply abandoned their efforts to vote. As documented in the very excellent report issued by the U.S. Commission on Civil Rights, entitled "Political Participation," Negroes were barred from voting by the use of these "good character" tests, by civic understanding tests, by poll taxes, property qualifications, residency requirements and a list of disfranchising crimes which were thought to be committed more often by Negroes than by others.

The story is not a pretty one, and it should not be permitted to happen again.

Since the Voting Rights Act of 1965, registration of Negroes has skyrocketed. Although it has not yet reached the same percentage as that of the white population, the change is indeed impressive. For example, in the following States the percentages have gone up in this fashion:

In Alabama before the 1965 Act, 19.3 percent were registered, after the act 56.7 percent; for Georgia it was 27.4 percent, it is now 56.1 percent; Louisiana, 31.6 percent before, 59.3 percent now, Mississippi 6.7 percent and now 59.4 percent.

There have been 800,000 Negroes who have registered in the South since the 1965 act. These spectacular changes would clearly seem to indicate that Congress without further ado should continue on this tried and true path and extend the provisions of the Voting Rights

Act of 1965 for an additional 5 years as provided in S. 818 and H.R. 12306.

However, the administration has introduced a new bill, S. 2507, which would amend the Voting Rights Act in a number of substantial ways and which deserves serious consideration.

The administration proposal is designed to extend the coverage of the Voting Rights Act to the entire Nation by five provisions:

1. There would be a temporary nationwide ban on all literacy tests or devices used to qualify voters in any Federal, State or local election.

2. There would be abolition of State residency requirements for voting in presidential elections.

3. It would authorize the Attorney General to dispatch voting examiners and observers anywhere in the Nation where voter disfranchisement is suspected.

4. It would grant nationwide authority to the Attorney General to start voting right suits and to ask for a freeze on discriminatory voting laws.

5. Creation of a Presidential Commission to study voting discrimination and other corrupt practices.

Some of these goals in the administration proposal are highly commendable. The abolition of literacy tests and residency requirements are objectives that the American Civil Liberties Union has long sought.

There are some who believe that illiterates should not be permitted to vote. However, this is to penalize illiterates for the failure of their Government to provide adequate education for all. It is within the power of the Federal Government to insure that every citizen is literate.

It is outrageous to discriminate against those who have no power to remedy their conditions; to keep from them the only power they have to improve their condition by denying them the right to vote for their representatives.

Illiterates are very much affected by the results of elections; they ought to be able to participate in them.

Contrary to popular belief, literacy is not a prerequisite for intelligent voting. Given the means of modern mass communication, radio and television, there is no reason why any citizen cannot be well informed on the issues involved in any election. There is no justification for maintaining tests which disfranchise illiterates.

By the same logic there is no reason for a State to deny anyone within a State the right to participate in an election for President and Vice President of the United States because of failure to meet a residency requirement. No one is less qualified to make an intelligent choice in such an election simply because he has not lived in any given State for a specified period of time.

The President and Vice President are the leaders of the country for all of us. There is no special interest in a State in setting qualifications for who can vote for President or Vice President.

No one is less qualified to make an intelligent choice merely because he has failed to satisfy residence requirements which rank as high as 2 years in some States, in order to vote for President and Vice President.

The ACLU's attempt several years ago to establish this constitutional principle was lost in a case called *Drueding* v. *Devlin*, which

was a challenge to the Maryland State provision requiring 1 year's residence in order to vote for the President and Vice President.

The Supreme Court summarily affirmed without briefs and without argument. Although we lost the battle I suppose you might say we won a minor victory because during the pendency of the action the State attorney general recommended to the State legislature that it drop the 1-year residency requirement to 45 days which was adopted by the State legislature.

It is very interesting to note that the very same issue is now before the Supreme Court in the case of *Halls* v. *Beals*, challenging the 6-month residency requirement of the State of Colorado.

Although we find much to commend these two amendments proposed by S. 2507, we believe that some of the other proposed amendments would, in fact, be disastrous retrogressions.

Section 4(a) of the Voting Rights Act of 1965 bars the use of any literacy, "good moral character" or educational achievement test in any State or political subdivision where less than 50 percent of the eligible adults were registered or voted in the 1964 presidential election.

However, the ban may be lifted by the filing of an action by the State in a three-judge Federal court in the District of Columbia and by proving that the test had not been used in a discriminatory fashion for the preceding 5 years.

Thus the test in section 4(a) and section 5 is really one aimed at racial discrimination.

S. 2507 would amend section 4(a) to ban all tests and devices, used to qualify voters throughout the country, whether or not racial discrimination is involved.

The Supreme Court has upheld the provisions of the Voting Rights Act of 1965 in the past based on the sweeping powers given to Congress by the 15th amendment, in the case of *South Carolina* v. *Katzenbach*. It had another case, *Katzenbach* v. *Morgan*, in which they based their decision under the 14th amendment, which barred the use of English literacy tests in States where individuals had completed the sixth grade in an American-flag school in some other language.

The court reasoned in these two cases that the enabling clauses of the 14th amendment and 15th amendment were intended to give Congress all the power necessary to pass legislation which was appropriate to bring about the objectives of the amendments. Yet the administration's proposed section 2 is not directly aimed at racial discrimination, even though it has been shown that such discrimination exists outside of the seven States that are presently covered by the Voting Rights Act.

There are, for example, discrepancies between voting registration by Negroes and by whites in other States, some of which do not have literacy tests. Such States as Arkansas, Florida, Oklahoma, Tennessee, and Texas have also been accused, and there has been documentation of the accusations by the Civil Rights Commission, of discrimination and yet they would not be affected by section 2 of the administration proposal, because it is only aimed at baring literacy tests throughout the country.

In those States which do have literacy tests, many of them have not been charged with discrimination, and Congress has not yet compiled

the necessary evidentiary record that literacy tests are being used as tools for discrimination.

What I am suggesting is another kind of record has to be made before you can adopt section 2, which bans the literacy tests or the other qualifications nationwide.

It has to be shown that those are standing in the way of franchise, whether or not racial discrimination is involved, and that kind of record has not yet been made before Congress.

Senator BAYH. Mr. Chairman, would you indulge me to ask one brief question right here?

Senator ERVIN. Yes, sir.

Senator BAYH. Mr. Speiser, I apologize for interrupting your testimony.

Mr. SPEISER. Please do not hesitate.

Senator BAYH. I appreciate your contribution here. It will be very helpful to the committee and to the Congress. Would you elaborate on that particular point, because I think this is the nub of being either for or against the administration's position as far as an outright ban even for 3 years and 4 months of literacy tests. Could you be more specific as to what criteria Congress has to meet before it can constitutionally ban literacy tests or suspend them?

Mr. SPEISER. It seems to me that Congress, in trying to ban literacy tests—if Congress cannot show that literacy tests in States outside of the South are having the effect of barring Negroes or other minority groups from voting, because they are racially motivated or they operate in a racially discriminatory fashion—there must be shown some other basis than the 15th amendment which is aimed at preventing discrimination based on race, color, or previous condition of servitude, in order to establish the congressional basis for passage of section 2.

Senator BAYH. I want to ask that same question of the Attorney General very frankly, and I imagine that he will say, and I want to put this in the equation, that as a result of the Gaston County case, it is true in the southern part of our country that where you have unequal education literacy tests discriminate per se, then as he mentioned in the House, as these same people that are poorly educated move North, the application of the literacy test there is discriminatory per se also. Would you put that in your equation in your answer?

Mr. SPEISER. Yes. In Gaston County they showed there had been segregated and unequal schools in Gaston County.

If you are going to move outside of the South and are raising the question about literacy tests in the North, about States that have them, you are going to have to establish the fact that either the schools there were segregated and provided unequal education or you are going to have to establish how many Negroes moved there who had come from States with unequal schools, and you are going to have to establish the fact that this type of bar is based on that unequal schooling. I do not believe that Congress yet has had that kind of information.

There are some States that do not have very much migration in it which have literacy tests. Now what is the theory on which you can ban literacy tests in those States.

Also, some of the tests that are going to be affected by this are good character tests. For example, the State of Idaho bars prostitutes from voting or people who live in house of ill-fame. You don't have any

racial motivation that I can think of there in the State of Idaho but there has to be some kind of congressional basis. It is authority to set aside State laws. This is really a States rights kind of argument, that before the Federal Government——

Senator BAYH. It is rather unique coming from Larry Speiser.

Mr. SPEISER. I am not embarrassed by it. Before the Federal Government can set aside or suspend State-passed laws or tests or devices, there is going to have to be a reason for the Federal authority moving into this area, and it seems to me that the authority is going to have to come under either the 14th or the 15th amendment. If you cannot do it under the 15th amendment because you cannot show racial discrimination, then you are going to have to show that there is some kind of discrimination, perhaps not based on race, which provides the basis for the Federal Government to operate. That kind of record has not been made because the focus in the past when the Voting Rights Act came up was entirely on the questio nof the use of these tests in States where they had been implemented—they had been put into existence—specifically to bar Negroes from voting.

Senator BAYH. How large a burden of proof do we have there? What number of examples do we need to have? For example, let us suppose if you could peruse statistically the significant numbers of poorly educated people from the southern part of the country that moved North, this would be one evidence. How many evidences of school systems which discriminate in the North would be needed, to really go to constitutional cases?

Mr. SPEISER. I cannot answer that question. All I can say is that if you held hearings on the administration proposal so that that kind of record could be built up, focusing on that problem, then it seems to me that it would sort of be a self-answering kind of question, but you have not had that. You did not have that when the Voting Rights Act was being considered. The focus there was on the South. The focus there was on the use of literacy tests and other devices in the South. When you talk about stopping the use, suspending the use of literacy tests, good moral character tests, whatever the tests are in other areas, and you have not the proof that they are racially motivated, you should have a hearing on that specific problem to provide the kind of evidence on which the Congress can act. I think that Congress should have that kind of evidence and should hold hearings on that, but that it seems to me, and as you may know from my statement is a problem that should be considered after the extension of the Voting Rights bill.

The Voting Rights bill was aimed at a specific problem. It has done excellent work. It should be continued. After that it seems to me the administration proposal should be given earnest consideration, and give the administration the opportunity to present that kind of evidence.

One problem is that under the Civil Rights Act of 1964 there was supposed to have been a census, but it was never made. The funds were never appropriated. The Executive never asked for them, and we do not really have the facts about the effect of literacy tests on black and white alike, simply because that census was never made, the funds were never asked for and the Bureau of the Census never conducted it.

Senator BAYH. Thank you very much.

Thank you, Mr. Chairman.

Mr. SPEISER. All of this and the colloquy suggests the answer that even if there were no defects in S. 2507 the expansion of the Voting Rights Act to nationwide coverage respecting literacy and other tests must be granted on a different factual basis than the Voting Rights Act of 1965. That record has not been made, and for this reason alone, as I said, the Voting Rights Act should be extended for 5 years while consideration is given to the administration proposal S. 2507.

In addition, there is a second, and more important reason why we are opposed to the enactment of S. 2507 in its present form. It would not only fail to achieve its goal of expanding the protection for voting rights, but it would also actually decrease rather than increase the effectiveness of the Voting Rights Act of 1965.

Section 3 of the bill would repeal the present section 5 which is in many ways most vital to its overall effectiveness. Section 5 is what is called a preclearance procedure. It requires any State or political subdivision before it changes any qualifications or procedures that come under the coverage of the bill at the present time either to obtain the approval of the Attorney General or to initiate a suit in the U.S. District Court for the District of Columbia. If the Attorney General objects to any of the changes they may not be enforced until the court rules that they do not have the purpose and will not have the effect of denying to any person the right to vote because of his race or color.

If the Attorney General does not object, then the new qualifications or procedures may be enforced 60 days after their submission.

Section 3 of the administration bill would repeal this provision and, instead, would authorize the Attorney General to seek an injunction in a three-judge district court against the enforcement of any voting qualification or procedure which has the purpose or effect of bridging the right to vote on account of race.

The objections to this proposed change, and to the elimination of the preclearance procedure, are many. First of all, it would reinstitute civil litigation as the basic means of trying to protect the right to vote, and the experience has been that it simply does not work. You cannot keep up with the changes. Litigation is slow. The amount of time and manpower that goes into a case is formidable. The Supreme Court in *South Carolina* v. *Katzenbach* case said it took about 6,000 man-hours, combing through registration records alone in preparation for trial.

It simply does not work to use civil litigation. It is a useful back stop method. It exists under the present law, but to switch from the the preclearance procedure back to that really would be to turn history backwards and to invite disaster.

Secondly, it puts the burden on the Attorney General to keep informed of any changes in the law, whereas the burden is now on the States and the political subdivisions to inform the Attorney General of any new changes in the law.

The burden of proof that the laws are not going to have a racial discriminatory effect is on the State, and the Supreme Court upheld that shifting of the burden of proof as being based on the fact that there had been systematic resistance to the 15th amendment and Congress might well decide to shift the advantage of time and inertia from the perpetrators of evil to its victims.

The individual suits which are presently allowed under the Voting Rights Act and which were sustained in the Supreme Court's decision

last month in *Allen* v. *Board of Education* would seem to be eliminated under the change in the law, and it is to be noted that it was private litigants in Allen who brought to the Court's attention the fact that there had been changes that were racially motivated or would have the effect of racial discrimination in voting processes.

The Attorney General argues against the preclearance procedure by saying only 225 voting laws have been submitted to the Attorney General for approval and of those only four were objected to by the Attorney General, a very small percentage, and three of those four, it should be pointed out, were involved in the Allen case.

He also points to the fact that a number of States and political subdivisions have failed to submit their laws for approval. From these facts he recommends the elimination of the preclearance procedure. I find this to be a strange position for an Attorney General to take, that because a law is being ignored it should be repealed.

Secondly, the mere fact that so few of the proposals submitted to the Attorney General have been found objectionable does not prove that the preclearance procedure does not work.

On the contrary, it can be argued that it shows that because it is there, the States are doing their best to comply with the procedures, and are doing their best to get approval. On the other hand, they are not going to submit proposals to the Attorney General that they think are going to be turned down, so the very existence of the preclearance procedure does have that kind of impact.

In place of the present section 5, the administration would substitute a provision authorizing the Attorney General to sue in a Federal court whenever he believes a State has enacted or is administering a voting procedure that is racially discriminatory.

However, he already has that power under prior civil rights acts, and he can presently sue in a three-judge court under the provisions of the Civil Rights Act of 1964.

The administration also proposes a new commission to study voting rights. The administration fails to make a very persuasive case or even a persuasive case at all as to why a new commission is necessary. There is presently existing a U.S. Commission on Civil Rights which has done yeoman's work in the past. If it has had any defects it is because it has not had the kind of executive backing it should have, and it has not had the financing it should have.

There is simply no justification for setting up a new commission. The old commission, which was set up incidentally during the Eisenhower administration when President Nixon was Vice President, has been giving a lot of attention to the problem of voting rights.

It has developed a staff with expertise. It has compiled a backlog of information and setting up a new commission would seem to me to be a wasted and duplicative step.

In conclusion let me summarize by saying we are heartily in favor of proposals which would eliminate literacy tests and residency requirements for voting in presidential elections. However, we think the first thing to do is to extend the provisions of the Voting Rights Act of 1965, which has worked in the past, and should continue to work in the future. It has been responsible for the registering of 800,000 Negros who had not registered before. There is still a continuing need for it.

We would be opposed, after the extension of the Voting Rights Act for 5 years, to the provisions in S. 2507, the administration proposal, which would make radical changes in the procedures, the preclearance procedures that have worked up until now. It is good to be aware of the still continuing concern on the part of the Executive, on the part of Congress in this very vital field.

A great deal of progress has been made. More needs to be made until we can be assured that all adult citizens are actively able to participate in the election process.

Thank you, Mr. Chairman.

(The prepared statement of Mr. Speiser follows:)

TESTIMONY OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

The Voting Rights Act of 1965 was a major breakthrough in providing an effective instrument to meet the problem of racial discrimination against potential Negro voters. Prior to its enactment, it was clear that earlier laws, including the Civil Rights Acts of 197, 1960, and 1964, had failed to remedy the persistent and outrageous denials of the right to vote to Negro citizens. Each of those earlier statutes required extensive litigation, because of the "massive resistance" to their enforcement. Hundreds of thousands of Negroes were continuously disfranchised in flagrant defiance of the provisions of the Fifteenth Amendment.

The major method of barring Negro citizens from voting was the use of literacy tests and other voter registration tests and devices in many Southern states. As a result, an estimated 57% of all voting age Negroes—2,843,000—living in eleven Southern states were not registered to vote as late as November, 1964.

The key provisions of the Voting Rights Act of 1965 suspended the use of these tests or devices in any state or any political subdivision where less than 50% of the persons of voting age residing registered or voted in the Presidential election of November, 1964.

At the present time, under the Voting Rights Act, the use of literacy tests and other voter registration tests and devices are suspended in Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia and 39 counties in North Carolina. All of these named states and counties are required, before passage of any new legislation affecting voting, to seek court approval or to submit such legislation to the Attorney General for his determination that it does not violate the Fifteenth Amendment.

According to the provisions of the Voting Rights Act of 1965, the states and counties which are presently barred from using these literacy tests will be permitted to petition a three-judge Federal court in the District of Columbia after August 6, 1970 for the right to escape from these provisions of the Act. If the Court finds that no test or device has been used during the preceding five years for the purpose of, or with the effect of discrimination, then the bar will be lifted. Those states and counties will then be able to reinstitute the exact same types of tests that were previously outlawed by the Voting Rights Act because they had been used to disfranchise Negroes.

This would permit history to repeat itself. After the Civil War, Negroes participated in the political life of Southern states on a broad basis. In many states they attained some political power. Nevertheless, through a series of strategems, fraud and violence, Negroes were effectively cut out of all the political life in the South. Under pressure, intimidation, and lawless discrimination, most simply abandoned their efforts to vote. As documented in the excellent report issued May, 1968, by the U.S. Commission on Civil Rights, intitled "Political Participation," Negroes were barred from voting by the use of "good character" tests and the requirement that applicants pass literacy and "civic understanding" tests. There were also other means used to disfranchise Negroes such as poll taxes, property qualifications for registering, residency requirements and a list of disfranchising crimes expanded to include offenses believed more often committed by Negroes. The story is not a pretty one, and it should not be permitted to happen again.

Under the Voting Rights Act of 1965, registration of Negroes in all Southern states has skyrocketed. Although it has not yet reached the same percentage as

the white population, the change is impressive. For example, in the following states the percentages have gone up in this fashion:

[In percent]

	Preact registration	Postact registration
Alabama	19.3	56.7
Georgia	27.4	56.1
Louisiana	31.6	59.3
Mississippi	6.7	59.4

These spectacular changes would seem to indicate that Congress without further ado should continue on this tried and true path and extend the provisions of the Voting Rights Act of 1965 for an additional five years as provided in S. 818 and S. 2406.

However, the Administration has introduced a new bill, S. 2507, which would amend the Voting Rights Act in a number of substantial ways and which deserves serious consideration.

The Administration proposal is designed to extend the coverage of the Voting Rights Act to the entire nation by accomplishing five separate goals:

(1) A nationwide ban on all literacy tests or devices used to qualify voters in any Federal, State or local election.

(2) Abolition of state residency requirements for voting in presidential elections.

(3) Authorizing the Attorney General to dispatch voting examiners and observers anywhere in the nation where voter disfranchisement is suspected.

(4) Granting nationwide authority to the Attorney General to start voting right suits and to ask for a freeze on discriminatory voting laws.

(5) Creation of a presidential commission to study voting discrimination and other corrupt practices.

Some of these goals are highly commendable. The abolition of literacy tests and residency requirements are objectives the ACLU has long sought. There are some who believe that illiterates should not be permitted to vote. However, this is to penalize illiterates for the failure of their Government to provide adequate education for all. It is within the power of the federal government to insure that every citizen is literate. It is outrageous to discriminate against those who have no power to remedy their condition; to keep from them the only power they have to improve their condition by denying them the right to vote for their representatives. Illiterates are very much affected by the results of elections: they ought to be able to participate in them.

Contrary to popular belief, literacy is not a prerequisite for intelligent voting. Given the means of modern mass communication, radio and television, there is no reason why any citizen cannot be well informed on the issues involved in any election. There is no justification for maintaining tests which disfranchise illiterates.

By the same logic there is no reason for a state to deny anyone within a state the right to participate in an election for President and Vice President of the United States by failure to meet a residency requirement. No one is less qualified to make an intelligent choice in such an election simply because he has not lived in any given state for a specified period of time.

The ACLU's attempt to establish this constitutional principle was lost several years ago in the case of *Drueding* v. *Devlin*, 234 F. Supp. 721, *aff'd* 380 U.S. 125 (1965), in which we challenged the constitutionality of Maryland's one year residency requirement for voting for President and Vice President. Although we lost the battle, because the decision of the three-judge Federal court was summarily affirmed by the Supreme Court, we did score a minor victory in having the state legislature, on the recommendation of the state Attorney General, drop the residency requirement to 45 days.

It is interesting to note that some four years later, the Supreme Court has just agreed to hear a similar case, *Hall* v. *Beals, prob. jur. noted* 37 U.S. Law Week 3298 (1969), challenging the six month residency requirement for presidential elections in the State of Colorado.

Although we find much to commend these two amendments proposed by S. 2507, we believe some of the other proposed amendments would, in fact, be disastrous retrogressions.

Section 4(a) of the Voting Rights Act of 1965 bars the use of any literacy, "good moral character" or educational achievement test in any state or political subdivision where less than 50% of eligible adults were registered or voted in the 1964 presidential election. However, the ban may be lifted by the filing of an action by the State in a three-judge Federal Court in the District of Columbia and by proving that the test has not been used or had the effect of denying the right to vote for the previous five years. The only standard which the court may apply in entering its judgment is whether the "test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color." Thus, the test in this Section and in § 5 which applies to areas covered by § 4(a) is clearly one concerned with the existence of racial discrimination.

S. 2507 would amend § 4(a) to ban all tests and devices, used to qualify voters such as literacy, "good moral character" tests, or educational achievements or knowledge in any Federal, State or local election whether or not racial discrimination is involved.

The Supreme Court has upheld provisions of the Voting Rights Act of 1965 in the past based on the sweeping powers given to Congress by the Fifteenth Amendment. See, *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966). *Katzenbach* v. *Morgan*, 384 U.S. 641 (1967) indicates that the Fourteenth Amendment can also be used.

The Court reasoned in these two cases that the enabling clauses of the Fourteenth and Fifteenth Amendments were intended to give Congress all the power necessary to pass legislation which was appropriate to bring about the objectives of the amendments. Yet Section 2 of S. 2507 is not directly aimed at ending racially motivated voting discrimination even though it has been shown that such discrimination exists outside of the seven states presently covered by the Voting Rights Act. There are, for example, discrepancies between voting registration by Negroes and by whites in states outside of those in the deep South some of which do not have literacy tests. For example, Arkansas, Florida, Oklahoma, Tennessee and Texas have been accused of racially discriminatory voting practices, but none of these states are among the fourteen which have literacy tests and therefore would not be affected by this Section of the bill.

In those states which do have literacy tests and which have not been charged with discrimination, Congress has not yet compiled the necessary evidentiary record that the literacy tests are being used as tools for discrimination.

It has been argued that because the percentage of Negro voters in some districts which have literacy tests is lower than it is in some districts which do not have literacy tests, the literacy tests are the cause of discrimination. It is deplorable that Negro (or for that matter any minority group) participation in elections is low in any district. But the mere presence of a literacy test in that district cannot be conclusive evidence that it is being used to discriminate. Often there are other explanations. For example, Negroes may be psychologically intimidated by the fact that they were rejected before, or by unfounded fears that they would be persecuted or by fears that they will not be qualified.

All of this suggests the answer that even if there were no defects in S. 2507, that its expansion of the Voting Rights Act to nationwide coverage in barring literacy tests and other devices and residency requirements for presidential elections, must be grounded on a different factual basis than the Voting Rights Act of 1965. Section 4 of the Voting Rights Act was based on the Fifteenth Amendment's prohibition against discrimination in voting based on race, color, or previous condition of servitude.

But the new expanded scope must be based on the Fourteenth Amendment's prohibition against any kind of discrimination whether racially motivated or not. That record has not been made and for this reason alone, the Voting Rights Act should be immediately extended for five years, while consideration is given to the broader proposal in S. 2507.

In addition, there is a second and more important reason why we are opposed to the enactment of S. 2507. It would not only fail to achieve its goal of expanding the protection for voting rights, but it would also actually decrease rather than increase the effectiveness of the Voting Rights Act of 1965.

Section 3 of the bill would repeal the present § 5 of the Act which is in many ways most vital to its overall effectiveness. Section 5 of the Voting Rights Act requires any state or political subdivision covered by the Act which seeks to change its voting qualifications or procedures either to obtain the approval of the Attorney General or to initiate a suit in the U.S. District Court for the District of Columbia. If the Attorney General objects to the changes they may

not be enforced until the court rules that they do not have the purpose and will not have the effect of denying to any person the right to vote because of his race or color. If the Attorney General does not object, the new qualifications or procedures may be enforced 60 days after their submission.

Section 3 of S. 2507 would repeal this provision and, instead, would authorize the Attorney General to seek an injunction in a three-judge Federal district court against the enforcement of any voting qualification or procedure which has the purpose or effect of abridging the right to vote on account of race.

The objections to this proposed change in the law are many. First of all, it would reinstate the old civil litigation method which existed prior to the 1965 Act and which was found to be so defective and inefficient. It was clearly the congressional intent to eliminate the necessity for relying on such civil litigation in order to strike at the evil of racially discriminatory practices. The Supreme Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966) persuasively stated why the old method simply did not work:

"Voting suits are usually onerous to prepare, sometimes requiring as many as 6,000 man hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow . . . Even where favorable decisions have finally been obtained some of the states affected have merely switched to discriminatory devices not covered by the Federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration." (at p. 314)

To reinstitute the system of civil litigation as the basic method of preventing states or political subdivisions from instituting racially discriminatory voting procedures is to invite disaster. Even if the Attorney General were successful in a suit there would be nothing preventing a state or political subdivision from adopting some new racially motivated procedure in order to bar Negroes or other minority groups from voting. Surely the fact of 800,000 new Negro registrants who have been enfranchised since the adoption of the Voting Rights Act of 1965 cannot be ignored as a most persuasive argument against reliance on civil litigation as a means for keeping the voting process pure.

This new proposal places on the Attorney General the almost insurmountable burden of keeping himself informed of every new voting law whereas under the current provision the states are required to inform him or the District Court of any new law they propose. Even after he discovers what appears to be a racially motivated discriminatory law, he must carry a heavy burden of proof. In many cases, it would be almost virtually impossible for the Attorney General to prove a law will have a racially discriminatory effect unless he allows the law to be instituted and then to investigate its actual impact. This procedure would necessarily allow the law to do a great deal of damage before it could be invalidated by the courts. Many thousands of Negroes could be effectively disfranchised during this time.

Facts developed prior to the passage of the Voting Rights Act provide the basis for placing this burden on some states and political subdivisions. The Supreme Court pointed this out in *South Carolina* v. *Katzenbach, supra,* when it said

"After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of evil to its victims."

Finally, § 5 of the Voting Rights Act of 1965 presently allows individuals to sue governmental bodies to enjoin them from enforcing racially discriminatory laws. In *Allen* v. *State Board of Elections*, 37 U.S. Law Week 4168 (1969), the Supreme Court held that the language "no person shall be denied the right to vote for failure to comply with [a new state enactment covered by but not approved under Section 5]" 37 U.S. Law Week 4170 gives individual litigants the power to seek declaratory judgments that new voting laws fall under § 5. The Court noted "the achievement of the Act's laudable goal could be severly hampered, however, if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General . . . The Attorney General has limited staff and often might be unable to uncover quickly new regulations and enactments passed at the varying levels of state government." 37 U.S. Law Week 4170–71. The language on which this decision was based is deleted by S. 2507. It is, therefore, doubtful whether individuals could still seek declaratory judgments if this bill were enacted.

The Attorney General in his testimony before the House Judiciary Committee pointed out that since the passage of the Voting Rights Act of 1965, approximately 225 voting laws have been submitted to the Attorney General for

approval. Of those, the Attorney General objected to only four. Three of the four objections involved statutes which were before the Supreme Court in the *Allen* case.

The Attorney General points out that in a number of cases, states and political subdivisions have failed to submit their laws for approval, and they had to be discovered by other means.

From these facts he recommends elimination of the "preclearance" procedure. That does, indeed, seem to be a strange position for the Attorney General to take—that because a law is being ignored, it should be repealed. Secondly, the mere fact that so few of the proposals submitted to the Attorney General have been found objectionable does not prove that the "preclearance" procedure has had no impact. On the contrary, it can be argued that states are much more careful not to pass laws that will be found objectionable.

In place of the present § 5, the Administration would substitute a provision authorizing the Attorney General to sue in Federal court whenever he believes a state has enacted or is administering a voting procedure that is racially discriminatory. However, the Attorney General already has such a power under several provisions of the Voting Rights Act of 1965 as well as the Civil Rights Act of 1957. He also can presently sue in a three-judge court with the right of direct appeal to the Supreme Court under the provisions of the Civil Rights Act of 1964.

The Administration also proposes the creation of a new presidentially appointed voting rights study commission. It is difficult to see the necessity for this. The U.S. Commission on Civil Rights already exists. It has done yeoman work; it has a trained staff and has gained expertise in its 12 years of existence since 1957 when it was founded. If there are any deficiencies in the Civil Rights Commission, it is because of lack of proper financing and lack of wholehearted backing by the Executive.

In conclusion, although we are heartily in favor of elimination of literacy tests throughout the country and eliminating residency requirements as a bar for voting in presidential elections, we believe that these are problems that should be handled in separate pieces of legislation. The Voting Rights Act of 1965 has proved its effectiveness in the fact that 800,000 Negroes are registered who were not registered before. Its procedures have been useful and expeditious. The wisest course for Congress to follow would be the five year extension of the ban on literacy devices and tests which is presently covered by the Voting Rights Act of 1965. Subsequent to that there could be considered some of the substantive changes recommended in the Administration's bill S. 2507. However, we would be clearly opposed to the radical changes in procedures provided in S. 2507 which would eliminate many of the existing safeguards in protecting voting rights.

It is good to know of the concern of Congress in this very vital field. Great progress has been made; more needs to be made until we reach the time when all adult citizens actively participate in the election process.

Senator ERVIN. Am I to construe your statement to mean you favor both the enactment of the extension of the Voting Rights Act of 1965 and also the enactment of the bill proposed by the administration?

Mr. SPEISER. I think you have overstated my position. I am in favor of the extension of the Voting Rights Act of 1965. I am in favor of two of the provisions of the administration's proposal. I am not in favor of the changes in procedures that are provided for in the administration proposal. I also suggest a time schedule. You, Mr. Chairman, have spoken about how things come in their due time, and it seems to me that first things should come first.

The first thing is to extend the voting rights bill of 1965 for an additional 5 years and then take up the administration bill, in order to make a record for those two provisions of which I am heartily in favor.

Senator ERVIN. You suggested that there is no basis for the enactment of the administration's bill, and there is no proof that outside of the South there is any racial discrimination in registration and voting in the United States.

Mr. SPEISER. No, I did not say that. I said that there was no proof that tests and devices, such as literacy tests, and good moral character tests, have been used for racial discriminatory purposes outside of the South. I said that they exist outside of the South, they exist in some 14 other States, but I said that there is no record that has been made to show that those tests have been used or have the effect of racial discrimination in their use in the States outside of the South.

Senator ERVIN. Well, you could apply the 1965 Voting Rights Act to every State in the Union which has literacy tests, if you would merely raise the percentage of those who must come out and vote to keep them from applying.

Mr. SPEISER. I suppose you could.

Senator ERVIN. Now the Voting Right Act does not condemn anybody on the basis of discrimination, but it says that discrimination exists when either less than 50 percent of the persons of voting age in a State are registered, or less than 50 percent of those of voting age, even of those who may be registered, come out and vote.

Mr. SPEISER. You are entirely correct, Mr. Chairman, and what Congress did was to develop a trigger mechanism. They did not use the word "race" and they did not get involved in trying to prove something. They had facts before them. They created a trigger mechanism to cover certain areas, and I think it was well recognized that is exactly what they were doing.

Senator ERVIN. And under the trigger mechanism which they developed, a State could register everybody of voting age in the State irrespective of the race. If they had 100 percent of the people on the registration books, thus giving them an opportunity to come out and vote, and if less than 50 percent of them availed themselves of the opportunity the State stands condemned of discrimination, does it not, under the——

Mr. SPEISER. It comes under the provisions of the act. I guess the difference is, Mr. Chairman, as to whether it is condemned, to use your term. It comes under the provisions of the act, so that those devices and tests are suspended.

Senator ERVIN. Don't they stand condemned of having violated the 15th amendment, which only applies to discrimination based on race?

Mr. SPEISER. There were jurisdictions that came under the provisions of the act in which there had been no accusation of racial discrimination. They came under the formula that was developed, and the Supreme Court said, perhaps it is a little overbroad, but it accomplishes the major purpose it sought to. Alaska came under it. There were counties in Arizona, one in Hawaii, which still comes under the provision, where tests are suspended, and there has not been any accusation of racial discrimination involved in those jurisdictions. It was a trigger mechanism that was drafted and I grant you, Mr. Chairman, it does not say anything about race in that trigger mechanism, but it was drafted in framing it at jurisdictions where the problem was most acute, and if it was overly broad, the Supreme Court said, well, you attempt to draw some kind of line, and the line may operate a little overbroadly in an area like this. I think you have different standards of overbreadth for criminal statutes as compared to other kinds of statutes.

Senator ERVIN. In other words, the bill was drawn in such a fashion that it put the innocent with the guilty?

Mr. SPEISER. You are posing this in terms of innocent or guilty, and if it were a problem of putting people in jail or taking their liberty away then I would say that Congress has to be a good deal more careful in drawing——

Senator ERVIN. I thought you shared that point with me that nobody ought to be convicted of evildoing without his guilt being proven.

Mr. SPEISER. I agree with you. I do not think anyone ought to be convicted without——

Senator ERVIN. But it does not apply in this case.

Mr. SPEISER. There are different standards that are utilized for different types of congressional enactments. When you get into the criminal law field, I grant you that standard, and we will be standing side by side on that, Mr. Chairman, but when you get into another field, there are different kinds of standards in which there is a good deal more flexibility. There is a greater chance for overbreadth on the part of Congress.

Senator ERVIN. Yes; and in every case—this applied in several instances north of the Mason-Dixon line, did it not?

Mr. SPEISER. Yes.

Senator ERVIN. Yes; and it applies in the Watts area of California. It applies in certain congressional districts and counties in New York State, both of which, California and New York, have literacy tests.

Mr. SPEISER. Yes.

Senator ERVIN. And it would apply to them, but a politically motivated Attorney General considered they were not guilty of discrimination. The only people guilty of discrimination were below the Mason-Dixon line.

Mr. SPEISER. There is a way to get out from under the provisions of the act which is to sue and Wake County in North Carolina got out from under it.

Senator ERVIN. Yes, it got out. It got under it because the Census Bureau went down to the county and counted all of the felons serving sentences in the State penitentiary which is located in Wake County, most of whom came from other counties because there are 99 other counties. They counted them. Then they went over to Dix Hill, a hospital for the mentally ill, and counted all of the insane people there, most of whom came from other counties, and when they counted the insane people and the felons in the State prison none of whom could have voted anyway, they got Wake County about one one-thousandth of an inch below the 50 percent requirement. Now that is the way the act was administered.

Mr. SPEISER. Mr. Chairman, any argument I would attempt to get into with you on what is true in North Carolina I am bound to lose.

Senator ERVIN. That about covers that. You agree with me that under the formula a State could register every person of voting age in the State without discrimination, afford them the right to go out to vote and if less than 50 percent of them go out and vote they stand condemned in violation of the 15th amendment.

Mr. SPEISER. Yes; there is a historical basis for that. The problem is not just registration and as the Civil Rights Commission pointed out in its report, there are all kinds of ways of preventing people from participating in the electoral process. It can start with party machinery; it can start with precinct organization; it can involve

election watchers, poll watchers. All of that can be involved in it. So even though you may have 100 percent registration, if less than 50 percent vote, it comes under the trigger mechanism.

I grant you it may be in some cases that the mechanism is triggered simply because individuals are not interested, and I understand that that can happen, and can be a problem, but the fact is that the proof of the pudding of the Voting Rights Act is what the results have been. The results have been 800,000 Negroes have registered under it that were not registered before. You compare that with the tiny increment of numbers of Negroes that registered, prior to the 1965 act, even with the fact that we have had acts in 1957, 1960, and 1964, and compare that with what has happened in Mississippi, for example, since then, and it seems clear that this operates effectively.

Now if in fact there are jurisdictions that come under the provision that perhaps should not, then I do not agree with you that this is a conviction, and I do not agree with you that it is depriving them of their liberties similar to a penal statute.

It is unfortunate, but the fact is that this formula has worked. It has worked effectively and worked well, and I do not see any reason to tamper with it.

Senator ERVIN. I am intrigued. You know I have always heard there are three kinds of liars. There are liars, damn liars and statisticians. Now in North Carolina——

Mr. SPEISER. You have me at a disadvantage if you are going to keep talking about North Carolina.

Senator ERVIN. Yes. North Carolina in 1962 had 258,000 blacks registered. In 1967 it had 277,404 registered, an increase of 19,409 in 5 years. When you contrast 47,000 in 1968, as an increase over the 258,000 in 1962, I would infer that the reason there was an increase in most of those cases was because of these people having come of age during that 6-year period. A lot of people do become 21 every year.

Mr. SPEISER. Right.

Senator ERVIN. But let us go back. Don't you agree with me that a State has no way to compel people to come out and vote?

Mr. SPEISER. I am sorry, I did not hear you.

Senator ERVIN. Don't you agree with me there is no way in existing law by which the State can compel people who are registered to come out and vote?

Mr. SPEISER. Under present law that is right.

Senator ERVIN. And so the fact that 50 percent of the people fail to vote for a President does not prove there has been any discrimination at all, does it really? If less than 50 percent are registered it might prove it, but the fact that less than 50 percent failed to come out and vote——

Mr. SPEISER. You are right, it does not prove it, but there are sufficient facts on which that trigger mechanism was created, and in the jurisdictions to which it applies to show that it has hit at the States where the problem was primarily the greatest. As I pointed out in my statement there are States that are not covered by it in which there is racial discrimination, and it has been documented that there is racial discrimination, and they are not covered by it. The argument is made "Look, you did not cover all the racial discrimination that should be covered by a Voting Rights Act aimed at eliminating racial

discrimination in voting, and, perhaps, you have covered jurisdictions in which there has been no allegation of racial discrimination."

Senator ERVIN. There is another thing that makes it an unreliable test. Take a State like North Carolina where the white population is larger than the Negro. The Negro population is about 25 percent. Every Negro in North Carolina could come out and vote and if the white people stayed at home, then North Carolina would stand condemned under this formula of practicing racial discrimination against Negroes, could it not?

Mr. SPEISER. Mr. Chairman, you could have that kind of conclusion, and there perhaps are other kinds of trigger mechanisms which could have been suggested. If the problem really is the fact that there is discrimination against Negroes in Southern States against registering and voting and participating in the political process, then there could have been a trigger mechanism based on the percentage of Negroes who are not registered, and who do not vote. It could have been framed in that way.

There was a good deal of experimentation I think in discussing this when it was first proposed. It was framed in this way. It works this way. There is still a job to be done, and if the bill is not extended, then it seems to me that you are going to have the same problem of the States, the flagrant violators reinstituting the exact same kinds of tests and devices that they instituted before. You cannot keep up with the changes. You go to court. You knock one out and there is another one to replace it, and in the meantime people are not permitted to vote and register.

Now if you are arguing against any kind of trigger mechanism, then, Mr. Chairman, I think you still have to acknowledge that a trigger mechanism, putting it in this fashion without proving in every case there is racial discrimination is really the only effective way to——

Senator ERVIN. Before this we had some laws under which the Government or the taxpayers could have gone into Federal court and alleged discrimination against Negroes, and the judge could have tried the case without a jury, so there would not be a chance to have southerners on the jury rendering a verdict. You would have a Federal judge. And then you could order Federal registrars to go in and register everybody, couldn't they? They had that power?

Mr. SPEISER. That is exactly what was on the books, and under that kind of provision the percentage of Negroes who were able to vote I think in the State of Mississippi went up about 2 percent in about an 8-year period.

Senator ERVIN. They could have been registered, if the law had been enforced it could have been done, could it not?

Mr. SPEISER. No, Mr. Chairman, it is not a question of diligence or enforcement of manpower or willingness. The civil litigation method unfortunately just does not operate as a means of protecting voting rights where there is a massive disenfranchisement. It just does not work.

Senator ERVIN. It does not work with impatient people. People are so impatient to get what they deem to be right they are willing to suspend provisions of the Constitution.

Mr. SPEISER. Except the Supreme Court has upheld the provisions that are involved.

Senator ERVIN. Oh, yes, they did.

Mr. SPEISER. In the Voting Rights Act.

Senator ERVIN. But they adopted a new method of interpretation which had never theretofore been employed in the history of this Nation. Up until the time of *South Carolina* v. *Katzenbach* and *Katzenbach* v. *Morgan*, it had always been held by the Supreme Court that the Constitution should be interpreted to be a harmonious whole, consisting of provisions of equal dignity, and it should be interpreted in such a way as to give each provision its meaning without destroying the other provisions of the Constitution.

Now, before I ask my next question I want to lay down a premise. I think you will agree with me that under section 2 of article I of the original Constitution it provides that the—

> House of Representatives shall be composed of members chosen every second year by the people of the several States and the electors in each State shall have the qualifications requisite for electors to the most numerous branch of the State Legislature.

I will ask you if it has not been uniformly interpreted, that provision of the Constitution, throughout the history of this Nation as giving the States the right to prescribe qualifications for voting including a literary test.

Mr. SPEISER. Yes, up until the passage of the 14th and 15th amendments which places a limitation on it—which gives Congress the power to implement the provisions of the 14th amendment to prevent any kind of discrimination, and the Congress under the 15th amendment to implement its provisions to prevent discrimination based on race, color, or condition of previous servitude. What you have read, you are right, is the original Constitution, but that is amended under the 14th and 15th amendments giving Congress that broader power over that.

Senator ERVIN. The only difference made by the 15th amendment was that no qualifications could be based on race.

Mr. SPEISER. That is the 15th; you are right.

Senator ERVIN. The only other specific provision on that point is the women's suffrage amendment which provides that you can still prescribe qualifications but you cannot prescribe qualifications based on race or sex.

Mr. SPEISER. Yes, but——

Senator ERVIN. And the courts have interpreted those clauses to give the States the power to adopt qualifications for voting, including literacy tests, in every case subject to these exceptions. First, that under the equal protection clause of the 14th amendment, the first section of the 14th amendment, it must apply to everybody in like circumstances.

Second, there could not be any qualifications on race.

Third, there could not be any qualifications based on sex.

Mr. SPEISER. Yes. I would add an addition to the first one, which is that qualifications apply to everyone in a like fashion—also qualifications must not be unreasonable ones which is another way of stating both of these are covered by the 14th amendment's equal protection clause.

Senator ERVIN. Up to that time there had been the principle of law that nobody could be condemned for violating the 15th amendment without it being proved that they had discriminated. Either they had a law to discriminate on the basis of race, or that it was shown

that the law was so manipulated as to constitute discrimination on the basis of race.

Mr. SPEISER. The answer to that is the Supreme Court's opinion in *South Carolina* v. *Katzenbach*.

Senator ERVIN. I am talking about what was the law before then and what was the interpretation of the Constitution before then.

In the *South Carolina* case the Supreme Court threw out the window the Constitution as a harmonious document, consisting of provisions of equal dignity, which should be interpreted so as to make every provision apply. In the *South Carolina* case they adopted the theory that the Constitution is an instrument composed of mutually repugnant and mutually destructive provisions of unequal dignity. What they held in the *South Carolina* case, boiled down to its essence, is that the second section of the 15th amendment, which merely gave the Congress power to enforce the prohibition against discrimination on the basis of race in voting, gave Congress the power to nullify the provisions of the second section of the first article, the provisions relating to electors of the first section of the second article of the Constitution, the provisions of the 10th amendment reserving to the States the right to prescribe a literacy test if they wished and the provisions of the 17th amendment relating to popular election of Senators, which is identical with the second section of the first article.

Mr. SPEISER. I do not read it that way, Senator. It seems to me that to make all these mesh, the Constitution, the body of it, still permits the States to set qualifications for voting subject to the congressional power under the implementing clause of the 14th and 15th amendments to do things to accomplish the purposes that were provided for in those amendments, so there is a limitation which does not seem to me to be inconsistent.

The amendments are amendments to the Constitution. The body of the Constitution really only restricts the Federal Government.

Senator ERVIN. But the 17th amendment was adopted after the 14th and the 15th.

Mr. SPEISER. Yes, and therefore it has to mesh into this as well.

Senator ERVIN. When you get down to theory of the decision in the *South Carolina* case, the Court held that the second section of the 15th amendment was so powerful that it gave Congress such vast powers that Congress could suspend powers reserved to the States under the second section of the first article, the first section of the second article, the 10th amendment and the 17th amendment. Now is that not true?

Mr. SPEISER. You are putting it in such——

Senator ERVIN. I am just putting it down on bedrock truth.

Mr. SPEISER. On an either/or basis, I guess I would respond with a question. If that is the case, and you feel that this is unconstitutional for Congress to engage in that activity, then I assume you would be opposed to the administration proposal as well, for example, to knock out the literacy test or suspend them throughout the entire country, no matter what the constitutional basis is, simply because you think that is contrary to the administration's——

Senator ERVIN. I think it is unconstitutional in certain respects, but the difference between it and the Voting Rights Act is that the Voting Rights Act is unconstitutional in every respect notwithstanding what the Supreme Court said. In the *Morgan* case the Supreme Court said the second section of the 14th amendment which merely gave the

Congress the power to enact legislation appropriate to enforcing other provisions of the 14th amendment gave Congress the power to pass a law which would nullify a State law which was in perfect harmony with the other sections of the 14th amendment, and not only to do that, but to substitute for the State voting qualifications in New York a Federal qualification which Congress was forbidden to pass by the second section of the first article of the Constitution, the first section of the second article of the Constitution, the 10th amendment and the 17th amendment.

Mr. SPEISER. The amendments to the Constitution amend the Constitution. They do change what existed before. For example, the first 10 amendments to the Constitution did not apply against the States. They only applied against the Federal Government. But the 14th amendment made the provisions or some parts of the provisions of the Bill of Rights applicable to the States, so you do change what exists before. The Congress, or rather the country, in passing and adopting the 14th and 15th amendments, did in fact limit in a way that had not existed before the provision in the body of the Constitution that the States have a right to set qualifications for voting.

Senator ERVIN. I take the position, all the Supreme Court's decisions to the contrary notwithstanding, that there is no power in Congress to destroy any provision in the Constitution. That is exactly what they held in both of these cases.

I am one of these sort of antiquated individuals who believes that the Supreme Court spoke the truth in *ex parte Milligan* when it said that no motion more pernicious was ever invented by the wit of man than the notion that any part of the Constitution could be suspended at any time under any circumstances, and that the Constitution was a law for the Government, the rulers, that is the Supreme Court and the Congress, as well as for the people.

Let's go back and talk about the *Gaston County* case. This bill was passed to condemn violators of the 15th amendment, State election officials, in any State coming under this formula.

Mr. SPEISER. All the provisions of the Voting Rights Act as I understand it are based on the 15th amendment except for the American-flag school provision which is based on the 14th amendment. All the rest is based on the 15th amendment.

Senator ERVIN. I say it was passed ostensibly for this purpose. It condemned by an artificial rule, it condemned election officials in all the States it applies to by an artificial formula. Then it provided that if they wanted to get relief from the insult and the condemnation of that formula, they could not go to the nearest Federal court to get relief. They couldn't go anywhere on the face of the earth, not to any judicial tribunal, except to a court sitting here in the District of Columbia.

Mr. SPEISER. That represents somewhat of a change but not that major change.

Senator ERVIN. I flatter myself by thinking you and I share some of the same concepts of due process of law.

Mr. SPEISER. I know we do.

Senator ERVIN. Don't you think it is a rather shabby form of due process of law to close the doors of the courts where causes of action arise and say that parties have to journey anywhere from 100 to

1,000 miles with their witnesses before they can find a court that is open to them?

Mr. SPEISER. Up until 1962 that is exactly what Congress required individual citizens to do when they wanted to sue the Government. They had to come to the District of Columbia no matter whether they were 3,000 miles way or not, and attacks on the constitutionality of that principle lost consistently Congress finally——

Senator ERVIN. Congress finally got so enlightened that it abolished that principle.

Mr. SPEISER. Exactly right.

Senator ERVIN. It opened all the Federal courts of the country to litigants who could get service on a Government official.

Mr. SPEISER. That is right, but before 1962 everybody who wanted to sue the Government had to come to Washington, D.C. Now granted that this is an inconvenience, but political subdivisions are more capable of weathering that than individuals, and I think we can all recognize the reason it was done. It was done to get the cases here in the District of Columbia. It was done for uniformity. It was done because the——

Senator ERVIN. It was done because you have some judges in the District of Columbia, in the words of the U.S. News & World Report, which said a few weeks ago, take off in flights of legal fantasy.

Mr. SPEISER. I trust that the statement was not made while Judge Burger was on the Court.

Senator ERVIN. No, I think an exception was made of him. I live right close to Gaston County. I am familiar with it. It was in the same congressional district as my county for many years, and I have held many courts in Gaston County. I am familiar with it. The blacks in Gaston County vote the Democratic ticket and Democratic election officials put them all on the books, on the register. And everybody in North Carolina knows that Gaston County has practiced no discrimination in voting. Circuit judge, Judge Skelly Wright, said in his opinion, 684 Federal Supplement 288 "Insofar as we are here concerned with that part of the act which speaks for purposeful discrimination, we must agree that Gaston County Board of Electors has made commendable efforts to have registration of all citizens residing in that county irrespective of race or color." And their commendable efforts got them condemnation, in addition to being condemned by act of Congress. They were condemned by the district court up here and also by the Supreme Court of the United States, because the district court and the U.S. Supreme Court added another thing you had to do to get exemption under the act that Congress had not put in, namely you must not have had segregated schools in times past.

Now Congress could have put something like that in the act if they had wanted to. I would challenge the constitutionality of it but Congress did not do it so the courts did that.

Here is what District Judge Gasch said in page 690 in that same opinion:

"Indeed there is no evidence of any Negro who has been denied registration because of his race."

Now that is the way justice is administered in the year of our Lord 1969.

Mr. SPEISER. Except they were looking to the future.

Senator ERVIN. In a country which theoretically is wedded to the principle that justice is every place attempted, there is no temple of justice to which these States and counties are given access to except the district court of the District of Columbia. Notwithstanding the fact that he said there is no evidence of any Negro being discriminated against in Gaston County, Gaston County still stays condemned under this act.

Mr. SPEISER. Coming back to the questioning of filing in the District of Columbia in your very excellent bill which we supported, S. 3 I think the number is, you provided that suits challenging Federal financial programs which would be considered violative of the first amendment establishment clause, would have to be filed here in the District of Columbia.

Senator ERVIN. I put that in there and I put that in there with shame and humiliation, because I recognized I had to do that to get the votes of some Members of the Congress, and I am ashamed of it.

Mr. SPEISER. All I am showing is the fact that it has been done before.

Senator ERVIN. The Civil Rights Commission put some statistics in the record. They stopped off in midsummer. I am not casting any aspersion on them because the evidence just was not available but after these figures stopped, the registration period extended from midsummer down to November, and so these figures are incomplete and short. Most people tend to register in the fall rather than in the spring. Now these figures show that in North Carolina there are 426,971 white people of voting age who are not registered in North Carolina and only 136,524 Negroes of voting age not registered.

Now why did not those 426,971 whites register to vote?

Mr. SPEISER. I do not know. There is a problem of apathy, and it may very well have affected those States or those subdivisions that came under the provisions of the 1965 act, and I just have to repeat again what I said before—that the trigger mechanism may have been overly broad as far as covering jurisdictions that, perhaps, should not have been brought under it. In fact, though, it has worked. Tinkering with it I think would be a mistake, and I think that as long as you can show how well it has worked by the number of Negroes who have registered, I think it ought to be extended.

Senator ERVIN. Well, now, it is alleged here by inference that the 136,524 Negroes of voting age not registered in North Carolina did not register because they were discriminated against by the literacy test, but that the 426,971 whites did not register because of apathy. That would tend to prove that the races are not equal notwithstanding efforts to make them so, that Negroes want to register and vote and white people do not.

Mr. SPEISER. You have the same kind of judgment in Alaska which comes under the act, and you have the same kind of judgment in the other jurisdictions outside of the South as to why it was less than 50 percent. There were problems. Part of it was military service and there were other kinds of problems that were involved. The trigger mechanism, as I keep saying, has worked in the past. It is still necessary to continue in the future. It does not cover the entire problem, and it may take in people or jurisdictions that should not be covered, but the fact that it has worked, the fact that it has had the impact it has it seems to me is a justification for its continuation. But after that, then

I quite agree we ought to go on to consider the administration proposals for literacy tests and abolition of residency requirements.

Senator ERVIN. Now another question. These Civil Rights Commission figures show that the middle of the summer of 1968 in 11 Southern States there were 4,304,735 whites of voting age not registered, and in the same States there were 1,904,000 Negroes of voting age not registered.

Can you tell me why those whites did not register, 4,304,735?

Mr. SPEISER. It may have been apathy, it may have been all kinds of reasons—disinterest, inconvenience, geographical isolation. There are all kinds of reasons why they may not have registered. The triggering mechanism does not say that in each and every case there is discrimination against Negroes. It was broadly framed. It covers the jurisdictions that were intended to be covered, and it has worked in getting Negroes registered and voting.

Senator ERVIN. I notice that my legislature has submitted an amendment to the people of North Carolina to abolish the literacy test, and I hope the people adopt it, because I have been for years hearing North Carolina condemned on the basis of having a literacy test. The North Carolina literacy test, as it was administered at the time the Voting Rights Act went into effect could be passed by anybody who merited promotion to the fourth grade.

Under regulations of our State board of elections, an applicant was given in most cases a sheet of paper with the shortest sentence they could find in the Constitution printed on the top of it and a blank line for the applicant for registration to copy that on. He was allowed unlimited time to copy it, and yet we stand condemned.

Of course the bill worked. We could put an end to the crime wave in the United States if we do the same thing. Just pass a law declaring everybody guilty of a crime and say they could not obtain freedom unless they came up to the District of Columbia, and could not get a trial in the other Federal courts, but thank God the Constitution does not allow that.

Mr. SPEISER. The fact that North Carolina literacy tests may have been utilized in a fair and impartial fashion does not prove that very similar kinds of literacy tests which were used in other States in the South, were not used in an arbitrary fashion. I recall an example in a footnote in one case, freedom of speech was supposed to have been copied and it was completely misspelled by a white person yet he passed the literacy test, and college graduate Negroes were disqualified on failure to pass the very same literacy test.

The fact is that literary tests have been historically used as a means of disqualifying Negroes. Now they may not have been used in some jurisdictions or most of the jurisdictions in North Carolina, but they have been used and Congress was right to use that as part of the triggering mechanism in order to bring the provisions of the Voting Rights Act into being.

Senator ERVIN. As I construe your testimony, you disapprove of the administration bill because it treats everybody alike. You approve of the Voting Rights Act. I consider that the due process clause properly interpreted requires that every person be allowed to try their case where the witness is available and where the case arises. You make people travel from 100 to 1,000 miles to get a trial and have them first

condemned by an act of Congress without a judicial trial—which I contend is a bill of attainder by all the precedents until they handed down this decision, in which they said the bill of attainder did not apply to the States.

But a bill of attainder applies to State officials. A State does not exist except in the contemplation of law. So this bill condemns every State election official in 39 counties of my State, and in six other States for violating the 15th amendment, without a judicial trial; it gave them the shabbiest form of due process of law by making them come up here.

Under this *South Carolina* case, Congress would have the power to pass a law saying that every civil case that arose under the Constitution and the laws and treaties of the United States would have to be tried in one district court sitting in Alaska.

I do not think Congress would do that, because that would not be nearly as politically remunerative as horsewhipping the South, so I do not think there is any danger of that.

Thank you.

Mr. SPEISER. You at the end attempted to summarize my position. I do not think you did it accurately, Mr. Chairman, but I think I did state it on a number of occasions so I will leave it as stated in the record.

Senator ERVIN. This law I do not think hurts North Carolina too much. But I am like the man who went to the circus and the circus attendant tapped him with a stick and he raised an awful howl. The circus owner went around and said, "I saw the man hit you. He just barely tapped you. He didn't hurt you."

The fellow said, "No, but what makes me mad, he tapped me with a stick with which he stirs the monkey's wheel."

So when you take an unconstitutional law which is interpreted in a manner contrary to every prior decision of the Supreme Court, and which allows Congress to suspend four sections of the Constitution and hold that 39 counties in my State cannot even exercise their constitutional rights in the United States, to me it is like tapping North Carolina with a stick stirring the monkey's wheel.

Of course, some advocate both of these bills. That reminds me of another story about the man who went home and got a telegram from the undertaker saying his mother-in-law had died. It said "Shall we cremate or bury her?" The man wired back, "Take no chances, cremate and bury her." So some people recommend both of these laws.

Mr. SPEISER. Let me state my position. I am in favor of extending the voting rights bill for an additional 5 years. I believe the administration bill has two very commendable provisions in it, the temporary ban on literacy tests or other qualifications, and secondly the ban on residency requirement in presidential elections. I think those should be taken up as separate legislation after the extension of the voting rights bill, because I think they have much to commend them.

I disagree with the administration's proposal on eliminating the preclearance procedure because I think that has been very effective and has worked. I would hate to see that eliminated.

I believe that a record has not yet been made for Congress, if it is going to ban literacy tests throughout the country as well as residency requirements. If Congress is to outweigh the provisions of the body

of the Constitution giving the States the right to set qualifications, it is going to have to make more of a congressional record to authorize that. We are heartily in favor of eliminating both literacy tests and residency requirements throughout the country but that is a matter to be taken up after this.

Senator ERVIN. Just to show how the law would apply: In Robeson County, N.C., 67.9 percent of all Negroes—or, rather, generally speaking, all persons of voting age, 67.9 percent of all people of voting age, are registered to vote in that county. In that county 68.3 percent of the Negroes over 21 are registered to vote. When they voted in the 1968 election, only 42.2 percent voted. Robeson County would be covered by the act, if it was moved up to 1968 figures.

Now, that is a county you can hardly catch a Republican in, and the Democrats do their voting in the primary. They do not bother to go out in an election to vote. Yet they would be condemned just because they voted in the primary instead of the election.

One other thing I overlooked and that is this: This bill would extend the condemnation to States and counties based on what they did or failed to do in 1964. Don't you think that it ought to be amended at least to provide that the test would be applied to the 1968 election?

Mr. SPEISER. No. The original proposal, when it came out, was for 10 years. It was amended to cover a 5-year period as a political compromise, and that was the price that was paid for getting it through. The 1964 figures were the basis for the triggering device. The problem is by no means over, and if you go up to the 1968 figures, you are going to have every jurisdiction out from under.

Senator ERVIN. Oh, you don't want any people to escape. I don't mean you but the proponents of the bill don't want anybody to escape.

Mr. SPEISER. The purpose of the bill was to prevent massive discrimination against Negroes exercising the right to vote and participating in the electoral process. The ones who came under the provision on the whole, not all but on the whole, were those most guilty of that, and the triggering device was based on the 1964 figures. You can play around with triggering devices any way you wish, but the fact is that there is still lots more to be done, there are still many instances involving discrimination against Negroes in the voting process as documented by the Civil Rights Commission. As long as that exists the bill should be extended based on the 1964 figures and no tampering should be done to any part of the triggering device.

Senator ERVIN. I would hate to think the Lord is going to judge us on the basis of our conduct before we have repented and behave ourselves rather than on the truth of our repentance. Here we have the proposal that people who acted righteously in 1968 must remain condemned because they allegedly acted unrighteously in 1964.

If the record works on that principle there is no hope for salvation of any of us.

Senator BAYH. I have some questions, but I see that the Attorney General has arrived, Mr. Chairman, and I think out of courtesy to him——

Mr. SPEISER. I am somewhat embarrassed because I recognize he is sitting here.

Senator ERVIN. I am just not going to sit silently by and have him tap North Carolina with a stick to stir the monkeys' wheel. I think that is engaging in rather iniquitous conduct.

Mr. SPEISER. I just think you are putting the wrong interpretation on what the act does. You make it a question of condemnation and guilt and matters of that kind. It is a triggering mechanism to do certain things.

Senator ERVIN. If they passed a law like that about a crapshooter it would have been unconstitutional as a bill of attainder.

Mr. SPEISER. I do not know about a bill of attainder.

Senator ERVIN. As a crap shooter it would, a murderer or any other criminal.

Mr. SPEISER. If you had an overly broad statute—a penal statute—then I think you are right, that it may be knocked down as unconstitutional, but there is a different kind of standard for a criminal statute by which individuals to gage their behavior as compared to other kinds.

This is a broader type.

Senator ERVIN. The trouble is some of us think there is a different standard in one section of the country in which I happen to live than in other sections of the country. They used to hold that when Congress passed a law that was so broad that it caught the guilty and the innocent both within the net, that the law was unconstitutional, that it was not the function of the court to segregate the guilty from the innocent. They repudiated that doctrine in legislation against the South through the Voting Rights Act.

Mr. SPEISER. I do not think that is a proper interpretation of it, Mr. Chairman.

Thank you for the opportunity of appearing.

Senator ERVIN. Thank you.

Counsel, call the next witness.

Mr. BASKIR. Mr. Chairman, the next witness is the Attorney General of the United States.

Senator ERVIN. Mr. Attorney General, I want to apologize as my questioning of Mr. Speiser delayed your appearance.

STATEMENT OF HON. JOHN N. MITCHELL, U.S. ATTORNEY GENERAL, ACCOMPANIED BY JERRIS LEONARD, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION

Attorney General MITCHELL. Quite to the contrary, sir, I enjoyed the lesson in constitutional law. May I proceed, Mr. Chairman?

Senator ERVIN. Yes.

Attorney General MITCHELL. I have a statement.

Mr. Chairman, and members of the subcommittee, I want to thank you for the opportunity to testify today. I appreciate the courtesy you have shown in scheduling the date of this hearing, so that I could attend.

The right of each citizen to participate in the electoral process is fundamental in our system of Government. If that system is to function honestly, there must be no arbitrary or discriminatory denial of the voting franchise. The President has committed this administration to the view that it will countenance no abridgment of the right to vote because of race or color or other arbitrary restrictions.

Furthermore, the President is committed to the policy that it is in the national interest to encourage as many citizens as possible to vote and to discourage the application of unreasonable legal requirements.

In the last several months, we have made a thorough review of the possible consequences arising from the expiration of the 1965 Voting Rights Act. We have also examined the general theories and facts underlying voting practices in the Nation and the need for Federal legislation.

We have come to the firm conclusion that voting rights is no longer a regional issue. It is a national concern for every American which must be treated on a nationwide basis. Our commitment must be to offer as many of our citizens as possible the opportunity to express their views at the polls on the issues and candidates of the day.

Therefore, we propose the following amendments to the 1965 Voting Rights Act designed to greatly strengthen and extend existing coverage in order to protect voting rights in all parts of the Nation.

First: A nationwide ban on literacy tests until at least January 1, 1974.

Second: Nationwide restrictions on State residency requirements for presidential elections.

Third: The Attorney General is to have nationwide authority to dispatch voting examiners and observers where required.

Fourth: The Attorney General is to have nationwide authority to start voting rights law suits and to ask for a freeze on discriminatory voting laws.

Fifth: The President is to appoint a national voting advisory commission to study voting discrimination and other corrupt practices related thereto.

Before describing our proposals in detail, I would like to review the situation as it exists at this time.

The 15th amendment to the Constitution was adopted in 1870. It provides that:

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

Since the passage of the 15th amendment, the Congress has been repeatedly told that Negro citizens were subjected to racial discrimination in many areas of the Nation, particularly in the South. As a result, Congress enacted the Civil Rights Act of 1957, followed by the Civil Rights Act of 1960 and the Civil Rights Act of 1964.

Each of these three acts provided additional procedures to assure equality in voting. In 1965, the situation was this:

The Department of Justice was pursuing case-by-case, county-by-county remedies under the Voting Rights Acts then existing. The Congress believed that more progress could be made by the passage of additional legislation.

Because the six States which had the lowest voter turnout in the 1964 election also had literacy tests—and because these States also had the Nation's highest ratios of Negro population and the lowest ratios of Negro voter registration—certain corrections were legislated by the Congress. These corrective measures were contained in the Voting Rights Act of 1965.

The act provided for suspension of literacy and similar tests and devices in States and counties where such tests were utilized; and where less than 50 percent of the total voting-age population was registered to vote or voted in the November 1964 election. This suspen-

sion could be removed if the State or county could show that it had not used such tests with a discriminatory purpose or effect. (Section 4.)

Other provisions of the act authorize the Attorney General to direct the assignment of Federal examiners, and election observers to counties covered by the act. (Secs. 6 and 8.) Also, covered States and counties are prohibited from adopting new voting laws or procedures unless they have received the approval of the Attorney General or the U.S. District Court for the District of Columbia. (Section 5.)

Areas now subject to the coverage of the act are the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, 39 counties in North Carolina, one county in Arizona, and one county in Hawaii. These jurisdictions have not applied to Federal courts asking for removal of the ban, except for Gaston County, N.C., which I will discuss later.

The State of Alaska and some isolated counties elsewhere were within the formula, but sought and obtained judgments indicating that their tests had not been used discriminatorily.

The results of the 1965 act are impressive. Since 1965, more than 800,000 Negro voters have been registered in the seven States covered by the act.

Moreover, according to the figures of the voter education project of the Southern Regional Council, more than 50 percent of the eligible Negroes are registered in every Southern State.

The Voting Rights Act also provides another means for termination of such coverage. Section 4(a) provides that the suspension of tests will end if the jurisdiction obtains from the U.S. District Court for the District of Columbia a declaratory judgment that there has been no discriminatory use of a test or device during the preceding 5 years.

The statute directs the Attorney General to consent to such a judgment if no such test or device was so used. No covered jurisdiction will have employed a literacy test since August 1965. Thus the awarding of the declaratory judgments after August 1970 will be virtually automatic for six States and 39 counties in the South.

However, section 4(a) provides that the district court is to retain jurisdiction of the action for 5 years after judgment and is to reopen the matter upon motion of the Attorney General alleging discriminatory use of a test or device.

Highly relevant to this provision is the recent decision of the Supreme Court in *Gaston County* v. *United States*.

Gaston County, N.C., filed an action for a judgment to end the suspension of its literacy test under the 1965 act. The county sought to prove that, when the literacy test was in effect, it had been administered on a nondiscriminatory basis.

The United States introduced evidence showing that, in Gaston County, the adult Negro population had attended segregated schools and that these schools were in fact inferior to the white schools. Relying on such evidence, the district court ruled that literacy tests had the "effect of denying the right to vote on account of race or color." It said the county had deprived its Negro citizens of equal educational opportunities in the past and therefore had deprived them of an equal chance to pass the literacy test.

On June 2, 1969, the Supreme Court affirmed the decision of the district court.

The Supreme Court ruled that offering today's Negro youth equal educational opportunities "will doubtless prepare them to meet future literacy tests on an equal basis." The Court added that equal education today "does nothing for their parents." It ruled that Gaston County had systematically denied its black citizens equal educational opportunity and that "'impartial' administration of the literacy test today would serve only to perpetuate those inequities in a different form." Accordingly, the Court held such tests unlawful under the Voting Rights Act.

Under the *Gaston County* decision, any literacy test has a discriminatory effect if the State or county has offered not only education which is separate in law, but education which is inferior in fact to its Negro citizens. Evidence in our possession indicates that almost all of the jurisdictions in which literacy tests are presently suspended did offer educational opportunities which were inferior.

Therefore, it is my view that, in regard to most of the jurisdictions presently covered by the 1965 act, I would be obliged to move, shortly after reintroduction of the literacy test, to have the test suspension reimposed in the seven covered States. I believe that the lower courts, under the *Gaston County* ruling would suspend the literacy test and would continue to do so until the adult population was composed of persons who had had equal educational opportunities. In short, in my opinion, the ban on literacy tests would continue for the foreseeable future in the States presently covered by the act, even if no new legislation were to be enacted by the Congress.

Furthermore, I believe that the *Gaston County* decision would continue to suspend existing literacy tests or would ban the imposition of new literacy tests in those areas outside of the seven States covered by the 1965 act where publicly proclaimed school segregation was prevalent prior to 1954. This would include all or part of Florida, Arkansas, Texas, Kansas, Missouri, Maryland, the District of Columbia, Kentucky, and Tennessee.

To protect against future denials of the right to vote and to encourage fuller utilization of the franchise, I propose the following amendments to the 1965 Voting Rights Act:

First: No State or political subdivision may require any person to pass a literacy test or other tests or devices as a condition for exercising the fundamental right to vote, until January 1, 1974.

The reason behind this suggestion is as follows—and this reasoning not only strongly supports our proposal but shows the inadequacy of a simple 5-year extension of the 1965 act.

My personal view is that all adult citizens who are of sound mind and who have not been convicted of a felony should be free to and encouraged to participate in the electoral process. The widespread and increasing reliance on television and radio brings candidates and issues into the homes of almost all Americans. Under certain conditions, an understanding of the English language, and no more, is our national requirement for American citizenship.

Perhaps more importantly, the rights of citizenship, in this day and age, should be freely offered to those for whom the danger of alienation from society is most severe—because they have been discriminated against in the past, because they are poor, and because they are undereducated. As responsible citizenship does not necessarily imply literacy, so responsible rating does not necessarily imply an

education. Thus, it would appear to us that the literacy test is, at best, an artificial and unnecessary restriction on the right to vote.

The history of the literacy test in this country shows quite clearly that it was originally designed to limit voting by foreign-born and other minority groups.[1] Available information today shows that present enforcement of literacy requirements in States not covered by the 1965 act indicates considerable variance in procedure.

In some States literacy requirements are no longer enforced or are enforced only sporadically. In other States the literacy test is not applied uniformly but is applied at the discretion of local election officials.[2]

Today, a total of 19 States have statutes prescribing literacy as a precondition for voting. This number includes the seven Southern States, where as a result of the 1965 act, the literacy test is suspended in all or part of the State. Also, there are 12 States outside the South which have constitutional or statutory provisions for literacy tests.[3]

Thus, following the Supreme Court's reasoning, it would appear inequitable for a State to administer a literacy test to such a person because he would still be under the educational disadvantage offered in a State which had legal segregation.

The Supreme Court appeared to tell us in the *Gaston County* case that any literacy test would probably discriminate against Negroes in those States which have, in the past, failed to provide equal educational opportunities for all races.

Many Negroes, who have received inferior educations in these States, have moved all over the Nation.

The Bureau of the Census estimates that, between 1940 and 1968, net migration of nonwhites from the South totaled more than 4 million persons.[4] Certainly, it may be assumed that part of that migration was to those Northern and Western States which employ literacy tests now or could impose them in the future; and that, as was true in Gaston County, the effect of these tests is to further penalize persons for the inferior education they received previously. For example, in the South, 8.3 percent of the white males over 25 have only a fourth grade education as opposed to 30 percent for Negro males.[5]

Furthermore, the Office of Education studies and Department of Justice lawsuits have alleged that areas outside of the South have provided inferior education to minority groups. Following the general reasoning of the Supreme Court in the *Gaston County* case, I believe that any literacy test given to a person who has received an inferior public education would be just as unfair in a State not covered by the 1965 act.

---

[1] Bromage, "Literacy and the Electorate," XXIV American Political Science Review 946, 951 (1930); Porter, "A History of Suffrage in the United States," p. 118 (1918).
See, e.g., *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

[2] Letters to Congressman F. Thompson from Deputy Attorney General of Delaware, 115 Congressional Record E3996 (daily ed., May 15, 1969), and from Assistant Secretary of State of Oregon, 115 Congressional Record E3999.
E.g., letter to Congressman Thompson from the Attorney General of California, 115 Congressional Record E4000 (daily ed., May 15, 1969).

[3] These States are Alaska, Arizona, California, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Oregon, Washington, and Wyoming. Idaho has a good character requirement which is a "test or device" within the meaning of section 4(c) of the 1965 act.

[4] Bureau of the Census, Current Population Reports, Series P-23, No. 26, "Social and Economic Conditions of Negroes in the United States (July 1968)," p. 2.

[5] Bureau of the Census, Current Population Reports, Series P-20, No. 182 (1969), "Educational Attainment (March 1968)," table 3.

Unfortunately, the statistics appear to support this argument. In the Western States, 3.5 percent of the white males have only a fourth grade education as opposed to 10.6 percent of the Negro males over 25 years of age; in the North Central States, 3.1 percent of the white males have only a fourth-grade education as opposed to 14.6 percent of the Negro males; and in the Northeast, 4.2 percent of the white males have only a fourth-grade education as opposed to 8 percent of the Negro males. Thus, inferior education for minority groups is not limited to any one section of the country.

The proposal for a simple 5-year extension of the 1965 Voting Rights Act leaves the undereducated ghetto Negro as today's forgotten man in voting rights legislation.

He would be forgotten both in the 12 States outside the South which have literacy tests now and in the 31 other States which have the ability, at any time, to impose them.

It is not enough to continue to protect Negro voters in seven States. That consideration may have been the justification for the 1965 act. But it is unrealistic as of today.

I believe the literacy test is an unreasonable physical obstruction to voting even if it is administered in an evenhanded manner. It unrealistically denies the franchise to those who have no schooling. It unfairly denies the franchise to those who have been denied an equal educational opportunity because of inferior schooling in the North and the South.

But perhaps, most importantly, it is a psychological obstruction in the minds of many of our minority citizens. I don't have all the answers to this problem. But I suggest to this subcommittee that it is the psychological barrier of the literacy test that may be responsible for much of the low Negro voter registration in some of our major cities.

Because records on voter registration and voting are not kept on a racial basis in the North, it is difficult to determine conclusively the level of Negro voting participation.

In most Deep South counties subjected to literacy test suspension, between 50 and 75 percent of the Negroes of voting age are now registered to vote. It is clear that this level is higher than Negro voter participation in the ghettos of the two largest cities outside the South—New York and Los Angeles—where literacy tests are still in use. Furthermore, in nonliteracy test northern jurisdictions like Chicago, Cleveland, and Philadelphia, Negro registration and voting ratios are higher than in Los Angeles and New York.

Consider, for example, the 1968 voter turnout in New York City. In the core ghetto areas of Harlem, Bedford-Stuyvesant, the South Bronx and Brownsville-Ocean Hill, six nearly all-Negro assembly districts (55th, 56th, 70th, 72d, 77th, and 78th) cast an average of only 18,000 votes in 1968 despite 1960 census eligible voter population of 45,500 to 55,000. On average, fewer than 25,000 voters were registered in these districts.

In addition since congressional districts are roughly equal in population, voting statistics from such districts may be used for the purpose of comparing New York and California Negro vote turnouts with those of other States.

In the nine northern big city States—Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Michigan, Illinois, Missouri, and

California—there were only 10 congressional districts where fewer than 100,000 votes were cast for Congress in 1968.[1] Of the 10, one was in California; and eight were in New York. Each of the nine districts—the 21st California; the 11th, 12th, 14th, 18th, 19th, 20th, 21st, and 22d New York—consists largely or partly of Negro ghetto areas.

These statistics illustrate a prima facie relationship between northern literacy tests and low voter participation by Negroes.

We clearly believe this amendment to suspend literacy tests and the other amendments we propose are within the jurisdiction of the Congress under its ability to implement the 14th and 15th amendments, in view of the U.S. Supreme Court opinions in *United States* v. *Guest*,[1a] *Katzenbach* v. *Morgan*,[2] *South Carolina* v. *Katzenbach*,[3] and *Gaston County* v. *United States*.[4]

Mr. Chairman, I urge this committee not to permit the Negro citizens outside of the South to be forgotten. I urge this committee to grant them the encouragement to vote and the protection for voting that are now granted to Negro citizens in the South. This encouragement has proved so successful that there have been 800,000 Negro voters registered since the passage of the 1965 act.

Second: It is our opinion that no person should be denied the right to vote for President or Vice President if he has resided in a State or county since September 1 of the election year. Persons moving after September 1, who cannot satisfy the residency requirement of the new State or county, should be permitted to vote in the presidential election, in person or by absentee ballot, in the former State or county.

This proposal would authorize the Attorney General to seek judicial relief against any abridgment of these residency rights.

Our reasons for this proposal follow:

Our society is mobile and transient. Our citizens move freely within States and from one State to another. According to the Bureau of the Census, in reference to the 1968 presidential election, more than 5.5 million persons were unable to vote because they could not meet local residency requirements.

A residency requirement may be reasonable for local elections to insure that the new resident has sufficient time to familiarize himself with local issues. But such requirements have no relevance to presidential elections because the issues tend to be nationwide in scope and receive nationwide dissemination by the communications media. The President is the representative of all the people and all the people should have a reasonable opportunity to vote for him.

Third: The Attorney General is to be empowered to send Federal examiners and election observers into any county in the Nation if he determines that their presence is necessary to protect the rights of citizens to vote.

Our reasons for this proposal follow:

This proposal would grant to the Department of Justice the right to send voting examiners and observers to any county in the Nation where such action is warranted because of reported violations of the

---

[1] Congressional Directory for the 91st Cong., pp. 359–366.
[1a] 383 U.S. 745 (1966).
[2] 384 U.S. 641 (1966).
[3] 383 U.S. 301 (1966).
[4] 37 Law Week 4478 (1969).

15th amendment. Our use of voting observers in the South has provided information to the Department of Justice which has enabled us frequently to ward off infractions of the 15th amendment. Similarly, in some counties, use of Federal examiners to list persons as eligible to vote has been necessary because local officials have refused to register them.

Under the 1965 act, the Attorney General is required to go to court to request voting examiners and observers in non-Southern States. Under our bill, he has the authority to send the observers and examiners any place without first applying to a court.

Fourth: The courts, on the application of the Attorney General, would be permitted to temporarily enjoin discriminatory voting laws and to freeze any new voting laws passed by the State or county against whom the lawsuit is filed.

Our reasons for this provision follow:

Because of the nature of elections and the fact that it is difficult at a much later date to correct the result of any illegal inequities, I believe that the Attorney General should have the discretion, in cases which appear to have serious consequences, to ask the court to temporarily freeze the situation in a particular area.

This was basically the philosophy adopted by the 1965 Voting Rights Act which provided that no election laws passed by States covered by the act could be changed without approval of either the courts or the Attorney General. In contrast to the 1965 act, our proposal leaves the decision to the court, where in our opinion it belongs; it properly places the burden of proof on the Government and not the States.

The preclearance requirements of section 5 of the 1965 act have been difficult to administer effectively. To date there have been some 345 submissions to the Department of Justice. We have 60 days to determine if a law has a discriminatory purpose or effect. Unless we are extremely familiar with the political structure of a given jurisdiction or are capable of detailing investigators to make appropriate injuiry, or receive complaints from local sources—it is virtually impossible to know if changes in the rules of a State election board, relocation of a polling place, consolidation of an election district, or some technical change in the election laws has such a discriminatory purpose or effect.

Despite the terms of the 1965 act, when local officials have passed discriminatory laws they have usually not submitted them to the Attorney General for approval. Rather, the Department of Justice has had to seek Federal court assistance to void them. Since 1965 only 10 laws submitted to the Department for approval have been disapproved, six of them this year.

Areas which passed discriminatory voting laws are likely to quickly pass substitutes. Our new proposal would eliminate this practice by goving the courts the authority to issue blanket orders against voting law changes.

The penalty for this violation of the court order would be contempt.

I might insert here that there is of course no penalty provided in the 1965 act for the failure to file any statutes with the Attorney General.

Under the present laws outside of the seven covered States, the Attorney General is limited in voting rights cases to a claim of constitutional violation. Under our proposal, he could institute a lawsuit any place in the country based on a broader statutory protection of a dis-

criminatory "purpose or effect" of a particular voting law or set of voting laws.

This would make it clear to the courts that it is unnecessary to prove that the intent of the local or State officials was racially motivated.

For all of these additional safeguards, we have only modified one section of the act. States and counties would no longer be required to automatically submit all changes in their voting laws.

With the entire Nation covered, it would be impossible for the Civil Rights Division of the Department of Justice to screen every voting change in every country in the Nation.

To justify this single modification of section 5, I would like to point out that the incidence of reported racial discrimination in voting has substantially decreased.

For example, since August 1965, we have received a total of 312 complaints of voter discrimination—231 from the covered States and 81 from the noncovered States.

In fiscal 1966, there were 157 complaints; in fiscal 1967, there were 92 complaints, in fiscal 1968, there were 45 complaints and through April of fiscal 1969, there were 18 complaints

This sharp decrease would seem to indicate that the dangers to voting rights, which existed prior to the passage of the 1965 act, appear to have substantially decreased in the seven covered States—decreased to the point where we no longer think it is necessary for these States to automatically present their voting law change to the Department after August 1970.

Fifth: A presidential advisory commission would be established to study the effects which literacy tests have upon minority groups, to study the problem of election frauds, and to report to Congress its findings and recommendations for any new legislation protecting the right to vote.

Our reasons for this proposal follow:

In order to determine whether additional legislation will be necessary or appropriate, a presidential advisory commission would study the effects which literacy and similar requirements for voting have upon minorities and upon low-income persons.

The Bureau of the Census would be directed to conduct special surveys regarding voting and voter registration and to make the data available to the Commission. The Commission would also study election frauds. It would be required to submit to Congress, not later than January 15, 1973, a report containing the results of its study and recommendations for any new Federal voting laws.

Our recommendation to study voting fraud stems from our strong interest in insuring that each citizen's vote will count equally with the vote of his fellow citizen. For too long, we have failed to take as aggresive action as we might in view of frequent evidence of false registration, illegal vote purchasing and the misreporting of ballots cast.

My previous testimony concerned encouragement of protection for and the exercise of the franchise prior to entering a voting booth. This fraud study, a logical extension, may help to guarantee the sanctity of the ballot once it is cast. Certainly, if we have a Federal interest in encouraging persons to vote, we have a Federal interest in insuring that their ballot be correctly processed.

Finally, there have been some suggestions that our proposal is merely a delaying tactic to tie up any attempt to extend the 1965 Voting Rights Act. I certainly disagree with this assessment.

First: As I said previously, the *Gaston County* case extends the literacy test ban for the foreseeable future in those States which previously maintained segregated and inferior school systems. Second: It would appear that any proposed amendment to this bill—no matter how well motivated and how comprehensive—would be open to criticism as a delaying tactic. Under this charge, it is difficult for me to see how we can propose an extension of the coverage to those citizens who need it in any way. Third: We do not want to see the act lapse in August 1970. We favor its extensions both in time and in its geographical coverage. I believe there should be sufficient time for the necessary hearings and debate on our proposal prior to the termination of parts of the 1965 act in August of 1970. I believe that it is worth the extra effort to extend the act to the entire Nation. I would hope that this subcommittee would support S. 2507, introduced by Senator Dirksen.

We will cooperate with this committee and with the Congress to assure a strong and timely bill.

Mr. Chairman, that is the end of my statement. I have with me Mr. Jerris Leonard, who is the Assistant Attorney General in charge of our Civil Rights Division, and perhaps, if I cannot answer the questions, he can.

Senator ERVIN. What use would it be to extend the Voting Rights Act of 1965 if the bill which you advocate were enacted?

Attorney General MITCHELL. I think it is a matter of context, Mr. Chairman. There are provisions of the 1965 act which dovetail with our proposals. So when we talk of extension of that act, we mean of its mechanical provisions which fit into the proposal that we have made.

Senator ERVIN. If that were done, we would still be under the limitation that any suits by any of the States or counties covered by the 1965 act would have to be in the District Court of the United States for the District of Columbia.

Attorney General MITCHELL. No, sir. Our bill provides with respect to voting laws and procedures that these suits be brought in the district where the complaint arises, before a three-judge Federal court with direct appeal to the Supreme Court. In view of the strong measures that are provided in the act for the halting of action by a municipality or other governmental body, we feel that these cases should be considered by a three-judge court and that appeal should be expedited.

Senator ERVIN. They would be left as far as the covered counties under your administration bill are concerned. The covered counties would really be denied even the right to come to the District of Columbia and show to the district court of the District of Columbia that they had not discriminated because your bill would put a total ban on all literacy tests.

Attorney General MITCHELL. Yes, sir: our proposal would ban all literacy tests, and would remove the question of whether or not election officials had applied the literacy tests in a discriminatory manner during the 5 years of the existing act. It would remove the relevancy of that question.

Senator ERVIN. We would still be left with the provision of the 1965 act that even though the 1965 act makes 39 counties in my State and six other States guilty, they could not even come to the District of Columbia because there would be no occasion to. They would be foreclosed from even litigating the matter.

Attorney General MITCHELL. Yes, sir; it would have that effect. I believe that it is appropriate that literacy tests be removed throughout the country; this would eliminate the necessity of determinations in the district court of the effect of the literacy tests or the method of their application.

Senator ERVIN. They would be precluded from the right to even litigate the question whether the administration of the act was unconstitutional, would it not?

Attorney General MITCHELL. The administration of the literacy test?

Senator ERVIN. They could not even litigate the constitutionality of the administration act.

Attorney General MITCHELL. Oh, I am quite certain that there would be grounds for litigating the constitutionality of this act by testing the application of its procedures in the amendment to section 5 relating to voting laws, ordinances, practices, et cetera.

Senator ERVIN. That would only be with respect to their right to exercise their constitutional powers to change the laws.

Attorney General MITCHELL. Yes, sir.

Senator ERVIN. That is a little less obnoxious than having it passed on by an executive officer, namely the Attorney General of the United States. I was very much impressed and heartened by your statement that laws should be uniform, that this should be regarded as one country, and that the Congress should not indulge in regional legislation. But it looks like to me with your advocacy of extension of the 1965 act, we still have one law applying to 39 counties in my State and six other States that do not apply to the Nation.

Attorney General MITCHELL. No, sir; that would not be true under the amendments that our bill proposes.

Senator ERVIN. It would leave us under the ban of the 1965 act, and say to us that you cannot even litigate that question whether you should escape from that ban. You have got two bans on us then and only one ban on the rest of the country.

Attorney General MITCHELL. No. The provisions of the bill that we propose remove the double standard. We would be abolishing literacy tests, and hence the provisions of section 4 would be removed, and section 5 of the act would be changed as we have discussed previously.

Senator ERVIN. You would remove the trigger device, from the 1965 act; would you not?

Attorney General MITCHELL. Yes, sir.

Senator ERVIN. I do not know what the Supreme Court is going to hold about the flat prohibition of the literacy test. It has already held that the Congress has the power to nullify three sections of the Constitution. What happens to the Constitution in some respects reminds me of the story down in my country. John Watts, a good bricklayer decided that he was called on to preach, and he was preaching away. He was a pretty good bricklayer but a rather poor theologian and he was preaching away in this little country church one Sunday afternoon and Joe Hicks, who had taken several drinks of pure country

corn, saw John Watts the preacher. He did not approve of his preaching so he grabbed him by the coat collar and dragged him to the door and threw him out. Joe Hicks was tried for disturbing the peace and he was found guilty. The judge, Judge Robinson, who evidently did not approve too much of John's preaching himself, was trying to find some way to let Joe down as light as possible. He said, "Mr. Hicks, you are guilty of this unseemly conduct on the sabbath day. You must have been so drunk as not to realize what you were doing," and Mr. Hicks said, "Your Honor, I had several drinks but I would not want Your Honor to think I was so drunk I could stand by and see the word of the Lord being muddled up like that."

I will have to confess the Constitution has been muddled up so much I cease to predict anything the Court will hold. But I do think if you go back to the original Constitution and what it meant prior to the *South Carolina* case, you will have difficulty in holding a ban on all the States of the right to prescribe the use of literacy test is constitutional. That is what worries me.

Attorney General MITCHELL. Mr. Chairman, our Office of Legal Counsel has made a study of this question, and it feels that there is a basis in both the 14th and 15th amendment to support this provision in the bill.

Senator ERVIN. Undoubtedly under the decision in *South Carolina* v. *Katzenbach* the Supreme Court held that the second section of the 15th amendment gave Congress such tremendous power that the Congress could suspend the fourth sections of the Constitution. I guess if you can suspend them, you could do exactly what this bill says. I have difficulty in finding anything in the Constitution that says that under one section of the Constitution Congress can abolish the other sections but the Court did hold that I will have to confess.

There being no occasion, of course, to seek to get out from under the bans of the 1965 act on the part of those who were denounced as culprits under it by act of Congress, because the trigger device would be abolished: is there anything in the bill that you advocate that would deny access to the courts, a Federal court sitting in North Carolina?

Attorney General MITCHELL. No, sir.

Senator ERVIN. Or any of these States to contest the validity of the total ban on the literacy tests?

Attorney General MITCHELL. No, sir. The bill does not deny nor prohibit access to the local courts. In fact, as I stated before, we have provided for three-judge courts to hear voting law cases. We think that it is appropriate that these cases be heard in the district in which the question arises. Under the 1965 act, the Attorney General, and his staff, have to make judgments beyond those of Solomon in order to determine whether these voting laws, ordinances, and procedures may be applied in a discriminatory manner. I believe that that question should most properly be determined in the courts, where the questions of intent and motives can be fully explored and accurately determined.

I use by way of an illustration one of the resolutions submitted to us concerning whether a school superintendent should be appointed instead of elected. Well, obviously you can draw all kinds of implications from such a change, on both sides of the fence. It may be that the purpose is to deny the right to vote in the election of the school

superintendent. Or, on the other side of the fence, it is a fact that more and more school officials are being appointed and not elected, and they are being appointed for their educational ability and not their political standing. It is our opinion that the Attorney General is really not equipped to make these findings within the 60-day period required.

Senator ERVIN. You could have a situation where laws would be invalid in one county and valid in another. In other words, the State would certainly have the power to pass a law like that, with nothing else appearing, and so you could have the law invalidated in one county on the ground that it is intended to prevent a member of the minority race from being elected to superintendent and then the law could be valid in the next county, which would be a queer thing from a constitutional point.

Attorney General MITCHELL. It is a question of intent and the manner of application. It is awfully hard, after the law has been passed, to sit up here in Washington and make a determination as to what this application is going to be. I think the courts found that problem themselves in the *New York* case, the *Rockefeller* case, where the claim was that gerrymandering had taken place to put Negroes and Puerto Ricans into particular voting districts. The court itself said they could not make that determination in the absence of a trial. That case, as you know, went all the way to the Supreme Court.

Senator ERVIN. Do you have any questions?

Senator BAYH. Yes, Mr. Chairman.

Mr. Attorney General, Mr. Leonard, we are very grateful to you for taking time to give us your thoughts on this matter which is of great interest to all of us.

I do not want to put words in your mouth or give you credit for something that may be lacking, but, as I understand your statement, in the opening remarks, you referred to the fact that circumstances prior to the 1965 act were sufficiently strong that the 1965 act was needed: is that correct?

Attorney General MITCHELL. We are looking at it from the year 1968. We pointed out, as I said in my testimony, that the 1965 act produced the registration of a substantial number of Negro voters.

Senator BAYH. Was that good or bad? Have we accomplished salutary results?

Attorney General MITCHELL. There is no question about it. It produced a salutary effect with respect to the registration. I presume that that is the result of the act. There does not seem to be much doubt about it.

Senator BAYH. Do you feel that there is a continued need to be on guard against the very activities, the very inclinations that existed prior to the 1965 act?

Attorney General MITCHELL. Yes. As I pointed out in my testimony, the occasions for the application of the provisions of the act under the powers of the Department of Justice have decreased measurably over the period of the act. In our bill, we provide all of the mechanisms to maintain our guard and to act appropriately, not only within the seven States, but throughout the Nation.

Senator BAYH. Yes. Well, very frankly, I respectfully take issue with some of your conclusions. On page 19 you say there were 345 submissions by the State legislatures to the Department of Justice.

Then you point out that 10 laws submitted to the Department of Justice were not approved, six of them this year. You go on over to page 22, I think it is, and point out the decreasing number of complaints. It would seem to me that a reasonable interpretation would be that this decrease is not just a whim or an act of nature or fortuitous but that it is a result of positive action, positive accomplishment under the 1965 act, and without it this decrease would not have occurred.

Attorney General MITCHELL. I do not disagree with that. However, I say that now the circumstances are much different than they were in 1965.

Senator BAYH. It has some rather detailed analyses of practices that "Political Participation"?

Attorney General MITCHELL. Very generally.

Senator BAYH. It has some rather detailed analyses of practices that are still going on right now. Would you care to suggest that these practices are not going on or that the information contained herein, compiled by the Civil Rights Commission is false?

Attorney General MITCHELL. If we could get to the specific practice perhaps I could answer definitely. As far as the Department of Justice is concerned, the facts that we have submitted here are accurate.

Senator BAYH. I do not intend at all to infer that you are falling down on your job. What I think it is important for us to get is common ground as to whether there is sufficient practice, sufficient temptation to discriminate against voters presently going on, that it would increase if we repeal the very salutary legislation which I feel is responsible for the progress which has been made. Now, if you want me to, I can——

Attorney General MITCHELL. Senator, maybe we can get on common ground by my pointing out that our proposed act does not remove any of the safeguards that currently exist in the 1965 act. There is one difference, and that is the change with respect to the submission of legislation. As I have testified here, I think that our proposal is stronger than the existing statute, because of the failure of the people who pass discriminatory legislation to submit it to the Department of Justice. I would point out that when they do that the Department of Justice is required to go into the district in a one-judge court and bring legal proceedings to try and reverse discriminatory practices. I think that the procedures that we have provided in our bill are better; aside from that we have retained all of the strength that is in the 1965 act.

Senator BAYH. I would like to look at the specific provisions here. I respectfully look at them with a somewhat different final judgment, but that is of course not unusual when people look at a similar set of circumstances, but still if you are not familiar with the details, perhaps Mr. Leonard is, since he is in charge of that department. I do not want to go and bother the committee with respect to matters of discrimination which are contained in this report.

I just point out that it has been necessary to send examiners to 64 counties and parishes in five States in the last 40 days. You have had cause to send poll observers to two elections in Mississippi and one in Louisiana. A number of these things have been going on.

The *Allen* case pointed out three or four very devious means to which State legislatures would resort, changing district elections for county

supervisors to at large, changing the qualifications in which one may list himself on the ballot as an independent candidate, the example of appointment versus election of superintendents of public instruction to which you referred a while ago but at least in the *Allen* case the Court found in that particular instance it was discriminatory.

All of these things and many others are listed in here.

I personally feel we have ample grounds to suggest that we cannot let our guard down. I do not think you really want to let our guard down.

Attorney General MITCHELL. We are not doing so, Senator. All of the safeguards that are in the 1965 act are certainly going to be continued. We have made only one change in section 5 as to the manner of enforcement of that provision.

Senator BAYH. Would you be so kind as to tell the committee specifically, I would like to look at section 5 but frankly I am concerned. I cannot help but believe it was not just an act of God that we suddenly got all of these people registered and that we suddenly had a decrease in cases. I think this frankly can be argued very effectively to weaken your case that section 5 was not important, but that is a matter of judgment.

Attorney General MITCHELL. We are not saying that section 5 is not important. We are saying that it is important. What we are saying is that the mechanics we have proposed for the enforcement of that section are an improvement over the present act.

Senator BAYH. Would you describe, please, just as quickly as you can how under S. 2507 you would handle the safeguards of section 5, please?

Attorney General MITCHELL. It gives the Attorney General power to go into a three-judge Federal court and request a restraining order or temporary or permanent injunction against any public body that deals with elections to enjoin any activity that would impinge upon the right of a person to vote.

Senator BAYH. In other words, here again we may have a little different judgment on this, but it seems to me that this is very similar to the provisions which provided not just in section 5 but in section 2, section 3 and implemented in section 12 of the present act and which were tried before the 1965 act involving this tedious business of going from one court to the other which got very little results.

Attorney General MITCHELL. This is restricted in our case to the legislative enactments, which are much easier to identify than are practices or any other devices that might be used to keep people from voting.

Senator BAYH. I would suggest that if you compare the means by which you are providing the policing, you are really making it more difficult to bring weight to bear.

For example, right now I personally believe this business of having the State have the burden of proof in those areas where you have had a long chain of circumstantial evidence of discrimination is good. What you are saying, that in each one of these cases before the subject can be suspended, before the case can be adequately litigated, you have to prove discrimination.

In the *Allen* case the court pointed out in some detail, you may have more personal experience in this than I have, I am sure, having practiced law for a long while, but the court just struck off a figure

of some 6,000 man-hours needed to prove overt discrimination and that is the only way you are going to be able to prevent a legislative act from taking effect.

Attorney General MITCHELL. This bill that we have here does not involve the question of intent. It only requires proof of effect.

Senator BAYH. It requires proof of discrimination though, does it not?

Attorney General MITCHELL. It requires that there be the effect of discrimination, and this relates to legislation solely.

Senator BAYH. Under the present act and under the *Allen* case, individuals have the opportunity to bring cases; is that not the case?

Attorney General MITCHELL. In the area of this bill, yes.

Senator BAYH. Yes?

Attorney General MITCHELL. Surely, section 3 of the existing 1965 act.

Senator BAYH. This would greatly increase the burden that an individual must prove. Under the present act, under the present section 5, an individual need only present to the court evidence that that legislature did not approach you as Attorney General before this act was implemented. This would not be the case now. They would have to prove the discrimination. That is the effect that you referred to.

Attorney General MITCHELL. This is true, and this is the issue that I raise. Under the provisions of the existing section 5, those who want to evade the application of the Attorney General's power do not come to us, and therefore we have to go into a one-judge district court in the area where the charge arises, and bring the suit, without the powers suggested in our bill with respect to restraining orders and temporary and permanent injunctions.

Senator BAYH. Right now you have to find these cases first. Under the present act if you find these cases you can stop them, and instead of proving discrimination all you have to prove is that you were not approached before and they are automatically discharged by the court as being discriminatory and violating section 5?

Attorney General MITCHELL. Yes, Senator. That is why I say there is no difficulty finding these cases; they become public issues. We had one here this last month, the *Friars Point* case. There is no problem about finding them. And when you do, you have to go into the district court with fewer weapons than we have proposed in this bill, in order to stop procedures which are discriminatory, or violative of constitutional rights.

Senator BAYH. I respectfully suggest, Mr. Attorney General, you do not need nearly the weapons. If all you have to do is prove that the Louisiana Legislature did not come to you and get your approval before this legislation was implemented, they are out of court. They are out of court under section 5. You cannot do that under your bill, S. 2507.

Attorney General MITCHELL. That is correct, but we do not believe that that is an appropriate function of the Attorney General for the reasons that I stated.

Senator BAYH. Yes, but are we on common ground here? In my opinion it is much easier to prove that a legislative act is invalid if all you have to prove is that you were not approached than it is to go

before a court whether it is a district court or a three-judge panel, and prove that it is discriminatory.

Attorney General MITCHELL. I do not think you prove that the act is invalid. You prove that they did not comply with the existing statute requiring submission.

Senator BAYH. That is all you have to do under section 5 or they are out of court. You give up that remedy under the administration bill.

Attorney General MITCHELL. Senator, as I testified, I do not believe that the Attorney General can appropriately exercise that power for the reasons that I have stated.

Senator BAYH. You mentioned that you had to have the wisdom of Solomon.

Attorney General MITCHELL. In order to make some of these determinations.

Senator BAYH. Is it fair to suggest that you as Attorney General are not automatically going to try all of these changes that are made by State legislatures, that you are going to have to make some judgment as to which ones need to be adjudicated and which ones do not?

Attorney General MITCHELL. No, because we have the courts to make this determination.

Senator BAYH. Yes, but you have to——

Attorney General MITCHELL. We will lay the proof before the courts as to the effect and intent, if that is necessary in certain cases.

Senator BAYH. But you have to make the determination, do you not, as to which cases are brought and which are not?

Attorney General MITCHELL. We have no problem with respect to bringing cases. The problem we have is making the judgment concerning effect, a question which properly belongs in the court.

Senator BAYH. I suggest to you that in my judgment, and here again it is just one Senator's judgment, that you are seriously weakening your position, which has in my judgment resulted in a great number, a lessening of the number of cases of legislative efforts to try to get around these laws.

What do you do about this example? You bring a case in court and the court says, "That practice cannot be followed." The legislature has a special session in September, passes a new law, which is to be in effect by November 1. Everybody who is covered by that is denied the right to vote, and you do not find out about it until December. There is nothing you can do about that. Under the section 5 provisions while this whole matter is being adjudicated those who are being denied or are seeking to deny the right to vote are at least permitted to vote. Under your provision they are denied the right to vote until the matter is adjudicated.

Attorney General MITCHELL. Senator, we have no problem with State legislatures. We are quite cognizant of what they are doing and we have no problem.

Senator BAYH. On the one hand you tell me you do not have any problems and on the other hand you tell me it is impossible to find all of them.

Attorney General MITCHELL. I am talking about State statutes, the illustration in your case. We have no problem with respect to that. There is no problem about finding the State laws. There is a great deal of problem if the powers that are given to the Attorney General under the 1965 act are to be reasonably and properly administered.

We must conduct extensive investigations so that our judgments are not arbitrary with respect to statutes that relate to changes of boundaries or anything that affects the voting process.

Senator ERVIN. If the Senator from Indiana will pardon me for interjecting myself, I would suggest it would be quite simple to invest those who have the power to prosecute with the power of making adjudications. Then we would not have any need for the courts and we would have no congestion in the courts at all and there would not be anything hurt except the constitutional doctrine of separation of powers.

Senator HRUSKA. Mr. Chairman, one could go a step further and invest in the Attorney General the power to change these laws the way he sees fit in order to get things done the way he wants them to do; then we could save a lot of high-priced Congressmen and Senators. [Laughter.]

Senator BAYH. I would be surprised if the people of Nebraska or North Carolina would find favor with either of the suggestions that my worthy colleagues just made, but I would be glad to consider them if you want to propose them.

Senator ERVIN. I disagree with the inference that I necessarily draw from the questions and observations of the Senator from Indiana. I think that the power to pass on the validity of the laws is vested by the Constitution in the courts, and unlike the Senator from Indiana, I do not favor putting the power to pass on validity of laws in an executive official.

Senator BAYH. If I might just make one summary observation about section 5 here, we obviously have differences of opinion. I would like to get your thoughts on a couple of other quick matters.

It seems to me that you are giving up a valuable tool. Here again it is just my judgment that it is going to be much more difficult for you to prevent legislators or indeed election boards from yielding to pressure and the temptation which they might not want to yield to. They may be grateful to have this type of supervision, this backstop provision, but under the act as it now is, all you have to do to prove an act is discriminatory is to prove that you weren't approached and informed of it. You lose that opportunity under the present act, I mean under the administration act. As the act as it now is, while this whole matter is being adjudicated, hundreds of thousands of people are given the chance to vote, but under your proposal, as I read it, they are denied the opportunity to vote until the matter is adjudicated, and if there is any doubt I would rather come down on the side of giving the person the right to vote.

Senator HRUSKA. Would the Senator yield?

Is it true, Mr. Attorney General, that sections 8 and 9 of the present bill are not only retained but that section 8 is improved and strengthened? Under the proposed amendment, if the Attorney General finds that there are denials of the right to vote under circumstances just described by the Senator from Indiana, then the Civil Service Commission shall send in these observers and registrars. The registrars will proceed to register any voters who comply with the simple application form that is prescribed and used by the Civil Service registrar. Isn't it true then that any proceeding in the court would not abridge these provisions of section 8 and section 9 which afford the people who want to vote the immediate right to vote after registering?

Senator BAYH. Is that your answer?

Attorney General MITCHELL. That is a correct analysis, Mr. Chairman.

Senator BAYH. That sounds like a very good answer to my question, but I do not agree with it.

Senator HRUSKA. It is a pertinent answer because the Senator from Indiana suggested and stated in fact that while a court case is pending, thousands upon thousands of people are denied the right to vote.

Senator BAYH. That is exactly right.

Senator HRUSKA. It is not correct.

Senator BAYH. My hometown election board, for example, or Sam's——

Senator ERVIN. Put it on mine.

Senator BAYH. I must take another State other than North Carolina because it does not happen down there, but let us take county X. The election board 60 days before election comes up with a change that totally changes the qualifications for voting. You could concoct a whole number of devious schemes and unfortunately many of them have been used.

Now these people are disqualified under the administration until the matter is adjudicated.

Senator HRUSKA. That is the point which I——

Senator BAYH. That is exactly the point. Whereas under the section 5 provisions right now there is no adjudication necessary. All that needs to be proved by either an individual or the Attorney General is that the result was not submitted to the Attorney General of the United States. That is a much less burden of proof than to try to prove the effect of discrimination.

Senator HRUSKA. Let me read to the Senator from Indiana the provisions of S. 2507 which will be inserted at the outset of section 8 and I quote from the bill:

> Whenever the Attorney General determines with respect to any political subdivision that in his judgment the designation of observers is necessary or appropriate to enforce the guarantees of the 15th Amendment, the Civil Service Commission shall assign * * * one or more persons * * * to enter into the place for holding an election, to enter into the place of registering, and to put them on the rolls.

That is in section 8.

Senator BAYH. We are talking about two different things, I think. We are talking about what makes a legislative law or election regulation valid, and what are the powers of appointing examiners and observers. Frankly you have the opportunity of getting a restraining order, but before you can get that restraining order, the burden of proof is on the United States of America or an individual who is aggrieved. The burden of proof is upon them to prove discrimination, which is a significantly higher burden than a burden of proof which is on the other party, and the whole matter is whether the regulation was submitted to the Attorney General in advance of its application. It is an entirely different degree of proof.

Senator HRUSKA. To that I agree, but the Senator from Indiana then went one point further and said, pending that proof and that litigation, thousands of voters lost their right to vote, and that second statement is not true under the present law, nor would it be true under the law as it would be amended by S. 2507.

Senator BAYH. With all respect to my distinguished colleague from Nebraska I would like to get the opinion of the Attorney General.

Senator ERVIN. Will the Senator permit me to interject? His suppositious case could not happen in North Carolina because county boards of election have no legislative powers in the first place.

In the second place the Legislature of North Carolina always adjourns 4 or 5 months before election.

Senator BAYH. I never cease to be amazed at the fact that not only is the Senator from North Carolina beyond reproach but so are his constituents.

Senator ERVIN. That is the reason I take some small degree of umbrage at the Senator from Indiana for saying North Carolina Legislature should be required to come to Washington to the Attorney General's office, and bow and scrape and make obeisance before him and say, "Please allow this act of our legislature to go into effect."

It sort of delays things because if you want to go to court you have to go there first under these decisions.

Senator BAYH. I have the greatest respect for my distinguished chairman from North Carolina, and as I told him earlier, I do not in any way doubt his feeling, his veracity, his integrity on what is happening. But I will point to a case in Mississippi here, to one case where the fifth circuit court of appeals issued an injunction pending appeal enjoining the registrar of voters of Forrest County, Miss., from committing such acts as denying Negro applicants the right to make application for registration on the same basis as those of whites and the Mississippi Legislature immediately turned around and changed the wording enough so that they got around and got out from under the prohibition which was set down by the court.

Now what do you as Attorney General have to prove, and what action do you have to take, if you are going to prevent this kind of thing from happening? Do you not indeed first have to bring the case? You have to get some sort of a judicial determination, and you have to prove discrimination.

Attorney General MITCHELL. Senator, may I find out exactly what kind of event you are discussing?

Senator BAYH. The act of the legislature, an act of the registration board, any of these some 345 matters that have been brought before the Department of Justice.

Attorney General MITCHELL. We are restricting ourselves to the question of legislative action?

Senator BAYH. To section 5.

Attorney General MITCHELL. Yes.

Senator BAYH. I think we got into section 4 material here with Senator Hruska.

Attorney General MITCHELL. I think it was appropriate for Senator Hruska to point out that if these people are being denied their right to register and vote, those sections that he quotes would be applicable. Our examiners and our observers would be registering and qualifying people to vote.

Senator BAYH. You were just telling me you were going to let the court make the determination as to whether this rule was good or bad. You did not possess the wisdom of Solomon. Now is it true or is it not that you had to bring that case, you had to get a judicial determination of some kind and we have to verify discrimination?

Attorney General MITCHELL. Are we still discussing legislative actions only?

Senator BAYH. That is what I have been sticking with from the very beginning. That is what really worries me.

Attorney General MITCHELL. Our proposed statute includes added powers in section 3 that permits us to go into a three-judge Federal court, and obtain restraining orders, temporary or permanent injunctions, which will not only nullify the existing discriminatory practices adopted by the legislature, but will enjoin any future discriminatory laws.

Senator BAYH. What do you have to prove before you get that order from a three-judge court?

Attorney General MITCHELL. We have to prove that it has the effect of discriminating in the voting process.

Senator BAYH. And that is a much more difficult thing to prove than to prove that you were not approached and did not give your agreement to the act in question?

Attorney General MITCHELL. I think we can agree to that, yes.

Senator BAYH. Thank you, I appreciate that.

Now let me move on to another.

Senator ERVIN. Let me inject myself on one point. State legislative acts are in writing; are they not? Legislative acts affecting anything are available in printed form?

Attorney General MITCHELL. They certainly are.

Senator ERVIN. The Attorney General can pass on——

Senator BAYH. But my distinguished colleague yesterday in the hearing suggested there were some matters and both of them could incidentally refer to the appointment of the superintendent of public instruction, which on the face, which on the writing of the act is not discriminatory per se, so there has to be some judicial determination. It is a much greater burden of proof than just proving that you were ignored and that the law was not adhered to.

Now let me move on quickly because I know Senator Kennedy, who is one of the original leaders——

Senator KENNEDY. I think if the Senator would yield, I think this section is really one of the most important sections, section 5. As I gather from the most recent response of the Attorney General, he does feel that the burden of proof is a much heavier burden on the administration's bill obviously, in the starting of legislation, than under the 1965 Voting Rights Act, and I think this was really the point which I understand the Senator from Indiana was trying to establish. I think that it is really quite clear on its face, and I think the fact that the Attorney General has recognized this is really a most significant, useful and important point developed in this exchange and I just want to say that I am extremely appreciative.

Attorney General MITCHELL. Senator, I testified at great length on the change and the reasons why I thought it was appropriate that the change be made.

Senator KENNEDY. That is correct. You gave as I understand it your reasons on why you felt that there should be less of a burden of proof or the reasons that support it in your testimony, but it does not get away from the fact, Mr. Attorney General, as you yourself have suggested, that it does mean that the provisions under the 1965 act, of

section 5, are a stronger provision in terms of meeting what are recognizable needs I think as pointed out by even your own testimony.

Attorney General Mitchell. Well, Senator, it is not quite that simple. It is not a question of burden of proof; there is no burden of proof required other than submission. That is not a burden of proof.

The point is this. I would make two additional points. No. 1 is the question of who should be deciding this question. I believe the courts should and our suggested procedure would do just that.

No. 2, I make, is that the additional powers that are provided for the Attorney General are to help in cases where the legislation is not submitted. The number of cases that have been turned down by the Justice Department is not as numerous as the number of cases that have not been submitted, and which have required lawsuits be brought.

Senator Bayh. If I may respectfully suggest, and here again it is rather obvious we are looking at this with two different yard-sticks as far as what we think we can accomplish, I do not at all intend to discredit the purpose and the intent of the distinguished Attorney General, but in my judgment under the administration bill, whether it is the intent or not I really do not think it is the intent, with full faith and credit here. This is going to greatly increase the burden. Now instead of an individual being able to just come into court and say "Wait a minute, this registration provision or this voting regulation was not submitted to Attorney General Mitchell" and thus the court says "That is right," it is automatically out, they are going to have to prove not only that it was not submitted but that it is discriminatory. And that is going to be significantly greater.

Attorney General Mitchell. Senator, it is not quite that simple. The legislatures contention is that they are not required to submit it.

Senator Bayh. Well, if just half a job is going to be done with a strong law, it is going to get better if you have a weak law is rather inconsistent. I am not so naive as to suggest that the present law has gotten all of those regulations out, that there are not some people who are discriminating, but if you have a large club or a close magnifying glass to look for them and the ease of getting a court determination it seems to me you are in a much better position than you are going to be when you repeal it.

Attorney General Mitchell. Senator, you have not given credit to the revisions we have made in the enforcement powers in section 5.

Senator Bayh. Very frankly I do not think you are getting any additional power that you do not now have under the 1957 and 1964 acts and under sections 2, 3, and 12 of the 1965 Voting Rights Act. I think you have these very powers, and it is these powers, this power of having to go into court, that proved so ineffective as far as the percentage of registered voters and the amount of Negroes who were participating in the South. It did not work when we used that, Mr. Attorney General.

Attorney General Mitchell. These powers are quite distinct from the ones we currently have and, of course, they are directed at the legislation and not the plethora of other voting rights cases that might come to the court.

Senator Bayh. Perhaps we should agree to disagree. Let me look to this matter of literacy tests if I may.

Senator Kennedy. Just before moving into that, Mr. Attorney General, Mr. Leonard, would you have seen the need for this section

5 in the 1965 Voter Registration Act or did you have reservations about including it in the first place?

Attorney General MITCHELL. Are you talking about section 5 of the existing bill?

Senator KENNEDY. Of the existing bill.

Attorney General MITCHELL. No, I would not. I would not have that portion of the 1965 act as it was structured, because I think the processes provided under which the Attorney General must make a decision are not adequate. They result in arbitrary decisions without sufficient information.

Now I am not talking about the blatant cases that are clear on their face, but I can go on and give you illustration after illustration of questions that get down to intent, and you never find out what the intent is until after the legislation is effected.

Senator KENNEDY. I think it becomes increasingly clear that you would not have supported those provisions in the 1965 act and are not supporting them in 1969. I think what we have really gathered here is that you did not agree with those provisions in the 1965 act and you do not agree with them today in spite of the fact that in the past it has had the support of 77 Members of the U.S. Senate in 1965, and 333 of the 385 in the House of Representatives, so I am not really so surprised at the exchange which has taken place between you and the Senator from Indiana, because I think that you just do not agree with those provisions.

Attorney General MITCHELL. Senator, I hope you will put that in the singular. We are talking about a single provision.

Senator KENNEDY. Yes.

Attorney General MITCHELL. It is a technical provision for enforcement of rights. I say that in my opinion our proposal provides a better mechanism that will work better than the 1965 act.

Senator BAYH. Mr. Attorney General, a moment ago you said, and I hate to get back to section 5, but this is so critical. I do not see how when you have 354 applications before you that you can just shrug this off and say that the fact that the great percentage of these were validated is a positive effect——

Attorney General MITCHELL. There are 10 of them.

Senator BAYH. Pardon me?

Attorney General MITCHELL. There are 10 out of 345. There are 10 statutes that the Justice Department has disapproved. The Justice Department leaned over backward in those cases to make sure that they were not used in an arbitrary and discriminatory basis. We may have been wrong in connection with some of them.

Senator BAYH. It seems to me that you just are arguing contrary to what you said a while ago, that these decisions would be arbitrary when the decisions that have been made have not been arbitrary, and I would be willing to wager, and I am not a wagering man and we have no way of proving, but I would be willing to wager that instead of 10 cases that were invalidated we would probably have been lucky to have 10 cases that were validated if it had not been for the fact that those who were making these decisions knew they could not get away with it.

Now you said just a moment ago, in response to Senator Kennedy, that this whole business, a great many of these cases were a matter

of intent, and that intent could never be probably determined until things were put in the act. Now are you saying that under your bill that you are not going to be able to bring one of these cases in a great number of these until you have had a chance to see whether it is discriminating or not?

Attorney General MITCHELL. Quite the contrary, if statute shows discrimination on its face we can go into court and have a determination in the proper forum. This is preferable to the Attorney General sitting here in the Justice Department, without the necessary investigating staff or the proper means of factfinding.

Senator KENNEDY. That does not have an investigating staff, Mr. Attorney General?

Attorney General MITCHELL. To the extent required to take care of this question.

Senator KENNEDY. Are you going to make recommendations that you want more investigating staff?

Attorney General MITCHELL. No. My recommendation is rather that our proposed statute be adopted.

Senator KENNEDY. They ask for FBI agents, Mr. Attorney General.

Attorney General MITCHELL. I do not believe that the FBI agents should be making determinations on a matter which should involve a judicial decision.

Senator KENNEDY. I was just using that as an example for request for additional agents, for the FBI, I did not see why you might not be requesting more investigators yourself if you do not have the staff.

Attorney General MITCHELL. We think we have a better solution in our proposed bill.

Senator BAYH. Let me look if I may to the matter of literacy tests. I cannot help but be of the opinion that if all the facts which you have presented are true, and I would take them at face value that they are, that indeed we should be making a maximum effort in this Congress to repeal literacy tests. Now if that is the case, I have two concerns. One, if it is that important, why is it that you just suggest the suspension until January 1, 1974, instead of wanting to do the job permanently?

Attorney General MITCHELL. Senator, as I stated in my testimony, the information——

Senator BAYH. I think you said, if you will excuse me, I think you said in your testimony that from your standpoint that these circumstances involved in the *Gaston* case would be prevalent in the foreseeable future. Now that is a long time. Excuse me.

Attorney General MITCHELL. This is correct, but you are talking about the date of 1974. As I am certain you are well aware, there is very little information available outside of the South with respect to registration and voting vis-a-vis color. The date is related to the recommendation for an advisory commission, which, with the information available from the 1970 census, will inquire into voting patterns and behavior, and report back to the President and Congress by January 15, 1973. Congress can then examine the matter further, see whether additional legislation is required, if any, and adopt appropriate action, based on all the facts, prior to 1974.

Senator BAYH. Let me agree wholeheartedly with you after you have had a chance to look at the evidence as far as what should be done

as far as literacy tests are concerned, because I have tended to feel that if in doubt let the man vote, and our State does not have literacy tests, never has. In those States that do, the great bulk of them in the North by your own admission there is very little evidence as to discrimination. You are looking at statistics as far as the impact of voting, and I am concerned about whether we can constitutionally do this, even until January 1, 1974.

I mean it is no more unconstitutional to waive the literacy test, take away that State right between now and 1974 than it is to do it permanently, so I think before we do it, we have to take the necessary steps to make a sound case.

You cite these statistics which are very dramatic, and you say it may be assumed that this is the result of the application of the literacy test. How can it be assumed? How can it be assumed?

I have heard the Senator from North Carolina, and we have disagreed on this matter, but I have heard him very dramatically argue, and I agree with this, that there are a number of circumstances that can consider the rate of turnout at the polls, how many people vote.

You point out in your statistics on page 4, you point out that in the South 50 to 75 percent of the Negroes of voting age are registered, "and it is clear that this level is higher than Negro voter participation." Well now, are we talking about two different things? Are we talking about the number of registered voters in the South and the percentage of those who actually vote in the North?

We go down. You assume per se that just because in those nine northern cities, those big cities, you point out here, and I will not repeat them, that just because there are 100,000 votes cast or fewer than 100,000 votes cast, that this automatically means there has been discrimination and this is the impact of the literacy test, whether overtly or through the *Gaston* rule.

Now, how can you as Attorney General ask us to flirt with something that is so fraught with constitutional questions without some significant and detailed data to support this, based on the matter of discrimination?

Attorney General MITCHELL. We are not asking you to flirt with constitutional problems. We feel that there is an adequate constitutional base for it.

As I point out in my testimony, there are over 4 million undereducated Negroes who have moved outside the South. We feel that the *Gaston County* case is not a cumulative restriction on an area covered by the 1965 act.

The *Gaston County* case was protecting rights of undereducated Negroes whether in New York, California, North Carolina or any of the other States that are now under the 1965 act.

Senator BAYH. Can you tell us the number of Negro voters in the South who have moved to Alaska, for example, or to any of the other States that are covered by the literacy test? This is the kind of information that the Court is going to want before they will hold the constitutionality of this.

Senator HRUSKA. And that is why they are going to have a commission that is provided for here in this bill to determine facts of that kind, just like the commission has done heretofore under the act of 1965. However, instead of limiting their activities to seven Southern States they would treat the other 43 States as part of the Republic.

Senator BAYH. I never thought I would hear my friend from Nebraska suggest that while a study was going on, before conclusive evidence was in, we should automatically do something which might be unconstitutional even for a 3-year and 4 months period.

Senator HRUSKA. The Senator from Nebraska does no such thing.

Senator BAYH. This is the effect.

Senator HRUSKA. The Supreme Court did not hold that the literacy tests would be indefinitely banned because they are a basis for discrimination. They simply said that as long as there are generations who attended school where they received inadequate education, it will be almost per se discriminatory. When that condition is removed, then we do not have a ban.

Now, does this condition apply to the North? One of the duties of the commission provided for in S. 2507 would be to direct their attention to that fact. They will see how many of these 4 million Negroes moved into Los Angeles and into New York, to see whether or not the literacy tests in those States there are under the same restrictions that are contained in the *Gaston County* case. I would think the Senator from Indiana would welcome additional information that would allow the extension of the *Gaston County* rule to other parts of the Republic that are similarly affected.

Senator BAYH. I must say as I think I said earlier, and I said yesterday, that if we have people being discriminated against in the North, that is as much of a problem as far as each individual is concerned as it is in the South. But there are a number of questions that have to be asked that were posed by the *Gaston* case. Only one of them, the matter that the Attorney General referred to, the fact that uneducated Negroes have moved north, that is only one of them. What about the number of school districts in the North that have been discriminatory in the way they have educated young people? This is another question.

Attorney General MITCHELL. I mentioned that in my testimony.

Senator BAYH. I salute you for recommending a study whether it is by this independent commission or the Civil Rights Commission, but why, before we get the results of the study, do we automatically outlaw the right to apply these tests in the States where they are now being held?

Senator HRUSKA. The reason is the Supreme Court's *Gaston County* decision. The triggering device was created, based on a presumption: it has served its purpose. Now, on the basis of *Gaston County*, this legislation would become national rather than just regional.

Senator BAYH. The *Gaston County* case, that was the significant step. Frankly I think it was a good step. My friend from North Carolina and others probably will disagree, but I think if we really look at the impact of that, I think it was good. But they had solid evidence. They had solid grounds to take away what had heretofore been a constitutionally given right to each State in this country if they wanted to take advantage of it. We do not have these grounds now as far as the other States are concerned.

Can you recite to this committee the number of instances in which there has been discriminatory practices as far as the application of literacy tests in the North?

Attorney General MITCHELL. I would point to the facts recited in my testimony. They make out a prima facie case with respect to the denial

of the right to vote through the application of literacy tests to undereducated people; I would add that if we are going to wait until 1974, there are going to be a lot of people denied the right to vote in the interim period. The *Gaston County* case may result in a proliferation of litigation, just as before the 1965 act.

Our legislation would eliminate the possibility of that proliferation of litigation, and would guarantee these people the right to vote until the Commission reports and Congress acts on the matter.

Senator KENNEDY. Mr. Attorney General, if that is the case, then why don't you go into court and knock down the literacy tests like the Attorney General did with the poll tax?

Attorney General MITCHELL. Senator, this is a double-edged argument. Certainly, we can go into all of the remaining 12 or 13 States, show that people have moved from the South into those States, that they are undereducated, and that they are being discriminated against through the use of a literacy test. But this is a very long and complicated project.

What we are really doing here by our statute is providing the rest of the country the same formula that was used in the 1965 act in the South—getting at the problem by means of legislation instead of a proliferation of litigation.

Senator KENNEDY. Why can't you just pick one case such as you did with the poll tax in Virginia and then ask the court for a general order?

Senator ERVIN. The plain objection——

Senator KENNEDY. I would like to hear from the Attorney General.

Attorney General MITCHELL. I am afraid that we could not get a general order that would apply in all of the States where there are literacy tests. Each has its own particular set of facts.

Senator KENNEDY. Certainly the effect of the Virginia case in effect abolished the poll taxes in virtually all of the States where it was had. I am just wondering if all of the things which you have pointed out in your testimony here and in recent forums as a basis for your testimony this morning, then why have you not come up here and asked for legislation and why have you not tried it in the courts?

Attorney General MITCHELL. The *Gaston County* case came down as recently as the 2d of June. We feel that legislation will be more effective than a proliferation of litigation in the different States.

Senator HRUSKA. Would the Senator yield?

Senator KENNEDY. I do not see why you say there would be a proliferation of suits. I do not understand that, why you cannot just go on in and get it tested, bring this in one jurisdiction, and why that would not be considered, and act immediately and expeditiously on this and resolve this question.

Attorney General MITCHELL. I think, Senator, you have different facts with respect to the number and educational background of the people involved in the different States.

In other words, if you carry through the concept of the *Gaston County* case I would have to show in, for example, the State of California, that in a particular area where they do apply literacy tests, that there are so many undereducated people or that the local school board provided unequal education. You are required to prove a series of factual questions in every case.

Senator KENNEDY. I mean it seems to me you could take what could be considered the worst case of the States that retained the literacy test and make that case there, and if you go about and suggest that you have not got the information on California or Massachusetts, you come on up here for us and ask us to act on evidence which you yourself do not have.

Attorney General MITCHELL. The testimony shows a prima facie——

Senator KENNEDY. It seems to me you cannot have it both ways on this point.

Senator HRUSKA. If the Senator will yield——

Senator KENNEDY. No, I do not yield. I would like to hear from the Attorney General.

Attorney General MITCHELL. Senator, as I stated before, my testimony contains a prima facie case, and this coupled with the *Gaston County* case, convinces us that Congress should act now to end discrimination and should then reexamine the question in 1974 when all of the facts are in. The reason for action is to put more people on the voting rolls now being kept off because of undereducation coupled with the use of literacy tests in Northern States.

Senator BAYH. There is absolutely no proof of that, Mr. Attorney General, absolutely no proof.

Senator KENNEDY. It seems to me, Mr. Attorney General——

Senator ERVIN. I would say at the risk of being impolite there is exactly the same proof about New York State, in about 10 congressional districts in the North and in California as in the South. In other words, figures prove one thing in the South and another thing in the North. The mistake you apparently make, Mr. Attorney General, is in advocating a law covering the whole country instead of seven States picked out for harassment.

Senator HRUSKA. A primary argument on behalf of the trigger device has been its simplicity as compared to a proliferation of lawsuits on a county-by-county or precinct basis. Now a further effort is made in S. 2507 to yet away from a proliferation of *Gaston County* type suits, and the discretion to sue is given to the Attorney General.

It seems to me therein lies a reason for the differences.

Attorney General MITCHELL. I think, Senator——

Senator BAYH. If I might suggest——

Attorney General MITCHELL. Senator, can I put in one other item that may be helpful? If you will go back to President Kennedy's Commission organized to study this question, I think you will find information in its report to substantiate our proposal. Incidentally, that Commission recommended the same thing—an end to literacy tests.

Senator KENNEDY. Are you going to consider bringing cases, Mr. Attorney General, in these States or in any one of the States?

Attorney General MITCHELL. Senator, I would hope that this legislation would make it unnecessary to institute suits.

Senator KENNEDY. It seems to me you are going to have to gather the information, the statistics to make—I mean you make the statement in your testimony that the Office of the Education Studies' Department of Justice Lawsuits has alleged that areas outside the South provided inferior education to minority groups. Following the general reasoning of the Supreme Court I believe that any literacy test given

to any person who has received inferior education would be just as unfair in a State not covered by the 1965 act.

Now if you have the information to substantiate that statement, and in which case if you have that information it seems to me that you have a responsibility to bring a case, or if you do not have the information, I do not know how you can expect us to respond in support of the legislation.

Attorney General MITCHELL. Senator, I have no problem about bringing the cases. What I am saying is that if this legislation is passed, it will eliminate the necessity of bringing a proliferation of individual cases in those States outside of the seven covered by the 1965 act that have literacy tests.

Senator KENNEDY. It seems to me, Mr. Attorney General, that it is not unreasonable to suggest that you could bring one suit and bring the other 12 States on it. You brought in New York. I am sure it was successful there. I am sure Massachusetts would abolish theirs. It does not seem to me to add all the questions of cases, additional cases which you have suggested here.

Attorney General MITCHELL. Senator, I get back again to my previous statement that this raises factual questions as to whether undereducated citizens live in areas where literacy tests are applied. This is not a subject matter that can be taken care of in all of the States outside of the South with one suit.

Senator BAYH. It is not only a factual matter, Mr. Attorney General, it is a means by which the tests involved are applied, and it is a much different test if you have a sixth-grade test in which you say automatically if you do not pass the sixth grade you apply and you prove a person can punctuate properly, but I want to reiterate, continuing to keep you in the batter's box on this thing, but first of all I have absolutely no objection to the effort to try to deal with this problem on a nationwide basis, and the idea as someone said a while ago, I think perhaps you, that it is our intention to put this past 1974. Not at all. Let us go forward with it right now. But when we go let us have some facts in that *Gaston County* case they had the entire educational experience in the State. We do not have that at all. You have not presented us any evidence of that as far as these other States are concerned.

We have the discriminatory tactics involved in the State of South Carolina. We do not have any evidence at all that these tests are being used discriminatorily. We do not have all this information about the registering to vote.

Senator THURMOND. Mr. Chairman, will the Senator yield?

I deny discrimination in South Carolina and I ask for the Senator's proof.

Senator ERVIN. We are running out of time.

Senator BAYH. I think there are going to be cases, and I for one say that that is the impact of the literacy test, and I want to take care of it, but I want to take care of it so we will be on a sound constitutional stool and not be left hanging up here.

Another matter just like this if I might go on, I know the Senator from Massachusetts has questions that he wants to ask, but this business of residency requirements- - - -

Senator ERVIN. I think maybe we had better recess now. It is a quarter after 1.

Senator BAYH. Could I take just a short period of time? One more question is basically all that I would like to pursue.

Attorney General MITCHELL. Senator, would you like me to answer the last one?

Senator BAYH. I want to suggest to you I personally feel that you need to be complimented for that. I think it is a good goal. But here again this is a very thick constitutional problem. It is a very tricky one.

For example, Senator Goldwater is of the opinion that this should be done, but he thinks it should be done by a constitutional amendment. The American Bar Association Study Group, which studied the electoral reform procedure, suggested that uniform residency requirements should be done but that this should be included in the constitutional amendment, and outstanding panel of lawyers across the country and for you to cavalierly suggest that we can do this by statute I think is subject to question.

I think my friend from Massachusetts thinks it can be done by statute but to get this all embroiled in this controversy and thus perhaps cause us to defeat a bill which has produced such salutary results I think is very questionable.

In fact I cannot help but think that the problem of can it pass, what this does to damaging the possibilities of any legislation being enacted as far as the residency requirement and the literacy requirements being included in here reminds me of a similar conversation that you and I have had or your deputy and I have had relative to the President's position on electoral reform, in which his main thrust was that although he had said on two occasions during the election he thought the man should be elected who had the most votes, he was reluctantly going to suggest two alternatives which would not provide that guarantee because he thought the other one could not pass.

I would like for you to consider the danger involved in these two areas as far as pulling down all efforts, and that we would separate them.

I, for one, would give you all the cooperation and I think our chairman would. Let us go forward to consolidate the progress we have made, and then in another effort going forward similarly to shore up the weak spots which you bring to our attention.

I thank you for your patience. I hope that we can disagree without questioning anyone's motives. I certainly did not intend to do that, and I appreciate your response.

Senator ERVIN. I do not know whether it is constitutional but I think it is time we got something to eat.

Mr. Attorney General, can you come back this afternoon?

Attorney General MITCHELL. I certainly shall. I do not know what my schedule is but I am enjoying this so much that I will cancel any other appointments.

Senator ERVIN. What time would be convenient?

Attorney General MITCHELL. Any time the committee would want me back.

Senator HRUSKA. Mr. Chairman, I presume there are others who would like to get into the matters as extensively as our friend from Indiana. This afternoon we do have a debate on a very important subject, the ABM. I would very much dislike to miss out on the fun over there. We can have all kinds of fun around here. I would suggest

we consider some future dates, rather than today, because to the extent we sit here, we are going to miss out on the action over there.

Senator ERVIN. I might say that I had hearings set and I canceled this week in order to give the Attorney General a chance to present his views. They are set for Monday, Tuesday, and Wednesday. Thursday I will be away. It may be wise to do that and see if we can reach a mutually convenient date.

I am holding hearings next week on Monday, Tuesday, and Wednesday and I have a speaking engagement which will take me out of Washington Thursday. If there is no objection the subcommittee will stand in recess subject to the call of the Chair on a date that is mutually convenient to the committee and to the Attorney General.

Attorney General MITCHELL. Thank you, Mr. Chairman.

(Whereupon, at 1:20 p.m. the committee adjourned, to reconvene subject to the call of the Chair.)

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

WEDNESDAY, JULY 30, 1969

U.S. SENATE,
SENATE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
VOTING RIGHTS LEGISLATION,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 1114, New Senate Office Building, Senator Sam Ervin (chairman of the subcommittee) presiding.

Present: Senators Ervin, Bayh, Hruska, and Thurmond.

Also present: Lawrence H. Baskir, chief counsel, Lewis W. Evans, counsel, and Glen Smith, Senator Thurmond's staff.

Senator ERVIN. The subcommittee is called to order.

This morning the subcommittee resumes its hearings on proposals to extend the provisions of the 1965 Voting Rights Act for another 5 years, and on S. 2507, the bill introduced by Senator Dirksen on behalf of the administration, to extend its application to all States using literacy tests.

Before the Attorney General resumes his testimony, I would like to offer some additional evidence which demonstrates that the 1965 act was politically motivated for the purpose of applying only to the Southern States. I believe this information shows that at the very least the act should be based on the results of the 1968 election, and should not be restricted to the South alone.

In the 1968 election, only three counties of North Carolina failed to register at least 50 percent of their population over 21. They were Craven County with 47.7 percent, Cumberland County with 32.8 percent, and Onslow county with 30.3 percent.

Cumberland County is the site of Fort Bragg, with a military population of 55,000, all but a few of whom do not vote in that county. Onslow is the site of Camp Lejeune, with a military population of 33,500. Craven, the third county, missed the 50-percent mark by only 2.3 percent, and its military population is 9,000. When military personnel are subtracted, Craven had a registration figure of 65.2 percent, Cumberland, 62.5 percent, and Onslow, 95.5 percent.

By contrast, according to figures supplied to me by the State of New York, Erie County registered only 47 percent of its population estimated to be over 21. To the best of my knowledge there are no significant military installations in Erie County.

As I have said before, I see no logical connection between the existence or nonexistence of a literacy test and the number of persons who actually vote in a given election. Dislike of the candidates, weather, and any number of factors may influence the turnout in

an election. In North Carolina, there are many counties in which Republicans are rarely to be found and so the important election is the Democratic primary. For this reason, the turnout in the general election is often quite low.

Nonetheless, the Voting Rights Act condemns many counties in North Carolina on the basis of low voting turnout. Of the 39 counties now covered because of 1964 voting statistics, only eight counties would be covered if 1968 results were used. Of the nine New York counties for which I have figures, four failed to achieve a voting turnout of 50 percent or better. These were the Bronx, with 49.4 percent; Kings with 47.7 percent; and New York County with 47.9 percent, in addition to Erie with 39.5 percent.

If we disregard percentages and look at numbers of citizens, the comparison between North Carolina and New York is even more interesting. The total number of persons over 21 in the 39 counties of North Carolina who did not register in 1968 was 461,387. For the nine New York counties, a total of 2,977,962 did not register, or almost four times as many. If we compare the North Carolina and New York counties in terms of persons who did not vote, the figures are 629,522 as against 3,866,211, or more than six times as many in New York.

The act applies to States or to political subdivisions. If it applied to election districts, such as congressional or assembly districts, many additional localities in New York and California would be covered, not to mention other possible States. As the Attorney General's statement shows, the voting turnout in a number of New York and California election districts fell well below the 50 percent figure, even though the results for the county as a whole may have exceeded that mark.

There has been much talk to the effect that the other States besides North Carolina and the Southern six have no need for a law like the Voting Rights Act. In my judgment, that argument is based upon the revulsion that the other 43 States would feel if they were subjected to the indignity of the 1965 Voting Rights Act. It is not based upon the fact that these States might not deserve to be subject to the act, as well.

At this time, I would like to insert in the record tables prepared by the subcommittee staff showing 1968 figures for certain counties in North Carolina, New York, and California. Also, a letter from Senator Harrison Williams and my reply.

(The material referred to follows:)

TABLE A.—1968 VOTING PARTICIPATION IN THE 39 COUNTIES OF NORTH CAROLINA COVERED UNDER "THE VOTING RIGHTS ACT OF 1965"

Counties	Estimated population[1] over 21 Nov. 1, 1968	Total registered[2]	Percentage of estimated population over 21 registered	Number voting[2]	Percentage of estimated population over 21 who voted in 1968 general election
Anson	14,200	8,578	60.4	8,014	56.4
Beaufort	22,100	14,360	64.9	11,638	52.7
Bertie	13,000	10,415	80.1	7,331	56.4
Bladen	14,200	9,827	69.2	8,434	59.4
Camden	3,100	2,632	84.9	1,993	64.5
Caswell	11,700	8,040	68.7	5,870	50.2
Chowan	6,700	4,172	62.2	3,737	55.8
Cleveland	42,500	29,050	68.4	22,801	53.6
Craven	35,300	16,500	46.7	13,233	37.5
	(25,939)		(63.5)		(50.9)
Cumberland	117,000	37,735	32.3	29,069	24.8
	(62,137)		(60.7)		(46.8)
Edgecombe	23,200	18,409	63.0	14,432	49.4
Franklin	16,600	11,163	67.2	9,000	54.2
Gaston	83,400	57,064	68.4	42,814	51.3
Gates	5,300	3,110	58.7	2,800	52.8
Granville	22,000	14,091	64.1	8,545	38.8
Greene	8,400	5,910	70.4	5,134	61.1
Guilford	166,000	115,090	69.8	87,427	53.0
Halifax	23,100	22,923	71.4	15,309	47.7
Hertford	13,500	9,055	67.1	6,957	51.5
Harnett	29,400	19,561	66.5	15,822	53.8
Hoke	9,100	5,423	59.6	4,532	49.8
Lee	18,200	12,875	70.7	9,240	50.8
Lenoir	32,000	22,404	70.0	15,835	49.5
Martin	14,500	10,822	74.6	8,250	56.9
Nash	36,200	24,408	67.4	19,251	53.2
Northampton	13,500	12,244	90.7	7,937	59.2
Onslow	49,100	14,860	30.3	12,309	25.1
	(15,544)		(95.6)		(79.2)
Pasquotank	15,900	8,777	55.2	7,791	49.0
Perquimans	5,400	3,755	69.5	3,071	56.9
Person	15,900	12,357	77.7	8,847	55.6
Pitt	44,200	26,076	58.9	22,746	51.5
Robeson	46,700	30,718	65.8	19,452	41.7
Rockingham	44,500	27,579	61.9	24,193	54.7
Scotland	14,700	8,302	56.5	6,125	41.7
Union	29,700	18,158	61.1	13,827	46.6
Vance	19,800	15,276	77.2	11,431	57.7
Washington	7,800	6,420	82.3	4,814	61.7
Wayne	50,500	26,586	52.6	20,103	39.8
	(44,695)		(59.5)		(44.9)
Wilson	33,500	19,779	59.0	16,203	48.4
Total	1,185,900	724,513		556,378	

[1] Bureau of the Census. Estimates except those in brackets include Armed Forces stationed in country.
[2] Alex K. Brock, executive secretary, North Carolina State Board of Elections.

Table prepared by staff of subcommittee on Constitutional Rights.

TABLE B.—VOTING PARTICIPATION IN 1968 GENERAL ELECTION IN 4 COUNTIES OF CALIFORNIA

Counties	Estimated population[1] over 21, Nov. 1, 1968	Total[2] registration; Nov. 5, 1968	Percentage of estimated population over 21 registered	Number voting[2]	Percentage of estimated population over 21 who voted in 1968 general election
Los Angeles	4,387,126	3,130,962	71.4	2,700,170	61.6
Orange	772,200	580,886	75.2	507,162	65.7
San Diego	795,000	542,813	68.3	470,350	59.2
Santa Clara	573,000	422,703	73.8	363,429	63.4
Total	6,527,326	4,677,364		4,041,111	

Note: Table prepared by staff of Subcommittee on Constitutional Rights.

Sources: 1. Planning commissions of each county. 2. Frank M. Jordan, Secretary of State, State of California, "Statement of Vote," general election, Nov. 5, 1968, pp. 4-5.

TABLE C.—VOTING PARTICIPATION IN 1968 GENERAL ELECTION IN 9 COUNTIES OF NEW YORK STATE

Counties	Estimated population over 21,[1] Nov. 1, 1968	Total registration[2]	Percentage of estimated population over 21 registered	Number voting[2]	Percentage of estimated population over 21 who voted in 1968 general election
Bronx	942,372	570,404	60.5	465,475	49.4
Kings	1,699,225	1,072,590	63.1	810,640	47.7
New York	1,155,675	691,073	59.8	553,629	47.9
Queens	1,377,857	938,439	68.1	788,790	57.2
Richmond	174,871	117,540	67.2	101,425	57.9
Monroe	418,588	322,172	76.9	299,475	71.5
Erie	1,166,627	548,633	47.0	461,289	39.5
Westchester	628,522	441,046	70.2	407,255	64.8
Nassau	841,812	725,590	86.2	651,349	77.4
Total	8,405,449	5,427,487		4,539,233	

Note: Table prepared by staff of Subcommittee on Constitutional Rights.

Sources: 1. All population estimates except those for Monroe and Erie Counties were prepared by Dr. Abraham Burstein, "Demographic Projection for New York State Counties," New York State Planning Coordination, Human Resources Administration. Estimates for Monroe and Erie Counties were extrapolated from statistics supplied by New York State Department of Commerce. 2. New York State Department of State.

TABLE D.—COMPARISON OF ILLITERACY OF VOTING AGE POPULATION IN 19 ILLITERACY TEST STATES

	Voting age population, 1960[1]	Total illiterates of voting age	Percentage which completed less than 5 years of school[2]
States covered by Voting Rights Act:			
Alabama	1,834,000	293,912	16.3
Georgia	2,410,000	424,160	17.6
Louisiana	1,804,000	384,252	21.3
Mississippi	1,171,000	220,148	18.8
North Carolina	2,557,000	421,905	16.5
South Carolina	1,266,000	256,938	20.3
Virginia	2,313,000	303,003	13.1
States with literacy tests not covered by Voting Rights Act:			
Alaska	134,000	10,988	8.2
Arizona	732,000	73,200	10.0
California	9,660,000	550,620	5.7
Connecticut	1,591,000	100,233	6.3
Delaware	267,000	17,622	6.6
Maine	581,000	27,307	4.7
Massachusetts	3,245,000	194,700	6.0
New Hampshire	373,000	16,412	4.4
New York	10,881,000	848,718	7.8
Oregon	1,073,000	35,409	3.3
Washington	1,718,000	58,412	3.4
Wyoming	190,000	6,840	3.6
Total in States covered by Voting Rights Act	13,355,000	2,309,438	
Total in States not covered by Voting Rights Act but having literacy tests	30,345,000	1,940,551	
Total in all States having literacy tests	43,700,000	4,249,989	

Note: Table prepared by staff of Subcommittee on Constitutional Rights.

[1] Source: Bureau of the Census, Current Population Reports, series P-23, No. 14 (1965), technical studies, table 1.
[2] Source: Bureau of the Census, County and City Data Book 1967: A Statistical Abstract Supplement, p. 3.

TABLE E.—COMPARISON OF VOTING PARTICIPATION IN 1968 GENERAL ELECTION IN SELECTED COUNTIES OF 3 STATES WITH LITERACY TESTS

State	Estimated population over 21	Total registration	Total votes cast	Total population over 21 not registered	Total population over 21 who did not vote	Total illiterates [1] of voting age population
North Carolina [2] (39 counties)	1,185,900	724,513	556,378	461,387	629,522	421,905
California [3] (4 counties)	6,527,326	4,677,364	4,041,111	1,849,962	2,486,215	550,620
New York [3] (9 counties)	8,405,449	5,427,487	4,539,238	2,977,962	3,866,211	848,718

[1] Number of voting-age people in entire State who had not completed 5 years of school in 1960.
[2] Covered by 1965 Voting Rights Act.
[3] Not covered by 1965 Voting Rights Act.

Note: Table prepared by staff of Subcommittee on Constitutional Rights from tables A, B C, and D.

JULY 22, 1969.

HON. SAMUEL J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights, Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The ability to control one's own destiny and have a proportional voice in directing the course of one's country is the foundation of the democratic principle upon which this nation purports to rest. In the fifteenth Amendment to the Constitution, this right was assured to all citizens of the United States regardless of "race, color, or previous condition of servitude." The Amendment commands the state governments not to deny the right to vote to anyone on this basis.

For 95 years, this promise was ignored and often repudiated. In 1965, however, the Congress enacted the Voting Rights Act. The Act stands as a landmark of political equality as it implements the Constitutional mandate. However, the hedging, indecision, and recent pronouncements of the present Administration concerning extension of this Act might prove to be catastrophic for the rich promises of democracy contained in the law.

At present, we have three courses of action with regard to the Voting Rights Act of 1965. The first is to do nothing and merely allow the integral parts of the act to expire (as of August 6, 1970). Our second alternative is to accept Attorney General Mitchell's position. Thirdly, we can extend the application of the Act and then explore other avenues to broaden the scope of the Act. As a sponsor of S. 2456, I have formally approved the last alternative—the only approach we can choose in good conscience.

Those who would urge that we permit the Act to expire have two possible arguments: The Act has failed to fulfill its objectives; or, the Act has served its total purpose, thus it is useless. Statistics alone will invalidate these arguments.

Here are facts that clearly demonstrate great strides under the Act:

(In percent)

States	1964	1969
Mississippi	6.7	59.4
Alabama	19.3	56.1
Georgia	27.4	52.6
Louisiana	31.6	58.9
South Carolina	37.3	51.2
Virginia	33.3	55.6

These figures represent non-white voters registered to vote immediately prior to the passage of the Act, as compared with the present, in the six Southern states primarily covered under the legislation. This laudable increase of 800,000 new voters has contributed to the election of 400 black officials in the past four years.

The Act has not failed. Rather, it has created a political citizenry that is essential if our legislators and elected officials are to represent *all* Americans. Token representation is not democracy. "Political power" is democratic and within the American spirit.

In 1965, we believed that five years under the Act would be sufficient time to enfranchise all the politically deprived. We were inaccurate. Foresight is be-

coming increasingly more difficult; in any case, the legislation has certainly not finished the task for which it was designed.

The disparity between white, registered, eligible voters and non-whites still borders on the absurd. Here are some facts:

1969 PERCENTAGE OF ELIGIBLE VOTERS REGISTERED

[In percent]

States	White	Nonwhite
Mississippi	92.4	59.4
Alabama	82.5	56.7
Georgia	84.7	56.1
Louisiana	87.9	59.3
South Carolina	65.5	58.8
Virginia	67.0	58.4

We cannot permit the Act to expire when we have so much to accomplish.

In 1965, I believed that through this Act blacks would be able to voice their views in a responsible and effective manner. I still adhere to this opinion. We cannot stop here. How can one say that this Act has completely done what it was designed to do, when there are no blacks serving in the State Senate or State House in Alabama, Mississippi, Louisiana, South Carolina or Virginia when there is 26%, 36%, 29%, 29% and 19% non-white population in the respective states.

The Administration's proposal has merit; however, it unfortuntaely does not stand as strongly for the disenfranchised as would the extension of the present Act. For example, the call for a nationwide ban on literacy tests, and state residency requirements for Presidential elections is certainly noteworthy. But the Administration's proposal fails to extend the section of the Act which has, and hopefully will in the future, provide for a critical review by the Office of the Attorney General of all proposed new electoral procedure by those states already covered. Under the Administration plan, the possibility of prohibitive voting laws would shine anew. Perhaps after a simple extension of the Voting Rights Act we can consider these recommendations. We must not allow all past and future progress to disappear.

We are left with the last and only responsible choice: a five-year extension to the Voting Rights Act of 1965 before August 6, 1970.

We have no other alternative than to extend the present Act. We have an obligation as responsible legislators and public officials to guarantee that all will have a voice in our political process.

This obligation is founded upon written law and informally imposed through personal involvement in the problem. Those who have been aware of the history of the fight for political equality and freedom have a strong sense of obligation; an obligation to see the promises of equality fulfilled; to see predictions become a reality.

How are we to explain to the disenfranchised in this country that we are forsaking them—denying to them the promises exposed for decades? We cannot afford to lose the confidence of these people—these Americans. The politically deprived of this country are expecting our assistance—our concern—the extension of the Voting Rights Act.

We must respond to the cry of the disenfranchised.

With best personal regards,

Sincerely,

(Signed) Pete Williams
(Typed) HARRISON A. WILLIAMS, Jr.

JULY 30, 1969.

Hon. HARRISON A. WILLIAMS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR PETE: Thank you for your letter of July 22. It is a most most eloquent statement of the position of those who favor extension of the Voting Rights Act of 1965 and with your permission, I would like to insert it into the Subcommittee's hearing record.

You realize that we disagree on this subject, and while I have little hope of converting you to my views, perhaps I can explain the basis for North Carolina's opposition to extension of the law.

The 1965 Act was a politically motivated effort carefully designed to impose the full might of the federal law upon a few selected states. The law was drafted to apply only to six states and to some counties in my own State, North Carolina. The bill's objective is laudable. I wholeheartedly approve of insuring that every qualified citizen regardless of race is given full opportunity to exercise the franchise. North Carolina adheres to this principle, and does not deny to any qualified citizen his right to vote.

The 1965 Act created an artificial standard of legislative condemnation through adoption of the 50% "trigger device." While there may arguably be some logical connection between a literacy test and the number of persons who register, there is no such relationship between use of the test and the number who actually vote. By the peculiarity of this provision, and the unreasonable addition of non-resident military personnel and inmates of mental institutions, a number of North Carolina counties were covered by the Act.

One can take the 1968 statistics and argue that the law was effective because 800,000 unregistered citizens have been registered; or one may argue that most, if not all, would have registered even without the law. But it is clear that the objectives of those who supported the Act in 1965 have been met in the 1968 election. Each of the six States covered by the Act met the 50% test of registration and voting last year. Of the 39 counties of North Carolina covered by the 1964 election, only three failed to register 50% this time. Cumberland County is the site of Fort Bragg, and Onslow County contains Camp Lejeune. The third county is Craven, and that fell below 50% registered by only 2.8%.

By way of comparison, according to figures supplied to me by the State of New York, the November, 1968, registration in Erie County was only 47% of the estimated population over 21. In Bronx, Kings, New York, and Erie Counties, the percentage of those voting in 1968 fell below 50% in each case, and was less than 40% in Erie. New York also employs a literacy test.

I can see no justification for not releasing from the coverage of the law those jurisdictions which have satisfied the standards of guilt imposed upon them in 1965. The typical response to this reasonable suggestion has been that the southern states would regain their power to order their own elections, and that this must be prevented.

This is a peculiar argument. An arbitrary and illogical test of righteousness is created. The victims meet that test. They are then denied absolution for fear they may sin again. So the test of righteousness is changed to make certain they remain sinners.

The Attorney General's proposal has only the small virtue of applying like unconstitutional laws uniformly to like subjects. In my view, the Congress has no constitutional power to suspend constitutionally guaranteed powers of the states. But at least the law should apply equally to all, and insure all the right to vote regardless of literacy tests.

The Attorney General's bill makes only a few small substantive changes in the 1965 Act, but it does eliminate the unjust and repressive aspects which are so objectionable to North Carolina. First, it opens the doors of all federal courts on that assumption that every federal judge can be relied upon to uphold the law of the land and the Constitution, even if he is born or living in the South.

The other change is to permit the states, their elected officials, and their representatives to change the laws of the community without seeking the prior approval of a federal official who is a political appointee. I am certain that the people of New Jersey would rise up against any proposal that they and their representatives could not legislate without the approval of the U.S. Attorney General. That is why the people of North Carolina object so strongly to this provision, and to other parts of the law that make North Carolina little more than a conquered province. The elimination of this provision would have great symbolic meaning to my State, because it would signify, in part, its readmittance on equal terms into the Union. As a practical matter, it would have little effect on the ends of the law or its enforcement.

In my view, the 1965 Act was a repressive, unfair, and unconstitutional law. It would be best if it were left to expire. It would be better to recognize the 1968 election results, or to apply the terms of the law equally to all states, such

as New York and California where the literacy test in 1968 worked to the advantage of black voters, than to extend the law for another five years.

With all kind wishes, I am,

Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

Senator ERVIN. I believe you were cross-examining the Attorney General.

Mr. Attorney General, maybe you would like to make some statement yourself before we proceed further with questions.

STATEMENT OF HON. JOHN NEWTON MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES—Resumed

Mr. MITCHELL. No, Mr. Chairman. I stand on my statement before the subcommittee on July 11th, but I would like to thank the chairman and the staff for providing additional information concerning the subject matter contained in that testimony of July 11.

Senator BAYH. Mr. Chairman, I had the opportunity to question the Attorney General at length at our last session. You were very kind and patient with me then.

Without trying to monopolize the time of the committee, let me ask just one or two other questions, which I didn't have a chance to ask the Attorney General, and he has been good enough to come back.

Mr. Attorney General, let me just start my questioning this morning in a broader scope than the act to which we address ourselves this morning, and I do so in the light of some events that transpired between the last opportunity and this opportunity to discuss this problem with you.

I think you are certainly aware of the critical problems that we have in this country which revolve around the efforts that we have been making over the past years to bring equal opportunity into some areas where it has been lacking, not only in the area of voting, but education, housing, and job opportunities, this whole business.

We realize the critical nature and the volatile nature of this, and a great deal of our ability to succeed depends on our ability to express ourselves and to act both at the congressional level and the executive level and the judicial level so that those who live in these conditions have faith in the ability of the system to respond, and thus they will keep their cool and let the system work and remedy the injustices which have been perpetrated on them for these many years instead of trying to work outside the system in unlawful activity.

I wanted to address myself to the great concern that large numbers of Negro leaders, black leaders, in the civil rights movement have toward the administration's attention in this area of civil rights. The reason that I think it is appropriate now is that in the Urban League meeting, which is presently going on, and has gone on over the last 2 or 3 days, there have been several statements made—I think the keynote address was by Whitney Young, the executive director—to the effect that he and others are getting impatient with inactivity, the difference between what is said and what is done. The administration's refusal to extend the Voting Rights Act has been interpreted by a broad number of leaders in the black community as less than "keeping the faith," and as evidence that the administration doesn't intend to

keep the faith. They say you really don't want to provide voting opportunities.

I think you should have the opportunity to give your opinion, speaking on behalf of the administration, because I think it is critical to you and us, Democrats, Republicans, white, black, and brown, that we take the steps necessary to show these people that we are going to act and that we are addressing ourselves to this problem in good faith.

Mr. MITCHELL. Senator, I haven't read Mr. Young's statement——

Senator BAYH. Let me just, if you like, read——

Mr. MITCHELL. As the press reported the statement on the Voting Rights Act, it related to the fact that he felt that we were spreading our resources too far afield in connection with the application of the act to the entire Nation compared to the small number of States covered at the present time by the 1965 act.

Senator BAYH. To be fair to you and put this in proper perspective, let me read just two very quick paragraphs comprising about three sentences, in which he said:

> Instead of the national commitment that is needed, evidence is mounting that indicates massive national withdrawal from the urban racial problem that should be at the top of the list of priorities. We seem to be moving backward in an age of indifference and repression.

And then in the second paragraph thence he says—

> One example in this list of several, the Justice Department tried to kill extension of the 1965 Voting Rights Act by offering a substitute which would have spread already limited resources and weakened enforcement.

So you are giving in to his concern as far as this area is concerned.

Mr. MITCHELL. Yes, sir. I think the first part of the statement that you have just read was gratuitous without any hard facts to back it up. To get to the specifics of the Voting Rights Act and the legislation upon which we are now commenting, I would point out that my testimony given before this subcommittee 2 weeks ago, denied any intention on the part of the administration to remove or limit the rights that exist under the 1965 act. To the contrary, we are expanding these rights into areas where we think they should be applicable.

Specifically, commenting on his statement with respect to the use of our resources. I would point out—and this is contained in my testimony of July 11—that there were 312 complaints of voter discrimination filed from the time of the enactment of the statute in August of 1965 to the time of that testimony. And I would point out that in the year 1966 there were 157 of these complaints; in 1967 there were 92; in 1968 there were 45; and through this year there have been only 18.

Eighty-one of these complaints were filed in noncovered States. With respect to the effectiveness of registrars, most of the complaints we receive are resolved by their use, a very limited number of lawsuits have been brought in relationship to the number of complaints.

The figures I have just recited indicate that our manpower requirements to attend the complaints are decreasing rapidly. I would also point out that in our budget applications, we have requested a substantial number of new personnel in the Civil Rights Division. They have been authorized to a degree in the House, and we expect we will receive the same treatment in the Senate. Our resources to take care of this problem on a national basis are far in excess of those that

existed in the Department to take care of it on a regional basis under the 1965 act.

Senator BAYH. How many additional assistants have you requested to carry this burden?

Mr. MITCHELL. The total with the 1969 supplemental and the 1970 budget is 92. The way the allocation is provided, we will be able to add in 1970, on top of the 30 we received in 1969, some 40 new attorney positions. For the first time in quite a number of years, the Civil Rights Division of our Department is being significantly strengthened.

Senator BAYH. I compliment you for this. How many do you have now, Mr. Leonard, or Mr. Attorney General?

Mr. MITCHELL. Mr. Leonard advises me that the Division, when we came in, had 219. That number had not changed since 1964.

Senator BAYH. So you have 219 now to police the——

Mr. MITCHELL. Plus 70.

Senator BAYH. Pardon me, sir?

Mr. MITCHELL. Plus the 70 that we will add through the supplemental 1969 budget, and the allocation under the 1970 budget—if the Senate goes along with the House authorization.

Senator BAYH. I am sorry, I misunderstood. I thought the figure was 40. It will be 70 new places instead of 40?

Mr. MITCHELL. There are 30 already aboard through the 1969 supplemental——

Senator BAYH. Plus 40, which would be a total of 70.

Mr. MITCHELL (continuing). Plus 40 we will allocate if the authorization in the House Appropriations is sustained.

Senator BAYH. Well, as I said when you testified before, I think the goal is giving everyone the right to vote whether he's in the North, South, East, or West. But, as I recall from the testimony before the House, at that time there was no mention made of additional members. That's not important. The fact that you are getting 70 new ones, I think is a step in the right direction.

I would like to suggest if you have 219 officials now in this division to police the act as it applies to six States, it would seem to me hardly sufficient to request only 70 more when it is going to apply to 50 States.

Mr. MITCHELL. Senator, the requirements of Civil Rights Division personnel in connection with the Voting Rights Act is very limited. As I know you are well aware we have many other programs that are overseen by the Civil Rights Division.

As I pointed out earlier there have been through fiscal 1969 only 18 complaints filed nationwide; the resources of our Department are more than adequate to take care of these.

Senator BAYH. But this is under the present act, and I think the evidence that you cite indicates how effective the present act has been. It has lessened the incidents of discrimination because those who would involve themselves in this type of activity know they can't get away with it. But by your own admission in your testimony the other day, as far as section 5 is concerned, it is going to be more difficult to police it.

In my judgment it is going to increase the temptation to involve legislative and other lawmaking bodies in this type of hanky-panky that is going to lead to discrimination. It is going to increase your

burden in those areas where, because of the effectiveness of the 1965 act, the complaints have gone down. This is what concerns me, that you are really opening a Pandora's box and you are going to turn the clock of history back and restore some of those conditions that existed prior to the 1965 act.

Mr. MITCHELL. Senator, I disagree with that entirely. I would point out that of the 312 complaints which have been received by the Department, 81 of them were in States not covered by the 1965 act. The number of complaints received from the covered States each successive year has materially decreased. And I believe this is because of the use of registrars and observers in the covered States. In the future, under any type of statute, we will not have the problems that previously existed. We will have more than adequate staff to take care of them. The provisions of our bill, strengthened as they are with respect to nationwide enforcement will provide such an appropriate measure that we anticipate no return to the problems as they may have existed at the time of the 1965 act.

Senator BAYH. I feel very much like a person in the story that one of my former colleagues in the State legislature used to tell every year when there was a difference of opinion. He recited the story about the blind man who was asked to describe an elephant, and it sounds to me like you are describing the elephant by feeling its tail and I am describing the elephant by feeling its tusks, because I don't see how you are getting any new enforcement provisions under this act that aren't provided in one way or the other in the present act. And what adds to my concern is not that the job doesn't need to be done in 50 States, but that if you have limited resources, you better concentrate where the problem is the greatest. You are not going to have the resources necessary to really do the job where the problem is the greatest and do it elsewhere in the other States. This is my point.

Mr. MITCHELL. Senator, in the area of the voting rights, we have more than adequate resources in the Department; under this bill, we will have adequate tools to protect voting rights.

Senator BAYH. Well, this is your judgment. It is not my judgment, of course, and this is why I originally brought in the question. There are really hundreds of civil rights leaders throughout the country that look at this well-intentioned move on your part in the administration, not for what you intended, but as a retreat from confrontation with discrimination. This concerns me.

Mr. MITCHELL. I am afraid, Senator, that those gentlemen are not fully informed with respect to the substance of our proposal with respect to the number of complaints that have been received how they have been handled, the available resources in the Department to take care of them, and the fact that we have made progress in this area to the point where we are not going to require the resources nationwide that at one time were required in the covered States.

Senator BAYH. Under section 5 of the present act, legislative bodies are pretty well put on notice that it is folly for them to involve themselves in this type of discriminatory practice.

Under the administration's approach, during our discussion the other day, we agreed that it was going to be more difficult to prove discrimination under the administration's bill than to prove refusal to submit changes in plans and procedures to the Attorney General.

Thus, one, it is going to take more assistants to do this job, and two, it is going to increase the incidence of discriminatory practices and procedures that will be promulgated. I think that you are going to see the caseload go up, rather than go down, in addition to add those few States. But I am just not going to find common agreement on this, I can see.

Mr. MITCHELL. Shall I answer that question again, if I may?

Senator BAYH. You may, since I asked it again.

Mr. MITCHELL. To start, determinations as to whether legislation or ordinances discriminate under section 5, properly belongs in the court, and I would point out that, as I testified before, where jurisdictions have sought to impinge upon the rights of voters, they have not submitted their legislation or their practices or procedures to the Justice Department for consideration. They have proceeded with the discrimination. Under those circumstances, the Justice Department has had only one recourse—to go into a one-judge district court to try and set aside these practices. We had to prove that they were discriminatory, in violation of the act or the 15th amendment.

I point out now that under our revised section, 5 we go to a three-judge district court, with direct appeal to the Supreme Court, and with broad powers of injunctions and restraining relief. This relief can be made applicable to the jurisdiction on a more definitive basis than just the individual statute or ordinance that might have been passed at a particular time.

We think that the revised language gets at some of the problems that really exist in this area, as distinguished from the legislation submitted for review to the Department.

Senator BAYH. I don't think you get to the meat of the problem. In the *Allen* case, the ruling held that a three-judge court could be resorted to, as I recall it, under the present act, plus as you agreed, it would be more difficult to police this act no matter what court you go to, whether you are seeking final determination or injunction, because you have to prove some facts of discrimination, or the effect of discrimination, under the act. This is more difficult to prove whether it is a one-man court or a three-man court or the Supreme Court than it is merely to prove that the regulation involved was not submitted in the first place.

Therein lies the difference between the burden of proof under the administration bill and the burden of proof under section 5 of the 1965 Voting Rights Act.

Mr. MITCHELL. I think it reasonable that when these statutes and ordinances are submitted to the Attorney General for approval or disapproval, that we should have to make an investigation and we should have to have proof that they are going to be used in a discriminatory basis. I don't believe that our load is going to be any different in the investigation of potential discrimination under a statute than it is in providing evidence of actual discrimination in the court case. I don't think it adds to our load one iota if we properly exercise the function of the Attorney General's Office in determining the nature of the legislation or ordinances that are submitted.

Senator BAYH. Well, I think the proof of the pudding is in the eating. Although here again, you argued this one way and I argued another. I think the very fact there have been some 310 or so rules

and regulations promulgated and submitted to you and that only a handful, I think it is less than a dozen, that have been ruled discriminatory, is due to the fact that, under the present act, there is no incentive for the legislative branch or the rule promulgating agency, whatever it is, to discriminate, because people know that they are under the magnifying glass.

If you take away this screening process, you are going to see that 310 cases, or a great percentage of them, resort back to the old practices, which I think most of the legislators in those areas want to avoid.

Legislators want to know right now, so they can go to their constituents and say, "Listen, you may want me to follow this pathway, but if I do I am going to get in trouble, so we're not going to go back that way." This is what concerns me.

You look at it one way, and I look at it another, and, as I say, reasonable men can disagree.

So much for the burden. Just a couple more areas, Mr. Chairman. You and the Attorney General have been very patient.

I wasn't certain that we really explored as far as I would like to, as far as getting your opinion is concerned regarding section 4(e) of the 1965 Voting Rights Act, dealing with non-English-speaking citizens.

What is the reason for treating it as the administration would treat it? It would mean that unless we come up with another piece of legislation as of January 1, 1974, this provision is going to lapse and you are going to be right back into the old situation in which the non-English-speaking citizens are disenfranchised.

Why don't we exempt that and just say that as of right now, we are going to continue to protect those non-English-speaking citizens?

Senator ERVIN. Non-English speaking? I think that is writing and reading.

Senator BAYH. Well, those who are not conversant with the language, however you want to describe it.

Mr. MITCHELL. The suspension of the literacy tests, under this particular statute, through the period of January 1, 1974, will take care of this situation.

Senator BAYH. As of January 1, 1974, it reverts back to where it was before the 1965 Voting Rights Act.

Mr. MITCHELL. Yes; but I would point out to you the additional provisions of this bill wherein we propose the creation of a presidential commission. Our intention is to have a complete review of this matter, based on the 1970 census, plus such additional information as the commission would direct the census to obtain, with a reporting date to Congress of January 15, 1973. There the matter could be reviewed for such additional and appropriate action as would be necessary.

Senator BAYH. I understand that, but I trust—perhaps I should ask, do you, does the administration feel that section 4(e) acomplishes a worthy goal?

Mr. MITCHELL. To the extent that it provides a basis upon which more people could qualify, we most assuredly do. That, of course, is the intention of our bill—to increase the number of people that may qualify to vote.

Senator BAYH. Well, I salute you for that goal, but what we are saying is that if we go ahead with the administration's proposal, and this commission, for some reason or other, does not come up wtih the recommendation that we should continue to treat non-English citizens—non-English conversant citizens—the way we treat them now, they are going to be excluded from the new act.

Mr. MITCHELL. I would not feel that that would be the case. I would assume that the Commission would come up with such a recommendation, but in the event it did not, I would presume the Congress would act in the same way as it did in 1965.

Senator BAYH. Mr. Attorney General, you are making some rather broad presumptions, if I may be so presumptuous as to suggest what Congress may or may not be able to do in the future. Right now we are dealing with the problem of thousands of non-English writing-and-reading citizens being treated discriminatorily. We dealt with this problem in the 1965 Voting Rights Act, but according to the administration bill, unless Congress takes another step, we are going to undo everything that was done in the 1965 act as far as they are concerned.

Mr. MITCHELL. I don't believe that is the conclusion or necessarily the result, Senator. I believe that the Congress, having the advice and the reports of this Commission, which undoubtedly will have more information in the area than has ever been had before, would make such a recommendation, and I am assuming—I think rightfully so—that the Congress will recognize its responsibilities in that area.

Senator BAYH. These assumptions are hopefully correct, but we treat one bill at a time, never really knowing what is going to happen tomorrow. It cannot be evaded. The effect of the bill is to take these people out from under the protection provided under the 1965 Voting Rights Act.

Mr. MITCHELL. Not during the period to January 1, 1974.

Senator BAYH. All right, but after January 1, 1974.

Mr. MITCHELL. After January 1, 1974, I would presume that there would be new legislation in this area, based on a study by this Commission, which certainly would see to the protection of the voting rights of all the people in this country. I am reasonably certain of that.

Senator BAYH. That is a matter of judgment. I would hope it would be the case. But there have been studies made strongly supporting the 1965 Voting Rights Act, and now we have a new administration that is trying to take it off the books.

So I don't think you and I can determine, sitting here, what is going to happen in 1974, with a new Congress, maybe the same administration, maybe a new one. We ought not to so casually treat this particular problem, which finds a number of our citizens burdened with a specific injustice. We ought to treat it as we have it and not leave it to some future Congress.

Mr. MITCHELL. Senator, I would like to make an observation. We are not trying to take the 1965 Voting Rights Act off the books; we are trying to extend its application to other parts of the country.

(See the Attorney General's letter at page 661 of the appendix.)

Senator BAYH. Well, you are taking much of the vitals out of it, let me suggest, by the definition of many of us who have been concerned with this problem of civil rights acts for many years and by those who

are directly affected. You would have a 99-percent vote, if you took it to a referendum. You are really weakening it. This is the proposition that I presented to you earlier. This is going to destroy the faith in these communities, because they don't look at the good faith of the administration like you do, and this concerns me, because I don't think you and our President can afford to lose faith in these communities.

Mr. MITCHELL. Senator, I quite agree with you on that score, but I would point out that even the statement made by Mr. Young was made without sufficient information and understanding of the situation.

As I have indicated here this morning, many of these statements concerning caseload and personnel are made under similar circumstances.

Senator BAYH. Well, I think that we get far afield if we get to disputing Whitney Young's expertise in the area of civil rights. I would think he probably knows more about the problem than you and I put together, and he is very much aware of these statistics because they have affected him and his family. His face is black, and he and his children have to deal with this problem, and have back through the generations. That is why he is concerned about it, and I don't blame him for being concerned.

Mr. MITCHELL. Senator, we are talking about voting rights here; I think that we have expert information in that area, which apparently he did not take into balance when he made that statement.

Senator BAYH. Well, I won't read his whole statement because I think it could indeed be considered self-serving, but I think it is very well documented, and I don't think the statement that excludes voting rights from civil rights needs to be argued further.

One further question, if I may please, and that is this whole business of who is going to have the responsibility? Is it your opinion and the opinion of the administration that the Civil Rights Commission has done a creditable job?

Mr. MITCHELL. Yes, sir.

Senator BAYH. Why is it, then, that you tend to take some of the authority from it, lessen its responsibility, and set up a special commission? The administration talks about the need to economize, and I concur. Why do we need to set up another administrative agency to deal with an aspect of this whole business of civil rights; namely, voting rights?

Mr. MITCHELL. There were primarily two reasons for our approach in this bill of recommending a special advisory commission. First was that the Civil Rights Commission has already testified to the fact that it would like to see the abolition of literary tests throughout the country In other words, it is in support of our position on that matter. It might have been presumptuous on our part since we were recommending that provision, to rely on a commission that had already predetermined its position on that subject.

Second was that the bill, as we proposed it, asked the commission to look into the vote fraud problems. We believe that a separate commission might better examine this area and make the recommendations this legislation requests.

Senator BAYH. The Civil Rights Commission didn't make the suggestion that literary tests be included under the present extension of the 1965 Civil Rights Act, did it?

Mr. MITCHELL. I am sorry, Senator, I did not hear you.

Senator BAYH. The Civil Rights Commission has not testified that the removal of literacy tests be treated in the way the administration would treat it, as part of the effort to extend the 1965 Voting Rights Act?

Mr. MITCHELL. No, sir, but it has recommended the removal of literacy tests on a nationwide basis. This, of course, would be one of the basic questions that this commission, either as existing or as appointed under this bill, must examine.

Senator BAYH. And you don't think they could conduct an objective study of this problem?

Mr. MITCHELL. I don't think that is the question. The question is that the Civil Rights Commission has already made a predetermination as to what its position on this subject should be.

Senator BAYH. But given the need to enact legislation in this area, you don't think they could be commissioned to expand their studies?

Mr. MITCHELL. I have no problem in connection with that. Our point was, when we proposed this bill, that since it had taken this position, we might perhaps have a better recommendtaion for the Congress from a new commission.

Senator ERVIN. The mention of the Civil Rights Commission on this point reminds me of one time when I was over at the Superior Court of North Carolina at a trial of a man for first degree murder. A juror came into the box and they asked him if he could give the defendant a fair and impartial trial. He said, "Yes, I certainly can. I think he's guilty and ought to be sent to the gas chamber."

The Civil Rights Commission has already expressed its opinion.

Senator BAYH. I am trying to tie those two in. I'm trying. [Laughter.]

Let me discuss this one step further. It is my concern that the administration is in a position where it can't do the job it says it is going to do, and this is worse than not doing the job in the first place.

I think one of our problems in this whole area of civil rights and Negro opportunities is that we have held out more than we have really been able to do. We are saying to black citizens and brown citizens all over the country, that we are going to deal with this problem on a nationwide basis with insignificant resources, and I am concerned about this problem in regard to the Commission.

Now, that Commission is going to hold studies. Where are these moneys going to come from? How much is it going to cost to fund this Commission? How does this relate to what the administration has asked for under the present Civil Rights Commission budget?

Mr. MITCHELL. Senator, the work would primarily be done by the Census Bureau. I would assume that in the interest of solving this problem once and for all, this Congress would be agreeable to the appropriation of the necessary amounts of money to make a definitive study that does not now exist. Such a report is required in order that we will have permanent legislation on this subject matter and not a series of 5-year extensions of a piece of legislation that pertains to a particular segment of the country only.

I think that the subject matter is worthy of that consideration and I feel that Congress will appropriate the money to make sure that the job is done.

Senator BAYH. I don't know about Congress. I would hope that Congress would provide these funds. I have not always agreed with the amount of funds that Congress has provided, but I am concerned frankly, about the request that the administration would make.

On the 3d day of April, Mr. Leonard sent to the Acting Staff Director of the U.S. Commission on Civil Rights a denial of a request made for a study under section 8 of the Civil Rights Act. The Civil Rights Commission was going to try to survey the areas of which you spoke and do a first-class job.

When that request was made, on April 3d, it was turned down. Now you have a new idea and suddenly you are going to come up with new funds. This seems a bit inconsistent to me. I would like, Mr. Chairman, to put Mr. Leonard's letter in the record right now, if I may, because, as I say, I think it shows a little inconsistency. I want to get this job done. I don't want to hold out to those disenfranchised citizens of this country a promise that we can't deliver on.

Mr. MITCHELL. Senator, would it be appropriate to put the letter from the Civil Rights Commission into the record at this point?

Senator BAYH. I think it would be appropriate to put both of them in there.

Mr. MITCHELL. Thank you, sir.

Senator BAYH. Certainly. We request that this happens at this point.

Senator ERVIN. They will be inserted.

(The letters referred to follow:)

FEBRUARY 18, 1969

Hon. JOHN N. MITCHELL,
Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The enclosed letter to the Secretary of Commerce reflects our current position regarding Title VIII of the Civil Rights Act of 1964.

Although Title VIII called for a survey of voter registration and participation to be taken after its enactment and for another survey in connection with the 1970 Census, the first survey was not conducted and no funds have yet been appropriated or requested by the President for the second. If no funds are appropriated for Fiscal Year 1970 it will be impossible for the survey to be made in connection with the 1970 Census.

As our letter to Secretary Stans indicates, we continue to believe that the survey required by Title VIII will be useful. If funds are not provided, however, we recommend that legislation be introduced into Congress to repeal Title VIII. If the survey is not to be undertaken, we see no useful purpose in having Title VIII remain on the books.

If you would like to discuss this matter, I should be happy to arrange a meeting with you.

Sincerely yours,

(Signed) Howard A. Glickstein
(Typed) HOWARD A. GLICKSTEIN,
Acting Staff Director.

DEPARTMENT OF JUSTICE,
Washington, April 3, 1969.

Mr. HOWARD A. GLICKSTEIN,
Acting Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. GLICKSTEIN: Attorney General Mitchell has asked me to reply to your letter of February 18, 1969, concerning Title VIII of the Civil Rights Act of 1964. Please excuse our delay in responding.

Your letter to Secretary Stans recommended that he request, for fiscal 1970, the funds which would be required for preparation for the survey of voting and voter registration described in Title VIII. Your letter states that, in 1968, the Acting Director of the Bureau of the Census estimated that the cost of a survey

with respect to the areas designated by the Commission on Civil Rights would be $350,000 in (fiscal) 1970, $5,075,000 in 1971 and $225,000 in 1976.

We recognize that it would be useful to have the results of a survey of the scope recommended by the Commission. However, because of the expense involved, we are unable to share your view that such a project should be undertaken. Assuming that the cost of the survey would amount to several million dollars, we do not feel that an expenditure of this magnitude can be justified.

A possible alternative could be to limit the extent of the survey and, in this way, to reduce the cost. It might, for example, be possible to select a representative sample of counties, *i.e.*, a much smaller number than was designated by the Commission in January 1968, and still obtain meaningful results. If you wish to consider this or other alternatives and feel that the Civil Rights Division could be of assistance, please feel free to call on us.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

Senator BAYH. Do you care to explain this further, or do you think both letters will do it?

Mr. MITCHELL. I believe that both letters will do it, and I would point out that here again we felt that this independent commission which did not have preconceived ideas could better function in this area.

Senator BAYH. Well, I think you are certainly entitled to that judgment, but let me suggest that, in itself, that very statement is going to be interpreted by those who have championed the Civil Rights Commission as indicative of the fact that the Commission can't do a nonpartisan, nonbiased job of studying the critical problems that exist in this area, and that is just the wrong type of connotation we want to have.

Mr. MITCHELL. Well, Senator, this is a judgment for the Congress to make. Our recommendation has been that it be a commission that does not have a preconceived track record on literacy tests. Furthermore, we felt that this special commission would be much better qualified to operate in the area of voting frauds, to report back to Congress to recommended legislation on that subject, rather than have the Civil Rights Commission get into the voting fraud area where it does not have a particular charter. We would hope that the existing commission would devote its talents and its resources to civil rights and not voting frauds.

Senator BAYH. Well, I think voting frauds and irregularities are as much a part of civil rights as anything else.

In fact, as I told Mr. Leonard when he was up here and we were conversing before we started, I think voting is the most important civil right, because if you give a black man or a white man or a brown man the right to vote, he can go to his county commissioner, he can go to his school superintendent, or his Governor, or his Congressman, and have something with which he can adjust his own grievance. I think voting rights should be put at the very top of the list, prioritywise, as far as civil rights.

You have been very patient, Mr. Chairman. I thank you for it very much.

Senator ERVIN. My friend from Indiana said that this administration proposal was going against the equal protection clause. Let's test the validity of that observation.

The proposal for a new Voting Rights Act of 1965 was a proposal, in effect, that we have——

Senator BAYH. Mr. Chairman, did I say it was going against the equal protection clause?

Senator ERVIN. Yes, sir.

Senator BAYH. It must have slipped out without me hearing it, because I have no recollection of saying that.

Senator ERVIN. Well——

Senator BAYH. I think, maybe, that is an interpretation of what I said placed on it by the chairman of the committee.

Senator ERVIN. Well, regardless, I understood you to say that. At the present time, the Voting Rights Act of 1965 applies to Alabama. Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 39 counties in North Carolina.

Mr. MITCHELL. That is correct.

Senator ERVIN. In those areas, under the Voting Rights Act of 1965, a literacy test cannot be used.

Mr. MITCHELL. That is correct, sir.

Senator ERVIN. But under your bill, under the administration bill, rather, not only would Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 39 counties in North Carolina be covered, but also the 61 counties in North Carolina not now covered would be covered, and also the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Wyoming, Delaware, Alaska, Arizona, California, Oregon, and Washington. They are all of the States that have literacy tests.

Mr. MITCHELL. That is correct.

Senator ERVIN. So they would all be covered. So there would be equal protection of the laws for illiterate people in all those States.

Mr. MITCHELL. Yes, sir; that is correct.

Senator BAYH. Since the Senator raised the question, that is exactly what I interpreted the measure to mean.

I think this is a worthy goal, but the law of this land, as passed by this Congress, is not worth the paper it is written on unless those who administer it have the force necessary to see that it is carried out. And I do believe that when this measure is applied to all those States, we are going to have a problem that you or no other Attorney General can handle. And that is my concern. I don't quarrel with the interpretation of the Senator at all.

Mr. MITCHELL. I believe you make the case for our bill by so saying. If there are so many problems and so many complaints throughout the rest of the country, then we should have an act applicable to the entire Nation, so that the Attorney General's Office can get at those impingements upon voting rights across the country. We feel that we have the resources to do it. I think you are making the case for our bill.

Senator BAYH. Quite frankly, I don't agree with you on that.

You say you have 18 cases filed this year. What action has been taken on those 18 cases?

Mr. MITCHELL. I think the figure that you are referring to is for complaints.

Senator BAYH. Complaints, right. What action have you taken on those complaints this year?

Mr. MITCHELL. There have only been some 51 lawsuits, both public and private, since the 1965 act was passed. Twenty-two of those involve the Federal Government and 29 of them had private plaintiffs.

These matters, as I mentioned previously, are customarily handled and disposed of through the use of registrars and examiners. So that we really do not have a great profusion of our legal talents at work in this area. We have all the personnel required to take care of this situation.

Senator BAYH. Was any disposition made of the cases that were presented this year that I ask a question about? Could you tell the committee what activity—what you have done since you have been Attorney General to deal with these, I think you said 18 cases, 19 cases that have been filed this year?

Mr. MITCHELL. No, I did not say that. I said that during this fiscal year there were complaints, 18 complaints filed, and I would be glad to submit for the record the disposition of those complaints. I do not have that information available.

Senator BAYH. I would like to have that and be able to then find if we have some agreement with the judgment that is made by the Civil Rights Commission, who are aware of some of these complaints, as to whether adequate disposition has been made.

I think we have to recognize—well, there is no need to proceed. We are just going to differ on whether you have the resources necessary to deal with the problems created by your bill; whether the burden has greatly increased. By your own admission the other day, you suggested it is going to be more difficult to police section 5. I think it is going to be more difficult to police the whole act, because you are going to be doing it over the entire country.

This is my judgment. I guess you differ, and we are entitled to our differences.

Mr. MITCHELL. I would like to respond to the admission that you referred to. I stated that section 5 in our bill gives us additional powers and additional strength; we can do a more effective job under the proposed amendment than we can under the existing legislation. This is the basis upon which we are recommending the change.

Senator BAYH. I see that our chairman has to leave shortly, so I will terminate this. I will look back to that record, but as I recall, when we discussed this the last time, when I was comparing the real nuts and bolts of the difference between the administration proposal and the Voting Rights Act, which we think should be extended, and I said, "Isn't it, Mr. Attorney General, going to be more difficult for you to go into court and prove that the legislation that has been passed does indeed have a discriminatory effect? Isn't it going to be more difficult to do that than it is just to prove that that measure was not submitted to you as Attorney General?"

Now, that is the nuts and bolts of this thing. You said you could agree with that. That's what I thought you said. I want to read it again in case you didn't.

Mr. MITCHELL. Well, Senator, let me respond to that by saying that it is a two-part question which we were discussing in separate parts.

First of all, I said with respect to the filing of the legislation in the Department of Justice, that having lived with it I did not think it was the proper place for a determination of whether statutes are or are not going to be used in a discriminatory fashion. That was one part of the question.

The second part of the question was the effectiveness of our proposed section 5 as compared with the present procedures. I said our section 5 would give us stronger measures to use in court cases and that the really flagrant violations of the 1965 act came about under circumstances where legislation or other ordinances had not been filed with the Attorney General. So that it was a balancing effect. We feel that by the very nature of the number of pieces of legislation filed vis-a-vis the number of court cases, our proposal is stronger.

Senator BAYH. Well, you, as the Attorney General, are going to have to make a determination, anyway, whether you bring suit or not, so you are going to have to do all the field work and all the examination necessary to determine whether you can bring a case to court or not.

Now, under the present act, all you have to do is look at that measure and say, "Was it submitted to me or not." If it wasn't, per se, you have a case and you can go ahead and sue. Now, that's the way the act is.

Mr. MITCHELL. But, Senator, we are going to have a case. We are going to have action taken regarding the ordinances and legislation. We are not going to have to sit in the Justice Department and try and guess as to the effect of the legislation.

Senator BAYH. Well——

Senator ERVIN. You are going to have some evidence.

Mr. MITCHELL. Yes, Mr. Chairman, that will be the basis on which the suit is brought.

Senator BAYH. Could you tell me how many acts that have been passed that were discriminatory that weren't submitted to the Justice Department? How many cases are we talking about in which you said most of the acts have been discriminatory and have not been brought to you? How many are we really talking about?

Mr. MITCHELL. I don't have that information presently available. I could provide it for the record. But the number of cases has been larger; this applies to procedures and to methods of conduct as well as to acts. The problem area has not been with respect to the legislation submitted, but with laws which were not submitted and which have resulted in the bringing of cases.

(See "suits involving section 5" at p. 665 of the appendix.)

Senator BAYH. I might suggest, Mr. Attorney General, that you repeatedly relied on the fact that your measure is as good as the present section 5 because a large number of discriminatory laws were not filed according to that section with the Justice Department. Now, we don't even know how many you are talking about.

Mr. MITCHELL. Let me say this, that the evidence is available and we can provide it. Let me point out to you that some 13 cases involved section 5 violations that were not submitted to the Justice Department. So right there we have numerically outweighed the submitted statutes which were disapproved.

Four additional cases—

Senator BAYH. Would you explain that? Thirteen cases outweighed what?

Mr. MITCHELL. There are 13 cases that involve violation of section 5.

Senator BAYH. Correct.

Mr. MITCHELL. As compared with only 10 statutes disapproved in the whole history of the 1965 act. And there are four additional cases that bordered on section 5 violations. Some 34 of the 51 lawsuits that were filed did not relate to section 5 violations. So, as I point out, the area of enforcement of these rights is heavily weighted away from the submission of the legislation.

Senator BAYH. You and I are both aware of the practices which were going on in some areas before the 1965 Voting Rights Act was enacted. By your statement you have admitted, and I think to your credit, and I agree with you wholeheartedly, that you thought the act had accomplished a great purpose. One of the purposes was to minimize the temptation on the part of the State legislators and the various rule-promulgating bodies to involve themselves in this type of tactics. I must say here I am feeling a different part of that elephant again, sir, because when I look at 310 cases—no, I'm sorry—310 rules, regulations and statutes that have been submitted to the Justice Department, and only 10 of them have been ruled discriminatory, and when I compare that with the 13 cases that are being tried that were not submitted, the question I ask myself then, and I think it is a legitimate question for you and everyone to ask themselves, is how many of that 310 would fit into the category of the 13 if they hadn't had to come before you before the act could be implemented? And I think it is going to be significantly larger than 13. It could be 100 or 150 or a large number.

Mr. MITCHELL. Senator, I would like again to say that I cannot speculate on the intentions of legislators as to what they might or might not do, but I would point out——

Senator BAYH. Except when it comes to extending the Voting Rights Act as far as English-speaking citizens are concerned.

Mr. MITCHELL. I have great faith in the Congress of the United States doing what is correct.

Senator BAYH. I think that is a good theme to leave my questions on.

Senator ERVIN. The avowed purpose of the Voting Rights Act of 1965 was to prevent discrimination in seven States. I will ask you if section 5 doesn't discriminate against those seven States and in favor of the other 43, because seven States cannot pass a law relating to procedures for election or qualifications for voting without first coming up here and scraping and bowing before the Attorney General and getting his approval. The other 43 States can pass any kind of law they want to on the subject without the Attorney General having any voice in the matter prior to some litigation; isn't that right?

Mr. MITCHELL. That is the circumstances under the 1965 act.

Senator ERVIN. I don't ask for any comment on this, but I think that Justice Davis stated the truth about the Constitution of the United States when he said that no notion more pernicious was ever invented by the mind of man than the notion that any of the constitutional provisions can be suspended at any time under any circumstances. And yet this 1965 act suspends the rights of seven States to use literacy tests, and allows the other States having such tests the privilege of using them. That makes us second-class citizens.

Now, as a matter of fact, under the Voting Rights Act, it has been forbidden in these six States I have enumerated and the 39 counties in North Carolina to use literacy tests for the past 4 years and it will be forbidden for one more additional year, will it not?

Mr. MITCHELL. Yes, sir; it will.

Senator ERVIN. And so far as literacy tests in those States are concerned, every illiterate person has had 4 years thus far to register and will have 1 additional year, making 5 years.

Mr. MITCHELL. That is correct, sir.

Senator ERVIN. I won't ask you to comment on this, but I think an illiterate person who has had 5 years to register, regardless of his illiteracy, and doesn't register, doesn't care very much about voting. I don't ask for any comment from anybody on that, but I think that is so.

And I don't know how you are going to get some people to register and vote unless you send a limousine down and haul them to the registrar, and then haul them back to vote.

Now, how many voting rights complaints do you say the Department of Justice has received since the 1965 act went into effect on August 6, 1965?

Mr. MITCHELL. Are you talking about complaints, Senator?

Senator ERVIN. Yes.

Mr. MITCHELL. There were 312 complaints from the inception of the act through April of fiscal 1969.

Senator ERVIN. And you said 81 percent of those complaints came from the States that are not covered by the 1965 act?

Mr. MITCHELL. Eighty-one complaints, not percentage of complaints.

Senator ERVIN. I mean 81 complaints. Then you received from the central Southern States in this period only 231 voting rights complaints?

Mr. MITCHELL. Yes, sir; that is correct.

Senator ERVIN. And do you have a record there, sir, of how many came from that Garden of Eden I call North Carolina?

Mr. MITCHELL. No, we do not have any complaint records. We can provide it to you. Of course we have the record of the lawsuits, but not of the individual complaints.

Senator ERVIN. Now, as I understand you, the complaints have been constantly decreasing as time passes, and during the fiscal year 1969, which I assume began on July 1, 1968, and ended on June 30, 1969, the Department of Justice received only 81 complaints?

Mr. MITCHELL. Yes, sir. The figures were through April of that year.

Senator ERVIN. Through April of it.

Mr. MITCHELL. Yes, sir.

Senator ERVIN. And were they from the entire country, or from these seven States?

Mr. MITCHELL. No, it was the entire country, but I cannot tell you at the moment what the breakdown was by way of the States within or without the seven-State area.

Senator ERVIN. Can you obtain that for the record later?

Mr. MITCHELL. Yes.

Senator ERVIN. We appreciate that.

(The information requested follows:)

COMPLAINTS REGARDING VOTING RECEIVED BY THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE DURING FISCAL 1969

This memorandum lists the complaints regarding voting discrimination or intimidation of voters received by the Civil Rights Division of the Department

of Justice during fiscal 1969.[1] Each complaint was investigated and, except with regard to complaints marked with an asterisk, it was determined after investigation that no further action was warranted and the file was either closed or placed in inactive status. The matters marked with an asterisk are still subject to investigation.

For each complaint, the county involved, the nature of the complaint and the date of receipt are listed.

ALABAMA

Tuscaloosa County
Voting intimidation
December 5, 1968

GEORGIA

Burke County
Voting discrimination
September 11, 1968

Camden County
Voting intimidation
August 19, 1968

Catoosa County
Voting discrimination
January 14, 1969

Cobb County
Voting discrimination
October 1, 1968

DeKalb County
Voting discrimination
October 11, 1968

Hancock County
Voting intimidation
September 18, 1968

Laurens County
Voting discrimination
September 20, 1968

Towns County
Voting discrimination
November 4, 1968

KENTUCKY

*Breathitt County
Voting intimidation
December 17, 1968

Jefferson County
Voting intimidation
August 19, 1968

MISSISSIPPI

Humphreys County
Voting intimidation
January 24, 1969

NEW JERSEY

*Hudson County
Voting intimidation
May 2, 1969

Middlesex County
Voting—miscellaneous
August 13, 1968

NEW YORK

Kings County
Voting intimidation
July 1, 1968

New York County
Voting—miscellaneous
October 30, 1968

NORTH CAROLINA

Hyde County
Voting discrimination
October 2, 1968

*Jones County
Voting discrimination
January 2, 1969

SOUTH CAROLINA

Greenville County
Voting intimidation
November 14, 1968

Senator ERVIN. Well, in spite of—I disagree with my good friend, the Senator from Indiana. I think extending the Voting Rights Act 5 years is about as sensible as using an atomic bomb to get rid of a mouse.

It doesn't take very many personnel to investigate 18 voting rights complaints; does it?

Mr. MITCHELL. No, sir; it does not. There are so few of them that go to litigation.

Senator ERVIN. Now, I am not going to ask you to—I want to make one observation. This, in my judgment, is the law—the Constitution means what it says.

I think this whole legislation has been unfortunate from a constitutional standpoint. By this triggering device, all of these States and

[1] Eighteen of the complaints were received prior to April 1969, and one was received during the remainder of the fiscal year.

counties were convicted not on the registration figures, but were convicted on the fact that less than 50 percent of their voting age population came out and voted in 1964.

In my honest judgment, there is no rational relationship between the fact that less than 50 percent of the population of voting age came out to vote, and the conclusion of discrimination. I say this because the State can register every person of voting age in the State, but it has no way to make those people come out and vote.

The point was raised in the *Katzenbach* v. *South Carolina* case that there was no rational relationship between those two statements and, therefore, that it amounted to a denial of due process of law because the conclusion had to be founded upon facts which bore a rational relationship to the conclusion presumed. But the Court said that States were not entitled to due process, which was sort of a revelation to me. Under that, why, they can abolish a State without even serving papers on it.

Then the Court said, in the case, that there was no evidence in the legislative record that anything was covered except the determination of impact in these particular areas. Yet I put in the record facts about New York, that among other things, Adam Clayton Powell's congressional district didn't vote 50 percent in the 1964 election. I called attention to a number of things in New York.

Then the opinion says that when they invoked the section condemning election officials by a bill of attainder—that is, by a legislative declaration without a judicial trial—the Supreme Court says the bill of attainder has no application to the States, but the people concerned about being convicted were the State election officials, as individuals.

And the same court held, in about the last case it had on the subject, in *State* v. *Levitt*, that the bill of attainder provision in the Constitution protected Federal employees. But the rule in this case was that it didn't protect the State employees. And it held that the power of Congress under the second section of the 15th amendment was so powerful that Congress could nullify the power of the State given to it by four other provisions of the Constitution, section 2 of article 1, section 1 of article 2, the 10th amendment and the 17th amendment.

It seems to me that we are burning the barn to get rid of the mice. And as a citizen of North Carolina, I resent the fact that under section 10 of this bill, the North Carolina Legislature cannot pass laws it is empowered to pass by the State constitution and the Constitution of the United States and make them effective without first getting the consent of the Attorney General of the United States.

If there was anything that was destroyed, it is what Chief Justice Chase said about the Constitution in *Texas* v. *White*. He said in that case that the Constitution in all of its provisions looked to an indestructible Union composed of indestructible States.

This bill, this Voting Rights Act, makes a second-class State out of my State, and 39 of its counties. The fifth amendment confers constitutional powers which allow all States north of the Mason-Dixon line to exercise. With all due respect, I think it is a disgrace for Congress to pass a law such as this. I believe I am a small minority. But the reason I resent it is I don't see why my State should be put on a lower plain in the Constitution than any of the other States.

Yet this bill does not only do that, I think it is also a denial of due process of law to place the trial of a case which involves testimony of witnesses a thousand miles away, in many cases, from where those witnesses reside. And I think that the Supreme Court should have prohibited it, but they didn't do that.

It's talked about, that anything that doesn't permit fairplay is a violation of the Constitution. A trial with a violation of due process of law—I don't know of anything much worse than that. The State of Mississippi would have to bring its witnesses a thousand miles, and they couldn't even get process for them when the law was passed, because under the law a subpena only ran 100 miles from the District Court of the District of Columbia. When I raised that point, they finally gave discretionary power to let it run farther. But I think it is a denial of due process of law to say that a man can't give his testimony without the consent of the Federal Government.

So I have some grievances against the 1965 act, and I don't like the others. But it does an insult to me. It doesn't apply equally all over the Nation, and the truth about it is, as far as North Carolina is concerned, this statute doesn't do anything in the world. It doesn't affect anything except to be a constitutional insult to my State. It doesn't affect anybody's rights to vote in North Carolina because there has been no complaint of voter discrimination in my State.

I have challenged the advocates to furnish me the name of a single individual in North Carolina who has been denied the right to vote anytime during the last 10 years, on account of his race. They make charges that they can't prove, and nobody has been able to come up with anything.

Excuse me on these things, but I just have a certain amount of constitutional indignation in my system about the Voting Rights Act.

I think there are several prostitutions of the judicial process, and I don't know of anything worse and more iniquitous. I think if anything it is almost on the same plane to deny a man the right to vote as to prostitute the judicial process for the purpose of making certain that only one side can win a case.

I realize we had the *Gaston County* case. The Supreme Court affirmed it. The whole case was based upon the inference—and it's an insult to the members of the Negro race—that a Negro schoolteacher doesn't have the capacity to teach a Negro child to read and write in a school attended by other Negro children. And I know that's not so. And yet that's the basis on which this case was decided.

Thank you, Mr. Attorney General, I have got to go on account of a luncheon. I will ask Mr. Bayh to preside.

Mr. BAYH. Thank you, Mr. Chairman.

Senator ERVIN. I appreciate your willingness to return.

Mr. MITCHELL. I am delighted to be here, Senator.

Senator ERVIN. Just one other thing. Here is the way the North Carolina literacy test was administered. This is the test we used in North Carolina prior to the 1965 Voting Act. The registrar asks the potential voter to copy substantially the following sentence out of the North Carolina constitution, "All elections are to be free."

A man was given unlimited time to copy that sentence, and if he could copy it, why, he was qualified under our laws. So I just don't agree with the findings of the district court in the *Gaston County*

case that there was any substantial evidence from anybody that a person who had gone to public school in North Carolina couldn't write that sentence.

Senator BAYH. Mr. Chairman, before you leave, if I might be allowed to make one observation. I can understand your concern for the inclusion of North Carolina in the other States that are narrowly limited as far as their geography is concerned, and I just, as one of your colleagues, would like to say sincerely, not just for the purpose of complimenting you, if all the people, all the officials in that area had the same dedication to constitutional law, and were willing to see that it was adhered to, as the Senator from North Carolina, there would be no reason for this act. I think we are being rather naive to suggest that that is the history of it.

Senator ERVIN. I would say that if all the Members of Congress had the same thoughts on the Constitution I have, this act would never have been passed. [Laughter.]

Senator BAYH. You are leaving, Senator?

Senator Hruska.

Senator HRUSKA. Mr. Attorney General, thank you for coming back to supplement your earlier testimony.

I am in full sympathy with the understandable impatience of many leaders of the so-called civil rights movement. Whitney Young used to be in Omaha with the Urban League. I have known him for a long, and I respect him highly.

Despite the impatience of these leaders, I don't believe that when people are impatient, then bills should be enacted so that they won't be impatient. I would say that this is rather a poor basis for legislation. Congress long ago formed the custom of eliciting testimony using the practice in committee rooms like this and hearing arguments on the Senate floor to test out the wisdom of present law and the wisdom of proposing new laws or amendments.

That is what we are engaged in now. I would categorically deny that the new administration is attempting to take the civil rights legislation off the books. I would also say with a great deal of conviction, that the bill of the administration, S. 2507, will serve to strengthen this Voting Rights Act. I believe when the record is completed, it will demonstrate this.

I would like to discuss first the present law. A section which has been belabored at great length is the section which requires a legislative body or political subdivision in seven States to come to the Attorney General to obtain permission to put certain laws into effect.

There were many of us who strained at the necessity of voting for the law in 1965 while containing that provision. We thought it was wrong. I thought it was wrong because it put into the hands of an appointed political office of another branch of the Government the right to veto, in effect, the legislative act of a State legislature. It was wrong because it is difficult to judge a law, a draft of a law, in a vacuum. That is why courts reluctantly get into declaratory judgment acts. They prefer to have a test case with specific facts.

Notwithstanding our beliefs and misgivings, we did approve the 1965 act, feeling the situation required it, together with other of these statutes. It is time now, however, to reconsider that in the light of what has happened, and what has been accomplished. A good deal

has occurred which has improved the circumstances in regard to voting in the seven affected States.

I would like to ask the Attorney General a question. Will the deletion of that requirement result in any sacrifice of substance, insofar as determining whether or not a State law put on the books is discriminatory?

Mr. MITCHELL. Senator, it is our opinion, which I have expressed here before, that the provisions of our proposed bill vest adequate powers in the Attorney General. Under our revised section 5 we can get at the abridgments of voting rights under any legislation or ordinances that are passed throughout the country.

It has been demonstrated in a number of cases that when the knowledge of a violation becomes available to the Attorney General's Office the procedures that we have outlined in the bill will enable us to get at the source of the problem and make sure that a remedy is expeditiously provided.

Senator HRUSKA. Section 5(a) of this administration bill provides that whenever the Attorney General has "reason to believe" that a State or political subdivision has taken action that has the "purpose or effect" of discriminating against persons with respect to voting due to race or color, he may institute a Federal court action for relief.

Now, the way I read it, the two basic tests of this provision are "reason to believe" on the part of the Attorney General, and "purpose or effect." That text is found on page 5 of the bill.

Now, how do the lines of the proposed section 5(a) compare with the present provisions in this regard, Mr. Attorney General?

Mr. MITCHELL. They are as strong, Senator Hruska, as we could possibly devise. They go beyond, of course, even the powers existing under the old act, with the use of the phrase "purpose and effect" that will have application, if this becomes the law, in all 50 States. The "purpose and effect" aspects of the prior existing statute, of course, related to the covered States and there had to be constitutional abridgment before we could get into that area in the States outside of the covered States under the 1965 act.

And, of course, I think one of the salient features of section 5 is the provision for the restraining order or preliminary or permanent injunction. I think that as soon as there is a determination upon the part of the Attorney General that there is an abridgment of rights, the matter can be taken to the courts. There are adequate powers within the court under this statute to provide the necessary relief, of course, the expedited appeal to the Supreme Court of the United States is another advantage that does not exist in the current law.

Senator HRUSKA. Also, section 3(a) of the present act will still be in full force and effect; will it not? According to this section the Court hears the injunction proceeding that you as Attorney General would bring, can authorize the appointment of Federal examiners. These examiners could go in and would have all the powers that exist under the present law; is that not true?

Mr. MITCHELL. That is correct.

Senator HRUSKA. Any time the Attorney General wants he may order or cause to be ordered the entrance of observers to the scene, whether there are examiners in an election place or not; is that not true?

Mr. MITCHELL. Yes, sir.

Senator HRUSKA. And, to my understanding, that is an extension of the powers of the present act because at present observers cannot be sent into a jurisdiction unless examiners are there first. Such a limitation is unnecessary and should be within the judgment of the chief law enforcemnt officer of America. If there is any existing condition that would require an observer, he ought to be able to be sent in whether or not there are examiners.

Isn't that the reason for the amendment of that particular section?

Mr. MITCHELL. It is, Senator, and I believe the rationale of it has been shown here this morning with respect to the number of complaints that have been filed and the number of cases that were necessary to dispose of them. We feel that the registrars and observers are most important in resolving many of these problems and that, upon their presence being known in the locality, the desire or intention to impinge upon the rights of the voters is reduced measurably.

In fact, I think it has been reported at least to the Civil Rights Division that many of the areas in these covered States now desire to have these registrars and observers there because they feel it will bring about an election that would not be challenged. But I fully subscribe to your thought that, more than the enforcement activities of the Attorney General, the registrars and observers are the ones who have been carrying out the provisions of the 1965 act, and would be available on a wider basis under our bill.

Senator HRUSKA. Now, the kinds of permanent relief that can be sought under proposed section 5 are limitless, aren't they? Or complete?

Mr. MITCHELL. They contain all of the areas of relief that we could devise to make sure that the court had ample powers.

Senator HRUSKA. What about a State law which is challenged, will it be suspended? Will it be stopped in its tracks until the adjudication is complete, or will it be allowed to continue to operate while the lawsuit is going on?

Mr. MITCHELL. The courts would have all of the powers required to suspend the application of that law, and presumably suspend the enactment of other laws dealing in the same area with the same adverse effect, if the initial law were found to be in violation of voting rights. I should perhaps clarify that. The direct answer to your question is, yes, the court could suspend the application of the law until the decision had been made, the ultimate judgment completed. If the particular statute in question were determined by the court to be in violation of the Voting Rights Act, it could enjoin the State or locality from passing laws that are similar to the one that was held unconstitutional or in violation of the statute.

Senator HRUSKA. And, of course, all decisions are based upon the constitutional violation of the 15th amendment, of abridging the right to vote on account of race, color, or creed.

Mr. MITCHELL. Yes, sir, it is. There is probably some support for it in the 14th amendment, but certainly in the 15th amendment.

Senator HRUSKA. I think this is a very important point, because in previous hearings we heard criticism that S. 2507 would greatly weaken enforcement of voting rights. Already you have cited six or seven reasons why that is not true, and that there would be no court delays. We've heard that it would in fact result in a strengthened

law, without giving up any of the prerogatives under the present act, with the exception of that formality of coming to the Attorney General in advance. And that is an empty gesture, is it not, Mr. Attorney General?

If the State refuses to comply with the Attorney General's decision when it has a state law turned down the matter goes into Federal court anyway, and then the decision has to be made whether or not the Attorney General was justified in refusing approval of that law.

Mr. MITCHELL. This was the previous procedure under the existing legislation.

Senator HRUSKA. Under the present law, is it that election observers may be assigned only to counties or areas where there are examiners functioning?

Mr. MITCHELL. Yes, sir.

Senator HRUSKA. And your bill would permit you to appoint observers to go in whether or not the examiners are there?

Mr. MITCHELL. That is correct.

The appointment of registrars, yes, is a severe remedy. The ability to appoint observers is really the backup in this enforcement procedures, so that they may take sufficient action to determine whether or not there is impingement of voting rights in the first instance. If that is so determined, then our remedies under the bill are very strong and will be very effective.

Senator HRUSKA. Now, a suggestion has been made that we are going to have an awful caseload. The critics say the law is going to apply to 50 States instead of just the seven, so we're going to be overwhelmed and we won't be able to make any progress.

Well, I would respectfully suggest an analogy to the Wholesome Meat Act which we passed in the last Congress. We undertook in that act to apply Federal law to all States that would not enact a bill on a State basis that would have at least the minimum standards contined in the Federal bill.

I didn't hear anyone say that the Wholesome Meat Act should only apply to seven States and, letting 43 States remain outside of the law, because if we applied it to 50 States we might have so many violations that we wouldn't have anybody to service them all.

It is not so far from the Office of the Department of Justice to the Bureau of the Budget and then to the Congress, which now, fashionably is sitting almost 12 months a year, to request a supplemental appropriation, is it?

Mr. MITCHELL. Senator, I don't believe that trip to the Bureau of the Budget and to the Congress will be necessary. As I point out, the caseload, the complaint load, and all of the other areas that we are talking about here, are going down and not going up.

As has been pointed out also, the number of cases and complaints that arise outside of the seven covered States is small in number. But if the argument that you suggest were valid—and I don't agree that it is—if that argument were valid, it would be all the more reason why this bill should be passed in order to get at the problems that exist in the other States.

I don't believe that such problems exist in great numbers, as some of our friends allege, but if they are there, and if this load is going to be required, I think we ought to take care of the problems and perhaps dedicate more of our resources to them under this bill.

Senator HRUSKA. If voting discrimination cases exist in the presently noncovered States, it would seem to be time to exert effort in those areas to correct any complaints that such States or their political subdivisions do not allow proper voting on account of color or race.

Mr. MITCHELL. That is the intention of this bill, Senator.

Senator HRUSKA. Regarding a literacy test, suppose that in 1974 a State devised voting requirements, but the Congress had not passed a new voting rights act. Isn't it true that, under the *Gaston County* case, the Attorney General could still bring an action on the ground of discrimination due to race or color, on the basis of and with the proof, which undoubtedly would be forthcoming, that many of the black people who were educated during the proscribed periods in the South, when schooling allegedly was insufficient, have moved into the North, and the literacy tests of those States, when applied, would be discriminatory.

So, separate and apart from any Federal statute, the Attorney General could proceed against those literacy tests on that basis. Is that a practical analysis?

Mr. MITCHELL. Certainly so far as the *Gaston County* case goes, the effects of discrimination that has existed in education in the Southern States, the covered States, will exist for a long period of time. Under the *Gaston County* case this will be a basis upon which the Attorney General can enjoin the use of literacy tests. With respect to the application of the Gaston County doctrine to the Northern States to which people who have been denied equal educational opportunity have moved, I would believe that the courts would find that effect of the application of literacy tests would be comparable, and that they may very well extend the application of the *Gaston County* case to the Northern States where literacy tests exist and where there are residents who have been denied equal educational opportunities regardless of the areas of the country from which they have come.

Senator HRUSKA. Now, the period that we would encounter between now and January 1, 1974, is breathing period, isn't it, to permit a systematic and authoritative determination of the facts that would be needed upon which to predicate Federal legislation?

Isn't that the purpose of the article which provides for a national Commission?

Mr. MITCHELL. There is a twofold question there. The provision for the national Commission is not necessarily a breathing space; we think that it would have a tremendous amount of work to do during that period. The period of time between now and January 1, 1974, is for the purpose of allowing that Commission to make the requisite studies upon the basis of which appropriate legislation can be enacted by the Congress with the full information that would be available.

With respect to the elimination of literacy tests on a nationwide basis under our proposed bill, it does have the effect of perhaps eliminating any number of lawsuits that might arise with respect to the matter we have just discussed in the North under the *Gaston County* case. As I am sure the Senator will recall, this was the reason why much of the civil rights legislation was passed, in order to eliminate the large number of lawsuits that would be required to assure individuals' rights. The legislation got at it more quickly than did litigation. This is what we expect with this bill.

Senator HRUSKA. Of course, the strength of the law, Mr. Attorney General, is not to be found wholly or even chiefly in the statutory provisions. Given any statute, it needs workable tools and appropriate efforts to obtain the desired objectives. Isn't the essence of the effectiveness of a law the enforcement efforts that are made under it?

Mr. MITCHELL. There is no question about that, Senator. First you have to have the legal tools, and then you have to have the will to carry out the job. We are trying to get the legal tools by this bill, and certainly if we get them, we will have the desire to implement them as rapidly and as fully as we can.

Senator HRUSKA. Your ability to get from the Congress 30 additional man-years under the supplemental appropriation bill of 1969 and, hopefully, an additional 42 man-years in the regular fiscal 1970 bill does not indicate that there is a weakening of enforcement. Do either of those events portray such a trend?

Mr. MITCHELL. Not in our administration. As you know, the obligation of the Department in the civil rights area is constantly expanding, and we are trying to get the personnel and the appropriations necessary to do a complete job in all areas of the civil rights field.

Senator HRUSKA. I am grateful to you for your testimony. I wish there were a more constructive spirit on the part of many people who look at this, who I know are being sincere. It seems to me there is cause for rejoicing that the proposed bill would extend enforcement of voting rights to all the States of the Nation instead of directing our efforts into seven States.

And it seems to me that, man for man, woman for woman, it is just as important to vote in New York or Chicago or El Paso as it is in Montgomery, Ala., or Selma, Ala.

I want to say again that the record, when it will be studiously scanned and analyzed, it will show that the administration bill, S. 2507 will strengthen the present act, and get at the problem more properly and effectively, and in a way that will generate greater respect for the law, and greater respect for the 14th and 15th amendments than does the law that we have on our books at the present time.

Mr. Chairman, you have been very patient with me. Thank you.

Senator BAYH. Not at all. The Senator has been very tenacious in his questioning. I must say that he, too, is feeling a different part of the elephant than the Senator from Indiana.

Senator HRUSKA. Exactly. And the elephant is of many, many parts isn't it?

Senator BAYH. It certainly is. We are all entitled to view this problem from our own perspective, and the Senator from Nebraska has always been not only a worthy advocate, but completely sincere in the position he takes.

The Senator from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Attorney General, we welcome you and your appearance before this committee today.

The subject we are considering is one of great importance to this country. I have stated before that I do not favor the invasion of the Federal Government into those areas that are properly within the jurisdiction of the several States, and for that reason I favor no extension of the present so-called Voting Rights Act, but if legislation

in this area is to exist, then I had rather have the kind of proposal favored by the Nixon administration.

I would frankly prefer that this matter be left to the States.

Mr. Attorney General, I have several copies of newspaper stories here concerning voter fraud. Most of the cases occurred in the last general election. There are several accounts of voting irregularities in Chicago and West Virginia, and other accounts of situations in St. Louis, in Virginia, and even in my home State in Charleston, S.C.

This sort of thing unfortunately appears in election after election. Fortunately, most of our election officials are honest people who try to see that the votes are cast in accordance with the Constitution and the law, but we do have those who would subvert a person's right to vote in order to accomplish some political goal.

S. 2507 provides that investigations and studies are to be undertaken to look into this matter of voting fraud.

What does the Justice Department plan to do to stop voting fraud at the Federal level, and does the Justice Department have any specific measures in mind to accomplish this?

Mr. MITCHELL. Senator, we have under investigation in the Department of Justice a substantial number of what we call voting fraud cases arising out of the 1968 election. They are somewhat widespread and require quite a bit of the resources that we do have in our Criminal Division. We have brought aboard additional personnel to help us in this area, and we are pursuing it as diligently as we can within the statutory powers that we have. People who have been operating in this area feel that additional legislation is desired, and that is the purpose of our recommendation in this bill that the advisory commission make a study of it and report back to the Congress.

Senator THURMOND. Mr. Attorney General, in the courts of this country a party to a legal action must produce evidence that meets the test of proof. He must carry that burden of proof forward and establish the truth of his case. Now, you know this burden rests heavily upon the accuser in our system of jurisprudence. However, under the Voting Rights Act of 1965 the traditional requirement that the accuser produce his case and prove it is disregarded and entire States stand accused of crimes for which there was no proof except on the basis of arbitrary numerical calculations.

We have listened to witnesses testify before this committee for days, and no one has presented any more evidence to justify the continuance of the Voting Rights Act of 1965 than was presented to justify its enactment.

Mr. Attorney General, you have an excellent reputation as an able lawyer, and I trust that you will honor your obligation as a member of the bar, and as the highest legal officer in the United States, to take action under whatever new act is passed, if one is passed and becomes law, and take action only on the basis of solid evidence and not hearsay.

All I ask and all any fair-minded citizens can ask is that only fair, equitable, and unprejudiced treatment be given to all people of all of the States and that a few States not be singled out for vindictive political punishment.

Mr. MITCHELL. Senator, may I point out that the mechanics set up under our proposed bill would certainly provide the tools for doing

just what you suggest. As I responded in answer to Senator Hruska's question, we will have the observers we can direct in these areas where there are complaints or possibilities of impingement of voting rights. They can determine the circumstances existing in the area and certainly will provide information to give us a better basis for making a determination as to whether litigation should be brought than would exist if we did not have them available to us in the Department.

I think the format for determining a reasonable basis for filing litigation does exist and we certainly will use it and provide safeguards for everybody throughout the country.

Senator THURMOND. Mr. Attorney General, in the hearings before this subcommittee, we heard testimony from a lawyer who favored the extension of the present law, and he said, in effect, that he wanted to extend the Voting Rights Act of 1965 because under that law, legal action would be brought in the District of Columbia and this was good because of the "sympathetic feelings" toward the "cause" of civil rights.

As I understand the law, the courts are not supposed to be sympathetic to any cause. They are supposed to be fair and impartial and to dispense justice and not espouse the then social or political movements.

Mr. MITCHELL. Senator, I would hope that all of our judiciary would be impartial. I presume that in most all cases they are, but I would point out that in our bill that there is provision for a three-judge district court and for expedited appeals in these matters to the Supreme Court. I would certainly hope that in the three-judge court all three of them would be impartial and would arrive at the proper conclusion.

Senator THURMOND. Mr. Attorney General, I note that in the bill before us, S. 2507, is provided that actions may be brought in the Federal district courts. Don't you believe that this is the proper place for these actions to be brought, and don't you think that the Federal district courts of this country are capable of dispensing justice in a fair and equitable manner, and aren't they capable of enforcing the provisions of this act if it becomes law?

Mr. MITCHELL. I would certainly hope, Senator, that the provisions that we have in this bill will strengthen that concept. And I am sure that equality and fairness does exist and will exist in our district courts under the formula that we have provided.

Senator THURMOND. Mr. Attorney General, I have no more questions. I wish to thank you again for your appearance here and I would say in closing again, that I do not favor extending the 1965 Voting Rights Act. I do not think it is needed. We have ample laws on the books already to protect voters. There has been no discrimination in my State, and I challenge anyone again to prove it.

However, if any law is to be enacted, then I think whatever law is enacted should apply to all of the States in the Union alike. In fact, I do not believe that a proper judicial tribunal could hold constitutional any other type of law, because the Constitution provides that all States shall be treated in a fair, just and equitable manner. And I hope that if any law is passed, that the law recommended by the administration will be the law that is passed.

Thank you very much.

Senator BAYH. Mr. Attorney General, if you could bear with me just another moment or two, there have been some points raised I would like to clarify here, if you have the time. I know you have other obligations.

Mr. MITCHELL. Mr. Chairman, we will make the time.

Senator BAYH. Thank you. I note with a great deal of interest the questions that have been posed by my two worthy colleagues.

The item of constructive spirit was raised here by my distinguished colleague from Nebraska. I am sure he was referring to the statement that I made that I thought the administration was on the right track as far as literacy tests and residency requirements. I am not sure that he was, but I would hope that he was.

But I think, as I said, that considering the significant burden of proof as far as the constitutionality of these two aspects are concerned, I think I pointed out—I won't go into these in depth because you and I talked about these things before—even our distinguished colleague from Arizona, Barry Goldwater, has felt that the residency requirements need to be removed or made uniform, but he feels it ought to be done by a constitutional amendment.

We have a significant body of thought, both in the courts and in the Congress, that we are talking about constitutional questions here. And it is my concern that by tying these together we indeed could destroy the whole effort to extend the Civil Rights Act.

Now, it has been brought to my attention that before the House Appropriations Committee, Mr. Leonard was asked by Mr. Rooney and Mr. Cederberg—if you would like, I will repeat the question per se, why more lawyers were needed when the number of cases have been falling. Then Mr. Leonard talked about the fact that we are playing catch-up ball here. You have not had an increase in manpower since 1964. If we are going to make progress in the civil rights area, we have to have a steady escalation of manpower. In those hearings on the House side, Mr. Leonard stated:

> Mr. Chairman, you can call this what you want, but the fact is that we are in the catch-up business, we are trying to catch up all the way back to 1964 which was the last time that this division was granted an increase in resources.

So that the whole testimony before the House indicates that these new assistants that you were seeking were not really to anticipate any additional load, but to take care of the load you now have. Now, can we believe? What you said in the House or what you said here?

Mr. MITCHELL. Senator, let me go back to your observation with respect to the constitutionality of the residency provision. I am sure that you will agree that the statute, as presently constituted, is such that the courts would recognize the separability doctrine and we will have no problem with the constitutionality of one provision sinking the entire ship.

Senator BAYH. I am talking about the passability as far as the Congress of the United States is concerned.

Mr. MITCHELL. I thought you were talking about the constitutionality.

Senator BAYH. Because the Congressmen themselves are concerned about the constitutionality, as some Members are on occasion, and they would be reluctant to vote for a bill if they thought that the constitutionality would be unsound even in part.

Mr. MITCHELL. We have filed a memorandum on that subject matter with the House, and I thought we had filed one here, but we would be glad to do so.

[See p. 665 of appendix.]

Senator BAYH. Thank you.

Mr. MITCHELL. Getting to the matter of personnel and appropriations, as you are well aware, the justification for the increase in personnel in the division was primarily related to our housing, education, employment, and the other facets of the division's activities. As I stated here earlier, the caseload in the voting rights area has been going down. The resources that we have are certainly going to be adequate to take care any increase that we might anticipate through an extension of the jurisdiction of the legislation from the seven covered States to the national area.

Now, Mr. Leonard, would you like to add to that?

Mr. LEONARD. Senator, I think the Attorney General has made the point. We, of course, have need for added resources which the division has not had since 1964. We have an idea with respect to resources that we should be entitled to and that this whole area of civil rights is entitled to. But I am not concerned, as the Attorney General has said on a number of occasions, I am not concerned with our ability to enforce the proposed Voting Rights Act as contained in this bill. As a matter of fact, some of our people today, Senator, are spending their time looking at, for instance, a city map. Because of an annexation, they have to try to determine what the facts are concerning a few blocks annexed to a city. Under the 1965 act that annexation had to be submitted to us. We have to try to look into it to determine whether there are any racially discriminatory motivations involved, when clearly that is not the situation.

Now, if we take a look at the 303 submissions that have been approved, most of them do not even come close to having racial motivations. And yet our lawyers have to spend time analyzing each one because, remember, we send an approval letter. We wouldn't want to send that letter unless we were absolutely positive that no racial motivation were involved. So it takes a good deal of time. Now, if we could put that lawyer time into other areas of voting rights, we will have the resources——

Senator BAYH. If that is the case, just how much more of a problem are you going to have when this voting rights thing is spread all over the country. And if there is any area where there might be an effort or a temptation to make allegations based on civil rights that are not based on racial discrimination, but are based on whether you are a Republican or a Democrat or an Independent, it is going to be in the Voting Rights Act. So you are going to have to do a better job of screening in this area than you do in the others to find out whether you really have a problem that is under the Voting Rights Act.

Mr. LEONARD. Senator, that is true, but I am sure you will admit that the enforcement of civil rights laws in Indiana and in other parts of the country is just as important as enforcement in the seven States in the South. As a matter of fact, the most important figures and the best case that I can recall that the Federal Government brought was in the State of Indiana. You have a black mayor

in Gary, Ind., today, because of the fact that the Federal Government brought a lawsuit against the Democratic Party when it was trying to eliminate blacks from the voting rolls, Senator. Now, we didn't need section 5 for that.

Senator BAYH. You didn't need the administration's act, either, did you?

Mr. LEONARD. What?

Senator BAYH. You didn't need the administration act at all. There were powers that were used that weren't even in the 1965 Civil Rights Act.

You don't need to tell me about the *Gary* case, Mr. Leonard. I lived through that and I have the scars to show it, because I happened to be against the Democratic organization on that.

Mr. LEONARD. I would propose to you that, under Senate bill 2507, we would be able to move in much more quickly and much more easily. And, by the way, I didn't mention the case because it is your home State, but it is a perfect example of a case outside the South where there were racial motivations.

Senator BAYH. Exactly, but the case was resolved without reliance on the present 1965 act or the act which you suggest ought to be put out all across the country.

Mr. LEONARD. It would be a lot easier under this act than it was in that lawsuit. We do have the resources, Senator, or we will have, if you give us 70 more people.

Senator BAYH. I would ask the Senate committee staff to put in the testimony in the middle of page 749 to the bottom of page 751.

(The testimony referred to follows:)

Mr. LEONARD. No, sir; it is abnormal but we are in the catchup business here.

Mr. ROONEY. Oh, we have to make an exception for you?

Mr. LEONARD. The Chairman can call it what he wants, but the fact is we are in the catchup business. We are trying to catch up all the way back to 1964, which was the last time that this Division was granted an increase in resources.

Mr. ROONEY. Although last year you went down in every category, caseloadwise, pretty much in every category?

Mr. LEONARD. We had an increase in terminations, which is also important.

Mr. ROONEY. Not worthwhile talking about, though, is it?

Mr. LEONARD. I think it is important that we terminate cases.

Mr. ROONEY. You terminated less cases in 1968 than you did in 1964 by a thousand.

Mr. LEONARD. No, sir; not cases.

Mr. ROONEY. I am looking at "Matters." Let us get the answer with regard to matters. Is that correct?

Mr. LEONARD. That is correct, sir.

Mr. ROONEY. Now as to cases for 1968 you terminated 120 as compared with the next highest year, to wit, 1964, of 90 cases. Is that right?

Mr. LEONARD. Yes; and in 1965 it was 39 which was the lowest.

Mr. ROONEY. Even giving you 1966, 59, or in 1967 it was 50 if you want it. Of course, this is all in the record, anyway.

Mr. Cederberg?

Mr. CEDERBERG. If you terminated 90 cases in 1964 with the personnel you had on board at that time there is no reason why you could not have terminated 90 in 1965 and 1966. Obviously you just did not have them to terminate. You had the people to terminate them.

Mr. LEONARD. Mr. Cederberg, that proceeds on the assumption that a case is a case is a case is a case, and a case is not a case. Each case is different. Each case takes more resources or less resources, to start, to investigate, to terminate, to let lie on desks, valid complaints sitting on desks that cannot be acted upon because there are not the resources to develop those cases.

The issue here is, itse ems to me, whether or not we will have some catchup over the 1964 resources that this division had in order to begin to get broader

compliance, greater compliance with the civil rights laws that the Congress of the United States had adopted. That is the issue.

Mr. Chairman, I am glad you brought that up.

Mr. ROONEY. I am sure you are. This press release says that the Assistant Attorney General for Civil Rights predicted today that the Nixon administration would make greater gains in civil rights in 4 years than the Democrats did in 8. I think that is commendable.

Mr. CEDERBERG. I think it is commendable.

NUMBER OF EMPLOYEES

Mr. ROONEY. We are agreed on that but we ought to inquire at the same time about this on hiring that the gentleman referred to. What is it?

Mr. LEONARD. 205 positions are our maximum.

Mr. ROONEY. 205?

Mr. LEONARD. Yes, sir.

Mr. ROONEY. Who was responsible for effectuating that lid?

Mr. LEONARD. I was not here, Mr. Chairman, but I think the Congress was.

Mr. CEDERBERG. I do not understand, frankly, how we can justify an increase in 1 year of 92 new employees from 197 employees, including the 55 that are in the supplemental. I just do not think this can be justified in the light of the statistics that have been presented to us today.

Mr. LEONARD. Congressman, the problem with dealing with statistics like this is that as you increase the manpower of the Division you will generate greater statistics. In addition there is the fact that civil rights cases are becoming much more complicated. In the *Roadway Express* case we have already spent 149 man-days, and this case has not gone to trial yet. Many of these cases are very complicated. Also, this Division has not had an increase in manpower since 1964. If we are going to make progress in the civil rights area we have to have a steady escalation of the manpower available. It does not do any good for us to get 100 lawyers because suddenly there is a realization we have to do more, because we cannot assimilate that number. We should have a moderate steady increase each year to train them in the field. This Division is a litigating division and litigation is done in the field, so there is travel involved and a lot of work involved. We cannot have instant compliance by loading up with people. I would hazard the guess that these 92 new positions, particularly the 47 lawyers, we undoubtedly would not be able to bring all of these 47 lawyers aboard until sometime probably late in 1970 before we had the full complement aboard. We cannot go out and hire these men overnight, and even if we could we could not train them. It takes time. So when you talk about 47 lawyers, let us not assume that if the committee were to grant our request that we will bring 47 more lawyers on board overnight. It simply cannot be done. Even if we hire them we could not get them working effectively for 6 months or a year.

Mr. ROONEY. Will the gentleman yield?

Mr. CEDERBERG. Yes.

Mr. ROONEY. In round figures, with an employment authorization of approximately 200, you think that 95 additional would be a normal increase for these 200-odd employees?

Mr. CEDERBERG. How many employees do you have on board right now?

Mr. LEONARD. We have 106 lawyers and 113 staff.

Mr. CEDERBERG. So you have 219?

Mr. LEONARD. Was your question how many do we have right now or how many are authorized?

Mr. CEDERBERG. How many do you have on board right now?

Mr. LEONARD. 197, sir.

Mr. CEDERBERG. So you have 22 vacancies?

Mr. LEONARD. That is correct, sir.

Mr. CEDERBERG. And how many new employees are you asking for?

Mr. LEONARD. In the fiscal 1970 appropriation a total of 37.

Mr. ROONEY. But there are 55 in the supplemental at a time when they have how many vacancies?

Mr. CEDERBERG. Twenty two.

Mr. LEONARD. Twenty two.

Mr. CEDERBERG. So you are really asking for a total of 92 new employees?

Mr. ROONEY. That is right.

Mr. LEONARD. Your figure is correct, Congressman. I would like to point out, however, that we have had the lid clamped on us in respect to our employment now.

Mr. CEDERBERG. But this request is far in excess of any present work-load or any projected workload you have given us including the 9-month figure.

Mr. LEONARD. I have attempted to point out by some of these submissions that you cannot really judge the workload of the Division based on the employees. In other words, we could sit here, I suppose, and say if we got all these employees there would be a tremendous increase in the cases filed and in complaints that proceed from a complaint stage to a matter stage, but the fact of the matter is we cannot scratch the surface in the overall total racial discrimination areas. What we are attempting to project is that if we are to continue to make progress in this area, this Division needs a continual moderate increase in our resources in order to make greater headway in this area of racial discrimination.

MATTERS RECEIVED

Mr. CEDERBERG. On page 12 it shows that in matters received you have dropped considerably in the number of matters received from 1967 to 1968, over 700.

Mr. LEONARD. Yes, but if you look at the supplemental provided you, you will see the matters received in the first 9 months of 1969 were 2,455 as compared to the 2,783 figure at the end of 1968.

Mr. CEDERBERG. But you still do not get back to 1967 in matters received.

Mr. ROONEY. Of course, these papers we got this morning could have been inspired by this press release we got, you know.

Mr. CEDERBERG. I do not recall this press release.

Mr. MITCHELL. May we have the opportunity to review that to see if there is other testimony of Mr. Leonard's——

Senator BAYH. I hope so, because Mr. Leonard said it. I hope, you know, he knows what is in it. If you want to read it out here right now, I'll read it out. You may put in any other testimony you want, of course.

Mr. LEONARD. Senator, I think you ought to look at the justification that goes with that testimony. It does not indicate that we are requesting any increase in personnel because of voting rights.

Mr. MITCHELL. And, Senator, I would also like to point out that the use of this illustration here has no political connotations whatsoever.

Senator BAYH. Certainly I know that there would be no temptation to do that on either of our parts.

It just seems to me we either have a burden or we don't have a burden. Now, you asked for significantly larger numbers of staff in the civil rights area from the House than you got. Yet when you came to the Senate, instead of biting the bullet and fighting for it in the Senate, a different panel, you yielded to the House will. Now, this makes me wonder just how big a burden are we going to have. It also makes me wonder about the validity of our friend from Nebraska when he said all you have to do is come up here to Congress and ask for it and you are going to get it. Well, that isn't the way it is happening this year.

Now, why is it that you didn't go back and ask for those additional employees that you thought you needed when you went to the House?

Mr. MITCHELL. If you will look at the appropriations bill, this is a——

Senator BAYH. I am looking at your testimony right here, given before the Senate Appropriations.

Mr. MITCHELL. Yes. I wanted to point out that we have the discretion within the Department to change personnel among the divisions and, as you know, the disallowance from the House was a relatively small number of positions compared to what we had requested Department-wide. We do have the power to assign personnel among the divisions, and we certainly will do so on the basis of taking care of the Civil Rights Division.

Senator BAYH. For the 1969 fiscal year you requested 55 positions and they only authorized 30; and you were pleased with that, in a sense. Fiscal 1970, you asked for 62, they authorized 40; in the Community Relations Service you asked for 90 and they gave you 45, that's half. You made a very compelling argument for the important need for these positions in the Community Relations Service, and yet, you say here that you will go along with the House's judgment on this without giving us in the Senate the right to sustain the position that you initially took.

All of this, of course, is before the new Civil Rights Act is implemented.

Mr. MITCHELL. Senator, I would point out that the act we are talking about will not become effective before August 6, 1970. The resources that we will have in the Department under the budgetary requests which have been approved will certainly be adequate to take care of any problems that we might have because of the Voting Rights Act.

Senator BAYH. Well, you make a very compelling argument, Mr. Leonard, the catch-up game is exactly the phrase which you used in the House. Yet we are not being quite consistent, as I see it. I have not always considered consistency to be the No. 1 virtue inasmuch as circumstances change, but I have not seen a compelling display of circumstances having changed between then and now.

Now, if you have anything further to add to that, that would be fine.

I just want to make one last observation. This is just so the record will show that there has been some insinuation made that as the result of the progress that has been made under the 1965 Civil Rights Act, there is no need for continuing the course of action which has resulted in the registration of 800,000 voters.

Right here is a book called "Political Participation" that you and I discussed before, which has some 250 pages, and is replete with occasion after occasion of efforts that have been made during this last year to deny voters the right that is theirs under the Constitution. The business of when a Negro gets to a point where he can get elected in a single-member district, and you take away the single-member district and make him run at large, or after he is qualified to run for office, you change the qualifications—these things are done.

I use "you" as a figure of speech, the body involved. Or you change an elective office when a black man is elected and make it an appointive. And I think the best example that we have had, and I wish Senator Thurmond was here, because we had elections the 29th of this month, just yesterday, in Green County, Ala. When the election was originally contested between the National Democratic Party of Alabama and the Organizational Democratic Party, allegations were made that there was something wrong. Well, they went in there, and they looked. The National Democratic Party suggested, as you know, that their candidates' names had not even been included on the ballot. When the examiners went in, they were shown an absentee ballot and lo and behold the names were on there. But they weren't on the regular ballot.

The election was held, this complaint was taken to the Federal court in question. The Senator from South Carolina says Federal courts do no wrong, most of them don't. But this particular Federal

court sustained the position of the officials that had kept the names off the ballot. And it was not until this had wended its way clear through the provisions of the Civil Rights Act that a new election was called for.

This is just one example of the type of practice that is being pursued by a few unscrupulous individuals. My contention is that the provisions of the present Voting Rights Act are such that they take away the incentive and give those God-fearing people, those who want to resist the temptation on the part of the bigots, a different course of action to follow.

Mr. MITCHELL. Senator, the *Green County* case is a further illustration of what we have been recommending today. It was a section 5 case that had to go to the courts before it was adjudicated. And the courts were the effective body. We are, as you know, revising the court procedure to make it more effective and to make it more expeditious. The *Green County* case could have been determined a lot quicker and the election could have been held a lot earlier if our bill had been in effect.

Senator BAYH. I respectfully suggest that litigation under the bill you propose would have required just as much time and effort. I just think that the colloquy between you and my distinguished friend from Nebraska completely ignores, so far as section 5 is concerned, how these sections function.

Under your section, the only way we can bring a legislative act before the bench is to be able to prove it has a discriminatory effect. You have to prove something substantial, something of substance. Under the present act all you have to prove is that it wasn't submitted to you, and it is automatically revoked. In the interim, while this thing is being contested, the voters continue to be able to vote. Under your measure unless you prove enough evidence to get a sustaining order, your voters are disenfranchised, and this continues while the issue is being contested.

I must say I am on the side of giving the man the right to vote. When in doubt, give him the right to vote while this issue is being contested.

You have been very patient. Thank you, both of you gentlemen. We don't want to paint your position or to use words against you by just taking one or two sentences. That's why I suggested that we have a couple or three pages of the testimony put in the record.

Mr. MITCHELL. We want to make sure that the record of the budget hearings shows the request that Mr. Leonard made in this area, and point out that they do not relate to the voting rights area because of the sufficiency of the staff that we presently have to deal with this.

Senator BAYH. Which is part of the problem. You haven't anticipated any additional load.

Mr. MITCHELL. Our load is decreasing and not increasing.

Senator BAYH. We will let the Attorney General have the last word. Thank you.

(Whereupon at 12:50 p.m., the hearing in the above-entitled matter was recessed, subject to the call of the chair.)

Page 254 blank

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

WEDNESDAY, FEBRUARY 18, 1970

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Sam Ervin (chairman of the subcommittee) presiding.

Present: Senators Ervin and Hruska.

Also present: Lawrence H. Baskir, chief counsel and Lewis W. Evans, counsel.

Senator ERVIN. This subcommittee will come to order.

Today, the Constitutional Rights Subcommittee resumes hearings on a number of amendments which have been proposed to the Voting Rights Act of 1965. One of these is the administration's bill, S. 2507, which was passed by the House last December as H.R. 4249. Another is an amendment extending the life of the act but making no change in its terms. Copies of these bills have already been included in the hearing record. In addition, amendments have been suggested to modify the 1965 act in certain other respects.

It is obvious to all that these hearings involve a very controversial and emotional subject. Ideally, every effort should be made to encourage rational and deliberate discussion, and to seek a resolution and adjustment of these differing positions. Unfortunately, so far it does not appear that the committee will be given time enough to act responsibly on this legislation.

When the House passed the administration's bill, supporters of a simple extension succeeded in placing a time limit of March 1 on the Judiciary Committee. March, I am certain, seemed like a very long time to them way back in December. But as a practical matter, the deadline gives the committee no time to hold hearings, resolve the differences that exist on this legislation, and deal with the many amendments which have been suggested.

The deadline was imposed in the name of "legislative due process," which, I assume, includes the right to debate, to offer amendments, and to seek an honorable compromise of different points of view. However, I do not understand how a restriction on discussion can possibly guarantee legislative due process. It is clear that when the committee meets with an immediate deadline facing it, there cannot possibly be any meaningful debate or compromise. A time limit works in favor of those who wish no real discussion of the issues, who have already made up their minds, and who have already decided to ignore the views of the minority.

It was asserted in December that a deadline was necessary to avoid delay and obstructionism. However, there is nothing in the past record of this subcommittee which could possibly suggest obstruction or delay, either on this legislation or on any other so-called civil rights bill. The fact is that as chairman of the Constitutional Rights Subcommittee I have always guaranteed due process, equal rights, and legislative fairness for all—even to those who profess to believe in equal rights, but who refuse to grant them to a small minority on the committee.

In order to eliminate any misinformation, I think it would be well to review the chronology of subcommittee action on these bills.

S. 2456, a bill extending the act 5 years, was introduced on June 19 by Senator Hart on behalf of a number of other Senators. Then a few days later, on June 30, the administration bill was introduced. The next day I announced hearings, to begin 8 days later. These hearings were held as scheduled and all who asked to testify were allowed to do so. The hearings were then recessed to await action by the House. This is common Senate practice with respect to civil rights bills.

In the period before the House acted I received no request, either formal or informal, written or oral, for the subcommittee to act on the bills. Not even one representative of that highly astute legislative team of civil rights lobbyists suggested that the subcommittee consider the bill before the House acted.

The House bill was referred to committee on December 16. These hearings were originally called on December 19 to begin on January 27, right after the start of the new session. The record since then is as follows:

The hearings on January 27 were canceled because of hearings by the full committee on the nomination of Judge Carswell.

The hearings were scheduled for January 28. They were canceled because of hearings by the full committee on the nomination of Judge Carswell.

Hearings were scheduled for January 29. They were canceled because of hearings by the full committee on the nomination of Judge Carswell.

Hearings were scheduled for February 3. They were canceled because of hearings by the full committee for the nomination of Judge Carswell.

Hearings were scheduled for February 4. They were canceled because of a Rules Committee meeting.

Hearings were scheduled for February 5. They were canceled because of an executive meeting of the committee on the nomination of Judge Carswell.

Hearings were scheduled for February 17. They were canceled because of an announced executive meeting of the full committee, which was itself later canceled.

Now, only 8 legislative days remain before the March 1 deadline.

That is more than enough time for the subcommittee to hear all the witnesses who have thus far asked to speak on the bills. But, obviously, there is no time left for Senators to debate the bill in subcommittee and committee to offer amendments, and to seek some compromise.

I fail to see why it is necessary to trample on the rights of the four southern Senators on the committee on behalf of a "civil rights" law which does not expire for half a year.

Since the Senate has imposed what amounts to a gag rule on the subcommittee, I will have to reserve detailed comments on the act for

the Senate floor where freedom of speech is still guaranteed. However, I do want to say a few words about the administration's bill.

This bill has the admitted virtue of being nationwide in application, and not sectional. Considering the fact that it is a civil rights bill, that is no small virtue. In addition, it does eliminate some of the objectional features of the 1965 act.

One of these is to repeal the veto power over State voting laws now wielded by the Attorney General. The 1965 act subordinates the decisions of the elected representatives of the people in the States to the unreviewable whims of an executive official of the Federal Government. This official also happens to be a political appointee who generally has more than a little appreciation of partisan politics. I say this not as a reflection upon the incumbent, but as a description of the office to which has been given this power. It applies to any individual who might occupy that office.

I am surprised at the eagerness of some to extend this awesome power for another 5 years, especially with general legislative reapportionment and redistricting scheduled next year on the basis of the 1970 census. Although I have complete confidence that the present Attorney General would not be tempted to use his power improperly, there is no good reason why this enormous power should be lodged in that office. The legality of State legislative action under the Constitution is a matter for the courts, not for a political adviser to the President. It is to the incumbent's credit that he does not wish this power for himself, and supports its repeal.

Another virtue of the bill is that it opens the Federal courthouses which were locked in 1965. No longer would Federal judges in the South stand convicted by this legislature of violating their oath to support the Constitution and the laws of the land. They would be welcomed back as members in good standing of the Federal judiciary, from which they never should have been excluded in the first place. In short, this bill would apply the law nationally, it would give judicial power back to the courts, and it would remove the legislative condemnation from the heads of State and Federal officers.

I call this bill virtuous, but only by way of contrast to the 1965 act. The Voting Rights Act contains features which Congress should never have placed in any law, and did only because it was the South being legislated against. But despite these virtues, the administration's bill contains seriously objectionable features which cannot be ignored.

First, it purports to prohibit literacy tests by national legislation. This flies directly in the face of clear words of the Constitution as they appear in no less than four separate places. The words are as clear as they can be—qualifications for voting are established by the States, not by the Federal Government.

This same objection applies to the administration proposal of uniform residency requirements for presidential elections. The objective is certainly a worthy one, and I think few would quarrel with this as a desirable policy. But that cannot affect the clear constitutional requirement that gives to the States, and not to the Congress, the power to determine how electors are chosen and to set residency requirements. Desirable as this proposal may be, the provisions of the Constitution cannot be nullified by stipulation.

I have searched in vain for the constitutional justification for these provisions. I have waited for a considerable time for the Justice De-

partment to provide me with its brief on this point. Their memorandum has just now been submitted, and I will ask that it be inserted into the appendix of the record.

The subcommittee has also received a number of other statements, reports, and other materials and I will ask that the staff include them in the appendix to the record.

(The documents referred to will be found in the appendix to this record.)

Senator Hruska.

Senator HRUSKA. Mr. Chairman, last July this subcommittee had hearings on a number of Senate proposals to amend and to extend the Voting Rights Act of 1965. Our hearings on those Senate bills were extensive and balanced. We heard from many witnesses, including Attorney General John Mitchell. Since our hearings a House bill has been considered and enacted by the House to accomplish this purpose. That bill is H.R. 4249 which, together with the Senate bills on which testimony was received in our hearings, is now pending before this subcommittee.

H.R. 4249 was introduced in the House at the same time that S. 2507 was introduced in the Senate. They were identical bills, and were introduced on behalf of the Nixon administration. Since the 1965 act expires this August, the administration sought to introduce appropriate legislation early in the 91st Congress to permit enactment before the existing law expired. This was a laudable goal, and the Department's prompt sponsorship has permitted the Congress to move forward. Only Senate action is now required.

The bills before this subcommittee, and those considered by the House, fall into two basic categories: those that seek merely to extend the 1965 act, and those that seek to amend as well as extend the 1965 act. H.R. 4249 seeks to amend as well as to extend. The difference, in my opinion, is primarily that of approach rather than of objective. They both share the same fundamental purpose, that is, to enforce the guarantee of the 15th amendment of the U.S. Constitution that the right to vote shall not be denied on account of race or color.

Both approaches are committed to the need to make more effective the voting rights of our citizens who are being denied the vote due to racial discrimination. However, H.R. 4249 goes further. It seeks, in addition, to make more effective both the rights of persons nationwide who are denied the opportunity to vote because they are undereducated and the rights of those who are denied the opportunity to vote in presidential elections because they cannot meet local residency requirements.

Both approaches provide procedures for the appointment of Federal voting observers and examiners. The 1965 act, however, applies this procedure only to six States and parts of three others. H.R. 4249 would, on the other hand, extend this procedure to every State of the Union.

Both approaches provide procedures for challenging the laws of States or political subdivisions which are allegedly discriminating against the right of citizens to vote due to race or color. Again, basic remedies of the 1965 act apply only to six States and parts of three others. H.R. 4249 would apply to all States equally.

I think these differences are strong arguments for H.R. 4249. The Nixon administration unqualifiedly supports this proposal, and the

House, by a majority vote, adopted this proposal. Let us consider its broad merits.

First of all, it abandons the onus of regional legislation that exists with the 1965 act. That act was passed, as I recall, for the purpose of bringing extraordinary remedies to bear on a few States of the Union where voting discrimination seemed most prevalent. This judgment was based on the registration and voting records of these States in the 1964 presidential election. The act's formula was a departure from the general rules of good legislation, and, I feel, was a troublesome precedent for the future of our Federal-State relations. The Congress, however, considered the problem to be critical and the formula contained in the 1965 act to be the only solution. I want the record clear at this point that I voted for the act, and am satisfied that the remedies applied had salutary results. We were told at our hearings last year that over 800,000 Negroes have been registered in the covered States since passage of the act.

Mr. Chairman, times and circumstances change. Problems, while once critical and demanding of extraordinary remedies, over time evolve toward solutions. Registration in these affected States is now as good or better than in many other States in the Union. Extraordinary remedies, in my opinion, should be necessary only to restore a situation to circumstances that can be dealt with by traditional and proven procedures. In my opinion, that time has come.

Next, H.R. 4249 extends the scope of the Attorney General's power to correct abuses of the 15th amendment rights anywhere in the country. This bill grants him direct authority to send Federal voting observers and examiners to any of our 50 States. It clarifies his power to bring lawsuits and obtain injunctions against discriminatory laws in any State or political subdivision in the Nation. It extends his power, once a particular case of discrimination has been proven in a court of law, to suspend future laws or practices in the appropriate States or subdivisions as long as the Federal court having jurisdiction considers it necessary. Thus, while H.R. 4249 would relieve the six presently covered States from the burden of regional legislation, it would not weaken the Attorney General's ability promptly to correct voting abuses anywhere in the Nation, including those States.

I think that it is obvious that discrimination does not exist in just one part of the country. Unfortunately, discrimination occurs in different places, in differing degrees, all over the country. The administration's recommended bill would extend coverage of the Voting Rights Act to all of those instances of discrimination.

A third change from the present act is that the administration's bill will return the thrust of enforcement back to the judicial processes and away from the administrative procedures which now exist. This is important. Our system of government is based on checks and balances, and the judiciary has been the most consistently reasonable and fair arbiter in this system. Administrative procedures, in place of judicial remedies, might be necessary under extraordinary conditions, but should not be extended once the basic conditions improve. The unreviewable suspension power of the Attorney General over State and local laws contained in the 1965 act is such an administrative power: it has served its function. Registration and turnout of voters in the covered States has greatly increased. Let us now return to our courts of law.

Furthermore, H.R. 4249 as passed in the House, prohibits the use of literacy tests in any State in the Nation. The 1965 act was directed at the discrimination against Negroes in Southern States resulting from use of literacy tests. However, it is becoming a well-known fact that literacy tests have the effect of discriminating against all educationally disadvantaged citizens, of all races and colors. As Attorney General John Mitchell stated during the subcommittee hearings last July:

> The widespread and increasing reliance on television and radio brings candidates and issues into the homes of almost all Americans. Under certain conditions, an understanding of the English language, and no more, is our national requirement for American citizenship.
>
> Perhaps, more importantly, the rights of citizenship, in this day and age, should be freely offered to those for whom the danger of alienation from society is most severe—because they have been discriminated against in the past, because they are poor, and because they are undereducated. As responsibile citizenship dose not necessarily imply literacy, so responsible voting does not necessarily imply an education. Thus, it would appear that the literacy test is, at best, an artificial and unnecessary restriction on the right to vote.

A recent study shows that, in general, States of the North and the West which have literacy tests have lower registration and turnout rates than those without literacy tests. It can be little doubted that literacy tests in all States that have them inhibit voting by minority group persons. A nationwide ban on literacy tests, as proposed in H.R. 4249, would add numbers of educationally disadvantaged blacks and whites, Mexican-Americans, Puerto Ricans, and American Indians to the voting rolls.

Finally, Mr. Chairman, the administration bill will limit the application of State residency requirements in presidential elections. It may be reasonable to require a period of residency for local elections, but such a requirement has no relevance to presidential elections. Presidential elections receive nationwide coverage, and the issues are nationwide in scope. The Bureau of the Census indicates that 5.5 million persons were unable to vote in the 1968 presidential election due to local residency requirements. In an increasingly mobile society, this problem must be resolved.

Mr. Chairman, I urge the members of this subcommittee and the witnesses who appear before us, to retain sight of the goal which we all share. That goal is to guarantee the right of each citizen to vote, recognizing in this guarantee that voting is the most fundamental right in a democratic society. The prominence of this right to the durability of our system and the dedication we all share to enforcing that right, should lend dignity and calm reason to our inquiry.

The results under the 1965 act are impressive, and all thoughtful men recognize that the act has served the extraordinary purposes for which it was enacted. On the other hand, the facts and circumstances on which its regional remedies were based have changed. We should not assume that it is necessary to preserve the act without change in order to continue the most active nationwide enforcement of the right to vote for all of our citizens.

Senator ERVIN. Counsel, call the first witness.

Mr. BASKIR. Mr. Chairman, the first witness this morning is Senator Tydings.

Senator ERVIN. Senator, we are glad to have you before the subcommittee.

Senator TYDINGS. Thank you, Mr. Chairman.

STATEMENT OF HON. JOSEPH D. TYDINGS, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator TYDINGS. Mr. Chairman, as you know the real subject of the hearings today is the right to vote. It is the basic right of any democracy. Without the right to vote, any person or group is automatically excluded from representative government. Without access to the voting booth, there is no power that a citizen or group can exercise, real or potential, over the course of government.

This fact is so basic as to be self-evident. Yet nearly 200 years after the Declaration of Independence held that all men should be treated equally, and over 100 years after a bloody civil was was fought to enforce equal treatment, we are still engaged in a struggle to permit all citizens to exercise their franchise.

The record of the continued denial of the vote in our Nation is a tragic chapter in our history and a bitter reminder of the gap which separates action from practice in the greatest democracy the world has ever seen.

The importance of the right to vote has been recognized by those who want to participate in the democratic process and by those who are so bitterly and persistently opposed to that participation. Both sides realize that the vote for any minority group means some degree of significant political power, power that can lead to better lives and better opportunities.

The legislative efforts to provide the franchise to Negroes in the South were failures until the 1965 Voting Rights Act was passed. I don't think any reasonable man can dispute that fact.

Senator ERVIN. I would dispute that as to North Carolina.

I would say that there are not a half dozen people in North Carolina who have been registered under the Voting Rights Act of 1965 who wouldn't have been registered without it.

Senator TYDINGS. Let me just refer then to the voting figures with respect to North Carolina. Before the Voting Rights Act of 1965 the nonwhite voters registered in North Carolina were 258,000; the white registered voters were 1,942,000; 46.8 percent of those nonwhites eligible to vote were registered prior to the act.

However, 96.8 percent of white voters eligible to vote were registered before the act took effect. After the act, the numbers of nonwhite registrants went up from 258,000 to 277,000. The percentage went up from 46.8 percent to 51.3 percent. And I would suspect in some counties that was quite a bit.

Senator ERVIN. There was an increase of 19,000 in nonwhite registration over a 4- or 5-year period. That would be about the number of people who would have become of age, don't you think?

Senator TYDINGS. During the same period of time, the number of white registered voters decreased by over 300,000 from 1,942,000 to 1,602,000; from 96.8 percent to 83 percent. You take those figures together and they are even more significant.

Senator ERVIN. That would prove, according to those who use figures, that North Carolina, since the passage of the 1965 act, is discriminating against the white citizens.

Senator TYDINGS. Except to those who are familiar with the history of the State.

Senator ERVIN. I'm very familiar with the history of my State.

Senator TYDINGS. The legislative efforts, as I indicated, to provide the franchise were a failure until the 1965 Voting Rights Act. The reason for the previous failure is fairly clear. Any enforcement of a voting rights law which depends solely on court suits, that is court litigation is too slow and too easily circumvented to provide an effective remedy for the loss of the vote.

Voting records, I believe, prove this beyond any question.

Before the 1965 act, percentage of nonwhite voters registered in Alabama was 19.3 percent; Georgia was 27.4 percent; Louisiana, 31.6 percent; Mississippi, 6.7 percent and South Carolina, 37.3 percent. In everyone of these States the white voter registration was above 60 percent. I have included for the record, a complete table of the registration percentages together with the number of registered voters before and after the act, by white and nonwhite voters. I have already given the North Carolina figures, but the balance are here.

VOTER REGISTRATION, BY RACE, BEFORE AND AFTER PASSAGE OF THE VOTING RIGHTS ACT OF 1965

State	Pre-act registration	Post-act registration	Pre-act percent of voting age population registered	Post-act percent of voting age population registered
Alabama:				
Nonwhite	92,737	248,432	19.3	51.6
White	935,695	1,212,317	69.2	79.6
Arkansas:				
Nonwhite	77,711	121,000	49.4	62.8
White	555,911	616,000	65.5	72.4
Florida:				
Nonwhite	215,616	299,033	51.2	63.6
White	1,908,499	2,131,105	74.8	81.4
Georgia:				
Nonwhite	167,663	332,495	21.4	52.6
White	1,121,415	1,443,730	62.6	80.3
Louisiana:				
Nonwhite	164,601	303,113	31.6	58.9
White	1,037,184	1,200,517	80.5	93.1
Mississippi:				
Nonwhite	28,500	253,754	6.7	59.8
White	525,000	655,175	69.9	91.5
North Carolina:				
Nonwhite	258,000	277,404	46.8	51.3
White	1,919,000	1,602,980	95.8	83.0
South Carolina:				
Nonwhite	138,544	190,017	97.3	51.2
White	677,914	731,095	75.7	81.7
Tennessee:				
Nonwhite	218,000	225,000	69.5	71.7
White	1,297,000	1,431,000	72.9	80.6
Texas:				
Nonwhite	2,939,535	400,000	53.1	61.6
White		2,600,000		53.3
Virginia:				
Nonwhite	141,259	243,000	38.3	55.6
White	1,070,163	1,190,000	61.1	63.4

In stark contrast to the figures that prevail prior to the enactment of the Voting Rights Act, the figures that prevail today demonstrate that the act has been a remarkable success. Senator Hruska pointed out that since its enactment over 800,000 Negro voters have been registered without any disruption of the election system.

The key to this success is contained in section 5 of the 1965 act which provides for a review by the District Court of the District of Columbia or the Attorney General of new voting procedures or practices in areas where literacy tests have been suspended under section 4. This unique procedure forces a decision about voter discrimination imme-

diately, prevents the long delay in courts, and makes the right to vote a reality.

Since the passage of the Voting Rights Act, there has been a significant increase in the number of Negroes registered to vote and running for office in Southern States. Records of the Civil Service Commission show that as of December 31, 1967, Federal examiners had been assigned to 58 counties in Southern States and have listed as eligible to vote 158,000 persons including 150,000 nonwhites and 7,000 whites. In addition, officials of the Department of Justice have estimated that as of May 3, 1967, an additional 416,000 Negro citizens have been registered by local voting registrars since the passage of the act.

Negro registration is now more than 50 percent of the voting age population in every Southern State. Before this act was passed, this was true only in the States of Florida, Tennessee, and Texas. The biggest gain has been in Mississippi where Negro registration has gone from 6 percent of those eligible to vote to 59.8 percent of those Negroes eligible to vote. It means that 59.8 percent of those elligible to vote are now registered, whereas 6.7 percent of those eligible were registered prior to the Voting Rights Act.

There have also been important gains in other States. In Alabama the percentage has gone from 19.3 percent to 51.16; in Georgia, 27.4 to 52.6 percent; in Louisiana, 31.6 to 58.9 percent; and in South Carolina 37.3 to 51.2 percent. A substantial rise in Negro voter registration has been accompanied by significant increase in the number of Negroes who have actually voted. Surveys by the voter education project and the Southern Regional Council found that in 1966 the growing Negroe vote was a major factor in elections across the South.

It resulted in a winning margin for a U.S. Senator from South Carolina, at least one Governor in Arkansas, and at least two Members of the U.S. House of Representatives. The project estimated that in Arkansas 80,000 to 90,000 of a total of between 115,000 to 120,000 registered voters voted in the November 1966 general election. In South Carolina, 100,000 out of 191,000 registered to vote; in Georgia, 150,000 out of 300,000.

After the 1966 election the number of local Negro officeholders and legislators in 11 Southern States was 159. After the 1967 election the nummber exceeded 200, more than twice as many as were serving before the Voting Rights Act of 1965 was passed. Although the vast majority of Negro officeholders held minor posts in 1966: that is, 20 Negroes (11 in Georgia, six in Tennessee, and three in Texas) were elected to State legislatures in the South. Negroes were also elected to posts at county levels such as in States of Georgia, Alabama, and Mississippi. In 1967, 23 Negroes were elected to office in Mississippi with the first Negro representative in the State legislature in almost 100 years.

Mr. Chairman, it is section 5 of the 1965 Voting Rights Act that means the difference between the right to vote or not to vote for nearly 1 million Americans. The evidence that I can see would not leave any observer to conclude that racial tension or discrimination is so diminished in this country that voting rights no longer need be protected. Many blacks have had the opportunity to vote for the first time in their lives because the 1965 law was effective, not because of the magnanimity of local officials.

In spite of these successes, Mr. Chairman, Negro voter registration is still low within numerous counties within these States. For example,

in Alabama, less than 50 percent of Negroes of voting age are registered in 27 of the 67 counties of that State. In five counties, Negro registration is less then 35 percent of those eligible to register and vote. In Georgia, less than 50 percent of the Negroes of voting age are registered in 68 of the 152 counties; in 27 counties it is less than 35 percent.

In Mississippi, less then 50 percent of Negroes of voting age are registered in 24 of the 82 counties. In six counties it is less than 35 percent. In South Carolina, less than 50 percent of Negroes of voting age are registered in 23 of the 46 counties. In three counties it is less than 35 percent.

Unfortunately, the President's civil rights proposal passed by the House last session does not contain any provisions similar to section 5. It is a retreat on the right to vote in the United States. By returning to the proven failure of remedial court action, the administration's bill will end the right to vote literally of hundreds of thousands of Americans.

No amount of talk about regional legislation or equal application of the laws will hide the fact that the administration bill will gut the 1965 Voting Rights Act. The bill does not extend the procedures of the 1965 act across the Nation. The bill totally removes the only effective procedure that we have to protect the right to vote without providing any adequate substitute, regional or national.

I'll not deny the statment, Mr. Chairman, that these procedures are extraordinary, or that they are aimed at one region, because they are. I say that they should be that way because the denial of the right to vote caused by racial prejudice is an extraordinary act and because of this massive voting rights discrimination occurred primarily in one region.

The only way that the vote will be available to all Americans regardless of race is to extend the 1965 Voting Rights Act. Mr. Chairman, we must do this if we are to preserve the bare shadow of equal treatment we boast of so often. I would also like to note today that two provisions of the administration's voting rights bill are excellent and should be added to any extension of the 1965 act.

First the nationwide literacy test is long overdue. This device is one of the many that has been used to deny the vote because of racial prejudice and should be eliminated nationally. Although it has not been used outside the South with a direct intent to disenfranchise particular minorities, the most recent studies of the Civil Rights Commission indicate that its effect has been to do just that. True equal treatment of all regions in the Nation demands that we strike down voter discrimination wherever it occurs. In this case, discrimination because of one device—the literacy test—occurs throughout the Nation and its use should be ended throughout the Nation.

Second, as the distinguished Senator from Nebraska has pointed out, the time has come for uniform residency requirements for voting in Federal elections. The mobility of a citizen of the United States today should not be used to penalize them when election day occurs. Familiarity with local issues and candidates has no relevance to the ability of those to vote intelligently for the President and Vice President of the Unted States. We should allow every American the vote for the Presidency no matter when he moves or where he moves.

I would like to reemphasize my central point—if we are going to allow Negro citizens to vote, if we're going to permit minorities to take part in our political system, if we are to be a democracy as well as sound like one, we must extend the Voting Rights Act of 1965. It has been effective, it has provided the votes and now, Mr. Chairman, is no time to retreat upon the right to vote in this great democracy.

Senator ERVIN. The Voting Rights Act of 1965 was based on the 1964 presidential election, wasn't it?

Senator TYDINGS. The Voting Rights Act of 1965 was based on the denial of the right to vote of hundreds of thousands of Americans for more than 100 years.

Senator ERVIN. Well, the formula upon which States were condemned was based on the 1964 votes cast for President, wasn't it?

Senator TYDINGS. To my recollection the formula was basically a compromise or device worked out to automatically trigger the use of Federal registrars in certain States and communities which had been notorious in their denial of their right to vote.

Senator ERVIN. Well, I can inform you, if you don't. It provided that any State which had a literacy test where less than 50 percent of the persons of voting age were registered, or less than 50 percent of the persons of voting age failed to vote, should be automatically condemned.

Senator TYDINGS. I didn't realize that was what you were referring to. That's my recollection.

Senator ERVIN. Now, a State can register everybody in the State, but it has no way to compel them to vote, does it?

This act provides that even though a State registers everybody in the State to vote, if less than 50 percent of them go out and vote in a presidential election, that State is automatically brought within the provisions of the legislative condemnation.

Senator TYDINGS. I didn't understand the thrust of your question, Mr. Chairman.

Senator ERVIN. Under this 1965 act, even though a State registers everybody of voting age in the State——

Senator TYDINGS. One hundered percent.

Senator ERVIN. Yes, 100 percent, that State would be condemned under this act of violating the 15th amendment if less than 50 percent of the 100 percent that were registered voted.

Senator TYDINGS. I don't see how it would be condemned under the act. If 100 percent of the eligible registered voters were registered, you wouldn't be worrying about the act.

Senator ERVIN. Yes, you would, because if less than 50 percent didn't vote——

Senator TYDINGS. You wouldn't be worrying about the act. Everybody would be registered.

Senator ERVIN. Oh, yes.

Senator TYDINGS. You wouldn't need the act.

Senator ERVIN. Oh, yes. Then why don't you condemn them on the basis of the registration rather than the number that go out and vote?

Senator TYDINGS. Nobody is condemning anybody, Mr. Chairman.

Senator ERVIN. Oh, yes.

Senator TYDINGS. All we are trying to do is to provide the opportunity to register and vote.

Senator ERVIN. Justice Warren who wrote the opinion in South Carolina against Katzenbach said a State was being condemned by a bill of attainder.

Senator TYDINGS. Well, with all due respect to the Chief Justice, we are condemning no one. This act is trying to provide the opportunity to register and to vote to the citizens of this country who have been denied the opportunity to vote by devious methods for over 100 years.

Senator ERVIN. You're condemning them right now.

Senator TYDINGS. How's that?

Senator ERVIN. You're condemning these States right now.

Senator TYDINGS. I'm condemning any official who denys rights of individuals who are eligible to vote the right to vote.

Senator ERVIN. This is exactly like the Voting Rights Act of 1965. You're condemning North Carolina——

Senator TYDINGS. I'm not condemning anyone. All I'm asking for is that we continue to provide the right to vote.

Senator ERVIN. You just talked about devious methods.

Senator TYDINGS. I say the reason why so many people have been denied the right to vote is that there has been some public officials who deliberately deny them those rights and have used all sorts of opportunities to do so.

And the purpose of this bill is to prevent certain of these officials from denying a person the right to register to vote.

Senator ERVIN. That's exactly what the Congress did when it passed the 1965 act. It stated that seven States violated the 15th amendment by a legislative fiat without a judicial trial.

Senator TYDINGS. There is a legislative fight at that time because hundreds of thousands of Americans had been denied the right to vote.

Does the chairman deny that? Does the chairman deny that thousands of Americans have been denied the right to vote?

Senator ERVIN. I have lived in North Carolina all my life and so far as I know, I have never known a single man to be denied the right to register to vote on account of his race.

Senator TYDINGS. All right, let's eliminate then the State of North Carolina.

You don't deny that hundreds of thousands of Americans have been denied the right to vote, do you?

Senator ERVIN. I know——

Senator TYDINGS (continuing). By all sorts of tricks——

Senator ERVIN. I know little about voting——

Senator TYDINGS. Mr. Chairman, are you going to sit there and tell me you don't know what's been happening?

Senator ERVIN. Well, you came here to prove that North Carolina has been discriminating against white people.

Senator TYDINGS. You may think you are proving that yourself, but you are not proving it to anyone else.

Senator ERVIN. I'm taking your illogical logic and showing that North Carolina, since the passage of this act, has been discriminating against white people, if your figures are correct.

Senator TYDINGS. You may think you're proving something, Mr. Chairman, but I don't think so.

Senator ERVIN. Well, let me ask you. Do you know State election officials are the ones who are charged with violating the 15th amendment.

Senator TYDINGS. Which election officials are you referring to?

Senator ERVIN. Under this act——

Senator TYDINGS. Are you referring to election officials who deliberately deny a person the right to register when they are eligible?

Senator ERVIN. Upon the ones that have been alleged it to be so, but guilt has not been proved, but just assumed.

Now, the Supreme Court of the United States held——

Senator TYDINGS. What's your hypothetical question? Are they or are they not deliberately denying a person the right to vote?

Senator ERVIN. I say that North Carolina is not doing it.

Senator TYDINGS. All right, what you're saying is in a case——

Senator ERVIN. But North Carolina stands condemned now.

Senator TYDINGS. How are you condemned? By merely requiring the giving the people the right to vote?

Senator ERVIN. The point is that if less than 50 percent went out and voted for the President in 1964, that was due to the fact that we were discriminating against blacks.

Senator TYDINGS. But how can you be condemned when you are merely required to permit those persons eligible to register and vote, if you permit them to register and vote? Why are you condemned?

Senator ERVIN. Because they were condemned.

Senator TYDINGS. If a person is eligible to register to vote under the laws of the United States, may he be permitted to register and vote?

Senator ERVIN. Sure I do.

Senator TYDINGS. Well, why shouldn't he?

Senator ERVIN. Well, why should we condemn them when they are allowed to register to vote?

Senator TYDINGS. We're not condemning anybody when you permit them to register to vote, they're entitled to it. How do you get this concept of being condemned?

Senator ERVIN. Well, because——

Senator TYDINGS. I mean, it's fundamental in a democracy if a person is eligible to vote——

Senator ERVIN. I take it that the Senator knows what a bill of attainder is. A bill of attainder is a legislative act which condemns persons of violating the law and imposes punishment upon them without ever giving them a judicial trial and that's exactly what the 1965 act does. It condemns those States——

Senator TYDINGS. You would draw an analogy to requiring a State to permit all registered voters to be able to register and vote? You would draw an analogy between that and a bill of attainder of British constitutional history?

Senator ERVIN. Yes, I do.

Senator TYDINGS. I fail to see any significance—any connection whatsoever.

Senator ERVIN. Well, I can't help what the Senator from Maryland can't see.

Senator TYDINGS. I don't see how any reasonable person can see it. It's fundamental in a democratic society that persons who are eligible to vote should be permitted to register and vote. And merely to require that they be permitted to register and vote, I don't see how that is condemning anybody. I think that is fundamental. Otherwise, you don't have a democratic system.

If you refuse to permit persons who are eligible to vote—Jefferson fought this battle a few hundred years ago in Virginia, when we didn't allow persons to vote because they weren't landowners; Andrew Jackson fought that out in this country, and we are still fighting today.

I think it is fundamental for a democracy that if a person is eligible to register and vote, he should be permitted to.

Senator ERVIN. Sure. Also, it's fundamental——

Senator TYDINGS. And no one is condemned if they are required to permit eligible voters to register and vote.

Senator ERVIN. And under the Constitution of the United States both State legislatures and Congress have been forbidden to pass a bill of attainder and the Congress passed a bill of attainder when they passed the 1965 act because it condemned election officials in 39 North Carolina counties without a judicial trial and denied them the right to exercise some of the functions of their office. That is a bill of attainder.

Chief Justice Warren admitted it was a bill of attainder but said that the bill of attainder didn't protect States, and didn't protect State officials.

Senator TYDINGS. Senator, you well know that the Congress didn't pass a bill of attainder. What the Congress did was to set up the machinery whereby voters who were eligible to vote could vote regardless or not of whether certain officials tried to deny them that right. That's what it did. It didn't condemn anybody. It provided an opportunity to vote and that's fundamental in this Nation——

Senator ERVIN. You condemned North Carolina in your testimony.

Senator TYDINGS. I have never condemned North Carolina. I condemn no area. I merely say that the right to vote is fundamental and that to deny a person the right to vote who is eligible to register and vote, is the opposite of everything that America stands for.

Senator ERVIN. It's just about as bad as condemning the people of the State without a judicial trial.

Senator TYDINGS. How does this deprive any State of any right? You merely say that the citizens of a State will be entitled to register to vote provided the machinery is in service. We're not condemning anybody.

Jefferson wasn't condemning anybody in Virginia when he changed the law and permitted a wider franchise. Andrew Jackson wasn't condemning anybody. The history of this country has been the broadening of the franchise so that all citizens be entitled to vote. We're not condemning anybody. We are just giving the persons who are eligible to register, the right to register and vote. That's all that this issue is about. Nobody is condemning anybody.

Senator ERVIN. As a matter of fact, that's exactly what the 1965 bill does. And it does something that the Supreme Court——

Senator TYDINGS. What does it do?

Senator ERVIN. It suspends the rights of seven States that use literacy tests and the Constitution gives them that right in four separate sections.

Senator TYDINGS. Yes, but there is one thing about using a literacy test in the genuine test sense, and it is another thing using it as a device to deny the right to vote to hundreds of thousands of voters.

Of course, the Senator well knows that was the finding of the Congress of the United States. The Senator well knows that is the fact.

Senator ERVIN. The Senator doesn't know anything about North Carolina, but let me tell you something about how this works.

This was carefully designed to bring under the condemnation of seven Southern States or parts of States——

Senator TYDINGS. No condemnation, Mr. Chairman. Merely the opportunity to——

Senator ERVIN. Will the Senator kindly let me make a statement.

Senator TYDINGS. Certainly.

Senator ERVIN. If this had been applied to regional districts instead of counties and States, the congressional district in New York which is represented in Congress by Representative Adam Clayton Powell, would have been condemned of discrimination against blacks because less than 50 percent of them turned out to vote in the 1964 election.

This condemns Guilford County, N.C., which is the seat of several of——

Senator TYDINGS. Where do you get "condemned"? Where does the chairman come up with the word "condemned"? What relationship does the word "condemned" have with setting up machinery to register voters? Do you think your are condemned when you set up machinery to register voters? Do you think a voter is condemned when he has a right to register and vote?

Where do you get the word "condemn"? I don't see any relationship whatsoever. We are providing the opportunity to vote for voters who are eligible to vote and have been denied the opportunity in the first place and the word "condemned."

Senator ERVIN. The Senator is condemning us now.

Senator TYDINGS. I'm not condemning anyone. The Senator knows I was born in North Carolina. I love the State of North Carolina. Second to my adopted State of Maryland, there is no finer State, but I see no relationship between the word "condemn" and the right to vote, the machinery to provide those voters eligible to vote with that opportunity, and I just don't see any connection.

Senator ERVIN. You are condemned of violating the 15th amendment by this act. You call it something else and I call it being condemned of violating the 15th amendment. As a matter of fact, the State's right to exercise constitutional powers is suspended and the Supreme Court of the United States said in effect that no notion was ever invented by the wit of man then the notion that any constitutional power can be suspended at any time under any circumstances.

Now, I——

Senator TYDINGS. Does the Senator take the position that the Constitution permits a local official, a county official to deliberately deny the right to register and vote to citizens he doesn't like? Does the Senator take that position?

Senator ERVIN. I take the position that the Constitution of the United States prohibits bills of attainder. I take the position that the Supreme Court took. No worst notion was ever invented by the wit of man that constitutional provisions could ever be suspended, yet that's what has been done.

Senator TYDINGS. Yes, but do you want to take the position that the Constitution permits a county official, when he doesn't like a group of voters in his county, to deny them the right to vote when they are eligible to vote and they are eligible to register?

Senator ERVIN. I have never taken that position.

Senator TYDINGS. I just wondered because the thrust of your argument seems to be that you felt that the Constitution permitted a local official, a county official to deny those citizens the right to register and vote——

Senator ERVIN. I did not so——

Senator TYDINGS (continuing). Because that is all this is about. This merely provides the opportunity or the right to register and vote for those citizens who are eligible to vote, and it provides the machinery to do so and provides the machinery, in a sense, to stop the circumvention of the Constitution or that right to vote by county officials.

Senator ERVIN. Just let me tell you how this operates in Guilford County.

Guilford County is the seat of a branch of the University of North Carolina. It's the seat of agriculture and technical university. It's the seat of Guilford College and others, and because of the presence of these students there Guilford County is condemned by this formula——

Senator TYDINGS. What do you mean condemned? You mean because a Federal registrar is in there to make certain that everyone——

Senator ERVIN. It is declared guilty——

Senator TYDINGS. What?

Senator ERVIN. It is declared guilty of violating the 15th amendment by this formula. Now, Guilford County——

Senator TYDINGS. What do you mean—I don't follow—what you're saying is that they shouldn't have a Federal registrar in there——

Senator ERVIN. I'm not saying anything—I'm not——

Senator TYDINGS. Where do you get the condemned figure? Where do you get that phrase, that figure of speech?

Senator ERVIN. Let's quit quibbling about the word "condemn."

Senator TYDINGS. Well, I can't see how it is anywhere at all applicable to providing the right to vote. I don't see where a county is condemned when it permits its citizens the right to vote.

Senator ERVIN. Will the Senator permit me to make a statment without interrupting me?

Senator TYDINGS. I don't see how a State is condemned when it permits its citizens the right to vote.

Senator ERVIN. North Carolina was condemned and Guilford County was condemned of discriminating against Negroes in violation of the 15th amendment by this formula. To add to that fact, Guilford County elected a black to the legislature it elected a black woman, a district judge, it elected two members of the black race to the city council in the county seat of Greensboro and yet on this formula it is condemned of discriminating against blacks.

Senator TYDINGS. Condemned by whom?

Senator ERVIN. By you and your vote.

Senator TYDINGS. I'm not condemning anybody. All we ask is that the Voting Rights Act of 1965 be continued and those voters who are eligible to register to vote be permitted to register and vote wherever they may live in this country.

Nobody is condemning anybody—all we ask is the simple basic, democratic right to register and vote.

Senator ERVIN. You're asking that the formula still apply to the 1964 presidential election not withstanding since then in 1968——

Senator TYDINGS. I feel that the right to vote is sufficiently important so that persons who want to register to vote and want protection

can be given that right to vote in 1970 just as they were in 1968. That they have a right to be registered and they are entitled to be registered is just as important in 1970 as it was in 1968.

Senator ERVIN. And on the basis of their supposed bad conduct in 1964, not withstanding their virtuous conduct in 1968?

Senator TYDINGS. All we are asking is the right to vote, the right to vote, which is fundamental in this country.

Senator ERVIN. What you're asking is——

Senator TYDINGS. We're asking that that right to register and to vote be protected.

Senator ERVIN. Now the Supreme Court says in that same case——

Senator TYDINGS. What case was this?

Senator ERVIN. I'm talking about South Carolina against Katzenbach. It says the doctrine of equality of the States only exists at the time of admission of the State to the Union. And immediately after admission to the Union, that Congress can have as many varieties of States as there are of pickles, notwithstanding the Constitution gave all 50 States exactly the same powers.

So, the Senator from Maryland apparently thinks——

Senator TYDINGS. There is one thing, I think, Mr. Chairman we should all be able to agree on, whatever the State or whatever the county: if you are a citizen of the United States and eligible to register under the law, you should be permitted to register to vote. You shouldn't be denied that opportunity. That's all this is about. The right to vote, the right to register and vote, that's all.

Senator ERVIN. I agree. Provided you meet the qualifications constitutionally established by the second section, first article, the first section of the second article, the 10th amendment, and the 17th amendment——

Senator TYDINGS. And the 14th and 15th amendments.

Senator ERVIN. I just don't believe——

Senator TYDINGS. And the fifth amendment.

Senator ERVIN. I don't believe that the Constitution empowers Congress to say that one State has constitutional powers and another State does not have constitutional powers of a like nature. I think all States are equal. This bill puts them on an unequality.

Senator TYDINGS. What the bill does is to provide machinery to allow a citizen to register and vote where he has been denied that right.

Now, as the chairman knows, the whole history of our country is based on the right to vote. Our colonial delegates were denied the right to participate and deliberate in the Parliament when the Tax Act was passed, the Stamp Act, and the tea levies were passed. The whole history of this country has revolved around the guarantee of the franchise.

All this bill does, quite literally, is to permit registration and voting to a citizen who has the right to register and vote.

Senator ERVIN. I beg the Senator's pardon. It does nothing of the kind. It says a person is allowed to register to vote even though he does not possess the qualifications described in the Constitution for voting. That's what the bill does.

Senator TYDINGS. Not the Voting Rights Act of 1965.

Senator ERVIN. And I will accept the Senator's assurance that he loves North Carolina next to Maryland, but I'm sorry his love is not

so strong that he would not resent, as I do, saying that North Carolina should be denied the rights which he freely concedes for 43 other States.

Thank you.

Senator TYDINGS. Mr. Chairman, as you know, the right which all Americans should love is that fundamental part of our democracy which says that all persons who are eligible to vote, to be permitted to register and vote and shouldn't be denied it by officials, local, State or otherwise anywhere in this Nation——

Senator ERVIN. That is the reason I opposed this 1965 law. I opposed it then and still oppose it because it doesn't say that. It says the people shall be allowed to vote even though they do not possess the qualifications described by the Constitution.

Senator TYDINGS. Now, as the Senator knows, the 1965 bill doesn't provide for that.

Senator ERVIN. That's exactly what it says.

Senator TYDINGS. Well, we fought this battle before and I'm sure we will fight it again.

I thank the chairman for his courtesy and time.

Mr. BASKIR. Mr. Chairman, our next witness is Mr. Clarence Mitchell, Washington representative of the NAACP, representing the Leadership Conference on Civil Rights.

STATEMENT OF CLARENCE MITCHELL, WASHINGTON REPRESENTATIVE OF THE NAACP LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. MITCHELL. Thank you, Mr. Chairman and Mr. Baskir for this opportunity to appear before your subcommittee.

I have a very brief statement which I will read in a minute, but knowing the chairman's fairness in permitting answers to statements which are made that one might not agree with, I would like first to take exception to some of the things that have been said by the chairman and also from the Senator from Nebraska, Mr. Hruska.

It is a fact of history that the chairman of this subcommittee, present chairman, has opposed every voting rights bill that I have ever come upon and presented in support. My first knowledge of that, of course, occurred when the late Senator Thomas Hennings was the—from Missouri—was the chairman of this subcommittee. You, Mr. Chairman, were then a member and at that time we were simply asking for the right of the Attorney General of the United States to take a civil, that is distinguished from a criminal action, to protect the right to vote.

This law was a good one in that it was the first opportunity for Congress to pass a civil rights bill in over 80 years. And it was effective, but it did not do the complete job. In 1960 there were Members of this Congress who came from the South who supported a voting rights bill which had as its purpose giving to the courts of the United States the power to appoint a referee, who after the courts made a determination that there had, in fact, been discrimination by preventing in the exercise of the right to vote, these referees could institute action which would put the people on the books.

We found that statute to be ineffective. When the 1964 Civil Rights Bill was considered in the Congress, there were some of us who wanted title 1 of that act to include language which would extend the provisions to State elections, but again, Mr. Chairman, the present chairman of the subcommittee and colleagues said they then believed and now believed they should oppose us and we got the bill which contained many wonderful things, but it left much to be desired in that area of protecting the right to vote.

The chairman will recall that after the passage of that magnificent legislation in 1964, this country was afflicted by one of the ugliest, most brutal and shameful experiences in our history when individuals who wanted to do nothing more than walk across a bridge in the city of Selma, Ala. were set upon by police, were brutally beaten and I think we can trace even the killing of people to the——

Senator ERVIN. You're not accusing me of what happened in Selma?

Mr. MITCHELL. No, I am not. I'm not accusing you, Mr. Chairman. I am saying what historical background about this causes us now to be seeking the passage of this legislation.

I'm doing it for two reasons. First, because I hope that there will be some soul in the Senate who will listen to it and be persuaded by it, but more importantly, I am doing it because I have been reading much of the history of our country and particularly I have been reading about the Reconstruction Period of our history, and I think we are making some of the same mistakes now that we made in the Reconstruction Period and is unfortunate that there are many gaps in the record of why certain kinds of legislation were passed in that period.

In my humble way I hope to provide at least some light to historians or courts or legisators who 25, 50, or 100 years from now will be wondering why it was necessary to seek extension of the provisions that we seek here today. I would like for them to know why we had to enact the law in the first place and why we now have to get an extension of it.

As I said, in my opinion, it would never have been necessary for colored people ow the South and more particularly those who participated in demonstrations in Selma, Ala., to do what they had to do to invite attention to their problems, if in 1960, when we had an opportunity to do, we had done what we finally did in 1965. In 1960 we had an opportunity to have this kind of plan which is now law put into effect. It was not done. The referee plan was substituted and it was not effective enough.

Senator ERVIN. I may have to leave soon and I'm afraid you will have to come back tomorrow because they told me they have a vote in 15 minutes.

Mr. MITCHELL. Well, I appreciate the Senator's desire for brevity and I only wish——

Senator ERVIN. I'm not trying——

Mr. MITCHELL. That would be true in all hearings with this subcommittee. And I do hope and I do believe that the Senator will stay as long as he can because I have not yet had the experience of being treated discourteously by the Senator.

Senator ERVIN. I try to treat everybody courteously and give everybody a chance to be heard. Nothing would please me more then sit here and listen to everybody and especially anybody who represents such a cause such as you.

The reason I voted against these things in the first place is that there have been sufficient laws on the statute books of this Nation both civil and criminal for a hundred years to get registered every person qualified in the United States if the Department of Justice would have used them.

We have sufficient laws to put in jail every election official who denied any qualified person the right to vote, if the Department of Justice would ever use them. Instead of using them, they just go along and add more laws. Every one of them centralizes the Government and takes power away from the local official. Every one of them destroys one of the purposes of the Constitution which Chief Justice Chase said was to establish an indestructible Union proposed of indestructible States.

Woodrow Wilson said that liberty has never come from Government; liberty has always come from the subjects of Government. That the history of liberty is the history of the limitation of powers, and when we fight the concentration of power we are fighting the processes of death because the concentration of power is what always precedes the destruction of human liberty. That is what we see here in this country.

Mr. MITCHELL. That is not why I——

Senator ERVIN. You mentioned in the paper about——

Mr. MITCHELL. May I point out about what you just said is in error in that in1957 the only thing we were trying to do is to give the Attorney General in the United States the power to institute civil action which he did not have.

Senator ERVIN. Yes, he has had that since——

Mr. MITCHELL. No, he did not have it at that time.

Senator ERVIN. I beg your pardon. I know the law pretty well.

Mr. MITCHELL. Well, no one could ever deny that. The record would argue to the contrary.

Senator ERVIN. You have had that statute on the books for 100 years. Suit can be brought——

Mr. MITCHELL. By private individuals.

Senator ERVIN (continuing). By private individuals, yes, and the Attorney General could intervene.

Mr. MITCHELL. He could if the parties or the court allowed him to enter, yes, but as a representative of the Government of the United States, the Attorney General did not have that power and that's what the 1957 act gave him.

Senator ERVIN. I have consistently fought and as long as I am allowed to hold office and be a citizen, I will fight the concentration of power.

Of course, for years the Attorneys General have come up here. They want more power, but I've asked Attorney General Brownell, I've asked Attorney General Rogers, I've asked Attorney General Kennedy, I've asked Attorney General Katzenbach about these laws and everyone of them admitted that they haven't made any effort to use them.

I told Attorney General Kennedy on one occasion, "You have plenty of laws now, which you admit you haven't used," I said. It reminded me of John and Mary sitting out there on a bench among the roses on a moonlit night.

John said to Mary, "If you wasn't what you is, what would you want to be?" She says, "If I wasn't what I is, I'd like to be an American beauty rose." And then she turns the question on John and says, "John if you wasn't what you is, what would you like to be?" He said, "I'd like to be an octopus." And Mary said, "What is an octopus?" He said, "It's an animal of some kind with a thousand arms." Mary said, "Well, John, if you were an octopus what would you do with all those arms?" He said, "I would put all of them around you." And Mary said, "Go away, John, you've not using the two you've got."

The Government has more laws now than it uses, many of which go against the Constitution. I don't care what the Supreme Court says, I think the 1965 act is a bill of attainder because it condemns the people of a State without trial and I don't accept Chief Justice Warren's theory that the doctrine of the equality of States only applies to the time a State is admitted to the Union, and that thereafter Congress can convert the States and give them different powers, different limitations on them and make as many different varieties of States as there are varieties of Heinz pickles.

Mr. MITCHELL. Mr. Chairman, may I interpose to say that I—one of the treasured experiences that I have had in my life around here is the repertoire of your stories that I have assembled over the years. This is the first time I have heard that one about the octopus. My only observation is that at 21 I too would have wanted to be an octopus, at my present age of 59——

Senator ERVIN. Well, I would——

Mr. MITCHELL (continuing). I have to be content to use the two arms I've got.

I would say at this present hearing that I would like to ask this procedural question. You have indicated that you may only have 15 minutes and I know that tomorrow a Senator is scheduled to testify.

If we must desist before I finish, will I be permitted to come on again tomorrow?

Senator ERVIN. Oh, yes.

Mr. MITCHELL. Thank you.

Senator ERVIN. We have three witnesses tomorrow——

Mr. MITCHELL. I would hope that I would have the right to continue my testimony as the first witness after the Senator in that I know senatorial courtesy require you to hear him first.

Would that be possible.

Senator ERVIN. We'll try to fix a day.

Mr. MITCHELL. Well, I'm happy—I'm at your disposal Mr. Chairman, but I want to be sure that when I testify——

Senator ERVIN. We have a Senator and we have a witness from out of town, so try to finish today——

Mr. MITCHELL. I would like to finish today, but you mentioned you might have to go to the floor.

As I was saying about the historical context of this legislation, we recognize that everyone has the right to have a point of view whether he is a Member of the Senate or is not, but it is a fact of life that traditionally this committee for many years was regarded by civil rights as the graveyard of civil rights legislation because it would not report legislation and we, therefore, sought to find parliamentary ways of circumventing the delaying tactics of this committee.

So that everything that we have done parliamentary, which you mentioned in your opening statement, is in response to the brilliant, but unfortunately delaying, parliamentary tactics of this committee.

Although this committee can no longer be called the graveyard of civil rights, there are forces on it that try to make it a mausoleum and I think that——

Senator ERVIN. Are you talking about this subcommittee?

Mr. MITCHELL. I respectfully say that I am, Mr. Chairman, I think——

Senator ERVIN. Well, I will have to enter a plea of not guilty.

Mr. MITCHELL. I wish I had the power to make the decision one way or the other, but I am only stating it as I see it.

We have found that this subcommittee has not been enthusiastic about reporting civil rights legislation.

Senator ERVIN. I've just been called to the floor, so we will have to——

Mr. MITCHELL. What shall I do, Mr. Chairman? Leave and come back or——

Senator ERVIN. No, I will have to be over there. I have some amendments to this bill.

Mr. MITCHELL. I wish I could say that I wish you good fortune, but I am not in agreement with you.

Senator ERVIN. I never thought you would wish me good luck on this bill. I'm fighting for freedom for children.

Mr. MITCHELL. Well, we are fighting for the right of children to live and have an education.

What shall I do, Mr. Baskir, come back or what?

Mr. BASKIR. Tomorrow, I think.

(Whereupon, at 11:55 a.m., the hearing in the above-entitled matter was recessed.)

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

THURSDAY, FEBRUARY 19, 1970

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m. in room 318, Old Senate Office Building, Senator Sam Ervin (chairman of the subcommittee) presiding.

Present: Senators Ervin and Bayh.

Also present: Lawrence M. Baskir, chief counsel, and Lewis W. Evans, counsel.

Senator ERVIN. This subcommittee will come to order.

Our first witness is Senator Goldwater.

We are delighted to have you come before the subcommittee, Senator.

Senator GOLDWATER. It is a real pleasure to be with you this morning.

I would like to introduce my legal adviser, Mr. Terry Emerson who has done the research on the paper and material I will present.

STATEMENT OF HON. BARRY GOLDWATER, U.S. SENATOR FROM THE STATE OF ARIZONA; ACCOMPANIED BY TERRY EMERSON, COUNSEL

Senator GOLDWATER. Mr. Chairman and members of the subcommittee, today I shall propose an amendment which will enhance the right to vote for up to 10 million citizens of all races, creeds, and national origins. In short, my proposal will secure the right to vote for President and Vice President for every citizen of the United States without regard to lengthy residence requirements or where he may be on election day.

My amendment is offered on behalf of myself and 28 other Senators. It is presented as a substitute for section 2(c) of the House-passed voting rights measure. Although this section provides for uniform residency requirements, there are several changes which must be made if it is to be made effective.

Specifically, the provision should be amended so as to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, to spell out the right of citizens to register absentee and to vote by absentee ballot for such officers, to permit States to adopt voting practices less restrictive than those provided by the law, to authorize the Attorney General to institute court

actions to insure compliance with the law, and to expressly prohibit double voting and false registration.

Also, in order to assure the constitutionality of the section, it should be amended so as to clearly identify the powers which Congress is exercising under the Constitution and to plainly apply to voting for the offices of President and Vice President alone.

Mr. Chairman, having been my party's nominee for President in 1964, I perhaps have had more reason than most persons to examine the workings of the Nation's election machinery. And speaking as a Senator from Arizona, a State which is attracting new residents by leaps and bounds, I have a special reason for wanting that machinery to take account of the needs of this important group of citizens—whether they have come to my State or moved to others.

Mr. Chairman, the sad truth is that the national election system is not geared to insuring that the maximum number of citizens will be eligible to vote. To the contrary, a barrier of outmoded legal technicalities has been erected across the land which disfranchises many millions of citizens who are otherwise fully qualified to vote.

It is my belief that these restrictions are unnecessary when applied to presidential elections and are utterly out of tune with the changing needs of a modern, mobile society.

The worst offender is the burden on voting imposed by lengthy residency requirements. Sixteen of our States require a full year's residence within their boundaries before they will allow a citizen to vote for President and Vice President. These laws alone affect more than 620,000 Americans of voting age who move from State to State in an election year.

In addition, three States, to which over 150,000 adult citizens move each year, impose a 6-month waiting period as a precondition to voting for President.

Thirty-two other States require residence periods ranging from 3 months down to zero. All but one of these States has enacted special provisions of law which allow new residents to vote for presidential electors alone. While this is an encouraging sign that the States themselves recognize the inequity in their regular residency laws, even these shortened periods result in the disqualification of 422,000 otherwise eligible voters.

Mr. Chairman, the combined effect of the various State residence laws is the denial of the right to vote for President in the case of over 1,120,000 Americans.

Mr. Chairman, this is only part of the story. Added to this obstruction to the free exercise of a citizen's franchise were numerous local rules that imposed a separate waiting period on persons who moved about inside a State.

For example, if a citizen living in any one of 10 States changed his address to a different county or city in that same State as much as 6 months before the 1968 election, he would have lost his right to vote in that election. One might think that the cumulative effect of these strictly local rules would be small, but they actually cause the disfranchisement of an additional 855,000 citizens.

Mr. Chairman, I have prepared a table which details the numbers of citizens who are disqualified from balloting in presidential elections and I request that it be inserted at this point in the record. The table is an updated version of one compiled by the Census Bureau.

The difference is that I have used the current residence periods applied by the several counties, cities, towns, precincts, and wards within each State, and have identified the number of citizens of voting age who moved to each State and within each State during the last election year.

(The document referred to follows:)

TABLE OF STATE AND LOCAL RESIDENCE REQUIREMENTS APPLICABLE TO VOTING IN PRESIDENTIAL ELECTIONS, JANUARY, 1970[1]

1. RULES APPLICABLE ONLY TO NEW RESIDENTS OF A STATE

State	Length in State	Length in county, city or town	Length in precinct or ward	Interstate migration, 1968	Citizens disqualified[2]
Alabama	1 year	6 months	3 months	56,400	56,400
Alaska[3]	4 days	(4)	(4)	23,900	270
Arizona[3]	60 days	(4)	(4)	85,200	14,200
Arkansas	1 year	6 months	30 days	40,700	40,700
California[3]	54 days	(4)	(4)	527,600	87,933
Colorado[3]	2 months	2 months	15 days	74,200	12,367
Connecticut[3]	60 days	(4)	60 days	57,500	9,583
Delaware[3]	3 months	(4)	(4)	16,200	4,050
District of Columbia	1 year	(4)	1 year	33,100	33,100
Florida[3]	30 days	(4)	(4)	341,200	28,433
Georgia[3]	do	(4)	(4)	88,500	7,375
Hawaii[3]	5 days	(4)	(4)	26,700	365
Idaho[3]	60 days	(4)	(4)	22,200	3,700
Illinois[3]	do	(4)	60 days	167,000	26,833
Indiana	6 months	60 days	30 days	84,900	42,450
Iowa	do	do	(4)	40,500	20,250
Kansas[3]	45 days	45 days	45 days	60,100	7,410
Kentucky	1 year	6 months	60 days	54,600	54,600
Louisiana[3]	60 days	(4)	(4)	53,400	8,900
Maine[3]	30 days	(4)	(4)	18,500	1,542
Maryland[3]	45 days	(4)	45 days	95,400	11,762
Massachusetts[3]	31 days	31 days	(4)	75,000	6,250
Michigan[3]	30 days	30 days	(4)	93,300	7,775
Minnesota[3]	do	(4)	(4)	54,200	4,517
Mississippi	2 years	1 year	6 months	35,500	35,500
Missouri[4]	60 days	(4)	(4)	87,900	14,650
Montana	1 year	30 days	(4)	18,300	18,300
Nebraska[3]	2 days	(4)	(4)	30,000	164
Nevada	6 months	30 days	10 days	22,400	11,200
New Hampshire[3]	30 days	(4)	(4)	17,900	1,492
New Jersey[3]	40 days	40 days	(4)	142,900	15,660
New Mexico[5]	1 year	90 days	90 days	48,100	48,100
New York[3]	90 days	do	30 days	173,200	43,300
North Carolina[3]	60 days	(4)	(4)	70,800	11,800
North Dakota[3]	10 days	(4)	(4)	11,400	312
Ohio[3]	40 days	(4)	(4)	155,600	17,051
Oklahoma[3]	15 days	(4)	(4)	58,400	2,400
Oregon[3]	None	None	None	52,800	
Pennsylvania	90 days	(4)	(4)	109,800	27,450
Rhode Island	1 year	6 months	(4)	18,200	18,200
South Carolina	do	do	3 months	42,400	42,400
South Dakota	do	(4)	(4)	14,000	14,000
Tennessee	do	3 months	(4)	65,900	65,900
Texas[3]	60 days	(4)	(4)	179,500	29,917
Utah	1 year	4 months	60 days	23,000	23,000
Vermont	do	(4)	(4)	8,800	8,800
Virginia	do	6 months	30 days	121,400	121,400
Washington[3]	60 days	(4)	(4)	87,600	14,600
West Virginia	1 year	60 days	(4)	25,000	25,000
Wisconsin	1 day	(4)	(4)	54,900	150
Wyoming	1 year	60 days	(4)	15,200	15,200
Total				3,881,300	1,116,712

[1] In States where length of residence is not specified, the term "residence requirement" means cutoff time by which citizens must apply for, or execute affidavit to obtain, a presidential ballot.

[2] This column is incomplete. It only includes new residents who are disqualified by State residence laws. It does not include new residents who are disqualified by local requirements because there are no statistics available to identify number of newly arrived residents who move within a State after their removal to that State.

[3] These States have enacted special residence rules which allow new residents to vote for President and Vice President, but no other offices, with less than regular length of residence.

[4] Not available.

[5] The special provisions of law in New Mexico that had permitted new residents to vote for presidential electors were repealed by sec. 451, Ch. 249, N.M. Laws 1969.

Source: Original State election laws as compiled by American Law Division, Library of Congress, Jan. 21, 1970, in case of special provisions of law relating to new residents. Date relative to regular residency laws of States obtained from Legislative Reference Service publication 69-228A, dated Sept. 25, 1969. Interstate migration figures obtained from Bureau of Census 1968 annual national survey.

2. RULES APPLICABLE TO RESIDENTS WHO MOVE WITHIN SAME STATE

State	Length in county, city, or town	Length in precinct or ward [1]	Intercounty migration	Intracounty migration	Citizens disqualified by local rules
Alabama	6 months	(2)	53,900	246,800	26,950
Alaska		(2)	3,800	11,400	
Arizona	30 days	(2)	15,600	83,400	1,300
Arkansas	6 months	30 days	35,700	128,200	23,192
California	(2)	(2)	440,000	1,302,100	
Colorado	15 days	(2)	52,400	107,400	2,153
Connecticut	(2)		23,300	197,700	
Delaware	3 months	30 days	1,800	32,600	1,808
District of Columbia				75,300	
Florida	6 months		82,300	324,700	41,150
Georgia	30 days		106,600	310,800	8,883
Hawaii	3 months	(2)	4,400	47,100	1,100
Idaho	30 days		15,200	40,600	1,267
Illinois	90 days	30 days	145,300	875,000	72,783
Indiana	60 days	do	85,500	339,500	28,396
Iowa	do		63,600	183,100	10,600
Kansas	30 days	30 days	51,600	140,300	10,146
Kentucky	6 months	60 days	56,900	256,600	49,823
Louisiana	(2)	(2)	64,800	220,300	
Maine	3 months		14,300	64,700	3,575
Maryland	6 months	(2)	62,000	192,400	31,000
Massachusetts	(2)		85,200	373,200	
Michigan	(2)		166,600	567,200	
Minnesota		(2)	84,100	215,900	
Mississippi	1 year	6 months	41,800	140,300	76,875
Missouri	60 days		117,700	322,900	19,617
Montana	30 days		17,900	43,000	1,500
Nebraska	40 days	10 days	32,100	91,400	3,768
Nevada	30 days	do	3,400	20,100	558
New Hampshire	(2)		6,300	39,800	
New Jersey	40 days		125,400	392,800	13,741
New Mexico	90 days	30 days	15,300	52,600	6,017
New York	3 months		439,500	1,135,400	109,875
North Carolina		(2)	85,300	325,000	
North Dakota	90 days	(2)	13,900	34,500	3,475
Ohio	(2)	(2)	169,000	806,900	
Oklahoma	2 months	20 days	58,800	166,400	13,860
Oregon			52,500	124,900	
Pennsylvania		(2)	174,400	805,000	
Rhode Island	6 months	(2)	7,900	61,800	3,950
South Carolina	do	3 months	34,600	163,100	37,937
South Dakota	(2)	(2)	16,600	38,100	
Tennessee	3 months		51,400	287,600	12,850
Texas	6 months		283,000	695,400	141,500
Utah	4 months	60 days	15,500	54,900	9,742
Vermont	(2)		5,200	26,200	
Virginia	6 months	(2)	109,100	223,600	54,550
Washington	90 days	30 days	65,700	208,300	25,105
West Virginia	60 days	(2)	29,300	129,000	4,883
Wisconsin		(2)	78,800	276,100	
Wyoming	60 days	(2)	6,600	21,200	1,100
Total			3,771,800	13,022,500	855,029

[1] In computing the effect of precinct and ward residence requirements, it is assumed that ⅓ of citizens who moved intracounty had crossed precinct or ward boundary lines.

[2] Designates those jurisdictions of a State which waive their usual residence laws by allowing newly arrived residents to vote in former election district of the same State when move was solely intrastate.

Source: Data relative to regular residency laws of States obtained from Legislative Reference Service publication 69-228A, dated Sept. 25, 1969. Intercounty and intracounty migration figures obtained from 1968 annual national survey of Bureau of Census.

3. Total number of citizens disqualified in each State by both State and local residence requirements

State	Number of citizens disqualified	State	Number of citizens disqualified
Alabama	82,350	Nebraska	3,932
Alaska	270	Nevada	11,758
Arizona	15,500	New Hampshire	1,492
Arkansas	63,892	New Jersey	29,401
California	87,933	New Mexico	54,117
Colorado	14,520	New York	153,175
Connecticut	9,583	North Carolina	11,800
Delaware	5,858	North Dakota	3,787
District of Columbia	33,100	Ohio	17,051
Florida	69,583	Oklahoma	16,260
Georgia	16,258	Oregon	—
Hawaii	1,466	Pennsylvania	27,450
Idaho	4,967	Rhode Island	22,150
Illinois	99,616	South Carolina	80,337
Indiana	70,846	South Dakota	14,000
Iowa	30,850	Tennessee	78,750
Kansas	17,556	Texas	171,417
Kentucky	104,423	Utah	32,742
Louisiana	8,900	Vermont	8,800
Maine	5,117	Virginia	175,950
Maryland	42,762	Washington	39,705
Massachusetts	6,250	West Virginia	29,883
Michigan	7,775	Wisconsin	150
Minnesota	4,517	Wyoming	16,300
Mississippi	112,375		
Missouri	34,267	Total	1,970,711
Montana	19,800		

Mr. Chairman, it is clear from reading the table that almost 2 million Americans are being denied a voice in the selection of their President solely because they have changed their residence. In fact, the Gallup poll's indepth analysis of the 1968 election claims that the true number of citizens who were disfranchised by restrictive residence laws exceeded 5 million persons. Since we know that 21 million citizens of voting age made a change of households during the year preceding the 1968 election, it is my feeling that 5 million is probably closer to the truth.

But these are only a part of the unfortunate citizens who find themselves without the vote because of out-of-date legal technicalities. Approximately 3 million more fully qualified American citizens were denied the right to vote for President because they were away from home on election day and were not allowed to obtain absentee ballots. This gap in the law is often overlooked because most States do permit absentee voting. But the catch is that some of these same States impose cutoff dates on applications for absentee ballots which disqualify millions of citizens who do not know early enough that they will be away at the time of voting. Another burdensome feature about these laws is the fact that in 10 States a person's absentee ballot will not be counted unless it is returned to the voting officials sooner than election day.

Mr. Chairman, I want to state as firmly as I can that this hodgepodge of legal technicalities is unfair, outmoded, and unnecessary when applied to presidential elections.

In my opinion, every able-minded citizen of the several States should be entitled to participate in the choice of his President—

period. A citizen should be able to exercise this right regardless of where he is in the world on election day and regardless of how long he has been a resident of any particular State.

As Chief Justice Taney put it over a century ago: "We are one people, with one common country." *Passenger* cases 7 Howard 293, 492 (1849).

Being members of the same political community, it is my view that all citizens possess the same inherent right to have a voice in the selection of the leaders who will guide their government.

Mr. Chairman, I wish to emphasize that my comments are not aimed at the election of State and municipal officers. My amendment is specifically worded so as to apply only to the choosing of the President. Here there is no need to insure that new residents have had time to learn about local issues. Here the issues are national and cut across all areas and regions of our country.

It is true that all States require their voters to be bona fide residents or recent former residents. It is also true that most States require voters to establish their qualifications by registering to vote within a few days before an election.

When these requirements are applied in a reasonable way, they can serve a valid purpose by protecting against fraudulent voting and allowing the election officials to carry out the paperwork and mechanics of holding an election.

But whatever the reasons for permitting a State to set a closeout date for registering to vote for President, there is no compelling reason for imposing a separate and additional requirement that voters also must have been residents of the State for a particular length of time. If a State can satisfy its logistical needs by keeping its voting lists open up to 30 days before an election—as 40 States now do—what is the justification for barring citizens from balloting for President unless they have been residents of the State for 6 months or 1 year?

So long as a citizen is a good-faith resident of a State and the State has adequate time to check on his qualifications, the duration of his residency should have no bearing on his right to participate in the election of the President.

This is why my proposal provides for the complete abolishment of the durational residence requirement as a separate qualification for voting for President and Vice President. My amendment will, however, permit a State to require that its voters shall be bona fide residents who shall register or otherwise qualify for voting no later than 30 days preceding the election. Thereby the legitimate interests of the States will be protected at the same time that the fundamental right of citizens to vote will be given its broadest possible meaning.

Mr. Chairman, in order to completely close the gap for those citizens who would still be unable to qualify as voters because they move after the voting rolls are closed, my amendment further provides that former residents of a State who fail for this reason to become electors in their new State must be allowed to vote for President in their former State.

My proposal draws on the excellent example set by the States themselves. Ten States—including Arizona—now permit former residents to vote in presidential elections.

Next, in order to provide the greatest possible encouragement and meaning to the right to vote, my amendment will permit all categories of citizens, both civilian and military, to register absentee and to vote by absentee ballot.

Specifically, the amendment provides that citizens may apply for absentee ballots for President and Vice President up to 7 days before the election and may return their marked ballots as late as the close of the polls on election day. Once again, the features of my measure are drawn from the proven practice of the States themselves. At present 37 States allow certain voters to make application for absentee ballots up to a week before the election and 40 States provide that the marked ballots need not be returned until election day itself.

My amendment will also allow citizens who are away from their homes to register absentee. Forty-nine States now permit servicemen to register absentee or do not even require them to register at all, and I believe this privilege should be extended nationwide to all citizens, both civilians and servicemen. This will benefit many, many Americans who are temporarily outside the United States as students, Government employees, or visitors.

In short, every standard set forth in my amendment is modeled after practices that have been used by the States themselves and have been proven workable. Therefore, I can say to those of my colleages who share with me a special respect and concern for the strength and diversity of our State and local governments that their interests were fully taken into account in the preparation of this measure. Mr. Chairman, I ask that tables identify the States whose practices I have followed be inserted at the end of my statement.

Senator ERVIN. That will be done.

Senator GOLDWATER. Mr. Chairman, there are two remaining features of my amendment that should be discussed. One is the provision which authorizes the Attorney General to institute court actions to enforce compliance with the law. There is no general authority that permits the United States to seek injunctive relief and I wanted to see this power spelled out in the bill. Otherwise, the only way the section could be enforced would be through individual, private lawsuits.

Finally, it is my belief that we should not leave any doubt as to whether there are sanctions in the case of double voting and false registration. Therefore, I have expressly provided that such conduct will be a Federal offense.

Mr. Chairman, up to here I have sought to identify the problem and to describe the ways in which I believe we can solve it. Now it is my purpose to state the grounds on which I think Congress can act in this field.

In doing so, I wish to note that I have also considered the route of a constitutional amendment. Early last year I introduced a joint resolution, on behalf of myself and 32 other Senators, proposing an amendment to the Constitution which would have carried out the same purposes as my present measure. But even though our resolution was joined in by a third of the Senate's membership, we were unable to get any action on it.

Now we are a year closer to the next presidential election. In view of the fact that the time left before that election is fast running out, I have decided to pursue the alternative path of seeking a Federal statute.

By passing a law before the end of this year, we can give the States a full 2-year period during which they can bring their local laws into conformity with the national standards. This opportunity is very important to many States because their legislative chambers meet only in alternate years.

Mr. Chairman, once the policy decision is made to cure the problem by means of a statute, rather than an amendment to the Constitution, I have no difficulty in finding that it is well within the authority of Congress to pass such a statute.

There are at least four distinct grounds for the exercise of congressional authority in this field, and I shall discuss each of them in turn. First, the power of Congress to secure the rights guaranteed by the 14th amendment.

The question here is parallel to the one before the Supreme Court in the recent case of *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). There the Court was faced with deciding whether Congress could prohibit the enforcement of New York's English language literacy test as applied to Puerto Rican residents of that State. The Court was also faced with its decision in *Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959), in which it had rejected a challenge to the English literacy test of North Carolina.

Nevertheless the Court held that Congress could override the New York law. In writing the Court's opinion, Justice Brennan said that the true question was: "Without regard to whether the judiciary would find that the equal protection clause itself nullifies New York's English literacy requirement as so applied could Congress prohibit the enforcement of the State law by legislating under section 5 of the 14th amendment?"

Justice Brennan proceeded by saying: "In answering this question, our task is limited to determining whether such legislation is, as required by section 5, appropriate legislation to enforce the equal protection clause."

The basic test of what constitutes "appropriate legislation," according to the *Morgan* decision, is the same as the one formulated by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheaton 316, 420 (1819), when he defined the powers of Congress under the necessary and proper clause.

In applying this test to legislation passed under section 5, the Court held that three questions must be asked: (1) is the statute designed to enforce the 14th amendment? (2) is it "plainly adapted" to that end? and (3) is it consistent with "the letter and spirit of the Constitution?" (384 U.S. 651.)

Mr. Chairman, I am eliminating any citation here because it will be registered on the papers that the reporter has.

In deciding the answers to these questions, the Court said: "It is enough that we are able to perceive a basis upon which the Congress might predicate a judgment" for acting as it did. (384 U.S. 653.)

Thus the Court upheld the power of Congress to preclude the enforcement of the New York literacy requirements. And so, I believe it would uphold the power of Congress to preclude the enforcement of State voting requirements which fall short of the standards created in my proposal.

It may be granted that the States have broad powers to determine the conditions under which the right of suffrage may be exercised. *Carrington* v. *Rash*, 380 U.S. 89, 91 (1965).

It may also be noted that the Supreme Court has affirmed, without opinion, a district court decision which upheld a 1-year residence requirement Maryland had imposed for voting in presidential elections. *Drueding* v. *Devlin*, 380 U.S. 125 (1965).

But, is this not the same situation that the facts presented in the *Morgan* case? There, too, the issue involved the power of Congress to preclude the enforcement of a State voting requirement. There, too, the Court was faced with an earlier decision that the requirement was permissible.

In *Morgan* one crucial factor was present that changed the whole issue before the Court. That same factor is present here. According to the rule of *Morgan* where the case involves an enactment of Congress designed to enforce the guarantees of the 14th amendment, the question is not whether the judicial branch itself would decide that the State law is prohibited by that amendment. Rather the question is whether or not the congressional measure is appropriate legislation under section 5 of the 14th amendment.

The thrust of the *Morgan* decision is that section 5 is a positive grant of legislative power authorizing Congress to use its discretion in determining what laws are needed to secure the guarantees of the 14th amendment. Under this doctrine, I have no difficulty in believing that the enactment of a uniform residence law is constitutional.

First, there can be no doubt that the measure is intended to enforce the guarantees of the 14th amendment. It is designed to protect the right to vote for citizens who travel or move their households prior to a Presidential election. The legislation clearly is meant to secure for this group of citizens freedom from a discriminatory classification in the imposition of voting qualifications that Congress has found to be unnecessary and unfair.

Second, the proposal is "plainly adapted" to furthering the purposes of the 14th amendment. By passing this law, Congress will effectively enhance the opportunities of millions of Americans to vote for President.

Third, the measure is not "prohibited by, but is consistent with" the Constitution.

It may be argued that because the Constitution creates the electoral vote system of choosing the President, the Federal Government may not prevent a State from requiring that persons who vote for its electors shall be citizens of that State. This is true, of course, and my amendment will allow a State to provide that its voters be bona fide residents.

But this reasoning does not mean that a State can deprive citizens of their right to vote for electors merely because they are so newly arrived in the State that they might have a different outlook than long-time residents. This kind of effort at excluding a part of the population from the electorate because of the way they may vote is precisely the kind of thing the Supreme Court said was unconstitutional in *Carrington* v. *Rash*, 380 U.S. 89, 91 (1965).

It might also be argued that since the States possess authority to impose reasonable voting practices, a Federal statute that interferes

with these local regulations is not consistent with the letter and spirit of the Constitution. However, I believe that the rule of *United States* v. *State of Texas*, 252 Federal Supplement 234 (1966), settles the question.

In this case, a three-judge district court, convened under section 10 of the Voting Rights Act of 1965, sustained the power of Congress to prohibit the use of the poll tax as a prerequisite to voting in State elections.

While the court recognized that the poll tax system in Texas had the function of serving "as a substitute for a registration system," it held that payment of the tax as a precondition to voting must fall because it restricted "one of the fundamental rights included within the concept of liberty." (252 Federal Supplement 250.)

In reaching its decision, the court said it was following the rule announced by the Supreme Court that "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates* v. *City of Little Rock*, 361 U.S. 516, 524 (1959).

Also, the lower court cited the principle of *McLaughlin* v. *State of Florida*, 379 U.S. 184, 196 (1964), that such a State law "will be upheld only if it is necessary and not merely rationally related, to the accomplishment of a permissible State policy."

Since the judgment of the district court was affirmed by the Supreme Court, 384 U.S. 155 (1966), I believe it offers the controlling principle which the courts will apply to other cases involving a conflict between the assertion of a constitutional right and a State law that serves a permissible State objective.

Another recent case that follows the same rule is *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). This case holds particular interest because it concerns the validity of waiting periods imposed by the States to deny welfare assistance to new residents of the States.

The court specifically rejected the argument that a mere showing of a rational relationship between the waiting period and a permissible State purpose is enough to justify the denial of welfare benefits to otherwise eligible applicants.

The court held that "in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." (394 U.S. 634.)

Since the State regulations involved here touch on the fundamental right to vote, and other rights which I shall discuss in a moment, it is my belief that Congress may clearly limit the use of such requirements, in order to protect these rights, unless the State laws are shown to promote a "compelling" State interest.

Senator ERVIN. Would you excuse me a moment, Senator, I have an amendment on the floor and I have to go over there, but I would just like to make some observations on the *Katzenbach* case and some other decisions that were handed down.

First of all I would like to comment on the quotation that has been quoted here because I don't think it fits. It is not within the scope of the Constitution to give the Federal Government power to prescribe qualifications for voting. Nobody ever thought that before the *Morgan*

case. And, as a matter of fact, what was done in the *Morgan* case was absolutely forbidden by four separate sections of the Constitution.

I would have to take the *Morgan* case and apply it here and say that there is no doubt that the Congress can by decree abolish all provisions of the Constitution which give the States any right to function.

I think that the *Morgan* case was a strange decision which held that the fifth section of the 14th amendment, which merely empowers the Congress to enforce the first section by appropriate legislation, vested in the Congress powers to nullify a State law which is in perfect harmony with the equal protection clause of the 14th amendment. And not only that but to establish a Federal instead of State voting qualifications which Congress is forbidden to do by the second section of the first article of the Constitution, the first section of the second article of the Constitution, the 10th amendment and the 17th amendment.

The case holds that Congress can do this even though the State has not violated the clause, but is in harmony with the clause, and the only limitation upon this power is that it must be appropriate to enforce the equal protection clause.

So the best way you have of keeping a State from ever violating the equal protection clause is to take away from the State the power to make laws, the power to interpret laws and the power to enforce laws.

If Justice Brennan's opinion had been the correct interpretation of the Constitution, perhaps you can abolish the States by taking away power to make laws and power to interpret laws and power to execute laws. If a State didn't have those powers, they couldn't violate the equal protection clause. That would certainly enforce it.

Justice Brennan is saying that Congress can legislate against a State which has not violated the equal protection clause and this would reduce the Constitution to absurdity. I have to agree with you, that under the *Morgan* case Congress can pass a law that can prescribe the qualifications for voting for President and it can even pass a law to virtually abolish the States of the Union.

I just wanted to make those observations.

Senator GOLDWATER. I can understand your feelings about the *Morgan* case and I have always felt very strongly about the constitutional judgment about who shall vote and who shall not, but the case that I cited concerning Texas followed the *Morgan* case and whether we like it or not, we have two Supreme Court rulings on this.

Senator ERVIN. Under the *Morgan* case, the Congress can pass uniform laws which supercede State laws and States could not ever violate the equal protection clause.

I hate to interrupt you. It is a very fine statement.

Senator GOLDWATER. I'm always glad to hear your opinion on legal matters, not being a lawyer I have to rely upon——

Senator ERVIN. Well, you have given a very good interpretation of the *Morgan* case. No doubt of it.

Senator BAYH. Will the Senator yield?

Inasmuch as our witness has said that he is not a lawyer, perhaps I should serve as counsel and suggest that you better not expect all lawyers to have the same position as this.

Senator GOLDWATER. I found that out by sitting in this room for 4½ years along with Senator Ervin.

I did want to remind you, Senator, that this applies only to the presidential election. While I am not aware of any decisions on all fours in this field, it does seem to me that the Congress should act to guarantee an American citizen the right to vote for President—I'm not talking about sheriff or the Senate or House or the Governor, I think the States must retain that. At first I tried to get action on a constitutional amendment but that would not move; and after researching this, my legal advisers came up with the suggestion that it could be done through legislation.

Senator ERVIN. I think your legal advisers gave you sound advice, if the *Morgan* case is sound.

Senator GOLDWATER. I don't think we can argue——

Senator ERVIN. To me, section 1 of article 2 of the Constitution says presidential electors shall have the same qualifications as electors of the most numerous body of the State legislature.

Senator GOLDWATER. That is true.

Senator ERVIN. Of course, since that part of the Constitution is declared unconstitutional by Justice Brennan in the *Morgan* case, I guess it won't provide any other issues.

Senator GOLDWATER. Well, if the Congress had acted to correct that judgment, I wouldn't be here making this argument today, but if it still stands and whether I believe in it or not, I want to take advantage of that court decision and try to get all Americans the right to vote for President.

Senator ERVIN. I would like to say that I think you have made a very—you are trying to right what is a very unfortunate and very unjust situation.

Senator GOLDWATER. Thank you.

Senator ERVIN. I'm in full sympathy with the objective of your bill. I still believe, regardless of what Justice Brennan said, the Constitution means what it says in plain English.

Thank you very much. I'm sorry to interrupt you, but I do have to get to the floor.

Senator GOLDWATER. I'm sorry that the Senator has to leave. I know he has an important amendment before the Senate. I would hope that he would read the rest of this because I have——

Senator ERVIN. Certainly. You have a wonderful statement there in support of your proposed bill.

Senator GOLDWATER (continuing). I have some other legal arguments which do not rely upon the *Morgan* case.

And good luck to you over there.

Senator ERVIN. Thank you.

Senator GOLDWATER. Mr. Chairman, as I was saying, since the State regulations involved here touch on the fundamental right to vote, and other rights which I shall discuss in a moment, it is my belief that Congress may clearly limit the use of such requirements, in order to protect these constitutional rights, unless the State laws are shown to promote a "compelling" State interest.

Under this standard, I must conclude that Congress may, consistent with the Constitution, establish the uniform practices that I have suggested. There simply is no compelling reason why a State should condition the right to vote for President on the duration of a

citizen's residence or his actual presence on election day. The mere fact that 40 States have been able to satisfy their administrative needs by providing for only a 15- to 30-day period between the close of their voting rolls and election day demonstrates that the legitimate interests of the States can be met by other means. In similar fashion, the fact that 37 States permit some voters to apply for absentee ballots 7 days before an election and that 40 States allow the marked ballots to be returned as late as election day indicates that more restrictive rules are not necessary.

Mr. Chairman, this completes my analysis of the authority conferred on Congress by section 5 of the 14th amendment. But it does not exhaust the grounds upon which Congress may act. For the interesting thing about this field is that Congress is not limited to action under the 14th amendment.

This leads to my discussion of the second ground upon which Congress can act—its power to secure the rights inherent in national citizenship.

Mr. Chairman, one of the most firmly imbedded concepts on constitutional law is the premise that there are certain fundamental personal rights of citizenship which arise out of the very nature and existence of the Federal Government. Without these basic rights, there would be no National Government and no meaning to U.S. citizenship.

Thus, in the case of *Ward* v. *Maryland*, 12 Wallace 418 (1870), the rights of national citizenship were held to embrace "nearly every civil right for the establishment and protection of which organized government is instituted."

The Supreme Court has consistently interpreted these rights as belonging to U.S. citizenship, as distinguished from citizenship of a State. In *Paul* v. *Virginia*, 8 Wallace 168, 180 (1868), Justice Field declared that the inherent rights secured to citizens of the several States are those which are common to the citizens "by virtue of their being citizens."

And in the *Slaughter-House Cases*, 16 Wallace 36, 79 (1872), the Court remarked that these fundamental rights "are dependent upon citizenship of the United States, and not citizenship of a State."

Perhaps the best exposition of the scope of national citizenship is found in the opinion written by Justice Frankfurter in *United States* v. *Williams*, 341 U.S. 70 (1951). At pages 79 and 80, the learned Justice presents a history of the broad recognition accorded to what he calls the "rights which arise from the relationship of the individual with the Federal Government."

Consequently, the existence of a separate category of implied rights that are based upon the nature and character of the National Government has been confirmed in case after case throughout the history of the Nation.

Furthermore, it is well settled that these rights include the right to vote in Federal elections. *Ex parte Yarbrough*, 110 U.S. 651, 663 (1884), is one of many decisions by the Court in which the right to vote for Federal officers has been held to be a right granted or secured by the Constitution and not one that is dependent upon State law.

It is clear that Congress may act to protect a national right under the necessary and proper clause. As it was said by Chief Justice Waite in *United States* v. *Reese*, 92 U.S. 214, 217 (1875), "Rights and immu-

nities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress in the legitimate exercise of its legislative discretion shall provide."

The doctrine was also defined in *Strauder* v. *West Virginia*, 100 U.S. 303, 310 (1879), where the Court held that:

> A right or an immunity, whether created by the Constitution or only guaranteed by it, even without any express delegation of power, may be protected by Congress.

Mr. Chairman, the third ground upon which I believe Congress may act is its power to protect the freedom of movement by citizens across State lines.

The right dates back to *Crandall* v. *Nevada*, 6 Wallace 35, 47 (1867), where the Court first held that "the right of passing through a State by a citizen of the United States is one guaranteed to him by the Constitution."

All decisions of the Supreme Court which are on point agree that the right exists. In delivering the opinion of the Court in *United States* v. *Guest*, 383 U.S. 745, 757 (1966), Justice Stewart wrote that the freedom to travel throughout the United States "occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."

And in *Shapiro* v. *Thompson*, cited above, the Court declared that it "long ago recognized that the nature of our Federal union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement."

The connection between the enjoyment of this right and the enactment of a uniform law on voting in presidential elections is immediately apparent when one looks at the data available for the 1968 election. According to the Census Bureau almost 4 million citizens of voting age moved from one State to another in 1968. An additional 3 million citizens were engaged in visits and travel across State borders at the time of the 1968 election.

It seems entirely legitimate for Congress to decide upon these facts that the lack of uniformity among residence requirements and absentee balloting imposes a substantial burden on the free movement in interstate commerce of millions of Americans who will be disqualified from voting in presidential elections solely because they move or travel during a year when such elections are held. Congress might well conclude that, by framing uniform voting practices, it can effectively protect the right of these citizens to travel interstate without sacrificing the right to vote for their President.

Mr. Chairman, the fourth basis of the power of Congress to adopt legislation in this field is its authority to enforce the privileges and immunities guaranteed to citizens of all the States.

Here I refer to the basic concept underlying the entire privileges and immunities clause which, in the words of the Supreme Court, is "to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul* v. *Virginia*, 8 Wallace 168, 180 (1868).

The doctrine was also followed by the Court in *Ward* v. *Maryland*, 12 Wallace 418, 431 (1870), where it said that the supreme law of the land "requires equality of burden."

Applying this principle to the facts at hand, I believe it is reasonable for Congress to determine that the hodgepodge of State and local requirements applicable to presidential elections creates exactly that kind of unequal treatment among citizens that the privileges and immunities clause was designed to prevent. I further believe that, in order to enable the citizens of one State to better have the same opportunity to choose the President that is enjoyed by citizens of most States, Congress may properly act under the necessary and proper clause to set uniform voting standards for presidential elections.

Mr. Chairman, this completes my analysis of the constitutional questions involved. In closing, I would like to add that a completely independent authority agrees with me that Congress may legislate in this field.

In December I had requested the American Law Division of the Library of Congress to undertake a study of these same questions. When their paper came back I was already well into the preparation of my statement. But upon reading the study, I was delighted to learn that the Library, working through a different route of analysis, had come to the same final conclusion which I had.

Mr. Chairman, their paper offers an excellent discussion of the conflicting considerations involved, and I think it would make an important contribution to the subcommittee's record. For this reason, I request that the memorandum written by Robert L. Tienken, legislative attorney of the American Law Division, be included as a part of the printed hearings.

Finally, Mr. Chairman, I request that the text of my amendment, and the names of the 28 Senators who have joined with me in offering the amendment, be printed in the hearings record.

Mr. Chairman, this concludes my statement.

(The appendix of tables, the list of Senators, and Mr. Tienken's letter above referred to follow:)

I. Registration Closing Dates for Voting for President and Vice President

1. SUMMARY

Forty States keep their voting rolls open for registration until at least the thirtieth day preceding a Presidential election.

Thirty-one States have special registration or application close out dates which apply only to new residents. Eighteen of these States permit a voter to apply for a special Presidential ballot as late as 15 days before the election.

Thirty-six States allow a voter to register at least up to 30 days preceding the election under their regular laws.

2.—TABLE SHOWING NUMBER OF DAYS PRECEDING ELECTION BY WHICH VOTER MUST REGISTER OR APPLY TO VOTE

	Special rules for new residents	Regular rules
Alabama		10 days.
Alaska	4 days	Not specified.
Arizona	do	43 days.
Arkansas		20 days.
California	54 days	53 days.
Colorado	3 days	25 days.
Connecticut	1 day	28 days.
Delaware	16 days	16 days.
District of Columbia		45 days.
Florida	30 days	30 days.
Georgia	14 days	50 days.
Hawaii	5 days	20 days.
Idaho	10 days	3 days.
Illinois	30 days	28 days.
Indiana		29 days.
Iowa		10 days.
Kansas	1 day	10 to 20 days.
Kentucky		59 days.
Louisiana	60 days	30 days.
Maine	30 days	0 to 10 days.
Maryland	Election day	28 days.
Massachusetts	31 days	Do.
Michigan	3 days	30 days.
Minnesota	59 days	20 days.
Mississippi		4 months.
Missouri	No closing date specified.	24 to 28 days.
Montana		40 days.
Nebraska	2 days	10 days.
Nevada		38 days.
New Hampshire	30 days or less	5 to 10 days.
New Jersey	40 days	40 days.
New Mexico		30 days.
New York	25 days	23 days.
North Carolina	3 days	21 to 24 days.
North Dakota	10 days	Registration not required.
Ohio	40 days	40 days.
Oklahoma	15 days	10 days.
Oregon	No closing date specified.	30 days.
Pennsylvania		50 days.
Rhode Island		60 days.
South Carolina		30 days.
South Dakota		20 days.
Tennessee		45 days.
Texas	30 to 45 days	9 months 3 days
Utah		10 days.
Vermont		2 days.
Virginia		30 days
Washington	1 day	Do.
West Virginia		Do.
Wisconsin	1 day	12 to 19 days.
Wyoming		15 days.

Source: Original State election laws in case of special provisions applicable to new residents, as compiled by American Law Division, Library of Congress, Jan. 21, 1970. Digest of State election laws compiled by Legislative Reference Service, Library of Congress, June 5, 1968, in case of regular requirements of State law (A-243).

II. States Which Allow Former Residents to Vote in Presidential Elections

Ten States permit recent, former residents to vote for President and Vice President: Alaska, Arizona, Connecticut, Michigan, New Jersey, Tennessee, Texas, Vermont, Wisconsin, and Wyoming.

In addition, the New York State Constitution (Article 2, section 9) authorizes the State legislature to allow former residents of that State to vote for President and Vice President.

Source: Alaska Statutes 1962, sec. 15.05.020(7); Arizona Revised Statutes Annotated 1956, section 16-171; Connecticut General Statutes Annotated 1960, section 9-158; Michigan Compiled Laws Annotated 1967, section 168.758a(1)(b); New Jersey Statutes Annotated 1952, section 19:58-3; Tennessee Code Annotated 1955, section 2-403; Civil Statutes of Texas Annotated (Vernon's 1968), Article 5.05b; Vermont Statutes Annotated 1958, title 17, section 67; Wisconsin Statutes Annotated (West's 1957), section 6.18; and Wyoming Statutes Annotated 1957, section 22-118.3(k)6.

III. State Requirements on Absentee Balloting

All States but three permit absentee voting by civilians generally. Alabama, Mississippi, and South Carolina allow only limited categories of civilians to vote absentee.

All States permit absentee balloting by servicemen.

The following 40 States[1] expressly permit absentee ballots of certain categories of their voters to be returned as late as the day of the election or even later:

Alabama	District of Columbia	Maine
Alaska	Georgia	Maryland
Arizona	Idaho	Massachusetts
Arkansas	Illinois	Michigan
Colorado	Indiana	Minnesota
Delaware	Kentucky	Mississippi

[1] This list includes only those States in which the statutory laws clearly satisfy this test. There may be additional States in which similar opportunities for return of absentee ballots are granted pursuant to rules or regulations issued under laws that are otherwise silent on this matter.

Missouri	Ohio	Utah
Nebraska	Oregon	Vermont
Nevada	Pennsylvania	Virginia
New Hampshire	Rhode Island	Washington
New Jersey	South Carolina	West Virginia
New York	South Dakota	Wisconsin
North Carolina	Tennessee	
North Dakota	Texas	

Source: Legislative Reference Service, Library of Congress (1) Digest of major provisions of the laws of the States relative to absentee voting, dated September 24, 1969 (69-226A), and (2) Summary of Election Laws of the States, dated June 5, 1968 (A 2431).

The following 37 States[2] expressly permit certain categories of their voters to make application for absentee ballots up to seven days or less before an election:

Alabama	Kansas	Oklahoma
Alaska	Louisiana	Oregon
Arizona	Massachusetts	Pennsylvania
Arkansas	Michigan	Tennessee
California	Minnesota	Texas
Colorado	Mississippi	Utah
Delaware	Montana	Vermont
Florida	Nebraska	Virginia
Hawaii	Nevada	Washington
Idaho	New Mexico	West Virginia
Illinois	New York	Wisconsin
Indiana	North Carolina	
Iowa	Ohio	

IV. State Requirements on Absentee Registration

1. Twenty-three States permit civilian voters to register absentee if they are away from home. One State, North Dakota, does not require civilian voters to register at all.

Twenty States will allow civilians generally to register absentee: Alaska, Arizona, California, Hawaii, Idaho, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Mexico, New York, Oregon, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming.

Two States, Florida and Georgia, grant the privilege of absentee registration to Federal employees who are outside the United States.

One State, Colorado, will permit voters to register members of their families who are away from home.

2. Thirty-eight States permit servicemen to register absentee: Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming.

Thirteen of these States provide that a voter may apply for absentee registration at the same time he applies for an absentee ballot: California, Colorado, Connecticut, Delaware, Florida, Indiana, Massachusetts, Nevada, New Hampshire, New Mexico, New York, North Carolina, and South Dakota.

Nine of the thirty-eight States do not require registration by servicemen in advance of voting. These voters may register at the same time as they use their absentee ballot merely by completing an affidavit included with the ballot: Idaho, Iowa, Maryland, Nebraska, Oregon, Utah, Vermont, Washington, and Wyoming.

Eleven States do not require servicemen to register at all: Arkansas, Illinois, Kansas, Missouri, New Jersey, Ohio, Oklahoma, Rhode Island, Texas, Virginia, and Wisconsin.

Source: Legislative Reference Service, American Law Division, report dated September 24, 1969, as amended (69-226A).

---

[2] This list includes only those States in which the statutory laws clearly permit certain voters to apply for absentee ballots within 7 days or less before an election. There may be additional States in which similar opportunities for absentee voting are granted pursuant to rules or regulations issued under laws that are otherwise silent on this matter.

[H.R. 4249, 91st Cong., second sess.]

AMENDMENT Intended to be proposed by Mr. Goldwater (for himself, Mr. Baker, Mr. Bennett, Mr. Bible, Mr. Brooke, Mr. Case, Mr. Cranston, Mr. Curtis, Mr. Dole, Mr. Dominick, Mr. Fannin, Mr. Fong, Mr. Griffin, Mr. Hatfield, Mr. Hollings, Mr. Metcalf, Mr. Moss, Mr. Murphy, Mr. Packwood, Mr. Pearson, Mr. Pell, Mr. Percy, Mr. Randolph, Mr. Scott, Mr. Smith, Mr. Stevens, Mr. Tower, Mr. Williams of Delaware, and Mr. Yarborough) to H.R. 4249, an Act to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, viz:

On page 2, beginning at line 5, strike out all through line 10, on page 3, and insert in lieu thereof the following:

(b)(1) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in Presidential elections—

(A) denies or abridges the inherent Constitutional right of citizens to vote for their President and Vice President;

(B) denies or abridges the inherent Constitutional right of citizens to enjoy their free movement across State lines;

(C) denies or abridges the privileges and immunities guaranteed to the citizens of each State under Article IV, section 2, clause 1 of the Constitution;

(D) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(E) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the Fourteenth Amendment; and

(F) does not bear a reasonable relationship to any compelling State interest in the conduct of Presidential elections.

(2) Upon the basis of these findings, Congress declares that in order to secure and protect the above stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the Fourteenth Amendment, it is necessary (A) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (B) to establish nation-wide, uniform standards relative to absentee registration and absentee balloting in Presidential elections.

(3) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(4) For the purposes of this subsection, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any Presidential election, for registration or qualification to vote for the choice of electors for President and Vice President, or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(5) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (A) in person in the State or political

subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (B) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(6) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(7) Nothing in this subsection shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(8) The term "State" as used in this subsection includes each of the several States and the District of Columbia.

(9) In the exercise of the powers of the Congress under the Necessary and Proper Clause of the Constitution and under section 5 of the Fourteenth Amendment, the Attorney General is authorized and directed to institute in the name of the United States such actions, against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this subsection.

(10) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(11) The provisions of section 11(c) shall apply to false registration, and other fraudulent acts and conspiracies, committed under this subsection.

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., January 12, 1970.

To: Honorable Barry M. Goldwater.
From: American Law Division.
Subject: Constitutionality of Section 2(c), of H.R. 4249, 91st Congress; Extension of Voting Rights Act of 1965 Statutory Uniform Residency Requirement for Voting For President and Vice President.

Reference is made to your request for an analysis of the constitutionality of Section 2(c) of H.R. 4249, 91st Congress (Extension of Voting Rights Act of 1965.)

Section 2(c), as passed by the House of Representatives on December 11, 1969, would establish a uniform residency requirement within States and the District of Columbia for voting for electors of the President and Vice President.

Specifically, the provision reads:

> (1) No citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in any such election for failure to comply with a residence or registration requirement if he has resided in that State or political subdivision since the 1st day of September next preceding the election and has complied with the requirements of registration to the extent that they provide for registration after that date.
>
> "'(2) If such citizen has begun residence in a State or political subdivision after the 1st day of September next preceding an election for President and Vice President of the United States and does not satisfy the residence requirements of that State or political subdivision, he shall be allowed to vote in such election: (A) in person in the State or political subdivision in which he resided on the last day of August of that year if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision; or (B) by absentee ballot in the State or political subdivision in which he resided on the last day of August of that year if he satisfies, but for his nonresident status and the reasons for his

absence, the requirements for absentee voting in that State or political subdivision.

"'(3) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in such election because of any requirement of registration that does not include a provision for absentee registration.

"'(4) "State" as used in this subsection includes the District of Columbia.'

In examining the question of whether Congress possesses the authority to enact such legislation, consideration should first be given to the nature of the right to vote as a subject in the Constitution. The right to vote is not a privilege or immunity of citizens of the United States (*Minor* v. *Happersett*, 88 U.S. 162 (1874)), nor is the privilege to vote in any state given by the Constitution (*Breedlove* v. *Suttles*, 302 U.S. 277 (1937)). Instead, the privilege of voting in a state is within the jurisdiction of the state itself, "to be exercised as the State may direct, and upon such terms as to it may seem proper, provided of course, no discrimination is made between individuals in violation of the Federal Constitution" (*Pope* v. *Williams*, 193 U.S. 621 (1904)).

Actually, the Constitution is not as barren as respects the right to vote as the statement from *Pope* v. *Williams* supra, would imply. The Constitution does establish a right to vote for United States Representatives (Article I, § 2) and United States Senators (Amendment Seventeen), and, when granted by the States, for Electors of the President and Vice President (Article II, § 1). Such right, however, is subject to such requirements as may be set forth by the States so long as the requirements do not violate the Constitution (*Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), nor contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed (*Lassiter* v. *Northampton Board of Elections*, 360 U.S. 45 (1959)).

Among the prerequisites which a state may adopt as a qualification for voting is that of residence within its jurisdiction (*Lassiter* v. *Northampton Elections Board*, supra; *Carrington* v. *Rash*, 380 U.S 89 (1965), so long as no discrimination is made between individuals in this respect, in violation of the equal protection of laws clause of Amendment Fourteen, section 1, of the federal constitution (*Lassiter* v. *Northampton Elections Board*, supra; *Carrington* v. *Rash*, supra.)

As noted, the authority to establish qualifications to vote for presidential electors has been placed by the Constitution in state legislatures (*McPherson* v. *Blacker*, 146 U.S. 1, 34–35 (1892); Article II, § 7, cl 1, "Each state shall appoint, in such manner as the legislature thereof may direct, a number of Electors . . ."). Nevertheless, the power of each state to establish qualifications for voters for presidential electors is limited by the various amendments to the Constitution such as the Fourteenth, Fifteenth, Nineteenth, etc., whenever presidential electors are, by state laws, elected by popular vote (see, for instance, *Drueding* v. *Devlin*, (D.C. Md) F. Supp. 721 (1964), aff'd 380 U.S. 125; James C. Kirby, Jr., "Limitations On The Powers Of Legislature Over Presidential Elections", 27 Law And Contemporary Problems, 495, 496, Summer, (1962)).

The federal courts have considered the question of the validity of state residency requirement for voting under the Fourteenth Amendment's equal protection of laws clause on several occasions.

In *Pope* v. *Williams*, 193 U.S. 621 (1904), the Supreme Court denied a challenge based on the equal protection of laws clause, against a Maryland statute requiring persons moving into the State to make declaration of their intent to become citizens and residents of the State a year before they secure the right to be registered as voters, by registering their names with the clerk of the proper county. Holding that while the right to vote for Members of Congress is not derived exclusively from the law of the state in which they are chosen but has its foundation in the Constitution and laws of the United States, the voter must be one entitled to vote under the state statute, and the statute in this situation did not create an unlawful discrimination against new residents.

In *Carrington* v. *Rash*, 380 U.S. (1964), the Supreme Court held invalid under the equal protection clause a Texas constitutional provision which prohibited any member of the armed forces who moved into Texas during his tour of duty from voting, notwithstanding the fact that he had fulfilled all other requisites for voting. The avowed purpose of the Texas law was to enable small communities near military installations to avoid a deluge of soldier votes on local issues.

Declaring that a state has the authority to "impose reasonable residence restrictions on the availability of the ballot", (p. 91), the Court went on to state

that the Texas provision was unique in that it prohibited a serviceman from acquiring a voting residence in the State so long as he remained in service. This, the Court determined, was not a reasonable classification within the requirements of the equal protection clause. The Texas provision "fenced out" from the franchise a section of the population because of the way they might vote, i.e., the fact that servicemen with bona fide residence intentions, if allowed to vote in Texas could "overwhelm" local elections. This, the Court held, was "constitutionally impermissible" (p. 94). It stated, "the exercise of rights so vital to the maintenance of democratic institutions cannot constitutionally be obliterated because of fear of the political views of a particular group of bona fide residents", (p. 94).

The Court also repudiated the argument of Texas that it was in many instances difficult to tell whether persons moving to Texas while they were in the service had the genuine intent to remain which would establish residency. Texas argued that the administrative convenience of avoiding difficult factual determinations justified a blanket exclusion of all those in the doubtful category. In rejecting this "conclusive presumption" approach, the Court noted that, "States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State (p. 96).

Subsequently, although not consistently, the Court began to apply a standard of "strict review" in cases where the right to vote had been denied by outright disfranchisement, instead of utilizing a test that the state law need bear only some rational relationship to a legitimate end in order to be acceptable under the equal protection clause.

In *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969), the Court invalidated a New York statute limiting the vote in certain school district elections to owners or lessees of taxable property, their spouses, and parents or guardians of children attending district schools, on the ground that the selection of voters was not made with sufficient precision to meet the strict standards of review which the Court concluded should apply when the vote is denied. The statute was found to extend the right to vote in such elections to "many persons who have, at best, a remote and indirect interest" in the outcome of the elections, while excluding "others who have a distinct and direct interest".

At issue was differentiation among citizens of the state as regards the right to vote, all of whom possessed the requisite qualifications of age and residency. The Court failed to find that the exclusions were necessary to promote a compelling state interest, since the statute failed to differentiate among eligible voters with sufficient precision to justify denying the franchise to the appellant. If a state is to classify voters it must be so tailored that the exclusion of certain voters is necessary to achieve the articulated state goal.

In *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969), the Court invalidated a Louisiana statute restricting the franchise to those who owned taxable property to vote on revenue bonds for public utilities, on the same grounds as in *Kramer*, supra. The challenged statute granted the right to vote in a limited purpose election to some otherwise qualified voters and denied it to others who were as substantially affected and directly interested in the matter voted upon as were those who were permitted to vote. All would be affected by the increase in utility rates in order to pay off the revenue bonds.

The *Kramer* and *Cipriano* decisions although resting upon want of precision in differentiating groups of otherwise qualified voters, also touched upon questioning a state's purpose in limiting the electorate on the basis of "interest". Raised for later application was the concept that a state, in keeping those assertedly not "interested" from voting, had imposed a standard which was inherently discriminatory or impossible of fair implementation. How much more discriminatory would be a statute such as a residency requirement which discriminated among voters with the same degree of interest, i.e., that prevented new residents from voting for electors of President and Vice President? However, since voters elect presidential Electors in the respective states it can be argued that local knowledge is a prerequisite for making this choice.

Two other cases respecting residency requirements for voting have been considered by the Supreme Court. Both involved challenges to state residency requirements as a violation of the equal protection clause as respects new residents voting in a presidential election. The first case sustained Maryland's then one year residency requirement for voting in presidential elections holding that it was not so unreasonable as to amount to an irrational or unreasonable discrimination in violation of the equal protection of laws clause of the Fourteenth

Amendment (*Drueding* v. *Devlin*, (D.C. Md.) 234 F. Supp. 721 (1964), affirmed 380 U.S. 125). The decision was affirmed by the Supreme Court without opinion. The district court, noting that the effect of the requirement might result in some inequality as respects newly arrived residents, nevertheless held it to be not so unreasonable as to amount to discrimination prohibited by the equal protection clause. The standard applied by the district court to the residency requirement was that applied to ordinary state regulation; that is, restrictions need bear only some rational relationship to a legitimate end (pp. 724–725). (Maryland subsequently reduced its residency requirements for voting in presidential elections by new residents to forty-five days (2nd Ann. Code. 1967 Replacement Voume, 1968 Supp., Art. 33, § 28-1)).

The second case arose in Colorado in 1968, when the residency requirement of not less than six months in order to vote for President and Vice President, was challenged. Relying on the *Drueding* decision and the per curiam affirmance thereof by the Supreme Court, the three judge federal district court in Colorado applied the same standard as in *Drueding* and sustained the requirement as not being so unreasonable as to contravene the equal protection of laws clause (*Hall* v. *Beals*, (D.C. Colo.) 292 F. Supp. 610 (1968. The decision was rendered on November 29, 1968, after the election, and was appealed to the Supreme Court. While the appeal was pending, Colorado reduced its residency requirement for voting in presidential elections to two months prior to the election (Stats. (*Drueding* v. *Devlin*, supra.).

On November 24, 1969, in a per curiam opinion in which six Justices joined, the Supreme Court held the case to be moot and ordered the judgment of the district court to be vacated, (*Hall* v. *Beals*, 38 United States Law Week, p. 4066. (November 25, 1969)). The mootness decision was based upon the fact that it was impossible to grant the appellants the relief they sought in the district court: they had by then satisfied the six months requirement of which they complained; and, the Colorado Legislature had changed and reduced the requirement to two months.

Thus, although residency requirements have been struck down in some situations as violative of the equal protection of laws clause, in the one instance in which the Supreme Court had an opportunity to pass upon the validity of a residency law as respects voting in presidential elections, it affirmed without opinion a three judge federal district court decision sustaining a one year residency requirement as being not unreasonable for voting in a presidential election. (*Drueding* v. *Devlin*, supra.).

With this background of judicial scrutiny of states residency requirements for voting, may Congress legislate and provide by statute a uniform residency requirement for voting in presidential elections? The purpose of the statute such as section 2(c), would be to prevent discrimination against new residents who are prohibited by state residency laws from voting in presidential elections.

The sources of authority available to Congress to enact legislation in the area of elections and voting rights are several, but all of them except one have yet to be construed broadly enough by the Supreme Court to serve as a basis for Congress to enact a uniform residency act for presidential elections.

Under Article I, section 4 of the Constitution Congress is granted authority to regulate the manner of holding elections for Members of the Senate and the House. The United States Supreme Court has stated, in dicta, that the power of the states to legislate respecting elections including the setting of voter qualifications as provided in Article I, section 2, and Amendment Seventeen of the Constitution exists only to the extent that Congress has not restricted state action by the exercise of its powers under Article I, section 4 (see, *U.S.* v. *Classic*, 313 U.S. 299 (1940); *Lassiter* v. *Northampton Elections Board*, 360 U.S. 45 (1959); and, a note, "Federal Elections—The Disfranchising Residence Requirement", 1962 University of Illinois Law Forum, Spring, p. 101). However, the Court has never explicitly held, in a case directed to the point, that the powers of Congress under Article I, section 4 do include authority to regulate voting qualifications. In any event, authority under Article I, section 4 only extends to the election of Senators and Representatives and not to presidential elections. It is unavailable for this purpose.

It is arguable that authority could flow to Congress from its power, under Article IV, section 4, of the Constitution to guarantee every state a republican form of government (see, "The Guarantee Clause of Article IV, Section 4, A Study In Constitutional Desuetude", Arthur E. Bonfield, 46 Minnesota Law Review, 513, 566–67, January, 1962), but the clause has not been held relevant to governmental units other than state governments (see, *Minor* v. *Happersel*, 88

U.S. 162 (1875)), and the courts have not decreed that it related to voting qualifications.

The power of Congress, under section 5 of the Fourteenth Amendment to enact appropriate legislation to enforce the clause in section 1 of the Amendment forbidding states to abridge the privileges and immunities of citizens of the United States, has not been extended by the courts to include voting qualifications. By implication, Congress has been deemed to possess authority, under section 2 of Amendment Fifteen of the Constitution, to enact appropriate legislation to enforce that Amendment's proscription against racial discrimination in voting (see, *Smith* v. *Allwright*, 321 U.S. 649 (1944)), and thus protect a privilege and immunity of a citizen of the United States, but the courts have not extended such authority generally as respects the privileges and immunities clause in Amendment Fourteen (see, *Pope* v. *Williams*, 193 U.S. 632 (1904); *Minor* v. *Happersett*, 88 U.S. 171 (1874)).

A further possible source of Congressional authority is the inherent power to preserve the departments and institutions of the federal government from impairment or destruction from corruption and fraud in elections (see, *Burrough and Cannon* v. *United States*, 290 U.S. 534 (1934), in which the authority of Congress to enact those portions of the Federal Corrupt Practices Act (2 U.S.C. § 241 et seq.) relating to presidential elections, was sustained). Possessing such authority, Congress may also select the choice of means to that end (supra, p. 547). While Congress thus possesses the authority to preserve the purity of presidential elections as an aspect of its inherent power to preserve the Government, such authority has thus far not been held to include the setting of qualifications of voters in presidential elections or, in any federal election for that matter.

Another projected source for such authority is contained in H.J. Res. 681, 91st Congress, passed by the House of Representatives on September 18, 1968. This constitutional amendment which provides for direct popular election of the President and Vice President contains in section 2 thereof authorization to Congress to "establish uniform residence qualifications" for voting in presidential elections. The House Judiciary Committee, in its report on the proposed amendment (H. Rept. 91–253) did not necessarily deny that Congress possessed such authority at the present time. It stated, p. 13, "This does not modify or limit any existing constitutional powers of the Congress to legislate on the subject of voting qualifications".

Consequently, while several sources have been mentioned as possible constitutional bases empowering Congress to enact a uniform residency statute for voting in presidential elections they all have flaws which prevent complete reliance upon them or they have only been passed by one House (i.e., H.J. Res. 681, 91st Congress).

There is, however, one further source which, by implication, the House Judiciary Committee recognized in its report on H.J. Res. 681 (see, supra). This is the power granted to Congress in Section 5 of Amendment Fourteen, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article", which enables it to enact legislation prohibiting the denial of equal protection of the laws by states to persons within their jurisdictions. The rationale supporting the existence and exercise of such power is that uniform residency requirements for voting in presidential elections can be established by Congress for the reason that existing state requirements unduly discriminate against new residents who are members of a general class of citizens who possess the right to vote (except for state residency requirements) for our two officials elected nationwide and in the election for which the possession of special knowledge concerning local issues and candidates is immaterial.

Until recently, congressional authority under section 5 of Amendment Fourteen had been limited by the philosophy which dominated the 1883 decision by the Supreme Court, the *Civil Rights Cases*, 109 U.S. 3. That philosophy limited congressional authority to legislate in areas of section 1 of Amendment Fourteen where corrective legislation might be necessary for counteracting state laws on a subject which the states are prohibited by the equal protection clause from making or enforcing. In addition, the specifications of such areas forbidden by the equal protection clause had become a function of the courts alone (see, "Fourteenth Amendment Enforcement and Congressional Power to Abolish the States", George R. Poelmer, 55 California Law Review, 293, April, 1967). Congress was not deemed to possess authority, under section 5 of Amendment Fourteen to adopt general legislation upon the rights of the citizen (see, *Civil Rights Cases*, supra, pp. 13-14). For these, among other reasons, the Congress enacted

little positive legislation in the civil rights field after 1883 until the late nineteen fifties.

The civil rights legislation enacted in 1957 and in subsequent years has given rise to numerous suits and decisions by the courts, but the courts themselves, as well, have continued to exercise their traditional independent role in interpreting Amendment Fourteen in situations exclusive of federal legislation (see, for instance, the *Kramer* and *Cipriano*, decisions, supra).

In 1966, the Supreme Court rendered two opinions concerning the Voting Rights Act of 1965 (42 U.S.C. §§ 1973, 1973c-p) which fundamentally changed the concept of the powers of Congress pursuant to section 2 of Amendment Fifteen and section 5 of Amendment Fourteen from a negative, corrective power to a positive, rights-implementing one. The decisions were, *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), and, *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

South Carolina v. *Katzenbach*, supra, involved the constitutionality of the Voting Rights Act of 1965 (42 U.S.C. §§ 1973, 1973c-p). In an original suit in the Supreme Court, South Carolina, joined by five other states as amici curiae (Alabama, Georgia, Louisiana, Mississippi, and Virginia) challenged the power of Congress to suspend the use of a state literacy test for voting in state and political subdivision elections, where the text was fair on its face and there had been no prior judicial finding of discrimination. At issue was Section 2 of Amendment 15, the so-called, "enforcement" provision similar to Section 5 of Amendment 14.

South Carolina argued that the power there conferred was confined to preventing or redressing illegal conduct, the *Civil Rights Cases* approach. The Court, however, adopted a broader view. After reviewing the history of the legislation, the Court stated that the power of Congress in Section 2 was far broader than redressing illegal state conduct. "As against the reserved powers of the states, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting" (supra, p. 324). It stated further, "By adding (Section 2), the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in Section 1. 'It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the (Civil War) amendments fully effective'. *Ex parte Virginia*, 100 U.S. 339, 345. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting" (supra, pp. 325-26).

Continuing, the Court added: "The basic test to be applied in a case involving Section 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the states. Chief Justice Marshall laid down the classic formulation 50 years before the Fifteenth Amendment was ratified:

> 'Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.' *McCulloch* v. *Maryland*, 4 Wheat. 316, 421.

"The Court has subsequently echoed his language in describing each of the Civil War Amendments:

> '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'. Ex parte Virginia, 100 U.S. at 345-346." (supra, pp. 326-327).

In short, the Court declared that the enforcement power of Congress under Section 2 of the Fifteenth Amendment (and inferentially under Section 5 of the Fourteenth Amendment) was as broad as the power derived from Article I, Section 8, clause 18, the "necessary and proper" clause and the authority enunciated in *McCulloch* v. *Maryland*, supra. The implication was that "under the parallel enforcement provision of the Fourteenth Amendment Congress may regulate activities which do not themselves violate the prohibitions of that amendment, where the regulation is a rational means of effectuating one of its prohibitions" (see, "The Supreme Court 1965 Term", Archibald Cox, 80 Harvard Law Review 102, November, 1966). Rendered nugatory by the decision was that aspect of the *Civil Rights Cases*, supra, that the power of Congress under the Civil War Amendment was limited to preventing or redressing illegal conduct arising from state action.

In *Katzenbach* v. *Morgan*, supra, the Court expanded elements in *South Carolina* v. *Katzenbach*, supra, and, in effect, diminished further that aspect of the *Civil Rights Cases* supra, in which it reserved for itself the power to specify the kinds of activities which were forbidden by the equal protection clause. The case concerned Section 4(e) of the Voting Rights Act of 1965 (79 Stat. 439, 42 USC § 1973b(e)) which provided that no person who has successfully completed the sixth grade in an American flag school (such as in Puerto Rico where the instruction is in Spanish) shall be denied the right to vote because of inability to read or write English. The case involved the validity of the provision in terms of New York State's English literacy test under which thousands of Spanish-speaking citizens who had moved to New York from Puerto Rico were barred from voting in that State. The Court upheld the section as legislation appropriate for the enforcement of the equal protection clause.

The Court's opinion concerned the question of determining whether such legislation is, as required by Section 5 of Amendment 14, appropriate legislation to enforce the equal protection clause.

The opinion has two parts. The first deals with the question of deferring to congressional judgment in reviewing legislation enacted under Section 5. The second deals with the constitutionality of that judgment as reflected in the said Section 4(e) of the 1965 Act.

In respect to the first question, the Court declared that the draftsmen of Section 5 of Amendment 14 intended to grant to Congress the same broad powers expressed in Article I, Section 8, clause 18, the "necessary and proper" clause as were enunciated in *McCulloch* v. *Maryland*. (supra, p. 650).

Viewing Section 4(e) of the 1965 Act in broad terms the Court stated that it could be construed "as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administraton of governmental services, such as public schools, public housing and law enforcements" (supra, p. 652).

Stating that, "It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literary requirement", (supra, p. 653), the Court then spelled out its deferment to congressional judgment as had been touched upon in *South Carolina* v. *Katzenbach*, supra: "It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support Section 4(e) in the application in question in this case. Any contrary conclusion would require us to be blind to the realities familiar to the legislators". (supra, p. 653).

In stating that the authority of Congress under Section 5 of Amendment 14 was similar to its authority under the "necessary and proper" clause, the Court held that congressional powers had been increased by section 5 and that Congress could impose affirmative obligations upon states in instances in which the Court had not previously held that Amendment imposed them. If the requirement of affirmative action which Congress, in its judgment, uses to ensure uniform application of equal protection is plainly adopted to the standard set forth in *McCulloch* v. *Maryland*, see supra, and is not expressly prohibited by the Constitution, the requirement should receive judicial approval. In other words, regardless of whether the New York requirement was a denial of equal protection as declared by the judiciary. Congress can make such a determination and enact remedial legislation based upon its decision, subject only to constitutional limitations. Such legislation may require affirmative action to be taken by a state or states toward the goal of equal protection such as making absentee voting procedures available.

The second part of the decision supported the Court's description of the power of determination by Congress. It stated: "(We) perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade

education in Puerto Rican schools . . . constituted an invidious discrimination in violation of the equal protection clause". (supra, p. 656).

Accepting the conclusion that the provision was aimed at the elimination of an invidious discrimination, the Court declared that a statute would be valid if the Court is able to perceive a basis for the judgment of Congress that the state activity in question constitutes an invidious discrimination. The result is to leave to Congress the power under Section 5 of Amendment 14 to make reasonable judgments in the definition of state activities proscribed by the equal protection clause (see, 55 California Law Review, p. 309). The decision constitutes a significant expansion of congressional enforcement powers, even to the extent pointed out by Justice Harlan in dissent that Congress can invalidate state legislation on the ground that it denies equal protection where the Court might uphold or even has upheld the constitutionality of the same state statute (supra, p. 670).

The prior and subsequent decisions of the Supreme Court noted earlier in this report have disclosed various voting residence situations in which discrimination was found to exist, and two situations (*Pope* v. *Williams* supra, and *Drueding* v. *Devlin*, supra) where no violation of the equal protection clause was cited. *Pope* v. *Williams*, supra, would have no effect on congressional legislation such as section 2(c) of H.R. 4249 because it dealt solely with residency requirements to vote for Congressmen. The Supreme Court's affirmance in *Drueding* v. *Devlin*, supra, would not prevent congressional action under the thesis of *Katzenbach* v. *Morgan*, supra, since by that determination Congress may legislate pursuant to section 5 of Amendment Fourteen even when the courts have held a state law not violative of the equal protection clause as well as when the courts have taken no position at all on the statute.

The decisions in *Carrington* v. *Rash*, supra, *Kramer* v. *Union Free School District*, supra, and *Cipriano* v. *City of Houma*, supra, which prohibit a state from "fencing out", by residency requirements otherwise qualified persons from voting locally, raise questions about the validity of keeping "interested" persons from voting, and prohibit a state from denying the right to vote because of extra administrative burdens that might be imposed thereby on a state, all contain principles that support the contention that state laws which discriminate against newly arrived residents by prohibiting them from voting in presidential elections could well be in violation of the equal protection of laws clause. They are not essential to the constitutionality of Section 2(c) of H.R. 4249 but they would add support to a congressional finding that section 2(c) implemented the right to vote.

In summary, decisions by the Supreme Court support the conception that Congress may, pursuant to its authority under Section 5 of Amendment Fourteen, legislate to enable new residents of states with bona fide intentions of becoming permanent residents thereof, to vote, not in elections involving local matters but in the election of the President and Vice President. Assuming that all voters constitute one group or class to vote for the President and Vice President, Congress may legislate to prevent states, through the imposition of undue residency requirements, from discriminating against otherwise qualified persons within that class, i.e., new residents. The same principle would be applicable as respects restrictions on the right to vote for President and Vice President applied to persons who move from one political subdivision within a state to another.

The only interest that a state would have in such situations would be identification of new resident voters to prevent fraud. This could be accomplished by registration and by absentee voting machinery, the procedures for which would not unduly burden the states.

ROBERT L. TIENKEN,
Legislative Attorney.

Senator BAYH. I appreciate listening to the testimony that you provided. You suggest that you are not a lawyer, but you certainly have done an excellent job of briefing this particular case, the points that you have presented to us.

I realize that you tried to approach this from a Constitutional Amendment standpoint and inasmuch as I am Chairman of the subcommittee, I suppose I should be held accountable for the fact that there has been no action taken on that. I should point out that the measure that we have been addressing ourselves to relative to the entire

matter of electoral reform, which is now the amendment in the Senate Judiciary Committee which would give Congress the Constitutional authority to provide uniform, for instance, residency laws.

This matter has been passed by the House, you know, by 339 to 70 votes including the power to provide for the residency provision. So, I want to praise you for the Constitutional approach as well as this approach.

As to the voting rights bill, in my judgment your view of a 30-day cutoff is much preferable to the suggestion made by the administration of a September 1 cutoff.

Your desire, of course, is to franchise as many people as possible for the longest period. The later the cutoff date the less people who are moving would be cut off. In addition your solution gives people the right to vote in one State or the other, so that if you fall in that interim period this doesn't disenfranchise you. You can still go ahead and exercise your vote in the State from which you came.

Senator GOLDWATER. That's correct, for President.

Senator BAYH. Have you given any consideration to making that applicable to Federal officers?

Senator GOLDWATER. Yes, I thought about that, but I'm afraid I would be meddling with my own regard for the Constitution that now provides the States the authority to be the judge of its own voters as a general rule. However, I think the Civil Rights Act of 1965 has sort of negated that.

Although, I think the decisions of the courts negated that when the State interest is not compelling. I won't say that I'm overly happy with those things, but as long as they are existing, I think we can take advantage of them, and try to get the right to vote spread to as many people as we can in the case of a presidential election.

Senator BAYH. Now, are you at all concerned about the confusion that might exist if we limit this only to presidential elections? Have you given any thought to applying it not just to presidential and not just Federal officers, that would be Senators and House Members, but across the board? Have you given any—in your study, have you considered the constitutionality of that approach?

Senator GOLDWATER. Yes, I have.

Senator BAYH. The reason I allude to this is that we had a discussion with the Deputy Attorney General the other day when he appeared before our subcommittee relative to lowering the voting age. The administration suggests we lower the voting age only for Federal officers, President, Congressmen, and Senators. One of the concerns that I could see was that this would present a dual standard as far as voting age. Now we are considering setting another dual standard for residency, and we are going to end up with a hodgepodge instead of uniform criteria.

Do you care to comment on that?

Senator GOLDWATER. I would like to say that 32 States now, as I noted in my testimony, now provide a special ballot for use by new residents in voting for President alone. So the practice of having a separate ballot for President is well established. And I might add that I didn't get here in time to testify in favor of the 18-year-old voting. I'm perfectly in favor of that. I've advocated it in my own State for many, many years, and I have spoke in favor of it during my turn in

running for the presidency. Had I appeared before your subcommittee, I would have testified in favor of an 18-year-old voting age even though I have felt very strongly that the States themselves should do this.

I see no reason why 18-year-olds should not be allowed to vote across the board. That would eliminate any confusion by saying an 18-year-old could vote for Federal officers, but they can't vote for sheriff or Governor and so forth and so on.

I would set 18 years old as the voting limit and if you reopen your hearings, I would like to testify.

Senator BAYH. Well, if the Senator would like to testify, we'll be glad to have hearings. We anticipate the possibility of holding 2 or 3 days of hearings, and I would hope that you will testify.

Senator GOLDWATER. I was asleep at the switch or I would have been here. When you get ready, just whistle for me. I'll come down.

Senator BAYH. I think, perhaps, that one can make a distinction between applying the 18-year-old criteria across the board and eliminating residency requirements across the board. I thought there was a great inconsistency suggesting the effect of the Deputy Attorney General's testimony I mentioned earlier—was that a person may be smart enough to vote for President, but not smart enough to vote for school board. If you apply this across the board for 18-year-olds you base the vote on one thing, namely, qualifications. Your residency limitation for voting for President on the other hand, would deal with the problem that I might move from Indiana to Arizona and not be familiar with the candidates, Senator or Congressman or school board member, but as a citizen of the United States I ought to be familiar with the record of the candidate for President or Vice President.

Senator GOLDWATER. That's correct.

Senator BAYH. So I think that this one thing can make a valid distinction there.

Let me pursue this just a little bit. You make such a good case for our having the constitutional authority to eliminate residency requirements. As I see it, you're setting out decisions in which the courts have held that the Congress has the power to eliminate literacy tests.

Senator GOLDWATER. They have already exercised that.

Senator BAYH. Would you suppose that Congress could establish literacy tests or give such power to certain States?

Senator GOLDWATER. I think the whole history of our—the formation of our Government would exclude that. If you recall the effort was made at the outset of our Government to only allow people to vote who held property and in some cases some States still use this in bond elections, although I think a decision of the courts might have stricken that, too.

I just—my attorney tells me that the *Morgan* case says that Congress cannot limit voting privileges but it can protect them. I think this bears pretty much on the fundamental concept of the Founding Fathers and I think it is applicable today.

Senator BAYH. Well, if the Congress can deal in the area of literacy and residency—and I concur that you make a very good case with residency—what about age? Should Congress now be looking at the lowering of the voting age from a statutory standpoint instead of from a constitutional amendment standpoint? Can we say—under

the equal protection clause—that taxation without representation, contributing to your country in the Armed Forces and in other ways, that these give us constitutional grounds for lowering the voting age? I know this is a curve ball, and I don't want to throw something at you that you haven't had a chance to think about.

Senator GOLDWATER. Well, let me read what I have put down on this. As I said recently, I think I would like to see this done by the States. I've been urging my State to lower its voting age as I have been urging my State to do away with this English language literacy requirements and I think that we are finally doing this in this legislature.

I think the constitutional arguments I have used would apply only in cases where Congress finds that a State voting requirement is unnecessary and unfair. And I think that a balance of competing State and Federal interest has to be made with respect to each distinct proposal to change a State law.

I also think that great care should be shown—should be taken to show the proper respect of the vitality of the federal system. Now applying this to the question whether the Congress can lower the voting age, I think we are going to need some record developed before I can comment on it.

Senator BAYH. I'll tell you, instead of throwing in this new subject here, why don't we make plans to hold further hearings about the 18-year-old vote constitutional amendment in our subcommittee in the next couple of weeks and ask you if you would give us the benefit of your thoughts relative to lowering the voting age at that time? We will also invite some other witnesses who will explore the constitutionality of lowering the voting age by statute. We have studied this bill for some time, and we really haven't had the kind of expertise pro or con that I think we should have before making a final determination as to whether the constitutional vehicle or statutory vehicle is——

Senator GOLDWATER. I would be very happy to. In fact, I hoped that you would suggest that.

If I may get back to this 18-year-old issue, my whole approach to it, my thinking on it, is not based on the fact that an 18-year-old can go out and fight and die for his country. To me that's an obligation we owe as citizens. I just think that the 18-year-olds are better equipped to vote at the age of 18 than my generation was at the age of 25.

I may be wrong, but I haven't found this to be wrong. I may have talked to more young people in this country then any man or woman living in this country and I'm constantly impressed with the intelligence of the 18-year-olds and their judgment and I don't buy this talk by the older person who says that they don't have stability.

I can't find stability in a man of my age who says he would rather vote for a man just because he's a Democrat or Republican regardless of whether he's intelligent or tall or short or what.

I don't think any young person would ever be that rigid. I think we find the same pattern in numbers of people voting at that age that we find at other ages. I don't think it is going to upset the balance between the two parties and the two-party system.

You just let me know when you want me back here.

Senator BAYH. I concur in the Senator's analysis of young people today. I think the quality they would bring to the ballot box is the most important thing.

Senator GOLDWATER. I think it is the best generation we have had in my life. I'm getting a little tired of people picking at them.

Senator BAYH. Right, I agree.

I'll confer with the staff and subcommittee today and get back to you. Then we will make a public announcement of the days for these hearings, and we will address ourselves, perhaps, to a little broader aspect of this 18-year-old voting.

We are certainly glad to have your thoughts on this.

Senator GOLDWATER. Be glad to.

Senator BAYH. Thank you again for addressing yourself to the residency requirements. It makes a lot of sense to me, very frankly.

Senator GOLDWATER. Thank you. It came to me so vividly during my very interesting tour of this country looking for votes when I was constantly told by people either, "I wouldn't vote for you if I could, but I can't so you don't have to worry," or "I would like to vote for you, but I can't because I have only moved here 6 months ago and the law says I can't."

It wouldn't have made any difference in the election, but we would have had a better representation. I think it would be much more impressive to foreign governments if we could say instead of 67 percent of those people who are registered to vote have voted, which means that about 57 percent of the people actually voted, 57 to 60 percent; to point with pride to the fact that 85 percent of our people voted for President. I think this would carry a lot more "bang" when we start talking to capitals around the world. We actually today elect many of our officials by minority, not by majority.

Senator BAYH. Thank you very much.

Senator GOLDWATER. Thank you.

Senator BAYH. As the temporary acting chairman here, I've been consulting with the staff relative to time problems. I understand that Rev. John Wells is from out of the city, from Boston. I would like to ask him to testify next so we will not inconvenience him after his trip down here.

Mr. Wells, we are happy to have you.

Mr. WELLS. Mr. Bayh, it is with a great deal of pleasure to be here today.

STATEMENT OF REV. JOHN M. WELLS, ACCOMPANIED BY ROBERT E. JONES, EXECUTIVE DIRECTOR, JOINT WASHINGTON OFFICE FOR SOCIAL CONCERN, REPRESENTING THE AMERICAN ETHICAL UNION, AMERICAN HUMANIST ASSOCIATION, AND UNITARIAN UNIVERSALIST ASSOCIATION

Mr. WELLS. Before I get into my statement, I would like to state that I enjoyed Mr. Goldwater's statement.

I had the opportunity for 10 years to make my living working with the Federal voting assistance program and I wrote the absentee voting laws for about 28 States in the Union as they pertain to our servicement, wives, and dependents. I have worked with States all over the Union with reference to this.

I also have had the opportunity of being able to vote since I was 18. I grew up in the southern State of Georgia. I am definitely in favor of having voting at 18. I would like to say also that I agree wholeheartedly with reference to the statement "if you're old enough to fight, you're old enough to vote" didn't have anything to do with it.

I was in Texas one time, I was out there and we were trying to get rid of that thing that kept servicemen from so long voting, which was article 6 of the Constitution, Texas wasn't letting the servicemen move anywhere even to another county or he could never vote again the whole time he was in the military. We finally got that knocked in the head.

I was testifying before a committee out there and they said, well if you're old enough to fight, you're old enough to vote and a Texas senator thought that was a wise observation but said if that was true, if you're too old to fight, you're too old to vote and I think that observation is brilliant and brings the views of our young people and the views of Senator Goldwater into relationship.

We are all on the same side and I appreciate the opportunity to be—

Senator BAYH. All right. Go ahead.

Mr. WELLS. I am John M. Wells, minister of the First Congregational Society, Unitarian, of Lexington, Mass.

I am today representing three religious organizations—the American Ethical Union, the American Humanist Association, and my own denomination, the Unitarian Universalist Association—all three groups sharing a common interest and concern in guaranteeing the right to vote of all Americans.

I have the honor and distinction of serving the First Parish Church of Lexington, which is facing the battlefield where the American Revolution began, where that shot was heard around the world. It is a proud town and a proud tradition and I am ever mindful of what Lexington stands for in this country's history. It is a sign of the times, perhaps, to liberalize the voting law in reference to residency requirements because here I am a son of the South—and we know this to be self-evident everytime I open my mouth, everybody knows that anyway—and I'm there preaching at a Yankee pulpit that is so steeped in Yankee history. I have a lot of fun with that.

As Lexington and Concord signalled the start of the struggle for self-government on this continent, so Selma and Montgomery are symbols of a contemporary struggle waged by the black people of this country to gain their full suffrage. For it was the events in Selma and Montgomery 5 years ago which impelled the Congress to enact into law one of the most successful civil rights acts of all time, the Voting Rights Act of 1965, an act which made it possible for over 800,000 Negro citizens to register as voters and for over 400 blacks to win public office in the Southern States.

I'm proud of that law. However, like the stand of the Minutemen at Lexington and Concord, the stand of the Negro citizens at the Pettus Bridge in Selma and at Marion, Ala., and at a thousand other locations across the South was not without bloodshed.

It is a tragic fact that this Voting Rights Act was won with the blood of martyrs—black men and white men—who stood up for the elemental right to vote and who were gunned or clubbed down by those

who feared change. At least one of those martyrs, a clergy of my own faith, Rev. James Reeb, had gone to Selma to bear witness for his brothers and I bear it on my conscience that I was one of those who talked him into going to Selma that time.

It is to prevent a repetition of this bloody history that I appeal to this distinguished committee to write legislation which will strengthen, and not dilute or weaken, the hard-won right to vote, represented by the Voting Rights Act of 1965.

Any diminution of the protections gained by the Negro voter in the 1965 Voting Rights Act will result in a reversion to the old repressive ways which in the past have kept the franchise and political participation a white man's privilege in several States of this Union.

Such a reversion will be accompanied by bitterness and frustration and despair on the part of those disenfranchised and will lend credence to the cries of those who urge violent solutions to America's problems and who say the system is beyond redemption and the white power structure will not yield or share its power, without violent struggle.

The years since passage of the 1965 act have brought a dramatic increase in the numbers of Negroes registered to vote in the Southern States. Some 800,000 Negro citizens have joined the voting rolls in the States fully covered by the act—Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. It would have been preferable if more Federal examiners were employed as empowered by the Act. Of 517 counties in the six States fully covered by the act, Federal examiners have been sent to only about 60. As Vernon E. Jordan, Jr., Director of the southern regional council's voter education project, observes:

> Make no mistake about it, black people in the South very much prefer going before a Federal examiner to going before a local registrar. There is a difference in attitude . . . a difference in setting; for many black people fear and dread the local county courthouse, which is for them a symbol of injustice and oppression.

All has not been rosy under the 1965 act. Negro voters and campaign workers have continued to be intimidated in some places, and subjected to harassments and obstacles much like those placed in their way before passage of the act. Federal examiners have not been available at all times, but only at intervals and coverage has not been uniform in the States covered. For instance, no Federal examiners have been assigned in Virginia, which is fully covered or in North Carolina, which is partly covered. I went to school down in North Carolina.

Federal examiners have been assigned in only three counties of my native Georgia and only two in South Carolina. All the rest have been assigned in Mississippi, Alabama, and Louisiana.

Federal examiners come and go and they have not always been there when most needed, as in the final quarter of 1968 when no examiners were in the States concerned, despite the approach of important municipal elections in Mississippi.

How much better and simpler it would have been if the law had made it possible for any citizen to merely go to the nearest U.S. Post Office and register to vote with a federal employee, as was suggested by some in 1965, to avoid the intimidating atmosphere of the county courthouse.

I used to see this a great deal when I was traveling down around Mississippi. It was just that simple. Go to the Post Office and get a

postcard and register your vote. But if that same man had gone to the County Courthouse, he would have never gotten registered. They don't have that registration in Alabama and still don't, to my knowledge.

The United States Commission on Civil Rights, in a document entitled "Political Participation, A study of the participation by Negroes in the electoral and political processes in 10 Southern States since passage of the Voting Rights Act of 1965" issued in May 1968, reported that there is still wide harrassment and intimidation, including shootings and other acts of violence which tend to keep down Negro participation in the political process.

There is not time now to go into great detail but the Commission report documents the following abuses since passage of the Voting Rights Act: exclusion of Negroes from precinct meetings at which party officials were chosen, omission of names of registered Negroes from voter lists, failure to provide sufficient voting facilities in areas with heavy Negro registration, harassment of Negro voters by election officials, provision of erroneous or inadequate instructions to Negro voters, disqualification of Negro ballots on technical grounds, failure to afford Negro voters the same opportunity to cast absentee ballots as white voters, and discriminatory location of polling places, racially segregated voting facilities and voter lists in some Southern counties.

In addition, the Commission on Civil Rights found several instances of exclusion of and interference with Negro poll watchers, vote fraud perpetrated so as to "count out" Negro candidates, discriminatory selection of election officials, and incidents of intimidation against Negro registration workers and campaign workers, including shootings, burning of homes, and economic reprisals.

In addition, many new devices have been adopted in Mississippi and Alabama to dilute the new expanded Negro vote by converting from elections by district to elections at-large, thus swamping a concentrated Negro vote by the white vote in adjoining districts; by laws permitting the legislature to consolidate predominantly Negro counties with predominantly white counties, and reapportionment and redistricting statutes, in short, use of the gerrymander.

Other devices used to limit Negro officeholding are measures to abolish elected offices, extending the terms of incumbent white officials, substituting appointment for election, increasing filing fees, and adding unnecessary requirements for getting on the ballot. Negroes elected to county office in Mississippi have encountered difficulty in securing the bonds which are required before assuming office.

In some areas of the South pertinent information about public office has been withheld from prospective Negro candidates and in some parts of Mississippi another tactic employed has been to withhold or delay the required certification of the nominating petition.

I have recited this litany of abuses because it is necessary to point out that what we need at this time is a stronger bill and not the watered-down voting right bill which passed the House and which is clearly deficient when it comes to coping with abuses. The bill which passed the House of Representatives eliminated the requirement that a State or county covered by the 1965 act submit either to the Attorney General or to the Federal district court in the District of Columbia any proposed changes in voting codes for clearance before they can be

enforced. This was written into the 1965 law to forestall electoral law tinagling and subterfuge. Its absence in the administration bill can only be interpreted as an invitation to denial of the vote by whatever chicanery can be devised by the mind of man.

We are concerned, too, that the House-passed bill has eliminated the "trigger" which empowered the Attorney General to suspend literacy tests and other devices and to move Federal examiners into a State or county if less than 50 percent of voting age people residing therein were registered on November 1, 1964, or less than 50 percent had voted in the presidential election of November 1964.

This was a simple and effective way to insure that large numbers of people, heretofore denied their rights under the 15th amendment to the Constitution, would be able finally to exercise those rights.

There are some who argue that the trigger percentage should be two-thirds of eligibles registered or voting 1964, since in many counties (among the worst in the South in terms of repression of Negro voters) Federal examiners were withdrawn after the 50 percent mark was reached and registration has stabilized at that figure while white registration has gone far higher. Latest figures supplied by the U.S. Commission on Civil Rights show that in the seven States covered by the act, 60 percent of eligible Negroes are registered against 83 percent of the eligible whites. In the 11 State southern region, Negro registration is 64 percent against 80.4 percent of whites. Clearly, there is still a lag in Negro registration.

To eliminate the requirement for a State or political subdivision to clear election law changes with the Attorney General or with the District Court of the District of Columbia, is to throw an enormous burden back on the Attorney General and the Justice Department. It [Justice Department] already insists that it is so backlogged with problems of law and order, it don't have time to do anything else.

It will turn the clock back to the tortuous case-by-case approach which was the method prescribed by the Civil Rights Acts of 1957, 1960 and 1964. The Justice Department will not, with its staff limitations, be able to keep up with the election-law changes which I fear my ingenious countrymen will devise.

There are several ways in which the Voting Rights Act could be strengthened. I have mentioned adoption of a two-thirds trigger. The Civil Rights Act of 1968 should be broadened to provide clear protection for campaign workers and to provide for relief against economic reprisal by establishing a rebuttable presumption of unlawful motive when the alleged intimidatory act and the exercise of one's political rights are closely related in time.

Congress should give the Justice Department authority to send observers into counties and parishes where hard-core opposition to voting rights persists and empower such observers to help voters mark and cast their ballots where it is demanded or deemed necessary in order to protect the 15th amendment rights.

The Congress should continue the Voting Rights Act for 5 more years in view of the resistance to Negro voting still encountered in many areas.

Though there has been undoubted success with the Voting Rights Act, we are not impressed with the apparent reluctance on the part

of the Attorney General to use fully the powers he has under the Act. In 1969, for instance, Federal election examiners and observers were sent to only 12 counties. The Justice Department initiated no voting rights suits.

Of some 345 statutory changes in voting procedures, reviewed since August 1965, Justice rejected only 10. There are currently no Federal voting examiners in the South.

The Attorney General should more vigorously enforce the existing law by assigning examiners in those political subdivisions where low Negro registration persists and should assign observers to the political party conventions, from precinct level to State level, to insure opportunity for full participation in the political party structure. Many persistent discriminatory practices could be eliminated by better enforcement of the law, such as insuring that election officials are broadly representative of the racial composition of a district, and that candidates, election officials, campaign workers, and poll watchers are treated without discrimination, and that illiterate voters are assisted in marking and casting their ballots, as allowed under the law.

We do find some merit in the administration bill which passed the House, notably in suspension, nationwide, of use of the literacy test and other vote-restricting practices, and in view of the waiving of residency requirements for voting for President and Vice President. We wish these had been included in separate legislation and taken up after simple extension of the voting rights bill, but obviously they must be dealth with at this time since we now have the House bill an accomplished fact. Prohibition of literacy tests in all 50 States, however, ought to be made permanent, else we will be confronted with this problem again and again as successive Voting Rights Act face expiration deadlines. Let us slay this dragon once and for all.

It is our hope that this committee will examine carefully all the proposals coming before it and then move for passage of a strengthend Voting Rights Act in time for the expiration of the present act on July 30.

Thank you.

Senator BAYH. I want to compliment you on this testimony.

I think, perhaps, one of the salutary signs of the times in which we live is that a man of your account could address himself to this problem.

Mr. WELLS. There are times, sir, when I feel that there is a great deal of prejudice in the North against those of us who speak the King's English, as I do, and I resent that.

Senator BAYH. I wish I could say that there is no prejudice in the North relative to anything.

Mr. WELLS. I couldn't agree with you more.

Senator BAYH. Unforunately, that is not true even on the problems to which we address ourselves here.

Did I infer from your statement that you find that the abolition of literacy tests, should be permanent and be included in the particular act?

Mr. WELLS. Let me state my own case with reference to that.

I moved from Virginia up to Massachusetts in September of 1968 before the elections and was disenfranchised on what they call the "shot" ballot—that's the way they say "short" in Lexington—anyway,

I got registered on the "shot" ballot with my wife so we could vote. Then we had to go down and register to vote in all the election. Now, I lived in Georgia, first of all, down in Fulton County, that's where my daddy and all of us lived down there. We had a big family, but I got married and moved to Wheaton County and couldn't vote because of the laws down there.

Now, I've been playing around with this a long time, but at the time it didn't bother me about this literacy tests because I didn't know about it. As I said, I was voting since I was 18. I think that with a white person you have no problem in interpreting the Constitution, but believe you me, you know in Massachusetts I had to pass a literacy test in Massachusetts to register and Massachusetts did this originally to keep those scoundrel Irish with names like "Kennedy" from registering to vote.

Senator BAYH. It hasn't been very effective, has it?

Mr. WELLS. That was 100 years ago and my own personal opinion is that I would like to see the literacy test done away with. I had a long discussion with a man there in Massachussets who says that 15 to 20 percent of the kids have a very difficult time with the literacy test, not because of what they have up there; it has to do with other things.

I also know that great numbers of people who have been barred from voting by literacy tests are the elderly. The greatest number of illiterate in this country are those who didn't go to public school before 1910, when public schools became fairly common across the country.

So those are the greatest number barred by the literacy test, the elderly, and I certainly do not think they should be denied the right to vote.

Senator BAYH. Do I infer from your statement further that you do not oppose the residency provisions or do you have some concern that this is included in this particular legislation?

Mr. WELLS. That's correct. I think the thing that bothers me is these two things can get hung up the same way with the question about the—Senator Goldwater was talking about—talking about 18-year-olds and talking about moving around. I think there should be legislation and, in fact, one of the most difficult tasks I have ever had in my life pertained to voting laws in States. And I'll tell you, I struggled with that for a long, long time.

I will admit, Senator, we are working under a tremendous handicap in working with the States in which they said we have the absolute right on how you can vote, how you can register and all that, and I was glad to see the Voting Rights Act of 1965 and I was working with the Department of Defense in working in this field, and I was there until July of this year.

Once you accept the fact under the decision of *Katzenbach* v. *South Carolina* that the Federal Government can protect rights under the 15th Amendment, so that we can have equal rights, to me the constitutionality there is absolutely settled and I recognize the fact.

I do wish that the Congress and the Senate will read what it means to declare war, I know this is off the track, but that is a very good suggestion for the definition.

Senator BAYH. Thank you very much for your thoughts. We may have some other questions relative to specific observations you have made and we would like to address these to you.

Mr. WELLS. Absolutely. I hope I have aided in some way.

Senator BAYH. Thank you for your presence.

I am told that it is going to be necessary for me to get over on the floor.

Counsel suggests because of the limitation of time and because I have to get on over to the floor, Mr. Mitchell, if we could ask you to read your testimony now. If you would do that, then we could take Mr. Anderson's testimony at a time when we can give him full opportunity to explore his entire testimony.

Mr. MITCHELL. Thank you, Mr. Chairman.

Senator BAYH. I regret to say that I wasn't here to hear the beginning of your testimony. I heard your testimony at a previous hearing before the subcommittee on this subject and certainly feel you have a great deal to offer on it.

STATEMENT OF CLARENCE MITCHELL—Resumed

Mr. MITCHELL. Thank you, Mr. Bayh. I will be brief because I know what the situation is on the floor. Also, I'm supposed to testify before one of Senator Muskie's committees now. I think I'm the witness they are waiting for, but what I would hope to do is just to resume my testimony and I guess the best way to do that is to read this brief statement here and make just two comments, then I will be through.

We believe that all that can be said or should be said about the importance of extending the key provisions of the 1965 Voting Rights Act is well known to the members of this subcommittee and all the Members of the Congress. The similar question we face is will Congress extend the act and thereby permit continued increases in registration and voting among Negroes, or will Congress set invariable legislation and get bogged down on the rafts of litigations because of technical changes in the present statute?

I have just returned from a meeting of the southeastern NAACP branches and State conferences held in Birmingham, Ala. Political participation in State, local governmental affairs in these States is becoming a reality, but it is far from an accomplished fact. There are still approximately 2 million Negroes who are not registered and there are still officials who seek to hinder the effective working of the 1965 act.

The best evidence of the continued resistance to the law is evidenced by the official act of Governors, Members of Congress who are trying to resist school desegregation 16 years after the decision in *Brown* v. *The Board of Education*.

There is no doubt that the Negroes of the United States are being caught in a pincer movement between the forces of the Nixon administration that are trying to put an advocate of racial segregation on the U.S. Supreme Court and the government officials in southern states who are trying to use their offices to hold the Negroes in second-class citizenship. The time has come to pull aside the curtain of deception and to identify what is at stake.

Any watering down of the 1965 voting rights law is an attempt to deprive Negroes of the right to vote solely because of race. Therefore, we ask that the provisions of the 1965 law be extended as provided by H.R. 4249, the Celler-McCulloch bill which was so narrowly defeated in the House by a vote of 208 to 203.

We are confident that if the Senate passes the Celler-McCulloch extension of the 1965 Voting Rights Act, it will be accepted by the House.

Mr. Chairman, I heard those bells. Do you have to leave instantly or do I have a few more minutes?

I wanted to expand on this point on the vote in the House. As you know, the rules of the House, there was a very serious question about whether any attempt to amend the 1965 Voting Rights Act extension would be knocked out on a point of germaneness in the House.

Because of that there were some members of the House who were interested in getting this provision of the bill dealing with the presidential elections written into law. And they thought the best way to do that would be to accept the administration's substitute rather then have a simple extension of the act.

But I have talked to a number of the people who had the problem and they know if the Senate passed a simple extension of the Voting Rights Act, we can get votes in the House to be sure that it will pass the extension as it now stands.

There is also the question, of course, of the two purposes and difference objectives, one has to do with presidential elections and the other has to do with the extension of this ban against literacy tests.

As an organization in the field of civil rights, we have no reason for opposing those two things except one. We know that the constitutionaltiy of the 1965 Voting Rights Act has been settled and resettled by the Supreme Court. There is the question about whether a ban against literacy can per se, would be constitutional, we would sincerely hope that the Supreme Court would say that any kind of literacy test is unconstitutional, but so far the court has not said that.

There is a real chance that if a general plan against literacy tests is included in the law, we will have so much litigation starting immediately upon passage, that these people wouldn't be able to vote until the 1970 election or 1972 and maybe not until 1980 by the time all these issues have been resolved.

Therefore, we would hope that if there is any disposition put in with respect to the Presidential election and any thing with respect to a nationwide ban on literacy tests, this would be clearly separated from the simple extension of the 1965 Act. So, that if there is a court attack on these two additions, it would not in any way affect the voting rights law as it now exists.

There is one other point, as I said. The other point has to do with a statement made yesterday by the Senator from Nebraska, Mr. Hruska, who was here indicating that in his judgment we had just about cleaned up the problem on voting discrimination in the south and for that reason it was no longer necessary to have what he called "extraordinary legislative remedies" against discrimination in voting.

I just would like to call to the subcommittee's attention on the record the fact that cases involving the Voting Rights Act still come into court and they are becoming very serious questions which indicates that the resistance to registering rules and the right to vote are not dead.

I would like to bring to the committee's attention *Adnoch* v. *Amos* which is in the Supreme Court Reporter 89 Supreme Court 1101, 19, 89 of the Supreme Court 1101. It is a 1969 case.

In that case there were four counties in the State of Alabama where Negroes chose to run as members of an independent party. They did not run as Democrats, they did not run as Republicans.

Under the Alabama law prior to the time that the 1965 Act was passed, if an independent candidate decided to run in an election it was not necessary for him to declare his intentions to do so until after the primary and he could do this by being chosen in a mass meeting of some kind.

When the Voting Rights Act was passed, that is the 1965 Voting Rights Act was passed, the State of Alabama enacted what was called the Garret Law and this Garret Law required that the Negroes file their intentions at the same time the regular people—the regular candidates, Democrat or Republican party, filed their intentions to be candidates.

Under the 1965 Voting Rights Act before that statute could become effective it had to be processed, as the chairman knows, through the Attorney General or the District Court in the District of Columbia. The State of Alabama did not do that, but found it easier to declare that Negroes who were elected in three counties under this procedure which they thought—were not lawful candidates and therefore they were not certified for office.

In one county, Green County, the probate judge even refused to put the candidate on the ballot. And the Supreme Court held that this was an improper action on the part of the State and it went to great length to point out what section 5 of the 1965 act means.

It further pointed out that the same question had originated in a case called the *Whitman* case in the State of Mississippi where the State had tried to do exactly the same thing.

In short, what we have is a continuing effort on the part of States by sophistication and simple minded ways to change the way of things revolve and that is in opposition to the right to vote.

I think it would be a serious mistake if Congress assumed that the battle is over and knowing your views on this matter, Mr. Chairman, I want to thank you in advance for the sympathetic consideration you have given and continued to give to this problem.

I sincerely hope that Congress will extend the 1965 Voting Rights Act.

Senator BAYH. I appreciate your bringing out the information relative to these two other aspects that are included in the bill that some of us feel might be able to bridge the gap between the House and Senate. I appreciate the information you have given relative to the temperament of the Congress at this time.

In the testimoney you gave in the hearing of this matter earlier, you covered the other portions of the bill that I wanted to discuss relative to the pros and cons of using 1968 voting figures in three, four or maybe five States. I think the information you have brought here today is pertinent to voters who have not yet been put on the rolls.

Mr. MITCHELL. In the matter of the '64 and '68 figure, Mr. Chairman, I believe it is important to point out that when you started seeking passage of the 1965 act, the bill provided for a 10-year suspension of literacy tests, but in the spirit of what is reasonable, many people said, we will make it 5 years because surely in 5 years all the wrongdoers will get religious and stop discriminating.

Well, these 5 years have elapsed and we haven't yet come to the altar, so I think that it is pretty clear that Congress should go through with what it originally intended to do and make it a 10-year period. I think I should point out that if the Congress should change the trigger date from 1964 to 1968, this will eliminate just about everybody, except the State of Georgia, I believe, and the result would be, of course, worse discrimination.

Senator BAYH. I appreciate your updating your previous testimony.

I understand that Senator Ervin had some technical questions that he wanted to have your appraisal of.

I'm going to have to run to the floor, so these and other questions will be asked by counsel so we will have your answers on the record.

Mr. BASKIR. Mr. Mitchell, a number of amendments have been suggested to the committee informally which have to do with what might be considered technical aspects and I would like to get your views on those on the record if I may.

First, this has to do with the operation of the trigger device and the accounting that is involved. Section 4B says that if 50 percent of the persons of voting age residing in a county did not vote, then the trigger device becomes operational.

With respect to that figure which would include in the voting age population a series of categories of persons who for any other reason would not be eligible to vote. It would include persons who were hospitalized in mental institutions and who had been judged incompetent and therefore, not eligible to vote and it would include persons who were incarcerated in prisons and have lost their civil rights; it includes members of the Armed Forces who have residence in either different counties of the State or in a different State and couldn't vote; it includes persons who are in school, college students who are registered in other counties or other States, and who do vote in that other county or other State.

The inclusion of all these categories tend to increase the count and, therefore, brings some counties potentially under the operation of the act even though if those categories of persons were excluded the counties would not come under the act.

I wonder what your views are on amending section 4B to exclude these categories?

Mr. MITCHELL. I don't think that we have any reliable evidence that these people are first included as parts of the State or part of the prospective voters or potential voters and second, I don't think you have much evidence which would show that if we included or excluded them it would have discernible law enforcement effect on the total persons under consideration.

I think you have to take into consideration so many variables, that if you attempted to do this, you would then get bogged down in court technicalities.

For example, suppose in the determination of whether a person is sane or insane subject to being put in an institution, there are differences in State laws, I'm sure there must be. Suppose if at the time the individual is adjudged to be insane, he is put in an institution, but shortly thereafter is judged to be sane and is released, how then would you deal with that statistic with reference to this?

With members of the Armed Services, suppose you had a group of persons on a base who were there temporarily and were transferred

out, but before some of the persons were transferred out, they elected to establish residence and become citizens of the State in which they had been stationed. That also happens.

So I just feel that with the variables that are involved, it would be rather unwise to include this type of thing in the amendment.

Mr. BASKIR. We have some statistics saying that there are counties in North Carolina that would not come under the act if those persons were excluded from the court.

In 1964 the State had some 26,000 students who were nonresident college students and were, as a matter of fact, included in the calculation.

In one of the counties covered by the operation of the trigger, Gilford County, there were 3,000 students in 1964. And, of course, the college population has increased since 1964 and in 1968 it was over 37,000.

Mr. MITCHELL. Of course, as you know, Mr. Baskir, the statute provides two things in the case of that county. It could come to the Attorney General and make representation indicating that it should be excluded by the act, or it could come before the district court in the District of Columbia and declare a judgment which would exclude them. Then the whole type of situation would be reviewed for the purpose of determining whether it is true that the presence of these students and other persons in the county are included in the calculations.

As far as I know, that has not been done. In my judgement, the remedy under the existing law is more than adequate for everybody to act in good faith.

Mr. BASKIR. Cumberland County has according to census figures something in the neighborhood of 117,000 people of voting age as of November 1, 1968, including some 54,000 servicemen most of whom, I would assume, have residencies elsewhere.

Mr. MITCHELL. I think the thing that destroys the point that would justify considering the amendment is your "assumption." Senator Ervin is one of the most strict constructionists of the use of that word "assumption." He will not let anybody assume anything and, therefore, it is really surprising that he would "assume" that in all those thousands of servicemen that not one of them or not a thousand or 10,000 would be residents of the State of North Carolina.

Again, because that is a fact question which can be determined and considered under existing law, I think that the only result of adding the amendment like that would be massive and would result in clever members of the bar, perhaps of North Carolina or elsewhere, using that amendment to further frustrate the right to vote and knowing Senator Ervin is interested in having everybody vote, I sincerely hope he will not put that potential impediment into the law.

Mr. BASKIR. Another amendment that has been suggested has to do with the power of the Attorney General to determine whether voting changes or regulations violate the Act. As you know, if the law is submitted to the Attorney General and he decides that it does violate the Act, that decision is not reviewable in court. The only way you get to court is to seek a declaratory judgment.

What would be your position on amendments which made the decision of the Attorney General reviewable?

Mr. MITCHELL. Well, the person who seeks the relief by going to the Attorney General elects to do so, it is not compulsory. That pro-

vision was put in for people who wanted to have a short cut rather than go to the courts, so under the present law people do not have faith in the Attorney General; they don't have to exercise their election to go into the Attorney General for redress. They can bypass him and go into court for a declaratory judgment where they will surely have review—right of review and again, the trouble with these kinds of amendments is that the legislatures of the States in which there is voting discrimination are amazingly agile when it comes to meeting and changing the law in a fashion which will prevent Negroes from voting.

They can do it almost by 24 or on 2 hours notice. That is why it seems to me it would be a serious mistake to put any change in at this point and also that it is unnecessary because the party that raised that do not wish to be bound by the Attorney General's determination can exercise their right and go into the District Court in the first place.

Mr. BASKIR. The third amendment has to do with sections 4 and 5. The present venue is in the District Court of the District of Columbia with respect to getting a declaratory judgment concerning changing laws, which we just discussed, also with respect to getting a decision from the court that within the past 5 years there has been no discrimination.

What would be your position on changing the venue to a three-judge district court or to a court of appeals in the circuit where the State capital is located or the circuit covering the State as well as the District of Columbia?

Mr. MITCHELL. Again, I think when you look into the history of this law, this would be an amendment that would do damage to the intent of Congress.

The reason the District of Columbia was directed as the place—was selected, was the fact that in the courts of many of the States where voting discrimination occurs, first there is a problem on getting your case heard within the court. Next, there is usually the problem of judges who, unfortunately, reflect so much of the customs, mores, and the prejudices of the area that they give the kind of decisions that always require review.

The case I just mentioned, for example. The *Adnoch* case was one which had to come up through tortuous practice of review and came up before a three-judge court and I think that it would be very unrealistic in this time to add that amendment because it would only be another form of delay.

When you have delay you get a terrible problem in elections. If the candidates who are served—or certified or borne by a candidate are elected to office, but subsequently, by a Supreme Court determination they are found not to be duly elected candidates, as was true in Green County, Ala., then you have the problem of putting people out of office who are already in.

Whereas if you had resolved these questions quickly before the election was held, then, of course, whoever gets elected does not have to get involved with the courts and other matters.

For that reason, as well as what I said about the absence of the other judges and reasons, I think it would be unwise to have that as an amendment and I hope very much that it will be defeated.

I think I should also make it clear that I'm not unaware of the fact that when you say that judges are subject to the prejudices of their community, you immediately opened yourself to an attack by those who come from the region that is affected and they say, you don't know how our judges are, how do you know you won't find them fair and things of that sort.

Unfortunately, there is a long record on the delays and problems we have had in all kinds of civil rights actions where the judges at the U.S. district court have been a little bit better than the fifth circuit, but realistically, I think you have got to face the fact that the present nominee to the U.S. Supreme Court comes from the fifth circuit and one that we oppose as well as many other people.

You also have to realize that the former Governor of Mississippi, Governor Colten, is a member of the fifth circuit court of appeals and he was not part of the avant garde in trying to promote fair play and get rid of racial discrimination in the State of Mississippi when he was Governor.

I think that it would be very unwise to have this amendment and I earnestly hope that if it is offered it would be defeated.

Mr. BASKIR. Thank you very much. I have no further questions.

The chairman has asked me to recess the hearing until Tuesday at 10:30, probably in another room for that date.

(Whereupon, at 12:20 the hearing in the above-entitled matter was recessed to resume Tuesday, February 24, 1970, at 10:30 a.m.)

Page 320 blank

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

TUESDAY, FEBRUARY 24, 1970

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m. in room G-308, New Senate Office Building, Senator Sam Ervin (chairman of the subcommittee) presiding.

Present: Senators Ervin, Kennedy, Thurmond, and Bayh.

Also present: Lawrence Baskir, chief counsel and staff director.

Senator ERVIN. Professor Cox, Senator Kennedy would like to make a statement at this time because he has to go on to another committee, and he wanted to ask a few questions before you made your statement.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Nearly 8 months ago we began these hearings on the extension of the Voting Rights Act of 1965. Six days from now we will begin debating this matter on the floor of the Senate. Thus, this week's series of hearings will serve the useful, if belated, purpose of reviewing and crystalizing the previous testimony, closing the gaps, and highlighting the remaining areas of disagreement before we meet in committee this week and go to the floor next week.

We have several orders of business. First and most important is the extension of the 1965 Voting Rights Act, an historical piece of legislation which has brought hundreds of thousands of Americans into our political system for the first time. It has fulfilled the promises of the 15th amendment, promises which were unkept for a century. It has made a substantial start towards assuring that our Government really is of, and by, and for all the people in places where, by law and color of law, some of the people were kept from the ballot box, whether because of the color of their skin or the language of their upbringing.

We know that the 1965 act is fully within Congress's powers. The Supreme Court has upheld the law's validity by an overwhelming vote on at least three separate occasions. We know that the law works if it is enforced and administered in good faith. The hundreds of thousands of new voters: the hundreds of new black candidates and office holders: the new spirit of participation; the growing feeling of a stake in the system are proof positive that rapid progress in human rights is possible. And finally, we know that we will see a reversion to former kinds of interference with rights if the law is terminated now. The testimony we have received has demonstrated beyond doubt that there remain those who will do all within their power to turn the clock back on voting rights. Without the barrier of Federal law, they would find

new ways—laws, rules, regulations, ordinances—to interfere with the right of all citizens to vote and run for office on equal terms. To withdraw the protections of the 1965 act now, just when they are beginning to bear fruit, would be a doublecross of the first order, an act of ultimate bad faith, to Americans who have already borne more than their share of indignities and insults.

So our first order of business must be to assure that the full benefits of the 1965 act are preserved and maintained.

The administration and the House of Representatives, however, have determined that this also would be a good occasion on which to bring additional groups of nonvoters to the ballot box. They have advocated new national standards, to assure that literacy tests will not be a barrier to voting—even where they may not have been abused in the past—and to enable our more mobile population to vote in Presidential elections without facing inconsistent and sometimes illogical residency requirements. Since the Executive and the House are willing to make at least a start in these directions right now, I am certainly agreeable. Any action we take to enable more Americans to vote is a victory for democracy, and as long as we do not deceive ourselves that we are doing the whole job, there is no reason not to begin.

It also has seemed to me that since there is an overwhelming desire in the Congress, in the executive branch, and in the Nation to extend the franchise downward as well as outward, we should determine the most rapid way to do so, and proceed accordingly. For that reason, I have consulted with interested Senators and have raised the question whether an 18-year-old vote amendment to the voting rights bill should be considered. My own conclusion is that Congress is fully empowered to pass such a bill and that there is good reason to do so now. I would like to place in the record a memorandum explaining these conclusions, and I hope that the witnesses today will have a chance to direct themselves to these questions.

MEMORANDUM OF SENATOR KENNEDY ON LOWERING THE VOTING AGE TO 18

The time has come to lower the voting age to 18 in the United States, and thereby to bring our youth into the mainstream of the political process. I believe this is the most important single principle we can pursue as a nation if we are to succeed in bringing our youth into full and lasting participation in our institutions of democratic government. In recent years, a large number of Senators have expressed their support for lowering the voting age to 18. In particular, I commend Senator Jennings Randolph and Senator Birch Bayh for their extraordinary success in bringing this issue to the forefront among our contemporary national priorities. For nearly three decades, Senator Randolph has taken the lead in the movement to extend the franchise to our youth. Senator Bayh's extensive hearings in 1968 helped generate strong and far-reaching support for the movement, and his hearings this month have given the issue even greater momentum. The prospect of success is great, and I hope that we can move forward to accomplish our goal.

In this memorandum, there are three general areas I would like to discuss. The first part deals with what I believe are the strong policy arguments in favor of lowering the voting age to 18. The second part deals with my view that it is appropriate for Congress to achieve its goal by statute, rather than follow the route of Constitutional amendment. The third part deals with the constitutional power of Congress to act by statute in this area.

I. THE MINIMUM VOTING AGE IN THE UNITED STATES SHOULD BE LOWERED TO 18

Members of the Senate are well aware of the many substantial considerations supporting the proposal to lower the voting age to 18 in the United States, and I shall do no more than summarize them briefly here.

First, our young people today are far better equipped to make the type of choices involved in voting than were past generations of youth. Because of the enormous impact of modern communications, especially television, our youth are extremely well informed on all the crucial issues of our time, foreign and domestic, national and local, urban and rural. Today's 18 year-olds possess far better education than former generations. Our 18 year-olds, for example, have unparalleled opportunities for education at the high school level. Our 19 and 20 year-olds have significant university experience in addition to their high school training. Indeed, in many cases, 18 to 21 year-olds already possess a better education than a large proportion of adults among our general electorate.

Moreover, 18 year-olds today are a great deal more mature and more sophisticated than former generations at the same stage of development. Indeed, through issues like Vietnam and the quality of our environment, and through their participation in programs like the Peace Corps and Vista, our youth have taken the lead on many important questions. They have set a far-reaching example of insight and commitment for us to emulate.

Obviously, the maturity of 18 to 21 year-olds varies from person to person, just as it varies for all age groups in our population. However, on the basis of our broad experience with 18 to 21 year-olds as a class, I believe they possess the requisite maturity, judgment, and stability for responsible exercise of the franchise.

Second, by lowering the voting age to 18, we will encourage civic responsibility at an earlier age, and thereby promote greater social involvement and political participation for our youth.

In 1963, President Kennedy's Commission on Registration and Voting Participation expressed its deep concern over the low voting participation in the 21-30 year old bracket. It attributed this low participation to the fact that:

> "by the time they have turned 21 * * * many young people are so far removed from the stimulation of the educational process that their interest in public affairs has waned. Some may be lost as voters for the rest of their lives."

We know that there is already a high incidence of political activity today on campuses and among young people generally, even though they do not have the franchise. None of us who has visited a high school or college in recent years can fail to be impressed by their knowledge and commitment.

I do not agree with the basic objection raised by some that the recent participation of students in violent demonstrations shows that they lack responsibility for mature exercise of the franchise. Those who have engaged in such demonstrations represent only a small percentage of our students. It would be extremely unfair to penalize the vast majority of students because of the reckless conduct of the few.

I believe that both the exercise of the franchise and the expectation of the franchise provide a strong incentive for greater political involvement and understanding. By lowering the minimum voting age to 18, we will encourage political activity not only in the 18 to 21 year-old group, but also in the pre-18 year-old age group as well. Through extension of the franchise, therefore, we will enlarge the meaning of participatory democracy in our society. We will give our youth a new arena for their idealism, activism, and energy.

Third, 18 year-olds already have many rights and responsibilities in our society comparable to voting. It does not automatically follow of course—simply because an 18 year-old goes to war, or works, or marries, or makes a contract, or pays taxes, or drives a car, or owns a gun, or is held criminally responsible like an adult—that he should thereby be entitled to vote. Each right or responsibility in our society presents unique questions dependent on the particular issue at stake. Nonetheless, the examples I have cited demonstrate that in many important respects and for many years, we have conferred far-reaching rights on our youth, comparable in substance and responsibility to the right to vote. Can we really maintain that it is fair to grant them all these rights, and yet withhold the right that matters most, the right to participate in choosing the government under which they live?

The well-known proposition—"old enough to fight, old enough to vote"—deserves special mention. To me, this part of the argument for granting the vote to 18 year-olds has great appeal. At the very least, the opportunity to vote should be granted as a benefit in return for the risks an 18 year-old is obliged to assume when he is sent off to fight for his country. About 30% of our forces in Vietnam are under 21. Over 19,000, or almost half of those who have died in action there, were under 21. Can we really maintain that these young men did not deserve the right to vote?

To be sure, as many critics have pointed out, the abilities required for good soldiers are not the same abilities required for good voters. Nevertheless, I believe

that we can accept the logic of the argument without making it dispositive. A society that imposes the extraordinary burden of war and death on its youth should also grant the benefit of full citizenship and representation, especially in sensitive and basic areas like the right to vote.

In the course of the recent hearings I conducted on the draft, I was deeply impressed by the conviction and insight that our young citizens demonstrated in their constructive criticism of our present draft laws. There are many issues in the 91st Congress and in our society at large with comparable relevance and impact on the nation's youth. They have the capacity to counsel us wisely, and they should be heard at the polls.

Fourth, our present experience with voting by persons under 21 justifies its extension to the entire nation. Lowering the voting age will improve the overall quality of our electorate, and will make it more truly representative of our society.

I have already stated my feeling that 18 to 21 year-olds possess adequate maturity for responsible use of the franchise. Equally important, by adding our youth to the electorate, we will gain a group of enthusiastic, sensitive, idealistic and vigorous new voters.

Today, four states—Georgia since 1943, Kentucky since 1955, and Alaska and Hawaii since they entered the Union in 1959—grant the franchise to persons under 21. There is no evidence that the reduced voting age has caused any difficulty whatever in the states where it is applicable. In fact, former governors Carl Sanders and Ellis Arnall of Georgia have testified in the past that giving the franchise to 18 year-olds in their states has been a highly successful experiment.

Moreover, a significant number of foreign nations now permit 18 year-olds to vote. Even South Vietnam allows eighteen year-olds to vote. I recognize that it may be difficult to rely on the experience of foreign nations, whose political conditions and experience may be quite different from our own. It is ironic, however, that at a time when a number of other countries have taken the lead in granting full political participation to 18 year-olds, the United States, a nation with one of the most well-developed traditions of democracy in the history of the world, continues to deny that participation.

I am aware that many arguments have been advanced to prevent the extension of the franchise to 18 year-olds. It may be that the issue is one—like woman suffrage in the early nineteen hundreds—that cannot be finally resolved by reason or logic. Attitudes on the question are more likely to be determined by an emotional or a political response. It is worth noting, however, that almost all of the arguments now made against extending the franchise to 18 year-olds were also made against the 19th Amendment, which granted suffrage to women. Yet, no one now seriously questions the wisdom of that Amendment.

There is, of course, an important political dimension to 18 year-old voting. The enfranchisement of 18 year-olds would add approximately ten million persons to the voting age population in the United States. As the accompanying table indicates, it would increase the eligible electorate in the nation by slightly more than 8%. If there were dominance of any one particular party among this large new voting population, or among sub-groups within it, there might be an electoral advantage for that party or its candidates. As a result, 18 year-old voting would become a major partisan issue, and would probably not carry in the immediate future. For my part, I believe that the risk is extremely small. Like their elders, the youth of America are of all political persuasions. The nation as a whole would derive substantial benefits by granting them a meaningful voice in shaping their future.

The right to vote is the fundamental political right in our constitutional system. It is the cornerstone of all other basic rights. It guarantees that our democracy will be government *of* the people and *by* the people, not just *for* the people. By securing the right to vote, we help to insure, in the historic words of the Massachusetts Bill of Rights, that our government "may be a government of laws, and not of men." Millions of young Americans have earned that right, and we must respond.

II. THE FEDERAL GOVERNMENT SHOULD ACT TO REDUCE THE VOTING AGE TO 18 BY STATUTE, RATHER THAN BY CONSTITUTIONAL AMENDMENT

I believe not only that the reduction of the voting age to 18 is desirable, but also that Federal action is the best route to accomplish the change, and that the preferred method of Federal change should probably be by statute, rather than by Constitutional amendment.

In the past, I have leaned toward placing the initiative on the States in this important area, and I have strongly supported the efforts being made in many states, including Massachusetts, to lower the voting age by amending the State Constitutions.

Progress on the issue in the States has been significant, even though it has not been as rapid as many of us had hoped. The issue has been extensively debated in all parts of the nation. Public opinion polls in recent years have demonstrated that a substantial and increasing majority of our citizens favor extension of the franchise to 18 year-olds.

In light of these important developments, the time is ripe for Congress to play a greater role. Perhaps the most beneficial advantage of action by Congress is that it would insure national uniformity on this basic political issue. Indeed, the possible discrepancies that may result if the issue is left to the states are illustrated by the fact that of those few states which have already lowered the voting age below 21, two—Georgia and Kentucky—have fixed the minimum voting age at 18. The other two—Alaska and Hawaii—have fixed the age at 19 and 20 respectively. Left to state initiative, therefore, the result is likely at best to be an uneven pattern of unjustifiable variation.

Federal action on the voting age is therefore both necessary and appropriate. The most obvious method of Federal action is by amending the Constitution, but it is not the only method. As I shall discuss in greater detail in the third part of my statement, I believe that Congress has the authority to act in this area by statute, and to enact legislation establishing a uniform minimum voting age applicable to all States and to all elections, Federal, State and local.

The decision whether to proceed by constitutional amendment or by statute is a difficult one. One of the most important considerations is the procedure involved in actually passing a constitutional amendment by two-thirds of the Congress and three-fourths of the State legislatures. The lengthy delay involved in the ratification process would probably make it impossible to complete the ratification of a Constitutional amendment before many years have elapsed.

It is clear that Congress should be slow to act by statute on matters traditionally reserved to the States. Where sensitive issues of great political importance are concerned, the path of Constitutional amendment tends to insure wide discussion and broad acceptance at all levels—Federal, State and local—of whatever change eventually takes place. Indeed, at earlier times in our nation's history, a number of basic changes in voting qualifications were accomplished by Constitutional amendment.

At the same time, however, it is worth emphasing that in more recent years, changes of comparable magnitude have been made by statute, one of the most important of which was the Federal Voting Rights Act of 1965. Unlike the question of direct popular election of the President, which is also now pending before us, lowering the voting age does not work the sort of deep and fundamental structural change in our system of government that would require us to make the change by pursuing the arduous route of Constitutional amendment.

Because of the urgency of the issue, and because of its gathering momentum, I believe that there are overriding considerations in favor of Federal action by statute to accomplish the goal. Possibly, it may be appropriate to incorporate the proposal as an amendment to the bill now pending in the Senate to extend the Voting Rights Act. Indeed, if enough support can be generated, it could be possible for 18 year-olds to go to the polls for the first time this fall—November 1970.

We know that there is broad and bipartisan support for the principle of 18 year-old voting. A total of 67 Senators have already joined in support of Senator Randolph's proposed constitutional amendment to accomplish the change. Last week, the Administration gave its firm support to the principle. I am hopeful that we can proceed to the rapid implementation of our goal.

At the same time, however, we must insure that no action we take on 18 year-old voting will interfere with the prompt consideration of the pending Voting Rights bill or delay its enactment by the Senate. The bill is scheduled to become the pending business of the Senate on the first day the Senate meets after March 1, and we must guarantee that its many important provisions are enacted into law at the earliest opportunity.

III. CONGRESS HAS THE CONSTITUTIONAL POWER TO ACT BY STATUTE TO LOWER THE VOTING AGE TO 18

The historic decision by the Supreme Court in the case of *Katzenbach* v. *Morgan* in June 1966 provides a solid constitutional basis for Congress to act by statute rather than by constitutional amendment to reduce the voting age to 18. This

power exists not only for Federal elections, but for state and local elections as well.

The issue in the *Morgan* case was the constitutionality of Section 4(e) of the Voting Rights Act of 1965. The section in question, which originated as an amendment sponsored by Senator Robert Kennedy and Senator Jacob Javits, was designed to enfranchise Puerto Ricans living in New York. The section provided, in effect, that any person who had completed the sixth grade in a Puerto Rican school could not be denied the right to vote in a Federal, State or local election because of his inability to pass a literacy test in English. By a strong 7–2 majority, the Supreme Court sustained the constitutionality of the section. Seen in perspective, the *Morgan* case was not a new departure in American constitutional law. Rather, it was a decision characterized by clear judicial restraint and exhibiting generous deference by the Supreme Court toward the actions of Congress.

As we know, Congress in this century has twice chosen to proceed by constitutional amendment in the area of voting rights. The Nineteenth Amendment, ratified in 1920, provided that a citizen of the United States could not be denied the right to vote on account of sex. The Twenty-Fourth Amendment, ratified in 1964, provided that a citizen could not be denied the right to vote in Federal elections because of his failure to pay a poll tax.

Nevertheless, in spite of this past practice, *Katzenbach* v. *Morgan*, and other decisions by the Supreme Court demonstrate that those particular amendments are in no way limitations on Congress' power under the constitution to lower the voting age by statute, if Congress so chooses.

The authority of Congress to act by statute is based on Congress' power to enforce the Fourteenth Amendment by whatever legislation it believes is appropriate. To be sure, the Constitution grants primary authority to the states to establish the conditions of eligibility for voting in Federal elections. Under these provisions, the voting qualifications established by a state for members of the most numerous branch of the state legislature also determine who may vote for United States Representatives and Senators.

It has long been clear, however, that a State has no power to condition the right to vote on qualifications prohibited by other provisions of the constitution, including the Fourteenth Amendment. No one believes, for example, that a State could deny the right to vote to a person because of his race or his religion.

The Supreme Court has specifically held that the Equal Protection Clause of the Fourteenth Amendment itself prohibits certain unreasonable state restrictions on the franchise. In *Carrington* v. *Rash* in 1965, the Court held that a State could not withhold the franchise from residents merely because they were members of the armed forces. In *Harper* v. *Virginia Board of Elections* in 1966, the Court held that a state could not impose a poll tax as a condition of voting. And, in *Kramer* v. *Union School District* in 1969, the Court held that a State could not withhold the franchise from residents in school district elections merely because they owned no property or had no children attending the district schools.

The power of Congress to legislate in the area of voting qualifications, as well as in many other areas affecting fundamental rights, is governed by Section 5 of the Fourteenth Amendment, which provides that:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

In other words, Congress is given the power under Section 5 to enact legislation to enforce the Equal Protection Clause, the Due Process Clause, and all the other great provisions of the Fourteenth Amendment.

Prior to the Supreme Court's decision in the *Morgan* case, the extent of Congress' power under Section 5 to preempt State legislation was unclear, unless that legislation was itself invalid under the Equal Protection Clause or other clauses of the Constitution. In the *Morgan* case, however, the Supreme Court explicitly granted broad power to Congress in this area. It sustained Section 4(e) of the Voting Rights Act as a valid exercise by Congress of its power to enforce the Fourteenth Amendment, even though as recently as 1959 the Court had held in a North Carolina test case that literacy tests were not unconstitutional on their face.

In essence, the *Morgan* case stands for the proposition that where state and Federal interests conflict under the Equal Protection Clause, Congress has broad power to resolve the conflict in favor of the Federal interest. As the Court itself stated:

> "It was for Congress . . . to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the

> right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected . . . It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did."

In other words, with respect to granting the vote to 18 year-olds, it is enough for Congress to weigh the justifications for and against extending the franchise to this age-group. If Congress concludes that the justifications in favor of extending the franchise outweigh the justifications for restricting the franchise, then Congress has the power to change the law by statute and grant the vote to 18 year-olds.

In fact, the Supreme Court's holding in the *Morgan* case is consistent with a long line of well-known decisions conferring broad authority on Congress to carry out its powers granted by the Constitution. Thus, in the *Morgan* case, the Court gave Section 5 the same construction given long ago to the Necessary and Proper Clause of the Constitution by Chief Justice John Marshall in the famous case of *McCulloch* v. *Maryland*, which was decided by the Supreme Court in 1819. In the historic words of Chief Justice Marshall in that case:

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

In the *Morgan* case the Supreme Court applied the test of John Marshall and upheld Section 4(e) of the Voting Rights Act for two separate and independent reasons. First, the Court said, Congress could reasonably have found that Section 4(e) was well adapted to enable the Puerto Rican community in New York to gain more favorable treatment in such public services as schools, housing, and law enforcement.

Second, the Court said, Congress could reasonably have found that Section 4(e) was well adapted to eliminate the unfairness against Spanish-speaking Americans caused by the mere existence of New York's literacy test as a voter qualification, even though legitimate state interests supported the test.

I believe that legislation by Congress to reduce the voting age can be justified on either ground of the *Morgan* decision. If Congress weighs the various interests and determines that a reasonable basis exists for granting the franchise to 18 year-olds, a statute reducing the voting age to 18 could not be successfully challenged as unconstitutional.

It is clear to me that such a basis exists. *First*, Congress could reasonably find that the reduction of the voting age to 18 is necessary in order to eliminate a very real discrimination that exists against the nation's youth in the public services they receive. By reducing the voting age to 18, we can enable young Americans to improve their social and political circumstances, just as the Supreme Court in the *Morgan* case accepted the determination by Congress that the enfranchisement of Puerto Ricans in New York would given them the sort of political power they need to eliminate discrimination and inequities in the public services they receive, and to give them a role in influencing the laws that protect and affect them. Although 18–21 year-olds are not subject to the same sort of discrimination in public services confronting Puerto Ricans in New York, the many discriminations worked against millions of young Americans are no less real in our society. We know, for example, that increasing numbers of Federal and State programs, especially in areas like education and manpower, are directed toward our youth. We can no longer discriminate against them by denying them a voice in the political process that shapes these programs.

Equally important, a State's interest in denying the right to vote to 18–21 year-olds is not as substantial as its interest in requiring literacy in English, the language of the land. Yet, in the *Morgan* case, the Supreme Court made it unmistakeably clear that Congress had the power to override the State interest. Surely, the power of Congress to reduce the voting age to 18 is as great.

Second, Congress could reasonably find that the disenfranchisement of 18–21 year-olds constitutes on its face the sort of unfair treatment that outweighs any legitimate state interest in maintaining a higher age limit, just as the Supreme Court in the *Morgan* case accepted the determination that the disenfranchisement of Puerto Ricans was an unfair classification that outweighed New York's interest in maintaining its English literacy test. Of course, there are obvious similarities between legislation to reduce the voting age and Section 4(e) of the Voting Rights Act. Just as Congress has the power to find that an English literacy test is on its face discriminatory against Spanish-speaking Americans, so Congress has the

power to find discrimination in the fact that young Americans who fight and work like other citizens are denied the right to vote, the most basic right of all. The *Morgan* decision is a sound precedent for us to eliminate this inequity in all elections—Federal, State and local—and I believe that Congress should act without delay.

It is worth emphasizing that no issue is raised here concerning the power of Congress to reduce the voting age even lower than 18. Essentially the sole focus of the current debate over the voting age is on whether *18 year-olds* should be entitled to vote. There is a growing national consensus that they deserve the franchise, and I feel that Congress has the power to act on that consensus.

The Constitutional position I have stated is supported by eminent legal authorities. Professor Archibald Cox of the Harvard Law School, the distinguished former Solicitor General of the United States, has recognized and approved the breadth of the decision in *Katzenbach* v. *Morgan*. As an example of Congress' power under the *Morgan* case, Professor Cox has expressly written that Congress has the power to reduce the voting age by legislation, without a Constitutional amendment.

If a statute to reduce the voting age is enacted, it should include a specific provision to ensure rapid judicial determination of its validity, in order that litigation challenging the legislation may be completed at the earliest possible date. Similar expediting procedures were incorporated in the Voting Rights Act of 1965.

In closing, it is worth calling attention to the fact that essentially the same arguments I have made here for action by statute to lower the voting age must also be made by the present Administration if it is to justify two of the most important provisions it is now proposing in its amendments to the Voting Rights Act:

First, the Administration is proposing a nationwide ban on the use of state literacy tests as a qualification for voting.

Second, the Administration propose to reduce the length of state residence requirements as a qualification for voting in Presidential elections.

Surely, the constitutional power of Congress to override State voting qualifications is as great in the case of age requirements as in the case of literacy requirements or residence requirements. So far as I am aware, the Administration's proposals in the area of literacy or residency have encountered no substantial opposition on constitutional grounds. Both proposals were incorporated as amendments to the Voting Rights Act in the bill passed by the Houe of Representatives late last year, and they are now pending before the Senate. If Congress has the authority to act by statute in these areas, it also has the authority to act by statute to lower the voting age to 18. I am hopeful, therefore, that we can achieve broad and bipartisan agreement on the statutory route to reach our vital goal of enlarging the franchise to include 18 year-olds.

TABLE—ESTIMATES OF THE TOTAL POPULATION THAT WOULD BE ENFRANCHISED BY LOWERING THE VOTING AGE TO 18

Region or State	Total resident population of voting age under current law	Population casting votes for President, 1968		Increase in voting population by lowering to 18	
		Number	Percentage	Number	Percentage
United States	120,006,000	73,160,223	61.0	9,778,000	8.1
Regions:					
Northeast	30,405,000	19,235,522	63.3	2,277,000	7.4
North central	32,405,000	22,202,472	67.7	2,686,000	8.1
South	32,781,000	19,140,276	52.1	3,011,000	8.1
West	20,048,000	12,581,953	62.8	1,804,000	8.9
Northeast:					
New England	7,000,000	4,824,398	68.9	559,000	7.9
Middle Atlantic	23,405,000	14,411,124	61.6	1,718,000	7.3
North Central:					
East north central	23,234,000	15,698,346	67.6	1,896,000	8.1
West north central	9,547,000	6,504,126	68.1	789,000	8.2
South:					
South Atlantic	17,901,000	9,412,984	52.6	1,432,000	7.9
East south central	7,776,000	3,992,760	51.3	539,000	6.9
West south central	11,095,000	5,734,532	51.7	1,041,000	9.3
West:					
Mountain	4,491,000	2,883,452	64.3	438,000	9.7
Pacific	15,557,000	9,693,501	62.3	1,365,000	8.7
New England:					
Maine	582,000	392,936	67.5	53,000	9.1
New Hampshire	424,000	297,190	70.0	36,000	8.4
Vermont	246,000	161,403	65.6	21,000	8.5
Massachusetts	3,361,000	2,331,699	69.4	264,000	7.8
Rhode Island	561,000	384,938	68.6	49,000	8.7
Connecticut	1,825,000	1,256,232	68.8	137,000	7.5

TABLE—ESTIMATES OF THE TOTAL POPULATION THAT WOULD BE ENFRANCHISED BY LOWERING THE VOTING AGE TO 18—Continued

Region or State	Total resident population of voting age under current law	Population casting votes for President, 1968		Increase in voting population by lowering to 18	
		Number	Percentage	Number	Percentage
Middle Atlantic:					
New York	11,731,000	6,790,066	57.9	854,000	7.2
New Jersey	4,412,000	2,875,396	65.2	328,000	7.4
Pennsylvania	7,261,000	4,745,662	65.4	536,000	7.3
East north central:					
Ohio	6,238,000	3,959,590	63.5	522,000	8.3
Indiana	2,957,000	2,123,561	71.8	249,000	8.4
Illinois	6,605,000	4,619,749	69.9	507,000	7.6
Michigan	4,965,000	3,306,250	66.6	419,000	8.4
Wisconsin	2,469,000	1,689,196	68.4	198,000	8.0
West north central:					
Minnesota	2,091,000	1,588,340	76.0	174,000	8.3
Iowa	1,650,000	1,167,539	70.8	130,000	7.8
Missouri	2,818,000	1,809,502	64.2	219,000	7.7
North Dakota	366,000	247,848	67.8	35,000	9.5
South Dakota	386,000	281,264	72.8	35,000	9.0
Nebraska	865,000	536,850	62.1	75,000	8.6
Kansas	1,372,000	872,783	63.6	121,000	8.8
South Atlantic:					
Delaware	306,000	214,367	70.0	27,000	8.8
Maryland	2,187,000	1,235,039	56.5	204,000	8.3
District of Columbia	509,000	170,568	33.5	46,000	9.0
Virginia	2,698,000	1,359,928	50.4	286,000	10.6
West Virginia	1,079,000	754,206	69.9	90,000	8.3
North Carolina	2,948,000	1,587,493	53.9	298,000	10.1
South Carolina	1,453,000	666,978	49.9	165,000	11.3
Georgia	2,883,000	1,236,600	42.9	0	[1]0
Florida	3,839,000	2,187,805	57.0	315,000	8.2
East south central:					
Kentucky	2,061,000	1,055,893	51.2	0	[1]0
Tennessee	2,367,000	1,248,617	52.7	212,000	8.9
Alabama	2,056,000	1,033,740	50.3	194,000	9.4
Mississippi	1,292,000	654,510	50.6	132,000	10.2
West south central:					
Arkansas	1,176,000	609,590	51.8	101,000	8.5
Louisiana	2,040,000	1,097,450	53.8	201,000	9.8
Oklahoma	1,533,000	948,086	61.9	129,000	8.4
Texas	6,346,000	3,079,406	48.5	609,000	9.5
Mountain:					
Montana	405,000	274,404	67.8	37,000	9.1
Idaho	401,000	291,183	72.6	36,000	8.9
Wyoming	186,000	127,205	68.4	17,000	9.1
Colorado	1,181,000	806,445	68.3	112,000	9.4
New Mexico	534,000	325,762	61.0	62,000	11.4
Arizona	948,000	486,936	51.3	91,000	9.5
Utah	555,000	422,299	76.1	57,000	10.2
Nevada	282,000	154,218	54.8	26,000	9.2
Pacific:					
Washington	1,836,000	1,304,281	71.0	170,000	9.2
Oregon	1,240,000	818,477	66.0	102,000	8.2
California	11,904,000	7,251,550	60.9	1,054,000	8.8
Alaska	154,000	82,975	53.9	6,000	[3]3.8
Hawaii	424,000	236,218	55.8	34,000	[3]8.2

[1] 18-, 19-, and 20-year-olds now eligible to vote.
[2] 19- and 20-year-olds now eligible to vote.
[3] 20-year-olds now eligible to vote.

Source: Bureau of the Census, Current Population Reports (Population Estimates), Series P-25, No. 406, Oct. 4, 1968; Series P-20, No. 177, Dec 27, 1968.

I want to make sure at the outset that I consider it our first priority to extend the Voting Rights Act of 1965. I raise the possibility of accomplishing the 18-year-old vote at this time by statute only if we can do so without interfering with prompt and successful action on the voting rights extension. It is my particular pleasure this morning to introduce our first witness, a constituent of mine, Professor Archibald Cox of Harvard Law School.

Professor Cox is an eminent legal scholar and advocate. He served with great distinction as the Solicitor General of the United States

under President Kennedy and President Johnson. Inside the Justice Department he saw at first hand the need for voting rights legislation and helped develop the legal foundation upon which the 1965 act was built.

So, I want to extend a word of introduction and a word of welcome to you, Professor Cox. I know you are no stranger to this committee. We will benefit immeasurably by your appearance and your comments, and I want to extend a warm word of welcome to you this morning.

STATEMENT OF ARCHIBALD COX, PROFESSOR, HARVARD LAW SCHOOL

Professor Cox. Thank you, Senator, I——

Senator KENNEDY. Excuse me, the chairman was extremely kind, indicating that I might be able to address some questions to you. Perhaps, as you go into your testimony, I could interrupt to develop certain points. This, I think, would be the way I would prefer to proceed, if that is agreeable to you and to me and to the chairman.

Professor Cox. Thank you, Senator Kennedy. Mr. Chairman, I have a statement that I have filed with the committee, which I don't propose to read in any detail. And, I would be happy to interrupt my summary of the statement for questions or to elaborate on any point that either Senator Ervin, the chairman, or Senator Kennedy wish at any time.

I have been asked to testify upon the constitutionality of two provisions of the proposed voting rights legislation. The elimination of durational residency requirements for voting in elections for the President of the United States and the nationwide abolition of literacy tests. I would like also, to urge upon the committee that Congress has power, under the very same constitutional theory that sustains these changes in the law, to reduce the age for voting from 21 to 18 years of age. Although my testimony will be confined pretty much to the constitutional questions, I would like to state that I favor the extension of the Voting Rights Act of 1965 in its present form. In addition, and as part, I should suppose, of the same bill, I favor the elimination of durational residency requirements in elections for President, the abolition of all literacy tests in all parts of the country, and the reduction of the voting age from 21 to 18 all by act of Congress without waiting for a constitutional amendment.

Now, I will speak first, if I may, to the matter of the durational residency requirements. Under article 2, section 1 of the Constitution, as the committee well knows, the States have the power to determine their own method of choosing electors. But, like all other State powers, the power to define the qualifications for voting must be exercised in accordance with the 14th amendment, and particularly, in accordance with the guarantee of equal protection of the law.

I would emphasize that the equal protection clause, under several Supreme Court decisions, is violated by any action that works an arbitrary and unreasonable discrimination or an invidious classification in the exercise of the right to vote. That is settled, as I say, beyond all possibility of dispute.

Now, if the question of the validity of a 6 months' or a 1-year residency requirement were to come before the Supreme Court without the aid of Federal legislation, then that court would have to balance the interest of the new residents, the putative voters, against the interest supporting the residency requirement which the Court is asked to sustain. The State has an interest in preventing fraudulent claims of residence, a mechancial interest in getting up the voting list on time, and whatever State interest might be alleged in having voters in a presidential election familiar with the local interests that a President's acts may directly affect. Just how the balance would come out in the absence of legislation by Congress is very hard to say. The Supreme Court in *Drueding* against *Devlin*, a few years ago, sustained a 1-year residency requirement. On the other hand, last November, two Supreme Court Justices, the only two who spoke on the question, said that *Drueding* was no longer law and that a residency requirement was unconstitutional even in the absence of State legislation.

Senator ERVIN. What two Justices were they?

Professor COX. Justice Marshall and Justice Brennan. The case was Hall against Beals, which is in 38 U.S. Law Week 4006, 4008.

The point I wish to emphasize, Mr. Chairman, is that the situation is radically different if Congress has legislated on the subject under section 5 of the 14th amendment. The critical difference is that under section 5, the Congress has the power to investigate the relevant facts and interests, to determine the actual conditions, to make its own evaluation of the opposing interests and to conclude, looking to the actual state of affairs in the country, that the citizens' interest in participating in the choice of the election of President, as well as in his freedom of movement to establish a new home in different States in accordance with our historical tradition, so greatly outweigh the alleged State interests in the durational residency test as to make the requirement an instance of invidious classification or arbitrary and capricious discrimination, and thus, a violation of the equal protection clause.

What I am trying to emphasize is that in a sense the Congress, as well as the Court and perhaps even more than the Court, has the power to determine what the equal protection clause requires in a given situation. And this, if you think about it, is appropriate legislative function. It involves the finding and evaluation of facts. When the Court does find the facts and makes an evaluation of them, then the only question before the Court—paraphrasing its language very closely—is whether it could perceive a basis on which Congress might view the removal of the classification as necessary to secure the equal protection of the laws.

The proposition that Congress has the power to determine the requirements of equal protection in a given State situation is not new on this occasion. It was very clearly established, I think, in the case of *Katzenbach* v. *Morgan* in 384 U.S. 641. I would like to dwell on it a minute because the parallel seems to me very close.

There a New York statute made literacy in English a prerequisite to voting. The discrimination against Spanish-speaking citizens was claimed to be justified because of the State interest in assuring an informed and intelligent use of the franchise as well as encouraging people to learn English. In the absence of a Federal statute, the Court might well—indeed, it declined to validate it—it might well have sustained the New York law. However, section 4(e) of the Voting Rights Act of 1965 provided that no person who was educated in a Puerto Rican school in Spanish should be denied the right to vote on the ground that he wasn't literate in English. The Court sustained that congressional abolition of the English language literacy test, saying it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement constituted an invidious discrimination in violation of the equal protection clause.

As Justice Harlan pointed out in dissent, what the case necessarily means is that even though the Court alone might sustain a statute, if Congress finds that it violates the equal protection clause and has a rational basis for doing this, then the congressional finding is controlling. Now, surely from the standpoint of the constitutional question there is a rational basis for the conclusion that requiring more than bona fide residence is an invidious classification and I have not the least doubt that abolishing the durational residency requirement is within the constitutional power of Congress.

Senator KENNEDY. Professor, how similar are the arguments supporting the Congress' power to act by statute to abolish literacy and residency tests and the power that the Congress has to reduce the age of voting?

Professor COX. I would say exactly the same constitutional theory applies to all, and that one cannot sustain the abolition of the durational requirement or the abolition of the literacy test without relying on section 5 of the 14th amendment. Exactly the same theory applies to the voting age. Congress has the power to find the facts and to find that a distinction between those who are 18 to 21 and those who are over 21 is an invidious classification and a denial of equal protection of the laws.

Senator KENNEDY. Based on your reading of the *Katzenbach* case, which was a 7–2 decision, is it your feeling that the Supreme Court would recognize fully the power of the Congress to make this determination with respect to voting age, and to change the age limit by statute?

Professor COX. I think it would. That is clearly my opinion and I ought in all candor to say that there are probably some constitutional scholars who wouldn't agree with me. I don't mean to hedge my opinion, because that is my opinion.

Senator KENNEDY. Could we just very briefly review the specific mandate that has been given to the States by the Constitution to make a determination on the question of voting age? How do you think that power has been altered or adjusted or changed in recent times to authorize Congress to act by statute to permit 18-year-olds to vote?

Professor Cox. First, I think that the full extent of the power of Congress under section 5 of the 14th amendment was not realized until the decision of *Katzenbach* v. *Morgan*. That decision quite plainly, I think, is that Congress has broad power under the 14th amendment to determine what is necessary and proper, what is appropriate to implement the right of equal protection. It has power under the 15th amendment to protect against discriminatory practices on the grounds of race in voting. Congress has the same power it has under the Commerce Clause, for example, in regulating interstate commerce. The second point is the courts say that they are not the sole judges of the facts. It is up to the Congress to exercise the power. I would add that in a sense it is the responsibility of the Congress to determine how the equal protection clause applies.

Now, I think in addition, Senator Kennedy, both in terms of literacy tests and in terms of the age for voting, there have been marked changes in our society. To dwell on the literacy tests is hardly necessary with the development of new media of communications. In the case of age, I think there are a number of changes which have taken place and if the Congress were to balance what there is to be said for retaining the distinction between those who are over 21 and those who are slightly younger, against the interest on the other side, surely Congress would wish to consider whether there really is any reason to believe that those between 18 and 21 aren't mature enough and sufficiently appreciative of their stake in society to vote. Here, I think, is where the changes in society come into play. There has been great improvement in education. There has been great change in the age at which young people take jobs, marry, raise families, and have children. They have a greatly increased knowledge and sophistication on all issues. This all bears on the propriety of concluding that these interests make waiting until one is 21 to vote an unreasonable requirement.

I would, if I may, add one more point in this connection. The Supreme Court in *Kramer* v. *Union Free School District* uttered some language that seems to me very pertinent on this point. It said that any unjustified discrimination in determining who may participate in political affairs or the selection of public officials undermines the legitimacy of representative government. That is a point which struck me as uniquely important. Today, when so many young people talk about legitimacy, there is a need to win them back to a conviction that free representative government will work. Having them participate in it, rather than be excluded, is, I think, a prerequisite. And, of course, the exclusion is uniquely bitter when one may be summoned to fight and perhaps to die in defense of a policy that he hasn't even had a citizen's indirect voice in making. But the real point is that it is for the Congress to appraise these things. If it does so, as I read *Katzenbach* v. *Morgan*, the court will defer to the congressional finding, provided it is at least rational, and I don't see how there can be any question but such a finding would be rational.

Senator KENNEDY. Is there any limitation on the power of Congress to reduce the voting age from 18 down to 16 or 15? What are the limitations on the actions of Congress in this area?

Professor COX. The primary question is the good sense and good judgment of Congress. *Katzenbach* v. *Morgan* really is a token of congressional supremacy.

Senator ERVIN. I am glad to hear somebody suggest that Congress has good sense.

Senator KENNEDY. All that is necessary is that there are reasonable grounds for Congress to make the determination. Certainly, such a determination would be based upon what you said here this morning. You certainly believe that there are legitimate grounds to draw the designation at a certain level, 18 years of age, and it is your professional and scholarly opinion that the Congress, itself, has the power to make this change by statute.

Professor COX. I do. I do, indeed.

Senator ERVIN. Professor Cox, are there any cases to sustain your position you have taken here prior to *South Carolina* v. *Katzenbach* or *Katzenbach* v. *Morgan?*

Professor COX. There are no earlier cases to take that view. In all honesty, there were none. I could find a few here and there that would sustain me, but the basic theory, as I am sure you know, Senator, goes back to Chief Justice Marshall. The theory of *South Carolina* v. *Katzenbach* and *Katzenbach* v. *Morgan* is basically the theory stated by Chief Justice Marshall in *McCulloch* v. *Maryland* and *Gibbons* v. *Ogden*, but they applied it for the first time to the 14th and 15th amendments in the *Katzenbach* cases.

Senator ERVIN. I would like to read section 2 of article 1 of the Constitution. "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Now, I ask you if that provision of the Constitution wasn't interpreted uniformly up until these cases to give to the States the exclusive power to define who should vote for Members of the House of Representatives, subject only to the limitations placed upon them by the 14th amendment that they couldn't discriminate between persons in like circumstances and give one the right of the Constitution and deny it to the other, and subject also to the proviso that they can't set any limitations on race or sex.

Professor COX. That is true, of course. All that is being asserted here, all that was asserted in *Katzenbach* v. *Morgan*, was that the State had violated the 14th amendment and that the legislation was necessary to secure conformity with the equal protection clause. So, there is nothing unfaithful about that principle.

Senator ERVIN. But does section 2 of article 1 any longer have any meaning?

Professor COX. I think it does, sir.

Senator ERVIN. To what extent is it still a part of the law of the land?

Professor COX. To the same extent it ever was. To the same extent the 14th amendment itself is a part of the law of the land.

Senator ERVIN. Congress could do away with this, couldn't they?

Professor COX. Congress can define what it regards as an invidious

discrimination and can adopt laws that it regards as necessary in its judgment to remove the discrimination.

Senator ERVIN. Well, it supersedes the qualification devised——

Professor COX. If Congress finds that the State law on the facts that it has investigated is a violation of the 14th amendment, or stands in the way of implementation of the 14th amendment, then Congress can supersede it. Of course, Congress never tried to do that prior to——

Senator ERVIN. No, but on your theory Congress would have the same power to make section 2 of article 1 a dead letter as it has to make section 1 of article 2 a dead letter, wouldn't it?

Professor COX. I wouldn't say that it made them a dead letter. I would say that Congress was restrained in two ways. First, that it is restrained by its own good judgment and conscience. I think, as Marshall once said, that is the——

Senator ERVIN. In other words, what you conceive to be good judgment. You would also have to add what I think is bad judgment—to give Congress the power to nullify provisions of the Constitution.

Professor COX. And the second check is whether the findings of the Congress are themselves so irrational that the courts won't validate them.

Senator ERVIN. Well, in other words, there is no doubt of the fact that under your theory—and I confess that I can find support in the two cases you mentioned—Congress can make section 2 of article 1 inoperative.

Professor COX. I think Congress can make some State qualifications inoperative, just as the Court for many years now has been saying that some States imposed qualifications that were unconstitutional.

Senator ERVIN. Well now, I would like to read part of section 1 of article 2 which says that each State shall appoint in such a 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 Congress. That no longer has any meaning under your theory, does it?

Professor COX. I would say that it continues to have meaning.

Senator ERVIN. But Congress can destroy its meaning.

Professor COX. Again, I think, "destroy" is an unfortunate word and an inaccurate word in this circumstance.

Senator ERVIN. Wait. If Congress, by an act, can supersede the portion of section 1 of article 2 I just read to you——

Professor COX. I would suggest, Senator Ervin, that when Congress exercises many of its powers under the Constitution, it may supersede State laws that stand in the way of the exercise of the powers. The most familiar case, as I know you are aware, is when Congress acts to regulate local activities under the commerce clause, and says we think that a Federal rule should apply because of their effect on interstate commerce.

Senator ERVIN. In that case, though, Congress can purport to carry out the rules of the interstate commerce clause. In this case, it purports to supplant the words of the Constitution with an act of Congress which differs from what power the States have under this——

Professor COX. I would say, in this case, it not only purports, but does exercise the powers given to it in section 5 of the 14th amendment.

Senator ERVIN. We will come to that later.

What you say, in effect, is section 5 of the 14th amendment gives Congress the power of nullifying section 2 of article 1 and a portion of section 1 of article 2 which I read to you, and also this provision of the 17th amendment, "the electors in each State * * *" that is, the electors of Senator from each State, "shall have the qualifications requisite for electors of the most numerous branch of the State legislatures." Now, your position is that under the power vested in it by the 5th section of the 14th amendment, Congress can absolutely nullify those provisions of the Constitution and supplant them with a standard set by Congress itself.

Professor COX. My position is in three steps. One, Congress has very wide discretion to determine what is necessary to enforce the guarantee of equal protection of the laws, which has always been a limitation on State power under the section that you cite.

Second, here, as very often under our Constitution, one of the chief restraints is the good judgment and good sense of Congress and that is something that goes back to the days of Marshall when he said this very explicitly.

Third, if the Congress acts whimsically in making a finding that something is necessary to enforce the guarantee of equal protection, then, as I read the cases of the Supreme Court, the Supreme Court would strike that down. So, for those reasons I wouldn't accept your characterization that Congress can nullify the Constitution.

Senator ERVIN. But the net result you reach after traveling on those paths is that the 5th section of the Constitution gives Congress the power to nullify section 2 of article 1, section 1 of article 2, as it pertains to presidential electors, and the provisions of the 17th amendment which designate who has the power to vote for Senators.

Professor COX. We are in an odd position because here I am asserting that Congress' own good judgment is a restraint, and you, the experienced Member of Congress, have more doubts.

Senator ERVIN. Well, I think the difference between your thinking and mine on this subject is that I don't think that the people who wrote the Constitution trusted Congress as much as you do. This theory puts the restraint on the good judgment of Congress rather than on the Constitution. But let's leave out this aspect and just come to the results. In the ultimate analysis, your position is that the 5th section of the 14th amendment which gives Congress the power to enforce by appropriate legislation the first of section 14, gives Congress the power to supersede section 2 of article 1, section 1 of article 1, insofar as it relates to presidential elections, and the provisions of the 17th amendment with respect to electors of the Senate, doesn't it?

Professor COX. I am afraid I must respectfully disagree with your characterization of the consequences of my position.

I would like to emphasize one point, and that is—I think that you

cannot defend the House bill without accepting the theory of *Katzenbach* v. *Morgan* that I espoused here and believe to be good law. The theory seems to me to apply to the age requirement just as much as to the literacy and residence requirements.

Senator ERVIN. I think we are just using semantics. The net result of your theory is that the fifth section of the 14th amendment gives Congress the power to prescribe the qualifications for presidential elections and the qualifications insofar as age is concerned for voting, doesn't it? And also, it gives Congress the power to prescribe a residential qualification.

Professor COX. It gives Congress the power to change those qualifications if it finds that the present restrictions are a denial of equal protection of the laws. I am assuming that Congress would examine this in the spirit of making that inquiry.

Senator ERVIN. In other words, that also gives Congress the power to convict somebody of wrongdoing without a judicial trial, doesn't it?

Professor COX. If I heard you right, no, because there are limitations on the power of Congress under the first eight amendments of the Constitution, which would restrict what Congress might do without a judicial trial, but I may not have heard you correctly.

Senator ERVIN. Well, what is discrimination is something that is manufactured in that case and in the minds of Congress or in the minds of judges, isn't it?

Professor COX. I wouldn't use the word "manufactured." I would say that it is something that Congress inquires into.

Senator ERVIN. There is no definition of "invidious discrimination" in the equal protection clause, is there?

Professor COX. There is no definition.

Senator ERVIN. In other words, the equal protection clause merely says that the State shall not deny any person within its jurisdiction the equal protection of the laws. That has been uniformly interpreted to prohibit a State from treating people differently in similar situations.

Professor COX. Yes.

Senator ERVIN. And it wasn't——

Professor COX. And Congress has the power to decide when they are sufficiently similarly situated.

Senator ERVIN. And wasn't it held by the New York Court of Appeals and by the three-judge Federal court sitting in New York district that the literacy tests in the New York constitution was perfectly constitutional because it treated everybody in the same situation exactly alike. In other words, it established qualifications which entitled everybody to read and write the English language the right to vote and denied those who couldn't read and write the English language the right to vote.

Professor COX. Yes, but of course, the question is of the importance of the distinction. For example, the Court held that a State may not forbid a resident to vote because he is a member of the Armed Forces. Now, I suggest, Mr. Chairman, that one could say verbally, "Well, Texas was treating people similarly situated alike." But one has to look at the importance of the distinction.

Senator ERVIN. I disagree with you most emphatically.

Professor COX. In that case—*Carrington* v. *Rosh*, Texas wasn't allowing members of the Armed Forces to vote.

Senator ERVIN. They said even the people of Texas or a man who had a permanent residence in Texas could be denied the right to vote although everybody else who had a permanent residence in Texas could vote.

Professor COX. the case required looking at whether being in the Armed Forces was a material distinction or a capricious distinction. It is not just solved by words alone.

Senator ERVIN. Well, That is clearly no distinction nor a basis for distinction.

Professor COX. Well, that is a matter of judgment. I suggest, Mr. Chairman, that——

Senator ERVIN. You and I will disagree on that point and probably many others. But, in other words, it couldn't have one residential requirement for Texans who were civilians and another residential requirement for—rather, that you couldn't give the right to vote to resident Texans who were civilians and deny it to resident Texans who were in the military service. That is what it amounted to.

Professor COX. That is one way of phrasing it. In addition, of course, there are the poll tax cases and there is the case in New York of *Kramer* v. *Union Free School District*.

Senator ERVIN. The Poll Tax case, I don't think, is anything anybody could take great intellectual pride in. It held it was an "invidious" discrimination to impose a poll tax as a prerequisite of voting that required a man to pay what under a minimum wage could be earned in 72 minutes because other people might earn a little bit more than that. Under that theory, it is an invidious discrimination to level taxes for any purpose because it is always easier for a man of affluence to pay a tax than it is for a poor man to pay a tax. I find that right now in trying to pay my income and intangible taxes.

In other words, I think that the real basis of *Harper* v. *Virginia Board of Elections* is that a majority of the Supreme Court didn't like the tax, so the Constitution outlawed it, despite the fact there were two other opinions from Supreme Court Justices before it, upholding the tax.

Professor COX. Yes, that, of course, is one case but there is also the *Kramer* case that I suggested supports my position.

Senator ERVIN. I seriously doubt whether an opinion by Justice Brennan and Justice Marshall is sound law even if the majority concur. I certainly don't accept that position.

Senator BAYH. Will the Senator yield?

I want to make a distinction between what the distinguished Senator from North Carolina calls sound law and what is law. Is that accurate?

Senator ERVIN. Yes.

Senator BAYH. We have been discussing it in——

Senator ERVIN. Now, you were talking a great deal about the fifth section of the 14th amendment. I would like you to explain to me precisely the difference between the power which the fifth section of the 14th amendment gives to the Congress and the power which section 8 of the first article gives Congress. Under these words, it says that "the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any departmental office thereof."

Professor Cox. Well, I think that the scope of the congressional power under section 5 of the 14th amendment and section 2 of the 15th amendment, although the language is somewhat different, is just as broad in relation to carrying out the purposes of those amendments as the power under the necessary and proper clause that you read, Mr. Chairman, is in relation to the other powers in Congress. Indeed, this is something the Supreme Court unanimously held in *South Carolina* v. *Katzenbach* and again in *Katzenbach* v. *Morgan* and in the *Guest* case later on. I don't evoke the *Guest* case here.

Senator ERVIN. We have found something we finally agree on and this is with reference to the emphasis on the fifth section of the 14th amendment. In the *Morgan* case you might just as well put it on this ground because when the 14th amendment became part of the Constitution, Congress certainly had the power to do whatever was necessary and proper to enforce the 14th amendment under the section——

Professor COX. Well, I suppose there were some doubts. It has come to the same thing, but I think the power would have been there anyway. As I remember, section 8 speaks of the power granted in "this article."

Senator ERVIN. Now, in your voting rights theory, this provision of the Constitution would permit Congress to destroy the fifth amendment, would it not?

Professor COX. Well——

Senator ERVIN. A bill of attainder has been defined in many cases as being an act of Congress which convicts a named person, or persons whose identity is ascertainable, of wrongdoing and punishes them for such wrongdoing without a judicial trial. Is that not a fair statement of what a bill of attainder is?

Professor COX. I would guess so.

Senator ERVIN. Now, the Supreme Court of the United States held in the *Lovett* case that the prohibition on bills of attainder prohibited Congress from passing a bill of attainder against two county officials which denied them the right to employment by the Federal Government and receive a compensation for the denial of employment; did it not?

Professor COX. I am sorry.

Senator ERVIN. In the *Lovett* case, Congress passed a law forbidding, in effect, payment of any appropriation for this employment and they held that these men were protected against this consequence by the prohibition of Congress to pass bills of attainder.

Professor COX. That is right.

Senator ERVIN. And yet, the court held in the case of *South Carolina* v. *Katzenbach* that a bill of attainder in that case afforded no protection because a bill of attainder does not protect States.

Professor COX. It wasn't a statute directed at a small number of identifiable individuals; that is correct.

Senator ERVIN. No, they said though that a bill of attainder didn't apply to States, didn't they——

Professor COX. Yes, I add the additional reason.

Senator ERVIN. They didn't add it.

Professor COX. No, they didn't add it.

Senator ERVIN. Well——

Professor Cox. I think I did in my argument, but they didn't follow it.

Senator Ervin. Here is exactly what they said—

> Likewise the court has consistently regarded the Bill of Attainder Clause of Article 1 and the principal of the separation of powers only as a protection of individual persons and private groups, those who are peculiarly vulnerable to non-judicial determination of guilt.

So, the decision sustained the proposition that a bill of attainder doesn't apply to protect the States, well——

Professor Cox. The Supreme Court unanimously so held, and I think historically a bill of attainder applied, as I have said, only to identifiable individuals.

Senator Ervin. Yes, identifiable. If Congress passed a bill condemning, for instance, all of the people in the county without a judicial trial, that would be a bill of attainder, wouldn't it?

Professor Cox. I would guess so if not an ex post facto law.

Senator Ervin. Well, this is ex post facto.

Professor Cox. Well, I always thought that——

Senator Ervin. Except for the technical distinction that an ex post facto law only applies to criminal cases.

Professor Cox. I thought this was basically very similar to a preliminary injunction, except that Congress imposed the preliminary relief and except that Congress did it rather than the Court.

Senator Ervin. Well, in this case States are denied the privilege of exercising powers given them by the three articles of the provisions of the Consitution which I read, on the basis of the fact in the 1964 election there were election officials which had discriminated against blacks and disenfranchised them; aren't they?

Professor Cox. Yes, sir.

Senator Ervin. So, they did condemn the election officials of the States on the basis of an event which occurred in the past.

Professor Cox. Well, that happens with all equitable relief against the continuation of wrongdoing. That is a very basic element in preventive relief.

Senator Ervin. Well, it is also normally a person which is convicted in a court; doesn't it? Isn't that the purpose of a bill of attainder?

Professor Cox. This really wasn't conviction and punishment. It was a regulatory measure.

Senator Ervin. In my State, they applied this law to 39 counties and said that the people of 39 counties cannot exercise the rights given them by the Constitution of the United States because they have violated the 15th amendment. That is what it amounts to.

Professor Cox. Well, I think it imposed duties pending a judicial determination that there had been no violation of the 15th amendment under circumstances where there was very strong reason to believe that those violations existed. Congress found that probability to exist.

Senator Ervin. You think that Congress could pass a law condemning all the people of a county in Massachusetts, and the people acting as agents or officers, for the people of a county in Massachusetts, of wrongdoing on that basis and deprive them of their rights?

Professor Cox. Congress often passes laws on the basis of evidence available to it that are in a sense prophylactic legislation, saying that certain people who have an interest and who have misused it shall sever themselves from the interest. What I would say is that they aren't condemned or convicted. Rather, the legislation is a regulatory measure to prevent the risk of continued wrong.

Senator ERVIN. What time does your plane leave?

Professor COX. 11:25. I have a class of 300 people waiting for me at 2.

Senator ERVIN. I hope that when you teach that class that you teach them sound law.

Professor COX. I will begin by telling them the advice I have received.

Senator ERVIN. I would just like to ask you this one question. Prior to the *Morgan* case and the *Katzenbach* case didn't the Supreme Court take the position that the Constitution consists of provisions of equal dignity and should be interpreted as a harmonious instrument so as to give respect to each provision.

Professor COX. I don't recall the specific language. I don't doubt that it exists. I would have thought that it did that in the *South Carolina* case and the *Morgan* case.

Senator ERVIN. The *Morgan* case and the *South Carolina* case, particularly, adopted the theory that the Constitution is composed of mutually repugnant provisions of unequal dignity. In other words, it was held that under section 5 of the 14th amendment, Congress could now annul a State voting qualification in perfect harmony with the equal protection clause and substitute for it a Federal voting qualification which Congress is forbidden to pass by the second section of the first article and the first section of the second article and the 17th amendment.

Professor COX. Well, I don't——

Senator ERVIN. That is what the case holds. It says the question of whether or not the State statute was in harmony with the equal protection clause was not relevant to the case. The relevant question was not whether there was invidious discrimination or a violation of these laws. It was that Congress had the power to pass a statute if the statute had a tendency or could be said to prevent a State from violating the equal protection clause. Now, isn't that so?

Professor COX. I wouldn't read it that way, Senator.

Senator ERVIN. Well, you talk about invidious discrimination, but Justice Brennan said that was immaterial. He said it was immaterial and wasn't relevant to the case whether the New York constitution was in harmony with the equal protection clause.

Professor COX. Because Congress had found that it wasn't and therefore, New York——

Senator BAYH. Mr. Chairman, with all due respect, our witness has to catch a plane and has the herculean task of trying to get back to a class. I have a few questions I would like to ask but will not be able to and I would like to waive them and let him go.

Senator ERVIN. Well, Mr. Justice Brennan and you disagree on that because he said particularly that that issue wasn't even relevant to this question. I hope I haven't detained you but that is my interpretation.

Under the *Morgan* case, Congress has the power to pass a law even though a State has not violated the equal protection clause and can pass a law which can deny a State the power to make any laws, enforce any laws, or interpret any laws, because by so doing, Congress makes certain—by simply stripping the State of all powers—the State couldn't violate the equal protection clause. This means that Congress has the power to destroy the Constitution.

Thank you.

Professor COX. Thank you, Senator.

Mr. BASKIR. Mr. Chairman, the next witness this morning is the Honorable Lester G. Maddox, the Governor of the State of Georgia.

STATEMENT OF HON. LESTER G. MADDOX, GOVERNOR OF THE STATE OF GEORGIA

Governor MADDOX. Mr. Chairman, members of the committee——

Senator ERVIN. Before you proceed, Governor, I would like to put in the record the opinion of the court in *Katzenbach* v. *Morgan* in *South Carolina* v. *Katzenbach* so that the Senate will have the benefit of it.[1]

Senator ERVIN. You may proceed.

Governor MADDOX. Thank you, Mr. Chairman.

Senator ERVIN. I would first like to thank you and tell you that it is a real pleasure that you have afforded me this opportunity to come before our committee.

Governor MADDOX. It is a pleasure for me to come before this group today as a Governor of the State of Georgia to share with you my views on what I consider the injustice and discrimination of the Voting Rights Law of 1965 and the proposed amendment to this outrageous piece of legislation. The 15th amendment to the U.S. Constitution ratified in 1970 states as follows:

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

I have no argument with the fact or philosophy contained in this amendment. Part 2 of article 15 states that the Congress shall have powers to enforce this article by appropriate legislation. Again, I have no arguments with the facts or philosophy argued in this statement, but I do strenuously object to the use of State rights by the Congress as it is the case of the voting rights law of 1965. The 15th amendment to the Constitution does not prohibit the States from abridging the right of citizens to vote. It simply prohibits any such abridgement on account of race or color and there is nothing in the U.S. Constitution which prescribes or allows Congress to prescribe the use of a fair literacy test to determine voter qualification.

I submit to you that any person who cannot read or write the English language if allowed to vote, could create a serious threat to our representative form of government and to the democratic ideals which we have traditionally held dear. Even if in this day and age an illiterate person could make an intelligent decision concerning the candidates and issues presented to him for his consideration, it would be impossible for him to vote his convictions in a modern, computerized voting booth without being taken in hand by another citizen who has bothered to get an education.

---

[1] The *Morgan* case and the *South Carolina* case appear at p. 663.

The great State of Georgia took the lead in reducing the eligible age of voters in our State from 21 to 18. This extended the franchise to thousands of previously ineligible young citizens, both black and white. In reference to the age 18 voting rights, I would like to say this, I would hope that Congress would set up the machinery that is necessary to provide for all our qualified 18-year-old youth who are able to vote. We expect them to act as adults in all other matters and most of them do, but—we call upon them to fight for our country and for our liberty and when they are called upon, most of them do, and I know there are thinkings among some of us that young people are possibly some of the—some of them would vote in the wrong direction that would be displeasing to us, and I am sure that would happen on occasion, but they probably feel the same way about some of their adult generation that is before them.

Personally, I am willing to trust the 18-year and 19- and 20-year-old young people in this country at the ballot box. I believe that my experience indicates to me that the people in this age group and the upper class of the senior high school and in the college years, I have found them often times to be more knowledgeable of the facts, the candidates, the platforms, and the Government and the needs, and often times those of my own generation.

When we lowered in Georgia the voting age to 18 I suppose it could have been lowered to the voting age to make it to 16 or to 12 or even to 6 years if the lawmaking body of our soverign State had deemed such to be wise and proper, but obviously, the lowering of the voting age requirement to 6 years for it would not be proper and wise and Georgians have acted prudently and responsibly to preserve the integrity of our representative form of government.

A 6-year-old neither has the education or the judgmental ability to cast an intelligent vote in any kind of political election. Neither does an illiterate regardless of his race, color or previous condition of servitude. I submit to you, gentlemen, that Georgia and all of the other 49 States in our Nation have the constitutional right to require that a voter be literate and not only do we have the right to establish such a qualification, but we have the duty. The Constitution of the United States of America does not legally allow any level of the Federal Government to take away this right and this duty from us.

In my opinion, it is totally irresponsible to permit persons who either cannot or will not learn to read and write our native tongue to have a voice in determining the fate of proposed local bond issues, constitutional amendments, and other important State or local issues and it is sheer folly to give such a person the tremendous privilege and awesome responsibility of choosing men and women to serve in high public office. I know that it is not necessary for me to remind the esteemed membership of this subcommittee that ours is a republican form of government and not a democracy. Certainly we would hold dear the democratic purposes of equal representation of our people in the government, but in the words of James Madison in 1787:

> One of the worst forms of government is a pure democracy; that is, one in which the citizens enact and administer the laws directly. Such a government is hopeless against the mischief of factions.

In his inaugural address in 1949 President Harry S. Truman said:

"Democracy is based on the condition that men has the moral and

intellectual capacity as well as the inalienable right to govern himself with reason and justice."

I submit to you that people without this moral and intellectual capacity can quickly destroy this great democratic public and do it in less than one one-hundredth of the time it took to build it. But whether you agree or not that reasonable qualification should be set for voters should really be considered a moot issue.

Under the U.S. Constitution as it now stands, the Congress has no legitimate authority to make a decision on this matter which would be binding on the States. It is a matter of public record that many Members of both the House and the Senate recognize that the right of the Congress to pass such a bill as H.R. 6400 into law is questionable at best. Some from nonaffected States are on record as being of the firm opinion that only through a constitutional amendment could Congress make laws banning the rights of States to determine and set voter qualifications on a nondiscriminatory basis.

Again, in view of the Court's decision concerning the constitutionality of the Voting Rights Act of 1965, you may also wish to consider this a moot question, but I challenge any honest man to tell me in good conscience that he believes it to be constitutional to pass legislation which was patently designed to discriminate against only a few Southern States. Some may have had some political reason for such legislation, but they are wholly without constitutional justification. This act used the percentages listed in the 1964 voter registration statistics of each of the affected States to come up with a formula aimed only at Georgia, Alabama, Louisiana, Mississippi, South Carolina, and Virginia. This, gentlemen, is discrimination in its invidious form. It is a direct violation of the U.S. Constitution and is in total contradiction to the concept of State rights.

I ask you, do two wrongs make a right? Is it right to use legislation which discriminates against a few States in order to eliminate the alleged discrimination against a few people? I contend that it is not.

I would like to point out that I am not so naive as to believe that no discrimination has ever existed in Georgia, but I would hope that no Member of this esteemed body is so naive as to believe that discrimination does not also exist in many other States in both the North and South. My own State has made a number of important moves toward insuring that all elections are fair and accurate. In 1964 before the effective date of the 1965 Voting Rights Act, Georgia adopted a comprehensive revision of its election laws. For the first time the State adopted procedures for the use of vote recorders for use with computers to count the vote. The new code as a whole with the vote recorder provision required amendments to work out the bugs in this comprehensive revision. In 1968, for the first time, Georgia adopted a comprehensive municipal election code applicable uniformly to all municipalities in our State. Because of the broad coverage, though, of section 5 of the 1965 Voting Rights Act, which required a change in any standard, practice, or procedure respecting voting be submitted to Washington, my State has submitted over 150 changes to the Attorney General since 1965. The requirements of this act even made it mandatory that Georgia submit 12 constitutional amendments to a Federal official for approval.

In my considered opinion, the burden placed upon my State by this act of Congress is not only improper, but impracticable. The Georgia General Assembly meets in January and February and sometimes into March of each year. The election code has provisions which become operative in March of each election year. Laws passed in the present section of the Georgia General Assembly Legislature in the early stages of the election process cannot go into effect until about May 1 because Federal approval must first be obtained. Actually, in my judgment, this is a Federal police state over elections in Georgia that most of the other States are not subjected to.

Senator ERVIN. It gives the Federal official the power to veto acts of State legislatures which they are empowered by their own constitution and the Constitution of the United States to enact, doesn't it?

Governor MADDOX. Yes; and in matters like this it is as though we don't even have a general assembly that is elected by the people to represent the people to legislate for the people.

We are handicapped in making changes by the 60 days in which the Attorney General has to act on election law changes. The Attorney General has stated that changes in location of polling places and election district lines must be approved by him. If a polling place burns down within 60 days of an election, we would have no alternative but to violate the provisions of the 1965 Voting Rights Act or deprive hundreds of citizens of the right to vote. Even more unreasonable aspect of this act comes to light that when we consider that after the 1970 Census Georgia will be required to redraw legislative and congressional districts under the law. The Attorney General of the United States could disapprove the apportionament plan even though the Federal courts had approved them. I believe that when the full effect of such cumbersome and unconstitutional procedure is brought to the attention of the general public, the people will be just as outraged as were the men with the freedom in our earlier history who asked—who were tired of tracing back and forth across the ocean to have their laws looked at and disapproved by the King and then set out their greatest of all documents, Declaration of Independence.

Their outraged would certainly be justified. In the words of Justice Black in defending in the *South Carolina* v. *Katzenbach* case which has been discussed in here a number of times:

> Certainly, if all the provisions of our Constitution which limit the power of the Federal Government and reserve other powers to the state are to mean anything, I mean at least that the states would have power to pass laws and amend their constitutions without first sending their officials for hundreds of miles far away to beg federal authorities to approve them. Moreover, it seems to me that Paragraph 5 which gives federal officials power to veto state law they do not like, is in direct conflict with the clear command of our constitution. I cannot help that believe that the inevitable effect of any such law which forces any one of the states to entreat federal authorities in far away places for approval of local law before they can become effective, is to create the impression that the state or states treated in this way are little more than conquered provinces.

Senator ERVIN. Governor, if you will recall one of the reasons Thomas Jefferson gave in the Declaration of Independence for our severing the bonds to the mother country of England, was because they were tired of being required to submit their laws to England for approval before they could become operative.

Governor MADDOX. The Senator would please permit me, I would like to say that there is more justification in this time in this country for a rededication to the Declaration of Independence than at the time when Thomas Jefferson and John Adams and the other fellows all got together and declared their independence at that time.

Georgia is not a conquered province. Georgia is a sovereign State that is coequal among the States of the United States and should be treated as an equal under the law and nothing less. This is all that we ask. We ask for no special privilege or right. We are a great part of the United States of America and we want to be recognized as a full fledged partner and not a stepchild. We are people and free our State, we beg of you from Congress and the bondage placed upon them by the Voting Rights Act of 1965. I plead with you the Congress to restore to Georgia the rights under the U.S. Constitution that Georgians and other Americans have fought, bled, and died for and on foreign battlefields for others and still do so even today on foreign battlefields.

If the Government of ours must make war, let it be upon communism, the deadly enemy of the great United States of America. Let it be against crime, against obscene and pornographic materials that are helping to bring about a morale decay in this country and let it be about the illegal drug traffic, let it not be upon the God-fearing, freedom loving, country loving, industrious people of the South.

This is an abominable piece of legislation. Which should have never been borne. I urge each of you to use your great influence to see to it that it does not continue to live. Let it die a just death. The administration amendment S. 2507 has also little to recommend it. It is an unnecessary measure of unquestionable constitutionality. I would also like to register my opposition to its passage, however, if the Congress will not be satisfied to allow the States to exercise the rights which are constitutionally theirs, then I say it is only fair and just that all States have their rights usurped equally.

In short, misery loves company and the more States that are affected by this Federal encroachment upon State rights, the more voices we will hear rising in opposition to it and the sooner we can all return to commonsense constitutional government.

Let me thank you for this opportunity to present my thinking before your distinguished committee and this most important piece of legislation facing the American people and the Congress today.

Senator ERVIN. Thank you, Governor.

Senator BAYH. Thank you, Governor, I appreciate your taking the time to come here. I am sure you must be busy as the Chief Executive of the State. I want to commend the State of Georgia for taking the leadership in lowering the voting age. As you know three others have lowered the voting age. Of course, there are others who have not followed Georgia in this area, and I appreciate very much your stressing that in your testimony. I think it is a good example for us to follow.

I think all of us owe a debt of gratitude to the sons of Georgia who have rightfully shown pride in suggesting that they have fought for the country. Of course, this is not limited to the State of Georgia. And I must say I share your concern that we wage a tireless battle if we are going to deal with the problems of crime and keep our guard up relative to communism and pornographic peddlers. But I wonder,

when we are talking about making war on the God-fearing, freedom-loving, industrious-minded people of the South do you so characterize it if we are trying to see that all the people of Georgia, black and white, have a chance to vote? Is that declaring war on people?

GOVERNOR MADDOX. No, sir. This is not what I am talking about. I am saying that set one standard for the people in your part of the country and another standard for the people in my part of the country. There is nothing in this U.S. Constitution that gives any level of government that right to say that people in Georgia and Mississippi are to be treated differently in the voting qualifications than the people in California or New York and this is the war against our particular section of the country. It was designed patternly against our people in the country.

Senator, I would say this, that on the November elections—on the November 9, 1964, elections—had we had a blizzard in about five Northern States and 45 or 55 percent of the people had to stay home, then they would be under this law also.

Senator BAYH. Did you have a blizzard in Georgia on that day.

Governor MADDOX. We did not, but we got quite a number of people out and were getting more people to vote out all along, sir.

Senator BAYH. You stated that this was an outrageous piece of legislation. This legislation has resulted in the registration of a million voters who were not entitled to vote prior to that time. Do you consider this a good consequence or a bad one?

Governor MADDOX. I wouldn't say that that particularly had a lot to do with it, but I would say that it roused people who were not qualified to vote, if it registered people who did not know who they were voting for and what they were voting for, why then it is bad legislation.

Now, it is right, for, that people in Georgia that don't know who they are voting for and what they are voting for, then the people in New York ought to do—the same kind of people ought to be registered to vote in New York also and right now it is a discriminatory piece of legislation against the people in my region of the country.

Senator BAYH. Perhaps, you're right and perhaps we should outlaw it in New York.

You talk about a fair literacy test, do you think a fair literacy test is one which a Ph. D. cannot pass and a nongrade school graduate is able to, is that a fair literacy test?

Governor MADDOX. No; I wouldn't say that. What I am talking about is that——

Senator BAYH. We're talking about——

Governor MADDOX. The discriminatory pieces of the bill says that the illiterate in our State can vote but the illiterate in New York can't vote and it denies us a State right which was given to the people in New York and Pennsylvania and in Indiana——

Senator BAYH. The reason we are deeply concerned about literacy test as applied in some States is that in your State a Ph. D. wasn't qualified to vote in many instances where a nongrade school graduate was. This seems to me to go to the very point of the test itself as a discriminatory device as it is administered in Georgia. I would like to know if you have any examples in New York where a Ph. D. was not permitted to vote and a nongrade school graduate was.

Governor MADDOX. No, sir; and I don't know of any particular ones in Georgia under those conditions. Could you cite an example where a Ph. D. in 1964 could not vote in Georgia?

Senator BAYH. I would be glad to give you a whole list of examples in that State. It is a volume about this high——

Governor MADDOX. I would like to see just one Ph D. in Georgia of any race in 1964 that could not vote in an election.

Senator BAYH. I would be glad to send you a list.

Governor MADDOX. For any reason other than he just didn't want to register——

Senator BAYH. He filled out the test and the person who was looking at the test didn't feel that he answered the questions.

Senator ERVIN. I read those records and I would challenge anybody to cite an example of that in North Carolina. In fact, I would challenge anybody to cite a single instance in the last 10 years where any person has been denied the right to register and to vote who could read and write in North Carolina.

Senator BAYH. Alright.

Senator THURMOND. I would also make the same challenge as to South Carolina.

Senator BAYH. I respectfully suggest that I disagree with my colleagues from North Carolina and South Carolina, but I think it is possible for us to look at the record and perhaps come to a different interpretation of what it says.

Senator ERVIN. You have Attorney General Brownell's statement that people have been discriminated in three of the southern precincts in the State of North Carolina, one in Camden County, one in Green County, and one in Brunswick County, back in 1956. Those are the only specific cases that I have had pointed to me. He said they were based on FBI records and when I contacted my State officials, I found those things had been called to their attention and every one of them had been corrected by an administrative process in time for the people affected to register to vote in the primary in May 1956.

The only other direct evidence from North Carolina was from a black registrar from Winston-Salem, who was a field agent in the NAACP, Mr. McLean, who came here one time about 1957 or 1958. He claimed of certain cases, but he admitted he had called them to the attention of the North Carolina State Board of Elections and that they had been corrected. That is all the evidence I have got from the record against us except for Mr. Clarence Mitchell, who does not reside in North Carolina, but who says he thinks there is discrimination down there.

Governor MADDOX. Mr. Chairman, if you will permit me, let me say this: I think one of the best evidences so far in my State is that all these people that voted this thing upon Georgia that in our State general assembly we have more of the minority race and if we wanted to protect the voting rights that they have back in their own State assemblies and in their own offices back home, our State is open to all of our people for voting and serving in office that can qualify and seek office and get the number of votes and cast their votes for the candidate of their choice. Of course, I am having some difficulty now about the income of Governor which may be getting some votes cast in an upcoming election, but I mean other than that people back in my State can vote for who they please.

Senator THURMOND. One more observation——

Governor MADDOX. Whether this bill or not. I mean, the people——

Senator ERVIN. If you stay on here you will find that southerners, especially of the Caucasian race, have a very bad image. I don't know whether that arises out of their history or arises out of the fact that it is politically profitable in some people to parade our very bad image before our constituents.

Senator BAYH. I don't know why the Senator from North Carolina is suggesting we criticize him. I will say now for the record what I have said before and that is that I know no Member of Congress who has a more dedicated record of providing rights for military servicemen, for those in mental institutions, for Federal employees, than the Senator from North Carolina. But I take issue with anyone on this matter of providing for the rights of black citizens over this country. I could see that if I were a Senator from a Southern State or Governor from a Southern State, I wouldn't like this type of legislation applied just to my area. What I am suggesting to you is that we have a problem that seems to exist just in this area and the very existence of this problem seems to me at least to some extent demonstrated by the fact that after this legislation passed we had a million voters added to the roll that weren't on the rolls before.

Senator ERVIN. They could have had 3 million voters on the roll.

Governor MADDOX. We have a lot more than in New York.

Senator ERVIN. There have been people registered, but I cannot think of a single person registered in North Carolina since that act was passed who wouldn't have been registered if this act had never been passed. The trouble is——

Senator BAYH. The Senator is entitled to his own opinion.

Senator ERVIN. When people start dealing with figures I always tell the story which I have told often because it illustrates a point. An old mountaineer bought his groceries on credit and one day he went in to pay his grocery bill and the grocer told him the amount of the bill. He thought it was sort of high and he got to complaining. The storekeeper got out the book from behind the counter and laid them out for the old mountaineer and he said "Here are the figures and figures don't lie." And the old mountaineer said, "I know figures don't lie, but liars sure do figure."

And not only do liars quote figures, but honest men figure. So, to take every record of every man registered in the South and include those in North Carolina, residents since 1964, and say they are registered by virtue of this act, I would say that at least 999 out of a thousand would have been registered if this act had not been passed. I don't know of any single man and nobody can tell me that there is a single man in North Carolina who for years had been denied the right to register to vote. And, I support the right of every qualified citizen of every race to register to vote all of my life.

Governor MADDOX. The more that votes the better I like it, Senator Bayh.

You mentioned a while ago that we seemed to have a problem in what to do to cope with it and you stated you knew what already had been done. We are just trying to get it undone. But you did mean to use the words "seemed to have a problem" and what do we do? Certainly we shouldn't, when we seem to have a problem, place

what I call a police state upon certain States and certain pieces of a country because they seem to have a problem. We have problems all over this country and the one that the Congress—this act has passed just directly against our people and has created a much greater problem than any problem existing because of it.

Senator BAYH. Perhaps instead of seemed to have a problem, I should have said, and it is true in this Senator's mind, you do and did have a problem. I hope the time will come when this legislation won't be necessary, but I don't think it is just mere accident—and I respectfully dissent from the assessment made by the Senator from North Carolina—that these millions of voters just automatically were enrolled to vote under this act. The facts are that after the act passed, hundreds of thousands of voters over the South registered, and these people couldn't even get into the registry offices beforehand. It seems to me we have a responsibility to the States, the Congress does and we also have a responsibility to the individual citizens in those States. If they are being denied the right to vote by one scheme or another, it seems to me that our burden, our responsibility required us to give them this most cherished right and this act provides that.

Governor MADDOX. You are denying them in New York the right to vote becaue they are illiterate.

Senator BAYH. Can you give me examples of where black people or brown people have been denied the right to vote just because they are black or brown and not based on whether they can read or write or not?

Governor MADDOX. I don't know of any place like that, but I know that in New York City if they want to because a person is illiterate to deny them the right to vote——

Senator BAYH. I have a feeling we should remove all these literacy tests because I think we have ample evidence from the Civil Rights Commission that they are patently discriminatory against poor people and people who are in the——

Senator ERVIN. If this had been applied to congressional districts instead of being limited to States and counties, they would have had to include the Harlem district which is represented by our Adam Clayton Powell. They would have had to bring that district under this act because less than 50 percent of the people of voting age in that area voted in 1964.

Senator BAYH. Can the Senator point to one example in Harlem where black men have been denied the right to vote because they were black?

Senator ERVIN. The conclusion that this bill——

Senator BAYH. The Senator is not answering the question.

Senator ERVIN. I don't know anybody from Harlem, but I say that if you applied the formula that is applied to North Carolina counties, Georgia and Virginia and South Carolina, Alabama, Mississippi, Louisiana, if you applied it to congressional districts, it would have compelled the presumption that those who resided in the Harlem district had been discriminated against on account of the race because less than 50 percent of them went out and voted in the 1964 election.

Senator BAYH. Before this formula was adopted an ample burden of proof was sustained, it seems to me, by case after case showing that in these areas there was a clear pattern of denial to minority group voters of the right to vote. That is what we are trying to remedy.

I am not trying to impose a hardship on Georgia or Alabama or Mississippi or North Carolina or any place else. What we are trying to do is stop those who deny individual citizens our most cherished right, the right to vote. We wish we had a clear kind of case where we would have no need for this kind of——

Governor MADDOX. They are registered to vote and you just aren't registered in the percentages that you thought that they were and takes into no consideration whatsoever, the fact that some of these people may not want to vote, white people and black people. It doesn't give any percentages for that. If they just didn't want to vote, well they just have to fall under this regardless whether they have been denied the right to register to vote or not and this is discriminatory and is illegal, unconstitutional and ungodly and un-American and wrong against the good people in this country.

Senator BAYH. Amen. [Laughter.]

Governor MADDOX. And phooey on anything that says otherwise.

Senator BAYH. I think that the Governor from Georgia, of course, is entitled to look at it as he desires, and I am sure he is using the best of his ability. But it seems to me that we have to set a standard. Perhaps it is all right as far as the Governor of Georgia is concerned that according to testimony in the House, 85 percent of the white voters are registered and 56 percent of the nonwhite voters are registered.

Governor MADDOX. Well, like in Illinois and Indiana we have some voters in the cemetery.

Senator BAYH. White or black?

Governor MADDOX. Both.

Senator BAYH. How about Echols County? Why is it that you have a fantastically high registration of nonwhite voters there, 9.7 percent and in Glascock County, 6.2 percent of the nonwhite voters are registered. Does this sort of alter——

Governor MADDOX. Wait, when was that, Senator?

Senator BAYH. This was in 1968 according to the testimony given in the House of Representatives. The Governor from Georgia certainly must have a conscience and must be of one opinion or another, does this type of legislation alter the registration of nonwhite voters in those counties?

Governor MADDOX. No, sir; I think this is evidence positively of some group of people in some instances of being more interested in being heard at the polls and being registered and participating in the elections. We find that it varies in some colored communities now in the Atlanta area and other areas where there is a heavier percentage of colored people registered and voting than of white people.

Senator BAYH. Well, I would have to——

Senator ERVIN. Civil Rights Commission figures of black registration in my county are that 100⅓ percent of all the black people of voting age, 21 years and up, are registered. I don't believe you can beat that much in Indiana.

Senator BAYH. We are trying.

Let me ask you one additional very quick question. What we are trying to do is to determine in our own minds if the conditions which existed still exist—and the gentlemen before us, of course, simply deny that they did exist. Some of us are convinced that they did, and the record is replete with evidence of discrimination and the large number of people registered after the initial act was passed. Now,

what we are trying to decide in our own minds is whether the act can and should be extended or not.

In other words, what acts in good faith show that the pattern of conduct which led to the disenfranchisement of black voters will not be repeated? Which shows now that this type of conduct will not again be performed? I thought I might ask the Governor if he would consider the following devices—which have been used by counties and municipalities in these areas—as legitimate devices.

One device is extending the term of a white official to prevent him from having to run for reelection. Does the Governor feel that this is a legitimate device as far as the election process is concerned?

Governor MADDOX. I have never heard of anything like that. I don't think it would be legitimate just for that purpose; no, sir.

Senator BAYH. What about——

Governor MADDOX. If it had been extended for some other purpose, Senator, and from far less. Liberal socialists in the Nation's Capital said it was for this purpose which you are now saying, it could have been for some other purpose. Every now and then, you know, they set the limit for the President; that he can run two and terms, they change terms of offices quite often in local governments. And they do in Indiana, I suppose.

Senator BAYH. I am sure the purpose of this has to be taken into consideration.

Governor MADDOX. If we hunt around them, we could get the idea that it is because colored people are around, but this is a bunch of malarky.

Senator BAYH. What about shifting municipal boundaries so that more white people are included and the black people are excluded; is that a legitimate tool?

Governor MADDOX. No more legitimate than right now, with the National Government coming in with HEW and drawing a county line in order to change school zones. They are both wrong.

Senator BAYH. What about abolishing offices that are sought by Negro candidates?

Governor MADDOX. Well, if they need to be abolished, it doesn't make any difference whether they are black or white candidates. I think that we have too many offices.

Senator BAYH. It is just a coincidence that in Baker County, in your own State, the office of the justice of the peace was abolished at the same time that a black man qualified to run?

Governor MADDOX. Well, we abolished others where white people ran and not black candidates were running.

Senator BAYH. Well, what about making formerly elected officers in black counties and cities appointed officers now.

Governor MADDOX. Well, we have done that for the school boards and the people have a right to do that. Are you going to deny them a right to change from appointed office to elective office?

Senator BAYH. I am suggesting that——

Governor MADDOX. Are you going to criticize them when they do, are you going to always holler black and white when they do?

What I want to ask you, Senator, is when are you going to quit warring on the South? That is what you are doing right now and you have been doing that for 10 minutes.

Senator BAYH. I am not warring on the South——

Governor MADDOX. Yes; you are——

Senator BAYH. I am just trying to get rid of unscrupulous methods of denying southerners the right to vote.

Governor MADDOX. I disagree with you.

Senator BAYH. And I want to try to restore their right to vote and not be——

Governor MADDOX. Well, they have that right in my State and they have never been denied the right to vote in my State.

Senator BAYH. What about increasing candidates filing fees and adding requirements for getting on the ballot after——

Governor MADDOX. Don't they do that in Indiana? We have——

Senator BAYH. We don't have them just when black people get interested——

Governor MADDOX. Now, there you go again, you are just warring on the South. It is all right to raise the fees poll in Indiana, but not in Georgia. I think what's wrong—let me say this—back during the War Between the States the States when Sherman captured a lot of our people around Atlanta, they carried them over to Marietta, they had to walk to Marietta from Atlanta and then they put them on a freight train and carried a lot of them up to Indiana and when the war was over a lot of them had to walk back. Do you still miss those Georgians that we got back from up there?

Senator BAYH. Well, I will tell you we have a lot of fine southern people in our State and I am not sure that they all vote for me, some of them do, but I don't know any of them that have denied the black man the right to vote.

Governor MADDOX. We don't do that in Georgia.

Senator BAYH. Well, the pattern would show that a large number of black people haven't had access to the ballot box in the Southern States and that is the reason we——

Governor MADDOX. That's the reason you declare war on the South.

Senator BAYH. We are not declaring war on the South, Governor. We're trying to see that everyone in your State and in all States has a chance to vote.

Governor MADDOX. Discrimination against—if you vote that way by you against our people in our State but you deny our people a right to which you afford the people in your own State, and there is absolutely no constitutional justification for your acting that way.

Senator BAYH. Well, the Supreme Court has held differently.

Governor MADDOX. The Supreme Court is not always right.

Senator BAYH. It has held that honest men should be able to vote——

Governor MADDOX. Has the Supreme Court always been right?

Senator BAYH. In *South Carolina* v. *Katzenbach* the Supreme Court said that this act is constitutional. Maybe we can make ourselves appointed judges of the supreme law of the land which says that the Voting Rights Act is constitutional and will remain that way until the Supreme Court says otherwise.

Governor MADDOX. It may change tomorrow, you know, it changes from one time to another. A decision in May 17, 1954, is now unconstitutional because it didn't work.

Senator ERVIN. You and I know that we have a precedent to follow when we say that some decisions that the Supreme Court has made are not in accordance with the Constitution. Abraham Lincoln once said of

a Supreme Court decision that "it is erroneous, it is contrary to the authority on the subject, I refuse to except it as a guide for governing the people, and I will do everything I can to do away with it."

Governor MADDOX. A member of a distinguished party of the U.S. Supreme Court even during this decade has outlined where they themselves think the U.S. Supreme Court went beyond the Constitution. That doesn't make it right because some Justice said—Supreme Court said it was right.

Senator BAYH. It makes it constitutional though, doesn't it? It makes it the law of the land.

Governor MADDOX. No, sir; not in this instance. Right now, the Court——

Senator BAYH. I think the Governor——

Governor MADDOX. I want to finish my point, you said yours. In May 17, 1954 they ruled that you cannot deny children because of race, color, or creed. And, in 1969 they ruled that you can deny them because of race, color, creed or national origin. Now one of them is wrong and one of them is not the law of the land. Now, which one do you pick as the law of the land?

Senator BAYH. *South Carolina* v. *Katzenbach* decided to the issue we're discussing right now, the constitutionality of the voting rights——

Governor MADDOX. Are you talking about Mr. Katzenbach?

Senator BAYH. I am talking about the Supreme Court of the United States.

Senator ERVIN. Well, it said among other things that it could condemn Southern States without a legislative trial—that you could shut all the doors of all the courthouses in the country except here in the District of Columbia—it said that the due process clause does not protect the States in this particular case and it didn't protect State officials—it says that even though a State registered everybody in the State of voting age, if less then 50 percent of them failed to go out and vote then that showed the State prevented them from voting without an opportunity to defend themselves. It said that the constitutional doctrine of equality of the States didn't apply except in connection with the terms of admission to the Union. That was, of course, a ridiculous statement because they had no equality as long as they were a territory and it was only applied in terms of admission. Under that theory, Congress could convert the 50 States into as many different kinds of States as there are pickles. That is what it said, among other things. I could also tell you a whole lot of other things.

Senator BAYH. I wish we had time——

Governor MADDOX. Senator, that kind of thinking—that kind of thought—that kind of legislation had to come from an intellectual, it could not have come from a kindergarten child. A kindergarten child would have known better.

Thank you for your time. You've been so nice to give me this time——

Senator BAYH. I have another question or two that you might care to answer, but if you are in a hurry then I don't want to——

Governor MADDOX. You go ahead.

Senator BAYH. I just wonder what you thought of setting different standards in three counties of a given State that have a black majority requiring the people in those three counties to own certain amounts

of property in order to run for office when the same standard isn't applied to the candidates from other counties that don't have a black majority. Do you consider this a fair test?

Governor MADDOX. No more legitimate and legal and constitutional than the present decisions of the U.S. Supreme Court and the Congress that sets certain discriminatory laws against a portion of this country that they don't others.

Senator BAYH. You can answer yes or no. Is that a good practice or is that a bad practice?

Governor MADDOX. I told you it is not a good practice. No more than it is a good practice to make our children do one thing in Georgia and your children in Indiana get another privilege.

Senator BAYH. It is being done. It is being done. These subtle things are being done——

Governor MADDOX. In Indiana and Illinois, too.

Senator BAYH. They are not being done in the voting booths or denying the people the right to vote——

Governor MADDOX. I don't think anything is more subtle than what is going on in Washington, D.C.

Senator BAYH. If you have examples of these in my home State, I would be happy to look at them, but I don't know of any there.

Governor MADDOX. If you come to Georgia, I'll give you equal time.

Senator BAYH. These types of practices are being followed in a very subtle, almost sinister, manner to deny people the right to vote. I think it's bad and if it takes an act like this to stop it, then we have to have it. When we stop having these practices followed, then we won't need an act like this.

I don't know what you can do to get people down there to stop using these practices. If they stopped we wouldn't need an act.

Governor MADDOX. Well, you ought to hang up some of your own dirty linen. You've got plenty of it. You keep hanging ours up. You've got more of it probably than we have.

Why don't you cut your war out—off against the South. Let us be a part of Indiana, a part of New York, and a part of California?

Senator BAYH. You are a part of this country——

Governor MADDOX. Well, quit stomping us down the hill of tyranny because that is what's happening by the Congress, death against the South.

Senator BAYH. Maybe this is the kind of dialog that is beneficial to you. I'm not too sure that it is beneficial to what we are trying to do here. What we are trying to do is to stop these practices. You and others who are in a position of responsibility can stop these practices and not have to have this type of legislation.

Governor MADDOX. That's easy for you to sit up there behind that place and call off some of these deficiencies and failures and weaknesses, but it would be just as easy but probably it would take a little bit more something else for you to point at something in your own State that is discriminatory against some of your own people and how this Congress discriminates against our people because someting you don't like about how some people register to vote in our State.

So you point at everybody in our State because you don't like the way someone is registered to vote and the U.S. Constitution gives

us in our State the right to set the qualifications of the voters and not you, a Senator from Indiana or any other Senator.

Senator BAYH. Now, you——

Governor MADDOX. Now, you can go ahead and discriminate against us, but your going to always regret it, I think, that you would take this fight and wage it against the people of the South, black and white citizens of my State.

Senator BAYH. Now, you've had quite a bit to say about the discrimination in my State relative to voting. Can you point to one example, one practice that would deny people the right to vote in Indiana?

Governor MADDOX. No, sir; but you can't point to one in Georgia where they're denied the vote.

Senator BAYH. Or in Illinois.

Governor MADDOX. You point to one in Georgia.

Senator BAYH. Or in Ohio, or Minnesota.

Governor MADDOX. The black people had been discriminated against all over this country.

Senator BAYH. Sure they have, but we are talking about the right to vote.

Governor MADDOX. And they are being discriminated against today in New York, in Ohio and Indiana and you know they are.

Senator BAYH. Let's have some examples——

Governor MADDOX. Other people are discriminated against.

Senator BAYH (continuing). Of discrimination in the area of voting. That's what we are talking about here.

Governor MADDOX. Well, you point to an example in Georgia.

Senator BAYH. I have a whole list of examples that have happened since the passage of the 1965 Voting Rights Act in which local officials have tried to use devices either to water down or to deny black voters the right to participate in the electoral process.

I don't think this is right and that's why this act is necessary. And that's why the Supreme Court in *South Carolina* v. *Katzenbach*——

Governor MADDOX. Even if its unconstitutional, it's necessary, right?

Senator BAYH (continuing). By an eight to one vote decided that it was unconstitutional.

Governor MADDOX. Even if it's unconstitutional, even if it is discriminatory you want to go against it. I tell you what I'll do, Senator——

Senator BAYH. I hope the day will come, and you may not believe this, but I hope the day will come when we won't need a Voting Rights Act like this, and I think——

Governor MADDOX. Never have. It's already here and it's passed.

Senator BAYH. The type of leadership that you give and others like you give is going to determine the day when we no longer need a Voting Rights Act. I appreciate your participation here.

Governor MADDOX. Let me say this, you point to one place in Georgia where a Negro citizen can't register and vote freely, then I'll go see if I can find one in your State.

Senator BAYH. Well, if you want to look at some facts and figures, in 1964 there were 27 percent of black voters who were entitled to vote in Georgia, in 1968 after the 1965 Voting Rights Act 52 percent of the black voters were entitled to vote.

All during this time 85 percent of the white voters were entitled to vote. Does that argue against your——

Governor MADDOX. Isn't it wonderful we're increasing our voting, isn't that marvelous, isn't that wonderful? White ones and black.

Aren't you increasing them in Indiana?

Senator BAYH. Every time we have a chance.

Governor MADDOX. Well, God bless you

Senator BAYH. We don't need the Voting Rights Act, they just register.

Governor MADDOX. How about all the illiterate? Do you have any illiterates up there? Are they voting? They are in Georgia.

Senator BAYH. No illiterates in Indiana.

Governor MADDOX. Mr. Chairman, is that——

Senator ERVIN. Governor, Lee surrendered at Appomattox 105 years ago this coming April. We've been waiting for 105 years to be admitted to full fledged membership in the Union. And we have been waiting for 105 years in the hope that reconstruction in the South will sometime come to an end.

Governor MADDOX. Still waiting.

Senator ERVIN. Still waiting. We've served in every war of the United States has fought in and died, and for some reason we can't bring an end to reconstruction.

I've got just one more observation. The Senator from Indiana was asking about a Supreme Court decision being the law of the land. Article 6 of the Constitution talks about what the law of the land is and it says, "This Constitution and the laws of the United States shall be made in pursuant thereof and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land."

There is nothing in there that says that judicial aberrations and judicial usurpations constitute the law of the land.

Chief Justice Stone said that when courts deal with an important question as ours do, the only protection we have against unwise decisions is that judicial decisions be given careful scrutiny, and fearless comment be made upon them.

I don't consider that *Katzenbach* v. *Morgan* is constitutional. It's contrary to many provisions of the Constitution. I also don't think *South Carolina* v. *Katzenbach* is constitutional because it says that seven Southern States shall be denied the power to exercise their constitutional powers, whereas all of the other States in the Union can do so.

That's what it says and what it doesn't say. It says that Congress can condemn the country by legislative fiat without a judicial trial and that's a bill of attainder. It said a bill of attainder doesn't apply and doesn't protect the States or its people, and I don't think those things are constitutional.

I don't think that section 5 of the 14th amendment gives Congress the power to nullify State laws which are in perfect harmony with the 14th amendment and to pass for them a Federal standard that Congress is forbidden to pass by three different sections of the Constitution directly and another by implication. I do say that I hope that I live long enough to see the South readmitted to the Union on a full time basis and I hope that I stay in the Senate long enough to see that when a bill comes up that's opposed by southern Senators,

that bill will be sent to the committee to be considered and not be subject to a deadline to be reported back whether they have finished consideration or not.

I still hope to see this.

Governor MADDOX. Senator, there is a lot of hope for us, you know, because a lot of these people who have voted against us are moving down there with us and they are all joining on our side and the first thing you know we'll be running the show.

Senator THURMOND. Mr. Chairman.

Senator ERVIN. Thank you for coming to testify.

Governor MADDOX. Thank you, sir.

Senator THURMOND. Governor, I have a few questions.

Governor MADDOX. Yes, sir. Senator Thurmond.

Senator Thurmond. Governor Maddox, it is a pleasure to have you with us this morning to testify to the issue concerning the voting rights act of 1965. I welcome you on behalf of the committee and thank you for taking time from your busy schedule to give us the benefit of your thoughts.

The States are in an equal partnership with the Federal Government and it is fitting and proper that the Chief Executive of one of our sovereign States should give us his views on this important issue. I regret that the other Chief Executives of the States effected by this law are not also present. I hope yet they will come.

If the States are to maintain their sovereignty in face of the constantly expanding growth of the Federal Government, it will be necessary for our governors to clearly and forthrightly stand up for the rights of the States and voice the position of the States at every opportunity.

Your testimony here today has contributed to the maintainence of the sovereignty not only of the State of Georgia, but the other States of this Union as well and I commend you.

Governor, I have just a few questions. Do you think that anybody who is qualified to vote will be refused the right to register and vote in your State if the administration's Voting Rights Act is passed?

Governor MADDOX. I would——

Senator THURMOND. The administration's Voting Rights Act, of course, will apply to all of the States of the Union. Personally, I would prefer for the act to expire all together. I see no need for it. I think it is unconstitutional. I think the States under the Constitution have the right to pick the voter qualifications, but as you know, the Voting Rights Act of 1965 applies to only a few States, a few Southern States and I believe a few counties in Arizona.

Now, if the administration bill were applied to the whole Nation, and it is my opinion that the people of Georgia and of the other southern States will abide by the law and that even if the present law is stopped and there is no law, they would still abide by the law.

Governor MADDOX. I believe this is true. Yes, sir; this is the way that I feel with or without the law, either one, that if there is going to be anyone who wants to register to vote will be able to register in my State, sir.

Senator THURMOND. Now, if any action is to be taken on the voting rights bill this year, I presume that you would prefer for this law to apply nationwide and not single out any State or Southern State chiefly as the 1965 law did.

Governor MADDOX. Absolutely so, sir.

Senator THURMOND. Do you know of any arguments that have been made either in these hearings or elsewhere that would justify the position of those who say that the Voting Rights Act of 1965 should remain in effect and to apply to only a handful of States.

Governor MADDOX. Well, the Constitution itself clearly states that this should not be the case, certainly it should not apply to some sections of the country. This is a double standard. When such legislation does apply to certain areas and exempts others on a percentage basis. They could have made it 60 percent, 70 percent or 40 percent, they could set any figure and the Constitution doesn't give them that right, so I state again that I feel that the people are going to register to vote with or without this law.

Senator THURMOND. Is it natural that since the passage of this 1965 Voting Rights Law that there has been a lot more people registered? Isn't that because they have registered people who did not meet the qualifications under the State laws? For instance in my State a man only has to be able to read and write to vote. If he can't read and write, he can still vote under our State Constitution if he owns $300 worth of property.

But after the passage of this law, Federal registrars came in and registered thousands of illiterate people who did not meet the State qualifications for voting. Isn't that the reason that you had the big increase?

Governor MADDOX. Senator, that could not——

Senator THURMOND. Persons chiefly who could not meet the State qualifications have been given the right to vote in spite of the State constitution and the States affected?

Governor MADDOX. This has brought in a lot of registered voters, I'm sure, under these circumstances, but I like to think, too, that we have had quite an increase in our State and in the Southeast in general because of the industrial revolution, the economic advances and developments that we have made in recent years. People are becoming motorized, they are able to get to the courthouse, they are able to register—we're taking people out from the courthouses and registering people, so this has brought in the registration——

Senator THURMOND. Voter drives by groups and civic organizations have naturally increased the voter interest, haven't they?

Governor MADDOX. Yes, sir; I think if we were still way down the bottom of the hill on the economic ladder, though, our voter registration would still be further down from what it is to this day. It's our industrial economic growth developments to the State last year, which is one of the top four in the country with Florida and Georgia which has brought about a personal income increase, so our entire region, this industrial revolution—your State of South Carolina, about $700 million this past year, all of these things have helped to buy cars, to buy vehicles, to make it possible for people to get back and forth to the places and get registered to vote.

Senator ERVIN. One element I think you and Senator Thurmond left out. If I recall correctly this activity was flourishing very much during the Second World War or thereabouts and there are a lot of newborn people that have come of age in the last few years who have been registered, aren't there?

Governor MADDOX. Yes, sir, this is true.

Senator THURMOND. And so we have a lot of people who have come south in the last 5 or 6 years.

Governor MADDOX. More of them and they are coming faster——

Senator THURMOND. And they have become eligible to vote in the the last 5 or 6 years and then you have the illiterates who are registered under this 1965 voting rights law who would not be qualified otherwise and if those same illiterate people lived in New York or moved to New York, they would not have the right to vote there because the Supreme Court law doesn't apply there and illiterate people can't vote in New York; isn't that true?

Governor MADDOX. This is true; yes, sir.

Senator THURMOND. Governor Maddox, with the various organizations both political and otherwise that are interested in getting the Negro vote, do you think that there is a practicable political matter or any danger of any member of a minority group having his vote taken away from him?

Governor MADDOX. No, sir——

Senator THURMOND. Isn't it a fact that anyone who is qualified to vote, certainly in my State, anybody qualified to vote can vote and has been able to vote. I was Governor from 1947 to 1951 and any qualified person then could vote and since then I'm sure has been allowed to vote.

Governor MADDOX. I don't see any—in the foreseeable future—anything that would take away from any person regardless of race, color, his right to vote in my State or in the Southeast.

Senator THURMOND. Do you favor that any person of any race, color, or creed of previous servitude is disqualified to vote under State law, register and vote?

Governor MADDOX. I do and I encourage it, sir.

Senator THURMOND. And also, you spoke about 18-year-olds voting. I presume you and your State has such a law which permits them to vote.

Governor MADDOX. Yes, sir.

Senator THURMOND. But I presume you do not wish the Federal Government to impose that on all the States of the Nation, but to leave it to each State to handle the qualifications for voting?

Governor MADDOX. Yes, sir, I think so. But my recommendation to the various States would be that they permit 18-year-olds——

Senator THURMOND. Do it by State by State——

Governor MADDOX. If I had the opportunity, I would recommend that because I think they are qualified and able and should be given the opportunity to vote.

Senator THURMOND. And you would favor that each State would act on it individually rather then the Federal Government enforcing it upon them?

Governor MADDOX. Yes, sir, unless we had a constitutional amendment somewhere that would provide that through Congress and the States, not by some court and not by Congress alone, but if there should be a constitutional amendment that should provide that 18-year-olds could vote, that would be a matter—a different matter all together.

Senator THURMOND. In other words, if it is going to be done, do it constitutionally and not by statute?

Governor MADDOX. That's right. Absolutely.

Senator THURMOND. Governor, thank you very much for appearing here and again I congratulate you for representing your State and I express the hope yet that the other Governors of the States affected by this law will come here and express their opinions on this vital and significant matter.

Governor MADDOX. Thank you, sir.

Senator ERVIN. I have a few observations to make on how we got such a bad image. The Civil Rights Commission made a formal statement that black people were discriminated against in voting in Clay County, N.C., because no blacks were registered to vote in that county. They didn't know in making that statement that there are no black people living in Clay County.

One of the counties of North Carolina which is condemned and has been denied the right to exercise the constitutional powers of this of this 1965 act is Guilford County.

Guilford County has the branch of the University of North Carolina there, it has the North Carolina Agricultural & Technical University; it is the seat of one of the Methodist colleges for women, Greensboro College; it's the seat of the great Quaker college of Guilford. It has been condemned for discriminating against blacks although they have made a black man to represent them in the legislation and a black woman is one of the district judges and several members of the City Council of Greensboro, the county seat, have been elected and yet it stands condemned under this artificial formula.

Don't you think that we are not as bad as we have been pictured and that we ought not to be treated like Esau? As I recall the Bible says that Esau was unable to obtain repentance although he sought it. Don't you think that they ought to, at least if they are going to condemn us again on the basis of voting, that they ought to take the 1968 presidential election and make the formula operate on that basis rather then on the basis of 1964?

Governor MADDOX. Yes, sir. I think they ought to be willing to accept change. That's what everybody tells me to do.

Senator ERVIN. Thank you very much.

Senator BAYH. May I ask the Governor one last question, please.

Governor, I'm trying to find out—I'm sorry if we have exceeded the lines as far as some of our exchanges are concerned, and if that's the case, I apologize—but I am trying to see what sort of response we might expect. One of the allegations that has been made by some who insist that it's necessary to extend the Voting Rights Act is that if it is not extended and the State legislators in the given States are no longer covered, they would then pass laws requiring reregistration of all voters, thus saying that those who had been perfectly registered and would have to be registered once again.

If the legislature of Georgia did this, would you support that kind of legislation?

Governor MADDOX. Well, let me say, first the legislature of Georgia will not or would not do that and if I were Governor, I would veto such legislation.

Senator BAYH. Well, I'm glad to hear that response.

Governor MADDOX. Let me tell you this, Senator, there is always going to be discrimination and nobody is doing anything about discrimination of black against black or black against white or white against white. We're just—because a lot of times and it is certainly

not true in your instance, but a lot of time people politically motivated and the black and white question gets into the thing and creates a lot of unnecessary legislation and breeds bias and prejudice a lot of times because of these things.

But if we ever end all discrimination neither of us could testify before any committee. We wouldn't be people, we wouldn't be free, we wouldn't have a country. I can remember before I got elected Governor of Georgia at these various country clubs and commerce clubs the only way I could get in those places would be as a delivery boy.

And I never fell out with these folks and had I been born black I would have tried to be the best black citizen in the country and if someone discriminated against me, I know this is a great country, a free country, with faith in God and a love for this country and initiative on my own, well, I would still try to be the best one in the country and we have people all over Georgia, black ones and white ones, living that philosophy and we're making and making it right in our State.

Senator BAYH. Well, I appreciate your comments. I would just like to make one last observation. I hope that what Senator Ervin said does come to pass, that he does stay in the Senate long enough to see—and although I hope he stays a long, long time, I hope it doesn't take long—for this day to come when we won't need this type of act. I'm willing to accept your good faith in what you say in honoring your oath as Governor of one of our States.

The facts of the matter are that there have been a number of efforts made by officials to find ways to keep black citizens from voting or to diminish their influence at the ballot box. What we are trying to do is to find a way to keep this from happening in all parts of the country.

Governor MADDOX. I don't think you'll find any evidence in my State of that, Senator. I do find that the Federal Government coming in with its action programs and its other programs that are breeding a group of people who feel like they have got to walk out on or war on business and war on industry and war on the right to private property and war on the city hall and the courthouse, I do see a lot of discrimination there by a government that is destructive of the democratic process of which we all love in this country, and in pushing the voters' rights act like we do, too, well, we're benefiting some political interests without benefiting maybe too many black people or white people in our own communities.

Senator BAYH. A person is not affected detrimentally, it seems to me, by the 1965 Voting Rights Act, if he doesn't become involved in the practices that discriminate against people who have the right to vote. As long as there are no orders passed, no laws in the State legislature passed, no rules passed on setting up voting boundaries and other kinds of things that have the effect of denying or diluting the right to vote, then everybody is all right.

Governor MADDOX. We don't have that in Georgia.

Senator BAYH. Then I don't see why you are concerned about the act. It doesn't affect you at all.

Governor MADDOX. I want my people to live under the same rules that your people live under in Indiana.

Senator ERVIN. I want to read into the record material on the passage of a bill of attainder. The decisions are that if a State condemns any named persons or any identifiable persons of wrongdoing

without a judicial trial and deprives them of any rights they may have, that is a bill of attainder.

In the case of *Texas* v. *White* reported in 7 Wallace at page 721 the Supreme Court gave this definition of what constitutes a State.

> A State in the ordinary sense of the Constitution is a political community of free citizens occupying a territory of defined boundaries and organized under a government sanction and protected by a written Constitution and established by the consent of the government. It is the Union of such States under a common Constitution which forms a distinct and greater political unit which that Constitution designates as the United States and makes the people and States which compose it one people and one country.

That's the end of the quotation. Now, the Voting Rights Act of 1965 doesn't make this one country. It takes the people of seven States and denies them the right to exercise the powers conferred upon them by the Constitution. It does that on the basis of a condemnation by the Congress of the United States and without a judicial trial.

It closes the doors to the courthouses to get acquittal of this legislative condemnation. I don't think the Voting Rights Act of 1965 has secured the registration of one person in my State of North Carolina because anyone could have registered without the act.

But I'm against it because it is an insult to my State. It's an insult to the other Southern States it effects, because it divides the States in the Union into different classes and allows one group the power to exercise constitutional rights and denies the others that right.

The States ought to have equal powers in this country and this bill bill goes against that principle, I just don't like my State insulted and that is what this bill does. It doesn't hurt my State and it doesn't hurt me politically. Talk about discrimination, as chairman of this subcommittee I'm being discriminated against at this very moment as a Senator by the Senate of the United States.

Under ordinary procedures, when a bill passes the House of Representatives it comes over to the Senate and it is sent to a committee with authority to take evidence, consider the bill and consider amendments to it. I am under orders from the U.S. Senate to report this bill back March 1. When I got that bill I set hearings immediately.

I was unable to hold those hearings because the full committee met on the nomination of Judge Carswell and under the Senate rules, I'm prohibited from holding meetings on the days that the full committee sits. I couldn't hold my hearings and I had to cancel the first 7 days of hearings.

Wednesday of last week was the first day I was able to hold hearings under the Senate rules and I got 3 days of hearing set this week. I can't possibly finish the hearings, much less have the subcommittee consider the bill and make a report back. That's another kind of discrimination. That is discrimination which in the almost 16 years that I have served in the Senate has never been exerted on any Senators except Senators who happen to represent Southern States and who happen to oppose bills that the majority of the northern Senators support.

So, we have areas of discrimination right here in the U.S. Senate. I hope I am able to serve in the Senate long enough to see it abolished.

Senator Bayh. I would serve the record, if our distinguished chairman would yield. I think that perhaps at least the Governor has no

reason to be involved in this difference between the distinguished Senator from North Carolina and the Senator from Indiana, but I think the record will show that the Voting Rights Act which was introduced the first part of last year. The subcommittee has never voted on it, and although the distinguished chairman did hold some hearings, we have not had any action. Without being at all critical of the Senator from North Carolina, I think history would show that the voting rights legislation has had a very tortuous pathway to follow in and out of the Judiciary Committee.

Because we thought that this was very important, we thought that some steps should be taken to see that the whole Senate has a chance to vote on it.

Governor MADDOX. Let me say this, gentlemen, if you would, please. Certainly the committee has not discriminated against me. It has given me a lot of your time and you've been very kind and generous and I appreciate your questions and opportunity to appear before you and I do have other things, and I know you have other things to do and would like to invite you to visit with me at the Governor's office while I'm there and visit in our State and I will try to give you equal time.

Senator ERVIN. If you had not found it convenient to come before this committee before the first of March, you would have been denied any hearing before this subcommittee.

I want to get it straight that the simple extension bill was introduced on June 19, 1969. On June 30, 1969, the Administration bill was introduced by Senator Dirksen which was 11 days after Senator Hart introduced his bill. One day after Senator Dirksen introduced his, I announced that I would hold hearings on August 9, 10 and 11 and 30, 1969.

No member of the subcommittee, no member of the administration, no Member of Congress asked me to give further consideration until the House had passed on these same bills. I was willing to hold hearings, or have the subcommittee give consideration.

Another thing is that there are only four southern Senators on this subcommittee; yet we have been said to block legislation—but we are only four Senators out of 17.

Now, I think it would be beneficial if there were more southern Senators in the Senate because I think the country would be better run.

We are like the Kazooks Society in the Maggie and Jiggs cartoon. They went over to Madrid and there was a protection society called the Kazooks that——

Senator BAYH. I think you ought to spell that for the reporter.

Senator ERVIN. Kazooks, K-a-z-o-o-k-s.

Every member was sworn to come to the aid of any other member when he was in any kind of difficulty. Well, Jiggs was walking with his wife along the street in Madrid and got in a little trouble with Maggie and he called Kazooks. Holding true to the tradition of the Kazooks, there in the cartoon a hundred men came swarming out to aid Jiggs, and Maggie laid them out with her umbrella. The last picture on the cartoon shows Jiggs all bandaged up in the hospital and he said, "There is nothing wrong with the Kazooks society, only they don't have enough members."

And the southerners don't have enough members in this body to make it a better country.

Governor MADDOX. The South will rise again, Senator.

Senator ERVIN. I would like to read into the record now a part of a case concerning the constitutionality of this voting rights act.

When New York raised the point that there were people who were denied the right to vote under constitutional literacy tests and that literacy tests had been held to be in conformance with the equal protection clause of the 14th amendment, Justice Brennan said:

> Thus our task in this case is not to determine whether the New York English literacy requirement as applied to deny the right to vote to a person who successfully completed the sixth grade in a Puerto Rican school violates the Equal Protection Clause. Accordingly, our decision in *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, sustaining the North Carolina English literacy requirement as not in all circumstances prohibited by the first sections of the Fourteenth and Fifteenth Amendments, is inapposite. Compare also *Guinn* v. *United States*.

In the earlier decision the Court did not find that the equal protection clause itself nullifies North Carolina's English literacy tests requirements.

So, under the *Morgan* decision, if that decision is valid, Congress has the power to pass a law depriving a State of the power to make or enforce or to interpret any laws because that would be the most effective way to prevent the State from ever violating the equal protection clause of the 14th amendment to the Constitution.

On the question of whether State laws in compliance with the Constitution could be nullified by congressional action was not even considered material or relevant.

What it amounts to here is that Congress can take rights away from States—for all practical purposes the Congress can abolish the States of this Union, notwithstanding what the Supreme Court said in *White* v. *Texas* that the Constitution looks to an indestructable Union composed of indestructible States.

This act would suspend the authority of the States to exercise their constitutional rights and is a far cry from the greatest decisions the Supreme Court ever handed down in exparte *Milligan*, which stated that there is no notion more pernicious was ever invented by the wit of man when the notion that any provisions of the Constitution could be suspended under any circumstances.

Senator BAYH. Permit me to ask that a letter be placed in the record at this time from a lawyer who is a member of Alabama Bar and has served in the Civil Rights Division of the Department of Justice and has experience with officials trying to stop people from voting. I think the story he tells here shows the problem.

Senator ERVIN. He works for the Civil Rights Division down in Alabama?

Senator BAYH. In the Department of Justice.

Senator ERVIN. What is his name?

Senator BAYH. John T. Nixon, a unique name to be submitted in the record, but——

Senator ERVIN. It will be added.

(The above referred to document follows:)

> Mr. Chairman, I recently received a long and thoughtful letter concerning the Voting Rights Act from an attorney who served in the Civil Rights Division of the Department of Justice from November 1964 to October 1969. This lawyer is a member of the Alabama Bar and has had extensive experience in the investigation and litigation of voting discrimination throughout the South, particularly in Alabama. His letter is eloquent testimony to the need for extending the Voting Rights Act, and I ask that it be included in the record.

WASHINGTON, D.C., *December 16, 1969.*

HON. BIRCH BAYH,
Old Senate Office Building, Washington, D.C.

DEAR SENATOR: I am writing to you regarding the Voting Rights Act recently passed by the House of Representatives and now before the Senate. From November, 1964, until October, 1969, I served as a trial attorney in the Civil Rights Division of the Department of Justice. I worked in the area of voting discrimination in the South, before and after the passage of the Voting Rights Act of 1965.

My first year in the Division the primary activity was the investigation and litigation of voting discrimination in the South. This litigation had been the focus of the Division from the time of its creation by the 1957 Civil Rights Act. The administrative procedures of the Voting Rights Act of 1965, providing for voter registration without litigation, changed the thrust of the Civil Rights Division to school desegregation. Should the Voting Rights Act of 1965 be eviscerated, the effect upon the political participation of Negro citizens in the South and upon the litigation efforts of the Civil Rights Division will be destructive.

A good example of past discrimination in voting and the success of the Voting Rights Act is Greene County, Albama. In 1960, there were 1,619 white persons of voting age, and 5,001 Negroes of voting age in Greene County. Prior to the passage of the 1965 Act, the voter rolls of the county reflected 2,305 whites registered (the rolls have not been purged in some time) and 275 Negroes registered. At the present time there are almost 4,000 Negroes registered to vote. Over 2,000 of these Negro voters were listed by Federal examiners. More than 1,500 were registered by local officials barred by the Voting Rights Act of 1965 from administering literacy tests.

In 1966 Negro candidates sought the Democratic nominations for Sheriff, Tax Collector, Tax Assessor, Clerk of the Circuit Court, and Member of the County School Board. One of the candidates for school board gained the Democratic nomination and was elected in the November general election. In 1968 six Greene County Negroes sought places on the general election ballot as nominees of the newly formed National Democratic Party of Alabama. They were seeking election to all four seats on the governing body of the county and to two of the five seats on the county school board. State and local officials resisted and litigation followed. The NDPA candiates were intentionally left off the November, 1968, ballot, and in March 1969, the Supreme Court of the United States ordered that a new election be held in Greene County with the candidates of the NDPA on the ballot. That election was held on July 29, 1969, and all six Negroes were elected. Greene County is approximately 80% Negro, and Negroes now fill all four seats on the county commission and three of the five seats on the county school board.

The provisions of the 1965 Voting Rights Act made these results possible. Not only were great numbers of voting age citizens registered who had been unable to register prior to the Act, but federal observers were present at the Democratic primaries and general election in 1966 and 1968, and at the Special Election of 1969, to insure that the newly registered voters were not discriminated against at the polls. The litigation that resulted in the Special Election turned on an act of the Alabama legislature discriminating against minor parties, which legislation was declared invalid for never having been submitted to the U.S. Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

The Negroes of Greene County have had difficulty mobilizing their full voting strength even with a numerical majority. There are several reasons for this. First, many of the older Negroes are illiterate. Not only have the Negro schools been inferior to the white schools, but economic pressures in past years dictated that Negro parents put their children to work in the cotton fields at an early age. Secondly, resistence to Negro political participation remains high. This pressure inhibits some Negroes going to the polls on election day, and at the polls the election officials who assist illiterates in casting ballots are either whites or Negroes acceptable to the white officials (sheriff, probate judge, and circuit court clerk) who appoint election officials.

One advantage that the six candidates of the NDPA had in a General Election over a Democratic Primary is that Alabama law requires each party to have an emblem at the head of its column of candidates and a straight party ticket may be voted by placing a single "X" under the emblem (only the urban counties in most Southern states are equipped with voting machines). The character of the Alabama ballot enabled the illiterate voters to cast their ballots with a minimum of assistance. Also, a peculiarity of Alabama law dictates that only an election official may assist illiterates in a Democratic Primary, but in a General Election an illiterate may have the assistance of any person of his choosing. (The Alabama statutes governing the ballot casting of illiterates predate all of the civil rights

acts passed by the U.S. Congress in the last twelve years.) In other words, in the Special Election, illiterates were able to vote for the candidates of their choice without memorizing the ballot position of each one, as would have been the case in a primary election.

The Voting Rights Act of 1965 has effectively guaranteed the registration of qualified adults without regard to race. It has monitored the electoral process in those areas that have historically denied the vote on the basis of race. And in anticipation of state legislative efforts to thwart the effects of large scale Negro voter registrations, the 1965 Act restrains discriminatory changes in election laws by the covered states. At the present time this last protection is perhaps the most important one, and it has been omitted from the version of the Act passed by the House.

Using Green County as an example, the following steps could be taken by the State of Alabama to undermine the progress that has been made there:

(1) The form of county government could be changed, requiring a new election.

(2) The members of the governing body could be required to represent districts of the county rather than the county at large, and the districts could be gerrymandered to the advantage of the white population.

(3) The party emblem and the straight ticket could be eliminated.

(4) The requirement that only election officials can assist illiterates could be extended to cover the General Election.

(5) The school board could be made an appointed rather than an elected body.

(6) Voting places could be consolidated and their number reduced (thereby causing Negroes who compose the poverty element as well as the majority element to walk farther to vote).

(7) The above steps could be accomplished by local bills in the legislature with separate bills for each county with a majority of Negro voters. (To achieve similar goals the Alabama legislature once gerrymandered the City of Tuskegee, and several years ago extended the terms of office of elected officials in Bullock County who were expecting Negro opposition.)

No doubt the above changes in the law would be unconstitutional, but the attacks upon them, in the absense of the Voting Rights Act of 1965, would have to come in a multiplicity of time consuming lawsuits rather than through the simple administrative procedure outlined in Section 5 of that Act.

Under the recent reorganization of the Civil Rights Division, ten of the Division's some 100 lawyers are assigned to the section responsible for enforcement of the statutes covering voting and public accomodations. Should the Division be forced to return to massive voting litigation there would of necessity be a drain from the attorney forces being used to combat discrimination in education, employments and housing. It is important to the political health of the South and the Nation that the gains of the Nineteen Sixties in the area of free participation in the political process not be abandoned. It is also important that all available resources be used to combat discrimination in schools, jobs and housing.

The statistical information outlined above regarding Greene County is derived from the *Report of the United States Commission on Civil Rights, 1968*. The other information came from my own knowledge. I was in that county dealing with discrimination in voter registration in the summer of 1965. I was the attorney in charge of enforcement of the Voting Rights Act of 1965 in Greene County in the 1966 General Election, the 1968 Democratic Primary, the 1968 General Election and the July, 1969, Special Election. I have participated in the enforcement of the 1965 Act in Lowndes, Wilcox, Hale, Perry, Sumter, and Marengo counties in Alabama and in Pointe Coupee and West Baton Rouge parishes in Louisiana.

I address this information to you as a member of the Judiciary Committee of the United States Senate because I know of your interest in participatory democracy for all citizens and I am aware of your acquaintance with the steps taken toward that goal in Greene County, Alabama.

Sincerely,

JOHN T. NIXON.

Senator ERVIN. The subcommittee stands adjourned until 2:30.

(Whereupon, at 12:33 p.m. the hearing in the above entitled matter was adjourned to reconvene in room 2228 of the New Senate Office Building at 2:30 p.m. same day.)

AFTERNOON SESSION

Senator ERVIN. The subcommittee will come to order.

Counsel will call the first witness.

Mr. BASKIR. Mr. Chairman, our first witness is the Honorable A. F. Summer, attorney general of Mississippi.

Senator ERVIN. Mr. Attorney General, I am pleased to welcome you to the subcommittee and I express my deep appreciation of your willingness to give us your advice on this pending legislation.

STATEMENT OF A. F. SUMMER, ATTORNEY GENERAL, STATE OF MISSISSIPPI

Mr. SUMMER. Senator, I appreciate this, and most especially since I perhaps have had more yeoman's duty with this law than any other man being the chief legal officer in the State of Mississippi. I have travelled back and forth a number of times as a result of this law, and with the chairman's permission, I do have a statement I would like to read.

Senator ERVIN. Fine.

Mr. SUMMER. Mr. Chairman and members of the subcommittee.

Thank you for this privilege.

I am here on behalf of the State of Mississippi. My purpose is to speak against the extension of the "1955 Voting Rights Act."

I am not here to deny any qualified person, black, white or otherwise the right to vote. However, I do object to this right being conveyed carte blanche to any and all individuals as set forth in section 4 of this act.

For instance this section of the act specifically sets forth that no individual may be prevented from voting because of any "test or device" that may test his ability to read, write, understand, or interpret any matter, or, his knowledge of any particular subject.

How can he be totally illiterate, unable to understand any facet of how our Government operates, how elections are conducted, their purpose, with absolutely no knowledge of the men or issues involved and yet be fully qualified to vote under this act in Mississippi, Alabama, Louisiana, Georgia, South Carolina and Virginia, and I believe 39 counties in North Carolina, and not in the rest of this Nation.

This is in fact rank discrimination practiced by Congress against these six States. By this act Congress has created a protectorate reducing us to the status of provinces.

Aside from the usual do-gooders, others from outside our State who want to reform our State in the image of their own thinking, we had 30 volunteer attorneys, 10 law students, 20 under-graduates, two lawyers from the Civil Rights Commission and a large but unknown number of Federal observers present when we held our last municipal elections in Mississippi.

There is a vast difference in putting your nose in other people's business and putting your hearts into other people's problems.

In considering the extension of this act for another 5 years it would be appreciated if you in fact considered the changes that have come about in our State and others hereunder discriminated against.

There is not a living person in Mississippi today who is 21 years or older, black or white, that cannot register and vote if he has the slightest desire to do so.

Any qualified person, black or white, who wants to seek public office can and does run for office in Mississippi today. In line with that I would say we probably have more black office holders in Mississippi today than the majority of the States of this United States.

To those who say we made you do it by this act, then I say you have accomplished your purpose. Why keep the heel of your boot on our neck for another 5 years? When does confidence begin and suspicion end? Now, 5 years from now or 20 years from now.

It seems to me to be a contradiction of purpose to try and educate our people to be better and responsible citizens and then demand that the illiterate and ill-informed participate only in our affairs.

Be that as it may, I think the real test of sincerity or hypocrisy is whether or not you will lift this onus from us completely by not extending this act at all or in the alternative place it on every State alike as called for in the "Voting Rights Act Amendment of 1969" as passed by the House of Representatives.

If you do either of these you will hear no complaint from us.

However, if this act is continued, section 5, as interpreted by the court, would prevent even regular housekeeping by our State. The hands of its governing body would be tied. Our seat of government will be moved to Washington—the Attorney General will become our Governor, with power to veto legislation—the district court of Washington, D.C. will become our guardian.

What does section 5 say? It requires Federal approval of any State, county or local act creating a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force and effect on November 1, 1964 * * *"

Several decisions, notably *Allen* v. *State Board of Elections*, have interpreted section 5 in a manner which Congress could hardly have contemplated. Despite the fact that Congress spelled out in the act that section 5 affected only qualifications, prerequisites, standards, practices and procedures with respect to voting, the Supreme Court in *Allen* held that the act reached "any State enactment which altered the election law of a covered State in even a minor way." The court further held that "voting" as used in section 5 meant "all actions necessary to make a vote effective" and that any dilution of voting power was prohibited as fully as a complete denial of the right to vote at all.

Now, this may appear to some to be a very laudable conclusion, but it does not comply with the language used by Congress in drafting the act. I am not the only person who believes the courts have turned the act from a shield into a sword. Consider the language of Justice Harlan in his separate opinion in the *Allen* case. I believe Senator Ervin was referring to this morning.

I shall first consider the court's extremely broad construction of Section 5. It is best to begin by delineating the precise area of difference between the position the majority adopts and the one which I consider represents the better view of the statute. We are in agreement that in requiring Federal review of changes in any standard, practice, or procedure with respect to voting, Congress intended to include all state laws that changed the process by which voters were registered and had their ballots counted. The court, however, goes further to hold that a state covered by the Act must submit for federal approval all those laws that

could arguably have an impact on Negro voting power, even though the manner in which the election is conducted remains unchanged. I believe that this reading of the statute should be rejected on several grounds. It ignores the place of Section 5 in the larger structure of the Act; it is untrue to the statute's language; it is unsupported by the legislative history.

Not only have the courts expanded the act to include any legislation which might conceivably have some effect on the strength of Negro voting, but they have utterly failed to supply any test by which the legislature of any affected State may measure proposed legislation to determine whether it will comply with the Voting Rights Act. The scope of the act has not yet been defined or in any way delineated. Its purview is apparently limitless.

We in Mississippi now know that Justice Harlan knew whereof he spoke in the *Allen* case.

We have had three legislative acts refused or turned down by the Attorney General. What were they: One act making the office of superintendent of education appointive rather than elective in specific counties. In this instance, if the chairman please, the purpose of the act that was that we had several counties in Mississippi that did not have the men with the qualifications, the educational qualifications, to hold that office, that would run for it, and they were seeking to find a way to get a responsible man to hold that office.

Another is to require the candidate running on an independent ticket to qualify at the same time other candidates for the primaries qualified and prevent anyone who had voted in a party primary from running as an independent. This simply stated the candidate in the running must qualify 60 days before the first primary election. The first is true of a Republican candidate. They can have a knockdown, drag-out campaign, and after that campaign is completely over and the victor is picked, then an unscathed, untried individual can then register as an independent, get on the general election ballot and take advantage of all the things that have transpired therefore.

This was a reasonable act, it was talked down.

The third provided counties with the option of redistricting or going to a county at large basis for electing supervisors. This last act was passed by our legislature to comply with the "one man, one vote" rule of *Baker* v. *Carr*, and *Reynolds* v. *Sims*. They turned this one down.

In the city of Belzoni, Miss., there was a change from electing the police chief to making him appointive in an effort to improve efficiency of local government and to improve the law enforcement aspect of city government. Such a change had to be submitted personally by a local attorney as well as a representative of my office to the U.S. Attorney General in Washington. If the chairman please, I would like to make a little statement and deviate from my statement.

There were only two small cities in Mississippi that did not have the authority to appoint a police chief rather than elect one. This was found in the statute and eliminated. One of the very small towns, decided they wanted to appoint their chief of police rather than elect him. They came to my office for an opinion and under the Voting Rights Act, I suggested they would have to submit this to the Attorney General for his approval. We came up with it. When we discussed this with the Attorney General's office they told us that, "Well, they may consider it." They told us that we should go back and they gave us a list of individuals we should see, and talk with. And after a concen-

sus was reached on the man who should be appointed, the police chief, then if we submitted his name to them they would give consideration to whether or not they approved it.

Now, Mr. Chairman, I think this goes far beyond any intention that Congress had in this act. They wanted to know who the man was before they were going to approve this act. I know that personally.

This, in essence, says that because of the act, the executive branch of the Government has to look over the shoulder of the judiciary branch. A recent three-judge district court in the northern district of Mississippi enjoined the enforcement of an amendment to the city charter of Grenada, Miss., which provided for the six city councilmen to be elected at large until the city of Grenada had complied with either of the alternate provisions of the submission requirements of section 5 of this act. These are not isolated instances, but simply instances that point up the difficulties we as a State are faced with in attempting to carry out the routine operations of efficient local, county, and State government. Can it be validly be said that the intent of the act was not only to impede the normal operation of government, but also to add the additional requirements to the operation of State and local government? Who can justify that an affected sovereign State under the act has closed to it every courthouse door except the U.S. District Court of the District of Columbia when any student in an elementary or high school class who is expelled for having long hair or wearing a mustache can have his grievance heard in any Federal court.

This type of thing is and will be an albatross around our neck.

As Judge Harlan pointed out in the *Allan* case, "The Court has now construed section 5 to require a revolutionary innovation in American government that goes far beyond that which was accomplished by section 4. The Court now reads section 5, however, as vastly increasing the sphere of Federal intervention beyond that contemplated by section 4, despite the fact that the two provisions were designed simply to interlock." In the same opinion Justice Black thought section 5 unconstitutional and pointed out it was "reminiscent of old reconstruction days when soldiers controlled the South and when those States were compelled to make reports to military commanders of what they did." He said he thought the Nation had repented of the "Conquered Province" concept.

Under section 5, our legislature, our boards of supervisors nor our city governing boards can pass any act and feel safe that it in fact went into effect. The specter of suspension is always present.

The town of Canton, Miss., expanded its corporate limits after having given full notice as required, a full hearing on the matter and a court decree of approval. One election was held after the expansion with no questions being raised. But the second election scheduled was enjoined by a Federal district court as possibly being violative of section 5 because more whites than Negroes lived in the newly annexed portion of the city. It was only after a three-judge panel decided months later that the city expansion did not have to be submitted for the Attorney General's approval, that their town could hold its municipal election, but this has not settled the issue because the decision turned on the fact that the city in fact had two expansions. The first took in more Negroes than whites and even after the second expansion there were more Negro voters than white voters and, therefore, there was no dilution of the Negro vote.

Senator ERVIN. That would lead to the conclusion that before a city could expand its limits, it would have to count by races the inhabitants of the territory it proposed to annex, and if it found that the number of black people in the expanded territory was larger than the number of white people, it would be perfectly proper for the city to expand?

Mr. SUMMER. Right.

Senator ERVIN. But if the number of white people outnumbered the number of black people in the area to be annexed, then it could be denied?

Mr. SUMMER. You are certainly right. And every city in those six or seven States, must follow that pattern. They cannot expand their city limits until they make a headcount of all the blacks and whites they are going to take in, and then they are subject to whether the Attorney General of the United States is going to approve it or not.

Senator BAYH. Did I understand, in the case in question, it was approved?

Mr. SUMMER. Only after all of the other cities in the State had held their election and after the men had held over an office some 6 months until it was approved.

Senator BAYH. But the three-judge panel did allow annexation to go forward?

Mr. SUMMER. Only because this second annexation did not dilute the number of Negro votes in the city. There was still an overwhelming number of Negro votes in the city, even after the expansion. Had there been a dilution of the Negro vote the decision would have gone over otherwise.

Senator ERVIN. It didn't make any difference how the white people were affected.

Mr. SUMMER. Their rights considered.

Senator ERVIN. In a State like Virginia this would present a real problem because Virginia unlike my State, has cities and counties that overlap. We have cities that overlap counties, and I think you have the same situation in Mississippi.

Mr. SUMMER. Yes.

Senator ERVIN. But a person in the city loses his right to vote in the county. Therefore before the Virginia city could expand they would have to consider whether it diluted the county as well as the city.

Mr. SUMMER. Yes, sir.

Senator ERVIN. And it would mean, as a practical matter, it couldn't expand.

Mr. SUMMER. That is exactly right, and this decision has been held by a three-judge panel in our district, and this is the case.

Could any city in these five States be expected to know that section 5 was applicable to these matters? Can they know now? I don't believe so.

We did have one small town in our State, however, who solved that problem very well, at least for a while. When they got ready to expand their city limits they simply picked up the "city limits" signs and moved them a mile out further and said they expanded. They didn't count anybody, and, of course, it was a little bit small, Mr. Chairman, and nobody challenged it. And this let them expand their city limits.

The frightening thing about this situation is the prospect of challenge to practically every legislative enactment by persons whose only

interest is their private war against the State of Mississippi with the guidelines as vague and far reaching as those now in effect—a single person with a little cash could literally hamstring all government in Mississippi from the local level on up. There are many operating in our State with fabulous financial resources who will go for our jugular vein.

Mr. Chairman, let me say this, at this point, in our State over the last 5 years there is one organization that filed a brief in the Supreme Court in over 2,000 cases in the past 2 years. They have the services of 150 fulltime lawyers, and the services of several law schools for briefing purposes. My office has to fight most of those. I have 12 lawyers that I fight these folks with.

That is what I am talking about. I don't think the act at all meant that an individual could own his own home and challenge the legislative acts. This was to be left to the Attorney General of the United States. But I believe it was the *Katzenbach* case that we talked about this morning, that any individual could bring before any district court, which the State of Mississippi can't do, and have it enjoined until a three-judge panel hears it or the District of Columbia court hears it.

So what I am saying to this question is simply this. That with all of the groups of civil rights attorneys, with all of the groups of lawyers in our State who have been there for years, and who live there and make it their business to file these law suits, can stop the operation of our government completely. Nobody has yet taken into account the fact that the State of Mississippi might actually want to do something for its black people all by itself without somebody pushing it, but they have made it impossible for us to do it.

We cannot innovate, speculate, upgrade, or change our laws—under the oppression of this act, we could slowly recede into a horse and buggy State.

For example, suppose one of our cities creates an industrial park and offers tax advantages to out-of-State industries. This can be challenged under section 5 if that particular industry employs more whites than Negro workers, meaning that more whites than Negroes will move into the community and the tax advantage will have the effect of encouraging the dilution of the local Negro vote.

This could go to the heart of the economic life of our State, Mr. Chairman.

Once the issue of section 5 noncompliance is raised the burden is upon the State or governmental subdivision to prove that the enactment could not affect voting in even a minor way, and on submission to prove it could not have a discriminatory purpose and could not have a discriminatory effect.

We have complied with the act. Any Negro or white literate or illiterate, who meets the residency requirements can vote. The purpose of Congress has been accomplished. Do not continue this injustice in the name of justice. Do not extend this act for 5 more years—to do so in my opinion will create more problems than will be solved.

We would like to think of ourselves as equal to our sister states, but with the interpretation by the courts of section 5 extending this section separate from section 4 you would create at last the final step to complete federalism.

In its zeal to remake the South, Congress can go too far, as the Federal courts and HEW has gone too far in their efforts to undo what they consider past evils in our schools.

Congress, by the passage of this act, decreed one set of standards for the South and another set of standards for the North, East, and West. The Supreme Court has established one constitutional principle for the southern schools and a different constitutional principle for the rest of the country.

For years the South was discriminated against in the imposition of freight rates.

The reason advanced for all of this is that we had segregation dejure in the South. In other words we meant to have it, so therefore, we must pay for the sins of our fathers. On the other hand, the segregation in the North, East, and West was de facto, which means it wasn't really intended to be that way, it just happened. It was caused by housing patterns. We of the South have come to the conclusion that the time has come to stop humoring the rest of the country by pretending that we really believe that. How did these housing patterns get started? Why are there all black schools in these areas? Why have the white people fled from the cities to the suburbs? The answer is simple.

The rest of the country intended it that way or it wouldn't have happened.

Yet standing in the glaring light of truth it is still apparent that the rest of the Nation wishing to relieve a guilty conscience points at the South and says, "Don't do as I do but do as I say do."

I agree with President Nixon when he said the time has come to lower your voice. We hear you but do you hear us? We have lived with black people much longer than the rest of this Nation, yet all of the experts live north of the Mason-Dixon line.

If "tests and devices" are wrong in Mississippi, it's wrong in Michigan. If our laws should be submitted to the Attorney General for veto or approval then the laws of your State should be submitted to him for veto or approval.

The originators of the Declaration of Independence were concerned as we are, in an analogous situation when they stated as one of the grievances against the King of England, "he has forbidden his governors to pass laws of immediate pressing importance unless suspended in their operation till his assent should be obtained * * *"

Senator ERVIN. This is the clause I was referring to this morning when I asked Governor Maddox if that is not one of the lines in the Declaration of Independence. The other one was that they transported our people beyond the seas for trial.

Mr. SUMMER. Right, which is true in this case.

Senator ERVIN. The Chief Justice cited, in the opinion in *South Carolina* v. *Katzenbach*, a case which supported the power of Congress to close Federal courts. The fact was that the La Guardia Act had denied the Federal courts the power to issue the injunctions in certain labor cases. But in that case every court of the United States was deprived of the jurisdiction, wasn't it?

Mr. SUMMER. Yes.

Senator ERVIN. It was held that only the special court of appeals could pass on the constitutionality and validity of all the resolutions of OPA in the Second World War, and that no other court would have jurisdiction to pass upon the matter. And it was held that an accused

couldn't even raise the question of the constitutionality of those regulations when he was indicted for violating the criminal law of the Nation. And it would seem to me that if you are going to have courts in existence that all courts of the same kind should have the same jurisdiction.

Mr. SUMMER. Yes, I agree.

Senator ERVIN. It is probably a thousand miles from Mississippi to the city of Washington. Yet the State of Mississippi, all the people in the State of Mississippi, all of the officers who were condemned by this act by legislation without judicial trial, and were deprived of the right to execute clearly constitutional power set out in section 2, article 1, the first section of article 2, the 17th amendment and the 10th. And the only way they can receive a trial is to travel with their witnesses a thousand miles.

Mr. SUMMER. Yes, sir.

Senator ERVIN. And then the three-judge panel which was chosen by Judge Bazelon, who is extremely liberal in his tendencies, was composed of one who had been counsel for the NAACP, Judge Write, whose tendencies are well known and one other judge. Of all the strange decisions ever involved, the *Gaston County* case was the strangest. Everybody knows that Gaston County has not discriminated against anybody on account of race. And in the district courts they made some very clear findings. They found Gaston County was doing pretty good but prior to 1954 there had been segregated schools. They held in substance that a black person, when the schools were segregated could not learn to read and write, could not learn when taught by black schoolteachers in the school. And I say this is an insult to the Negro race. But that is what the judges held.

And just to say one other thing, one paper which defended the Supreme Court, the Greensboro Daily News, had an editorial condemning the decision. Everyone knew that Gaston County was not discriminating against anybody on account of race, and the editorial said this decision makes it very hard for those of us who have been trying to defend the Supreme Court against the claim it has been changing the Constitution while saying it was interpreting it.

Mr. SUMMER. I agree with you thoroughly, and I think it is more than passing strange that prior to 1954 segregated schools were completely legal, and the State of North Carolina had not been indulging in any illegal acts prior to 1954.

Senator ERVIN. And hundreds of thousands had learned in such schools. Yet, this is a decision district court made there in the District of Columbia. And my own opinion is, and I argue any fair concept of due process of law, would say you have no right to require children to travel 10 to 20 miles to seek education all because of a conviction made by a legislative body.

Mr. SUMMER. Mr. Chairman, your judicial background would let you appreciate this, and to give you my idea of justice that could be maintained, I will recite for you of the 30 Mississippi cases that came to the Supreme Court and we were ordered to put into effect the HEW plans immediately, not one word of the entire trial record was ever opened by any member of that Court. There was no resemblance of due process law, there was no indication that it was about to let us have due process of law, and as I stated before, the chief judge of the

court of appeals in Houston, Tex., about 2 weeks later when this question was raised and they brought a man from Baton Rouge to argue a point that was not before the court at all, and he suggested it would be without due process of law, the chief judge looked at him and said, "If that is all you have got, forget it."

And I say to you, sir, that is the way we feel when we enter the Federal courts of the United States today. I don't feel we are getting due process of law. Be that as it may though, I thought that you may be interested in that.

Senator ERVIN. Having been a judge myself and having spent about 15 years of my life judging my fellow travelers, I have found out you can't learn what a case is about in 15 minutes, and you cannot learn what it is about without reading the record.

Mr. SUMMER. And I would agree with that, too. After my appearance on that occasion, I agreed. Up to that time I had a different opinion. I had the pleasure of serving as a chancery judge in my own district, and this is probably why, it is the reason why it affected me.

Senator ERVIN. I would like to read to you section 2 of article 1.

> The House of Representatives shall be composed of Members chosen every second Year by the people of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislation.

And this portion of section 1 of article 2:

> 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.

And this portion of the 17th amendment relating to the election of senators:

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

Now, don't these three sections state in about as plain and simple words as can be found in the English language that the powers to prescribe the procedure for voting for State legislatures, for Congressmen and Senators, presidential and vice presidential candidates belongs to the State?

Mr. SUMMER. In my opinion it does; yes, sir.

Senator ERVIN. And doesn't the 10th amendment clearly reserve the power to the States to set voting qualifications?

Mr. SUMMER. It does.

Senator ERVIN. The only limitations upon those powers of the State made by the Constitution of the United States are threefold.

First, that any law prescribing the qualifications for voting shall apply to all people alike, and there shall be no denial of rights to vote on account of race. And no denial on account of sex.

Mr. SUMMER. That is right.

Chairman ERVIN. And outside of those, the State has the absolute right to prescribe voting qualification, and wasn't it so held in every case up to the time of *Harper v. Virginia State Board of Elections?* That is the case where Justice Douglas wrote that peculiar opinion in which he outlawed the poll tax as a prerequisite to vote on the grounds that it violated the equal protection clause of the 14th amendment because it constituted a discrimination against a poor man. This would amount to the money he would earn if he worked for 72 minutes at the

minimum wage. And, therefore, if there is any intellectual basis for the opinion in the Harper case, that same intellectual basis would invalidate any tax law imposed in the United States would't it?

Mr. SUMMER. Without question.

And Senator, when they entered the field of removing discriminatory practices and entered the field of forceful integration, forceful acceptance of law, the whole thing got out of kilter and it is going to stay out of kilter until they back out of the forceful aspect of this thing. And they will have to rely on an antidiscriminatory practice rather than forceful practices.

Senator ERVIN. I don't ask you to make any comment on this, but I am going to express my honest opinion. The majority of the Warren Court accepted the Machiavellian theory that any kind of means justified what they conceived to be good ends. And it didn't seem to make any difference what damage was done to the Constitution, how badly it was mangled, just so they could accomplish the results they saw fit.

Mr. SUMMER. Yes; I believe you are correct, and I think they thought only within the confines of the case and not as judicial men as in the confines of the whole United States as a concept rather than the law of the case.

Senator ERVIN. It was held in effect in *South Carolina* v. *Katzenbach* that the doctrine of the quality of the States only applied to the terms upon which a State was admitted to the Union, and did not apply thereafter.

Mr. SUMMER. That is correct.

Senator ERVIN. So, under that theory, Congress can pass laws which will permit some States to exercise all their constitutional powers and prohibit other States from exercising all of theirs. And if you can deny a State the right to exercise some of its constitutional powers, you can deny it the right to exercise all of its constitutional powers.

Mr. SUMMER. Yes.

Senator ERVIN. Do you agree with me and Justice Davis that no notion more pernicious was ever invented by the wit of man than the notion that any constitutional powers can be suspended under any circumstances.

Mr. SUMMER. I would agree with that.

Senator ERVIN. It is also held in the South Carolina case that the probation of bills of attainder didn't apply to a State.

Can it be truthfully said that when you condemn an entire State, say it cannot exercise constitutional powers through offices of its own choosing, that you are not passing a bill of attainder against all of the people in that State. In view of the fact that every decision says a bill of attainder protects a person or an identifiable group of people from condemnation by a legislative body, the Voting Rights Act is certainly a bill of attainder against the people and officials of a State.

Mr. SUMMER. It certainly is.

Senator ERVIN. And yet the Supreme Court of the United States said that Congress can pass a bill of attainder.

Mr. SUMMER. I agree.

Congressman ERVIN. They can pass it condemning all the people of the State or county without a judicial trial and can deprive them of exercising their constitutional rights.

Can you imagine a worse bill than that?

Mr. SUMMER. Only in one instance that I did not get involved in at all. We have had some instances in Mississippi that we are not proud of. We had three murders in Mississippi. Immediately the entire Nation felt everybody in Mississippi condoned murder. This is the impression that was given by the press everywhere. Pennsylvania had three recent murders, nobody suspected for a minute that everybody in Pennsylvania condoned murder. California had three recent vicious murders. Nobody believed for 1 minute that everybody in California condoned murder. Yet, for years, and I know because I have read it everyday, we were condemned as a State, as a people because we condoned murder. Now, this is a bill of attainder in a different sense than which you are speaking, but I think it fits exactly part of the thing we are covering here, and the difference of attitudes as to where people live and what they do.

Senator ERVIN. Well, I don't know why we get condemned as a people, but those who condemn us don't have any trouble doing what Edmond Burke couldn't do, he didn't know how to draw up an indictment against all people. I sat on the Democratic platform committee in Chicago, in 1956, that was shortly after the very brutal murder of the Till boy. And everybody that came before the committee practically condemned everybody, not only everybody in Mississippi but everybody south of the Mason-Dixon line, accused them of condoning that murder. And while I was sitting and listening to these people talking about Mississippi and the South, there were two atrocious murders right in the city of Chicago, one was a man who evidently was killed by gangsters—he was stripped of his clothing so they could not identify him—and he was shot with a machinegun, there must have been 65 or 70 bullet holes, and his body was thrown out in the front of a residence. A woman was apparently raped and strangled and murdered under the most atrocious circumstances there, and nobody talked, certainly not me, of blaming all of the good people of Chicago and all of the good people of Illinois and all of the people north of the Mason-Dixon line of those murders.

Mr. SUMMER. I was there, and I saw the Senator, and I remember, he is absolutely right.

Senator ERVIN. Now, did you hear the colloquy between Professor Cox and myself in respect to the *Morgan* case. Are you familiar with that case?

Mr. SUMMER. Yes, some.

Senator ERVIN. See if you agree with me, and my analysis of that case. The majority opinion in that case, written by Justice Brennan, said in effect that whether or not the New York literacy test was in compliance with the equal protection clause of the 14th amendment, was not relevant, did he not?

Mr. SUMMER. Yes.

Senator ERVIN. He said the Supreme Court doesn't even have to pass on, and should not pass on the question whether the New York literacy test was constitutional under the 14th amendment. All that the Court had to pass on was the question of whether Congress could come to the conclusion that the New York literacy test violated the equal protection clause. So, on that strange theory, the majority of the Court held that the fifth section of the 14th amendment, gave Congress the power to nullify a State law in perfect harmony with the equal protection clause of the 14th amendment and to establish a Federal

voting qualification, although the Congress was forbidden by two provisions of the Constitution and the 17th amendment from doing that.

Mr. SUMMER. I thought the Senator's remarks to Professor Cox were very apt in this. That is, this is the law he is teaching, that I suggest that he reexamine his teaching. I might suggest he obviously has been teaching this law because we have hundreds of lawyers whom he is teaching bringing this type of lawsuit in the Federal court now.

Senator ERVIN. It is to be noted this decision applies not only to the equal protection clause, so it is not only authority on the question of what Congress can do on the equal protection clause but also the due process clause. I ask if the decision in the *Morgan* case is upheld in the long run as being correct, cannot Congress pass a law, ostensibly to prevent the States from violating the due process clause, which establishes criminal procedures of all kinds, and which could even abolish the rights of the States to have jury trials?

Mr. SUMMER. It wouldn't surprise me if the trend continues along the line, the line we were discussing, that we will not be able to try our cases in our courts. We will be trying all of our cases in the Federal district court here in Washington, D.C., where Congress knows we could not get anything close to a sympathetic or understanding or a fair hearing.

Senator ERVIN. Doesn't a possible question concerning the equal protection clause arise everytime a State applies its law to any individual within its boundaries? I will ask you if this very illogical decision is upheld and what it holds is considered a proper interpretation of the Constitution, then the Congress has the power under the 5th section of the 14th amendment to prohibit the States from making laws, enforcing laws, or interpreting laws.

Mr. SUMMER. I agree with that, yes, sir. I think you are absolutely right and I don't think they would hesitate.

Senator ERVIN. You think anybody that has ever had anything to do with drafting the Constitution or ratifying it, or drafting or ratifying any amendment, ever contemplated that Congress, which is a creature of the Constitution, was given the power to destroy that part of the Constitution which has any relationship to powers of the State?

Mr. SUMMER. So long as they have another arm of the Government consorting with them in that position, I think there is a good possibility, Senator, it will continue.

Senator ERVIN. Don't you think it is a tragedy when the court hands down a decision like the *Morgan* case which says there is no obligation on the court to determine whether the State acted in a constitutional manner, but the only question is whether the court can see that the act of Congress could keep the State in the future from violating the equal protection clause. That is what it comes down to.

Mr. SUMMER. Right, Senator, let me make one more observation. Until I became somewhat versed in this type of thing, I didn't know either that the court or Constitution passed laws to punish States or people for deeds that—past deeds that had been accomplished prior to some time of the birth of you and I, and others, but they have.

Senator ERVIN. Yes.

Mr. BAYH. Are you referring to the voting rights act as being designed to punish?

Mr. SUMMER. Yes, sir, I certainly am, Senator.

Mr. BAYH. You said before your birth.

Mr. SUMMER. I think that would be stretching it a little far. I was around.

Mr. BAYH. I just want to make sure I understand.

Mr. SUMMER. I didn't say that.

Senator ERVIN. That is exactly what the act does. It says if you didn't turn out 50 percent of your voting age population in the 1964 presidential election you can't exercise your right to use literacy tests.

Mr. SUMMER. As I read it, it says any matter, and any matter is any matter.

Senator ERVIN. The Supreme Court said in its very remarkable opinion that was a rational presumption. Let's see how rational it is. A State can register every person of voting age, but it has no way to compel them to go out and vote, does it?

Mr. SUMMER. No, sir.

Senator ERVIN. Wherever you have a statutory presumption there had to be a rational relationship between the fact which existed and the inferences drawn from that fact.

Mr. SUMMER. Yes.

Senator ERVIN. And if it was irrational, it was in violation of due process clause. Now, today my State, North Carolina, has a black population of about one-fourth and a white population of three-fourths. Under this act every black in North Carolina could be registered and every black in North Carolina could go out and vote, and if the number of whites who went out and voted added to the number of black voters amounted to less than 50 percent, North Carolina would stand condemned of discriminating against blacks, notwithstanding the fact the only people that didn't go out and vote were whites.

Do you think there is anything rational about that?

Mr. SUMMER. No, I do not. And this is one reason I am here today since I have been involved in so many of the procedures of this act that I could convey some of my actual experience to this committee. This should show just how bad this act really works.

Senator ERVIN. In the case of *Texas* against *White* that I read from a little while ago, it says that the States have a common constitution. It is the union of such States, under the common constitution which warrants the great political union which that constitution designates as the United States and makes of the people and State which it composes one people and one country.

Now, how can it be said this country has a common constitution when the constitution is interpreted to permit seven of the 50 States to be deprived of their constitutional powers.

Mr. SUMMER. We no longer have it. We have two constitutional standards in this country today.

Senator ERVIN. And how can it be said this makes the people of the States of which it is composed, one people and one country when people of seven States are not allowed the same rights and powers and privileges as people in the other 34 States.

Mr. SUMMER. It points out that we have been deprived from it.

Senator ERVIN. The Voting Rights Act of 1965 is totally incompatible with the theory that the States are indestructible.

Mr. SUMMER. In my opinion, yes, sir.

Senator ERVIN. And especially the part which says that they can't pass laws which the Constitution of the United States gives them the power to do until they first get the consent of the Attorney General of

the United States, or the consent of a Federal court. What business is it of the Federal court in supervising the validity of the State law in that way?

Mr. SUMMER. There is no validity in that concept in my opinion, Mr. Chairman. I have been here on many occasion to try to get a law passed. In fact, we are in the process now to try to advise or revise our antiquated election law. We have no fear whatsoever we will ever accomplish that purpose. It was my understanding at least when the Attorney General of the United States—I found when we do so we find ourselves emerged in the lower echelon. We are not only bound to the Attorney General's approval, but every group who would like to see Mississippi destroyed, and we have not received approval of any law of any consequence since that act was passed. Mississippi will dry up on the vine if this continues. We cannot housekeep in our own State with this law on the books. Insofar as the voting aspect of it is concerned, as I said, in the beginning anybody in Mississippi, black or white, anybody who is warm, can vote and does. I am not here on that account. I am concerned about what the Senator has been bringing out in that case, and that is that the State of Mississippi and its six Southern States have been placed in an impossible position through a movement that very many people know the consequences of.

Senator ERVIN. I think it is, on a number of grounds, unconstitutional. I don't care how many judges say it is not, but the Constitution is written in plain English and I have been studying its contents since I was 16. I don't care how many Supreme Court judges say it is. I think it is unconstitutional to say that Congress can suspend the constitutional powers of any State. I think it is unconstitutional for Congress to deprive some States and allow them to be exercised by others. I think that the administration bill is unconstitutional. I don't think the Congress has the power to suspend any State in the Union from exercising its constitutional powers. I think when you condemn all the people in the State or county by legislative act without trial, I think it is clearly a bill of attainer. So, I don't accept what the Supreme Court does. And I also don't think there is any warrant in the Constitution for any executive office of the Federal Government to have the right to veto State law. So I will argue these things on the floor of the Senate. I know that a book written by a college professor says that I was merely arguing against the rights of the Negroes to vote. I have always thought every qualified citizen has the right to vote regardless of race. I fought for that. I think all citizens of the United States are entitled to the Constitution, even if they are part of the country which we dominate as the South.

Mr. SUMMER. I would agree with that, Mr. Chairman.

Mr. BAYH. There is a great deal of interest between the colloquy of the distinguished chairman and yourself, and I suppose everyone has a chance to look at the act and the problem and the motive behind the act, and come up with a different motive, and I certainly support that act and extension. But I do not have the motive of being opposed to the court, and I do not believe the civil rights killing and the murder in Chicago or Pennsylvania is accurate, and that is my judgment.

Mr. SUMMER. You don't believe that people of Mississippi would condone murder?

Mr. BAYH. No, but I think the rapid apprehension by law-enforcement agents is significant, and it took a long period of time, with the

intervention of Federal officials before we ever got a line on the civil rights killing.

Mr. SUMMER. You must remember they had over 150 agents from the day it happened, and months and months and months it wasn't as easy to break as the Jablonski case.

Mr. BAYH. I wonder why it wasn't.

Mr. SUMMER. I have no idea.

Mr. BAYH. Maybe the answer to that question goes to the whole key problem. But I certainly would not want the record to show that I think that all of the people of Mississippi, or indeed a significant percentage of the people of Mississippi, condone this type of malicious activity. And I include some that may deny someone to vote.

Am I right by interpreting you to be critical of giving a private individual a right to file a suit if he is denied the right to vote?

Mr. SUMMER. My position is if you give the individual the right which he has or the court has interpreted.

Mr. BAYH. I thought you were critical of this.

Mr. SUMMER. Only to the extent, Senator, Mississippi has become a battleground, if you please, for this type of lawsuit, and the individual, whether he comes from New York or California or wherever he comes from, can come down and file a lawsuit. I spend $5,000, or $10,000 of my budget defending their lawsuits, but nowhere, except through an injunction, can Mississippi go to a three-judge panel and the District of Columbia. The Attorney General of the United States has ample power and men to bring these people, on behalf of these people. I think in New York or in Indiana, or Chicago, lawyers cannot bring the lawsuit, that he is denied.

Mr. BAYH. He has to find someone who alleges he was discriminated against. You have a difference of opinion as to the importance of a grievance of that kind?

Mr. SUMMER. I think not.

Mr. BAYH. It seems to me that is one of the most basic rights, and if you take away the right to vote you are doing something terribly wrong.

Mr. SUMMER. My motion is simply that at the outset I said if a man in Mississippi is 21, warm, he can vote in Mississippi today and chances are is that he is registered to vote.

I have no quarrel with that. The quarrel I have was that in our seven States we have to register every illiterate, he has to understand nothing, he can know nothing about government, and yet he can vote. And in other States of this jurisdiction he can't. I believe in the Senator's State he can't. I think everyone who is 21 can register and vote. But there are States in this Nation where a person must be able to read and write. There are requirements that must be met before he can vote. I say that to continue this policy would be to spell the doom of our seven States by turning us over to a group of illiterate voters where the other States are not subject to that same principle.

Mr. BAYH. Of course, the administration's proposal would repeal all literacy tests, so all States would be subjected to this.

Mr. SUMMER. I could support this proposal, reluctantly, because it is wrong in concept but right in its universal application. I have no quarrel with that.

Mr. BAYH. I suggested to Governor Maddox that the real concern that precipitated the bill's attack on literacy tests, as they have been

interpreted and applied in certain parts of the country, was for a fellow who is a Ph. D. or a schoolteacher who somehow didn't get the answer to the questions. Then we had a fellow who graduated from sixth grade, passing the test. That raises some presumption that something is wrong.

Mr. SUMMER. Senator, you are absolutely right, and prior to the passage of this act we have been inundated with lawsuits with the Justice Department requiring the registrars to register these people where they had been previously denied registration. We do not say that people came to vote who got to vote. This was 5 years ago, this was 6 years ago. I am saying to you now, that any man who wants to vote can vote and he doesn't have any problem getting down there to vote. And I am sure that there was some injustice in that regard. I say to you, frankly, I don't think there is an injustice in our State today in that regard, and there is not need to continue this punitive type of legislation.

Mr. BAYH. You think the act itself had anything to do with the change?

Mr. SUMMER. Yes, I think it did. Yes, sir, simply because, Senator, you could go—of course, we were inundated with Federal registrars after this act was passed. They came to every small community, every town, they sent people in trucks to bring these folks in to register, and you could see them standing in line, a half mile long, and the unfortunate part about it was that most had no idea what they were standing there for. Some thought they were standing there to register for welfare. They didn't know that they were standing there to vote. This was cruel.

Mr. BAYH. You mean people were brought against their own will?

Mr. SUMMER. No, sir, they were told you are going to get your civil rights, come on.

Mr. BAYH. That is bad?

Mr. SUMMER. No, sir, but I thought it was a fraud on those that they brought in.

Mr. BAYH. Perhaps the individual might make that determination.

Mr. SUMMER. I suppose you are right.

Mr. BAYH. Now, you resent, I think you said, the forceful practice, and said that we should resort rather to presenting discriminating practices. How do you differentiate between the two of those?

Mr. SUMMER. Well, the Attorney General of the United States has a vast section known as the civil rights section. If I would give an educated guess I would say 121 of these had been for 5 or 6 or maybe 7 years. They know every new ounce of our thinking, what we do, they know when the legislature meets and they know every law we pass. At a moment's notice it would take us 3 hours to get to the fifth court of appeals to nullify any laws that were passed that would be a discriminatory law. This would be left up to the Attorney General of the United States. This would be a proper function of Government.

Mr. BAYH. Is this as a result of the passage of the 1965 law?

Mr. SUMMER. Yes, sir. It certainly was. We were engaged in many of these type lawsuits.

Senator BAYH. You mentioned that Congress should permit Mississippi to do something by itself. Was Mississippi doing something by itself prior to the 1965 Voting Act?

Mr. SUMMER. Mississippi has done quite a few things, Senator, by itself and even in our school situation, Mississippi had started doing something about its school situation long before it was told that you are now forced to do this type thing.

Yes, sir. The registration offices were being opened to these people where they had not previously had an inclination or opportunity to register and vote. It was being done.

Senator BAYH. And you feel that the act, its total effect was, as we discussed a moment ago, to punish you and other citizens of your State for deeds that went on a long time ago?

Mr. SUMMER. Senator, to this extent. Now, I know that the Senator's State is a good State. I have been through there. But I do not believe you would sit there and tell me that there are things going on in your State that are altogether right in regard to voting, in regard to schools, in regard to other matters.

Now, I think this is your business. I think this is the State of Indiana's business. It is not the State of Mississippi's business. But the State of Mississippi's business has been the business of the Nation for the last 15 years and only in the last few months have we decided that we would try to make some of the other parts of the Nation our business and to look into some of the inequities that exist there.

Senator ERVIN. If I may interrupt you right there, I looked up the figures from FBI a short time ago and I found that with the exception of North Dakota, that the State of Mississippi is the most law-abiding State in the Union.

Mr. SUMMER. Mr. Chairman, you are right, and we have not burned down our cities. We have not had wholesale riots. We have not had near the problems that have existed in some other parts of this country.

Senator BAYH. Let us look back, if I may, with all due respect for your good anticrime record, look back at this voting rights issue and the feeling that you as a State official in your State have been punished.

Mr. SUMMER. Yes, sir.

Senator BAYH. I meant what I said this morning, that I hope we can get to the day and age when we do not need this legislation in Mississippi or any other State. You know, if there are shortcomings in Indiana, I would like to know about it. I am sure there are instances in which elections have not been totally proper. I have not found any examples where this has occurred on a black versus white basis. We have, I suppose, instances of either party trying to outskin the other one, and I do not think that is any better. But the thing that concerns me and the reason I respectfully take issue with you, Mr. Attorney General, is on whether Mississippi's business is our business. It seems to me the record is rather clear that with everything being left to Mississippi, and with Mississippi doing everything on its own itself, as you pointed out, that from the Civil War up until 1964 there were a total of 28,500 black voters registered as of November 1, 1964. There were over 500,000 white voters as I recall, looking at the record.

Mr. SUMMER. Yes, sir.

Senator BAYH. Now, with the enactment of the Voting Rights Act, that registration of black voters increased from 1964 to 1967, by 235,000. It increased almost 10 fold.

If this act did not have a salutary effect in getting Mississippi black voters registered, then what was responsible for this?

Mr. SUMMER. Well, Senator, are you saying that—now, if you will count the number of black people in the State of Mississippi, you will find that everybody within the age range are now registered to vote. Are you saying that you should continue to hold this heel on our neck until you know as an absolute fact that we are not going to change our ways or do it differently?

Senator BAYH. I do not know where you get the figures.

Mr. SUMMER. Or do you agree that we should have the power to name the qualifications for our own electors?

Senator BAYH. I think repentance is a great thing, but I would like to see the evidence of repentance before we regress back to the standard prior to the 1964 figure which I mentioned.

Now, the latest statistics I have—if you have other statistics that are more accurate I would like to have them—but the latest statistics I have are the following. In 1964 there were 6.7 percent of the black voters in Mississippi registered. In 1968 there were 59.4 percent of the black voters registered. This compares to the white registration in 1964 of 69.9 and the white registration in 1968 of 92.4.

Do you suggest that we have had 41 percent additional registration of black voters in Mississippi from 1968 to 1970?

Mr. SUMMER. Do you mean would I suggest that they would register on their own without this act?

Senator BAYH. Perhaps I misunderstood you, but I thought you told me just a moment ago that everyone who is old enough to vote in Mississippi, every black voter old enough to vote in Mississippi is now registered to vote.

Mr. SUMMER. If he wants to be. All he has to do is go down and sign his name. If he cannot sign his name, somebody will sign it for him, and there have been no evidences of any intimidation or duress to keep anybody from registering to vote.

Now, Senator, you have taken your figures from the Civil Rights Commission report, I am sure.

Senator BAYH. That is right.

Mr. SUMMER. I am sure you would also find that the Civil Rights Commission has concentrated its study in those seven States. They probably do not have any figures for any other State. I do not know. I have not seen it. I have not read it. I do know that I have read quite a bit of this commission report. Frankly, I do not recognize a lot of it. I think they interview each other and come up with the figures that they want and they present it to this committee and they know you believe in them and you will buy it, and that whatever we say to the contrary notwithstanding will make little difference.

Senator BAYH. It is relatively easy as the attorney general in the State of Mississippi, I suppose, to find contrary figures and have access to refute the 28,500 figure of registered voters in 1964. Is that not accurate?

Mr. SUMMER. Well, I might point out to the Senator that somewhere prior to all this they made it against the law for us to keep separate figures as to whether a voter was black or white and how they got the figures I have no idea. It would be illegal for me to go in to determine this. We cannot keep a book as to whether a man is black or white or what.

Senator BAYH. Well, are you suggesting that there were more than 28,500 registered in 1964?

Mr. SUMMER. I am suggesting that there very well could be because there were quite a few Negroes who voted in Mississippi in 1964. We had Stokely Carmichael and several others many years prior to that who had run many registration drives within the State prior to that.

Senator BAYH. At least by your testimony earlier there at least were long lines of people who had not registered, people who came from some place and are now registered.

Mr. SUMMER. That is right. And half of them, I would say about half of them were voting.

Senator BAYH. And your contention is that attitudes have changed and that for that reason the act is no longer necessary.

Mr. SUMMER. I certainly do, yes, sir. And I point this out, that if you wanted to go back a little further during the Reconstruction days you could find that 79 percent of the black people in Mississippi were registered to vote and approximately 10 percent of the white people were registered to vote.

Senator BAYH. Let me ask you if you were a black voter how you would feel about the attitudes of the community of Woodville, Mississippi?

Senator ERVIN. You are asking him an impossible question.

Senator BAYH. I think the attorney general is reasonably intelligent, probably of greater than average intelligence.

Senator ERVIN. If the Senator from Indiana were a southerner, I think he would come nearer seeing the truth on this matter.

Senator BAYH. I sort of believe the Senator from North Carolina may have a point. The admonition of the old chief to the young brave that one should not judge a fellow brave until he has walked in his moccasins for 2 or 3 months is probably pretty well taken.

If the attitudes are really changed, why is it necessary in Woodville for the Wilkinson County Citizens Council--Mr. Chairman, I would like if you may consent to put this whole letter in the record at this point.

(The letter referred to appears at page 44.)

Senator BAYH (reading).

Your local Citizens Council is gravely concerned about the political prospects in the Woodville municipal general election which will be held on June 3 and we feel you as a public-spirited white citizen are equally concerned.

First, may we emphasize the fact that we have no axes to grind nor political fortunes to favor or oppose as to individuals but are taking this action purely and simply to endeavor to insure that white officials are elected on June 3

I skip a paragraph then.

We feel that forgetting personal ambitions or desires, some of the white candidates should withdraw so that there will be only one white candidate for each office.

The paragraph I skipped perhaps I should put in proper perspective.

As you doubtless know, the present prospects in the major's race present two white candidates and one Negro. In the alderman race it is eight whites and one Negro. In both instances the Negroes are thus virtually assured of election.

So, here are attitudes that are designed not over fiscal or individual qualifications but for one basic purpose, and that is to guarantee the election of a person whose face is white.

Mr. SUMMER. Senator, I am glad you brought that out because I am very familiar with what you talked about. Mr. Glickstein inserted that in the record of the House over there when it came up.

Now, this circular that you just read was the product of probably two to five men acting on their own, paying for the publishing of that circular, and passing it out. Woodville is in a county that has 80 percent black population and 20 percent white population and since the enlightenment of the Supreme Court rulings on our school, it now does not have a single white child in its schools. It is an all-black school system.

So what an individual does is constantly applied as the action of the State or the officials of this State.

Not one official of the State of Mississippi named is on that circular. Not one official of the State of Mississippi had anything to do with that circular. It was the product of a very few, a handful of men.

Their purpose as I understand it, was unsuccessful and yet it is presented to this Congress as being the attitude of the entire town and city.

Senator BAYH. Would you like for me to have the record read back? Did I say that?

Mr. SUMMER. No, sir.

Senator BAYH. I would like to have the record read back if there is any doubt about it. I do not think I said that, but I was trying to talk about neighborhood attitudes. I did not say anything about public officials, State officials, or anything.

Senator ERVIN. If I may—I would plead guilty to having written similar letters except I used the word "Democratic" where the word "white" appears and polled Democrats in secret meetings.

Senator BAYH. Does our distinguished colleague suggest there is a parallel there?

Senator ERVIN. I think so.

Senator BAYH. Between Democratic and white?

Senator ERVIN. Do you not think other people wrote letters to get all the black people registered?

Senator BAYH. Oh, yes.

Mr. SUMMER. Senator Bayh, what is the difference?

Senator BAYH. But the Senator is suggesting that writing a letter suggesting that all Democrats should be elected is the same as all white people being elected, and I respectfully take issue.

Senator ERVIN. Let me tell you what the Democratic National Convention did in Chicago last time. They expelled virtually every white man that had been elected delegate from Mississippi and took a delegation which was virtually all black. Now, if you can tell the difference between white citizens counseling down there and the Democratic National Convention on that point I would like to see it.

Mr. SUMMER. And also, Senator, what is the difference between a group of white people trying to elect white officials and a group of black people trying to elect black officials? Where is your distinction?

Senator BAYH. Only the fact that I do not know of any allegations or any evidence that has been submitted to show that black voters or black citizens or black officials are conspiring to keep white voters from being registered and I notice there is a preponderance of white voters here who have had access to the ballot. There is little reason for white people to be suspicious of this, it seems to me.

Mr. SUMMER. If I had any idea that the Senator would take that leaflet I could have brought you a bushel basket full of the same type literature in the black counties of Mississippi advocating the election

of black officials and there would have been no battle, but I assure you, you will not find that in the Civil Rights Commission's report.

Senator BAYH. Prior to this May 20 letter, or at the time of the letter, I notice they are talking about alderman and mayor. Was a white mayor elected? Was a white mayor in office at that time?

Mr. SUMMER. Yes, sir.

Senator BAYH. White alderman in office at that time?

Mr. SUMMER. Yes, sir.

Senator ERVIN. If I recall the newspaper articles I read about Gary, Ind., when Mr. Hatcher, I believe it was, ran for mayor, they said a lot of people made appeals to the white people to vote against him because of his race and he made public speeches to the effect that they were opposing him on account of his race even in such a Garden of Eden as Gary, Ind.

Senator BAYH. I am glad the Senator characterized a part of Indiana as the Garden of Eden. I thought maybe all that was reserved for North Carolina.

Mr. SUMMER. Let me point this out. A little town, Sunflower in Mississippi, who had an overwhelming preponderance of Negro voters, a white group of officials were elected. Through court action this election was set aside and a slate of black candidates were entered into the race. There was an all-out knock down, drag out fight to elect black officials. The majority of those black people went and voted for the white officials.

Now, how can Congress change this or why would they want to change this, is my opinion.

There are over 100 black officials in the State of Mississippi today. They hold offices from the mayor on down. So, insofar as a black man being discriminated against in Mississippi, it is just not so.

Senator BAYH. We have specific examples of people who have been denied access to the ballot in some of these States. In fact, one went clear up to the Supreme Court, Green County, Ala., relative to the official acts of election officials who took these people's names off the ballot. They had them on the preliminary ballot, the sample ballot, but just coincidentally left them off the real ballot when election day came.

Mr. SUMMER. Senator, Alabama did not get into the act until they had worked on Mississippi for many, many years. We were the first people that they started out after. And you said Green County, Ala. That is not in Mississippi.

Senator BAYH. That is right.

Senator THURMOND. Would the distinguished Senator from Indiana yield for two questions? I am in another committee, a very important one. Defense appropriations.

Senator BAYH. Go ahead. I will be glad to yield, though I have another appointment, too.

Senator THURMOND. I do not——

Senator BAYH. Go ahead.

Senator THURMOND. General Summers, I just want to take this opportunity to welcome you to Washington and to tell you we are very glad to see you here. I think you have given splendid testimony on behalf of your State and your people and this morning we heard the testimony of Governor Maddox of Georgia. I do not know whether you were present or not.

Mr. SUMMER. Yes, I was.

Senator THURMOND. It is unfortunate the chief executives of other States who were invited to testify did not avail themselves of the opportunity. If the States expect to be heard they must take full advantage of each opportunity to state their case.

I commend you for coming and stating your case on behalf of the State of Mississippi and the chief executive of your State, Governor John Bell Williams. I suppose you are speaking for him, too.

Mr. SUMMER. Yes, sir; right.

Senator THURMOND. He is an excellent man and fine Governor and I am glad you are speaking for him as well as your State.

Now, I just have a couple of questions here and I have got to get back to another committee.

In your opinion, can any person who is qualified run for public office in the State of Mississippi and participate in the election process in that State?

Mr. SUMMER. There is no doubt about it, Senator. They are doing it every day.

Senator THURMOND. General Summers, do you know of any reason or any argument which would justify the singling out of a handful of States to be treated differently from the other States of the Union and is there any reason why every State should not be treated on an equal basis.

Mr. SUMMER. In my opinion there is none, Senator. And I have been out, as I stated before you came in, I probably have been involved in this act more than any single person because we have probably been singled out more than any single State to present our laws for approval up here as well as the voting aspect part of it.

I was telling them that we have been successful in getting one insignificant law approved. The entire electoral process of our State needs revamping. We cannot have it happen so long as this law is in effect.

Senator THURMOND. In order to get any change in your electoral process at all you have to come to Washington and get the approval of the Attorney General of the United States, do you not?

Mr. SUMMER. Yes, sir; and then we find ourselves down in the lower echelons trying to get the approval there. The Attorney General does not have time to fool with it.

Senator THURMOND. Do you feel that the Constitution of the United States concentrated, centralized all of this power at the Central Government in Washington as is now being exercised by the Central Government in Washington?

Mr. SUMMER. I do not feel that it was intended to be that way, Senator. I think——

Senator THURMOND. Those who wrote the Constitution said they had no intentions of that?

Mr. SUMMER. No, sir; they did not.

Senator THURMOND. Is not the sovereign state of a sovereign government and does it not have all the powers of an independent nation, in fact, except those powers which have been specifically denied to it in the Constitution or one of the amendments adopted since the adoption of the Constitution?

Mr. SUMMER. That was my understanding up until 1954, Senator. I am doubtful that that exists today.

Senator THURMOND. Can any person of any race vote in your State without any intimidation or pressure whatever?

Mr. SUMMER. Anybody who wants to vote and can register, we can register him with Federal registrars, or State registrars. Any man 21 years old in my State and who has lived there long enough can vote, man or woman, black or white.

Senator THURMOND. Is any effort made to keep them from voting?

Mr. SUMMER. No, sir. No effort.

Senator THURMOND. Can any child of any race attend any school of that State in the school district?

Mr. SUMMER. No, sir. Unfortunately, the Supreme Court has said because of the child's color he must attend the school to which they now tell him to go.

Senator THURMOND. And they are now practicing forced integration rather than fredom of choice and depriving the parents and children of choosing schools to which they can go.

Mr. SUMMER. That is absolutely correct, and they have destroyed our school system and I have no idea how we will ever recover from it.

Senator THURMOND. Now, are these not powers being exercised by the Central Government here usurping the powers of the States and violating the Constitution of the United States, in your judgment?

Mr. SUMMER. In my opinion they are, Senator.

Senator THURMOND. Again, I just want to congratulate you for coming here and not because it is the State of Mississippi, although I have great affection for the people there. They voted for me for President in 1948. But any State, whether it is Massachusetts, Michigan, California, Wisconsin, whatnot, I want to see the States of this Nation stand up for their rights. I want to see the Governors of the States of this Nation stand up for the rights of the States. And I just regret that the other Governors of the States involved here have not appeared and I hope yet they will appear and testify as to conditions in their States and as to how they feel about this law which usurps the rights belonging to their respective States. Congratulations again on coming here.

Mr. SUMMER. Thank you, Senator, and I think you know that we feel that you are a man of your beliefs and I think that you know that is why we voted for you in that election.

Senator THURMOND. Thank you very much.

Mr. SUMMER. Thank you, sir.

Senator THURMOND. Thank you very much, Mr. Chairman.

Thank you, Senator Bayh.

Senator ERVIN. I am afraid that is a vote.

Senator BAYH. Right. Could I just pursue one or two more questions and then I will be through.

Senator ERVIN. I will be back because I want to ask you one or two questions.

Senator BAYH. The chairman has been very patient.

Mr. SUMMER. If you have to recess and vote I will be glad to wait.

Senator ERVIN. If I do not get disenfranchised.

Senator BAYH. Perhaps I ought to go to make sure I am not disenfranchised. [Laughter.]

Now, Mr. Attorney General, you led me to believe that you felt that the efforts being made by black citizens to elect black candidates has a

parallel in the type of discriminatory practices that have been followed in the past. Are you sure of this?

Mr. SUMMER. This is my impression.

Senator BAYH. Can you— do you have any evidence whatsoever of black officials keeping white people from registering?

Mr. SUMMER. No, sir; because——

Senator BAYH. Hardly parallel?

Mr. SUMMER. Anybody who wants to register now goes to a Federal official if they do not want to go to the county.

Senator BAYH. This is because of the 1965 act which you want to repeal.

Mr. SUMMER. No, sir; not necessarily, because this is the way they have been trained to go because of this act. I agree with that.

Senator BAYH. If we did not have the act then the registrars would disappear and the incentive to try to scrupulously avoid some of the past practices would no longer be there. This is what concerns me.

Mr. SUMMER. Well, Senator, let me allay your concerns in this respect. We are monitored every day by the Justice Department. If any act would be passed in the Mississippi Legislature that would be of a discriminatory nature in any effect, it would be nullified in the Fifth Circuit Court of Appeals by the following morning at 10 o'clock.

Senator BAYH. What about the acts of a local election board, just before the election, moving the polling place without bothering to tell anybody?

Mr. SUMMER. Senator, I believe we have had one instance of that and that was a part of a lawsuit. And that occurred because a man who owns the voting place told them they could not use it any more and they changed one voting precinct. We do not have that problem in Mississippi. We never had anybody trying to change the voting precinct. To my knowledge, there has not been but one voting precinct change that was challenged on this basis. I am sure there have been others changed because of necessity, but as I was discussing with Representative McCulloch of Ohio, he said they quite often change them in Ohio in order to try to fool the voting booth people.

I would say this does not exist in Mississippi and has never existed in Mississippi.

Senator BAYH. The allegation was made that the voting booth location was changed, and furthermore that voters who arrived to vote were not given any advice and counsel as to where the new post was.

Mr. SUMMER. This was a small town and I do not know whether anybody was stationed there to tell them or not but this would also affect the black and the white. But it is——

Of course, it was in a black precinct, as I recall.

Would you define again to us—I must say I was in and out of the committee hearing room at the time—the validity for the State's statute which is applicable only in three predominant black counties that requires a different standard for being a candidate for the school board there than the standard applied in other counties in the State?

Mr. SUMMER. Candidates for the school board?

Senator BAYH. My understanding is that in the counties of—correct me if I am wrong on pronunciation—Washington, Coahoma and Leflore Counties, that in 1966 there was an act passed requiring that all candidates for school board be resident free holders and owners of

real estate valued at $5,000 or more, and that these criteria applied only to those three predominant black counties.

Now, can you tell us why that particular law was applied only to those three counties?

Mr. SUMMER. Well, I can probably give you the commonsense reason for it; and that is simply because they are and have been predominantly black counties for quite some time. The white people of that area put up over the years practically all of the financing of these institutions and were the governing body of those instituions and this was an era when we were getting a tremendous number of illiterate people on our voting rolls, and it was an effort to keep quality education and not necessarily to keep a black man from running for school board.

Washington County, by the way, is probably the most liberal county in the State of Mississippi. If you knew the State, you would know that this is the home of Hodding Carter and Washington County has never in my knowledge been accused of being a prejudiced county insofar as blacks are concerned.

Senator BAYH. Of course, this was State law we are talking about, and I would think there would be just as much concern in other areas to have quality education, and as to real State ownership——

Mr. SUMMER. There was that concern and we passed a law making the appointment of county superitnendents of education an appointive office rather than an elective office and the Attorney General refused to approve this law, so it never became law. And the idea behind that was to get qualified people as superintendents of education of the county schools.

Senator BAYH. Well, I am going to have to go vote. I suppose we can recess. You have been very patient.

Mr. SUMMER. I will stand by, Senator, until you all get back.

Senator BAYH. I appreciate your patience.

(A recess was taken.)

Senator ERVIN. I just wanted to make some comments about the kind of evidence that they adduced to get bills passed that have an impact on the Southern States and nowhere else.

My first acquaintance with it was in 1957. Unfortunately, this business of making the Attorney General not only an officer of justice but also the chief political adviser and agitator for the administration is very unfortunate. They ought to have kept the political adviser as the Postmaster General because he did not have anything much to do except read postal cards. But for a man to try to be a prosecutor and try to agitate for coercisive legislation seems to do some damage to truth.

In 1957 the Attorney General of the United States who happened to be Herbert Brownell then, came before the committee and testified we needed a new voting law for the South and I asked him why. Because of some instance in North Carolina. One of them was, he said, that some blacks had been denied the right to vote in one precinct in one of our small rural counties, Campbell. Some blacks had been denied the right to register to vote in another small precinct in the rural county of Green and some blacks had been denied the right to register to vote in a small precinct in Brunswick County, another rural county. This was in reference to the primary of May 1956.

The Attorney General stated that this was disclosed by FBI reports. I asked him for the FBI reports and he would not produce them. He said they are confidential. I said, they ought to be confidential when you determine you are going to prosecute somebody for crime but when you use them as a basis to come here and agitate for a new law, I think you automatically would make them public property so that the committee can determine whether or not you are interpreting them correctly.

Well, I could not get them. So, I called up my State election officials and I found out that each one of these three incidents had been called to the attention of the North Carolina State Board of Elections and every one of them had been corrected in time for the people affected to register to vote in the May primary.

Then I tried to get a response from the Department of Justice as to whether the FBI reports did not show that these matters had been corrected before the Attorney General came down here and used them as a basis for advocating a law.

I guess they picked out the three North Carolina instances because they knew I was one of the few men that was on the committee and was going to examine about them. But I never could get a response from the Department of Justice until after the record was closed and then they denied that it was disclosed by the FBI reports after the matter had been acted on. I could not get the courtesy of a reply prior to that time.

Well, I have a notion that if they had thought there was any criminality they would have prosecuted them and the FBI would have checked on it. That is one of the great illustrations they gave as to why the southerners are such sinful people.

Then, the next one referred to Mississippi. You may have heard a man, a black merchant down there named Coats. He fled from Mississippi. Some people said because he had been shot because of embracing some other man's wife and some said because he wanted to register to vote. When he crossed the Mason-Dixon line he suddenly acquired the title of Reverend. He became a theologian as soon as he crossed the Mason-Dixon line and paraded himself all up and down over the North to make speeches in which he said the people in Mississippi were murdering blacks and throwing them into the river because they wanted to vote.

Just day after day, week after week, he paraded over the northern part of this country making speeches of that character. They brought him down before the committee and they wanted to trick me into letting his affidavit come in evidence instead of compelling him to testify. He had an affidavit filed in which he stated the general proposition that people in Mississippi were murdering blacks and throwing their bodies into the river just because they wanted to vote. So, I would not let him put it in the record. I said I want you to testify.

Well, the first thing he testified was about the tremendous profits he was making and when I got to asking him what kind of Federal income taxes he had been paying on these big profits, he started hemming and hawing and said he just started making his profits. He had not yet paid any income tax.

Then the only two instances when I asked him about who had been murdered and thrown into the river he mentioned the Till boy. I said the Till boy certainly was not murdered and thrown into the river be-

cause he wanted to vote because he was just about 15 or 16 years of age and did not even live in Mississippi. He was on a visit down there in Mississippi. So, he was not murdered and thrown into the river because he wanted to vote, that that was somebody else. He said, well, a man over in a certain county: so I called the office of a Mississippi Senator and asked him to contact the people in that county about that immediately. Before the hearing ended they got me the information. So, I asked the NAACP official who had brought Coats to testify, I said, now I can put Coats under the subpena to be a witness in the morning because I have some information I want to ask him about and I will put him under subpena unless you give me your solemn assurance you will produce him here in the morning without me having to do so. So, I received the solemn assurance that Coats would be there next morning.

Between sunset that day and sunrise Coats disappeared and so far as I know he has never been seen or heard of since.

But the information I got showed the only other person that he said had been murdered and thrown into the river because he wanted to vote was a black schoolteacher, a man, and the evidence was he never attempted to register. Instead of that, he committed suicide and left a suicide not in his automobile near this lake addressed to his wife.

So there were two people, the only two people that Coats could mention. And yet he had for months paraded about speaking generally to the effect that people in Mississippi were throwing blacks into the rivers because they wanted to vote.

Now, there is another thing. I will give you another illustration. The reason I found what a good law-abiding State Mississippi is. I was coming down here to testify against a bill which Attorney General Clark was advocating on behalf of the Johnson administration which was to create new Federal crimes based on violence. And incidentially, it is beside the point, but I just took the position that we ought not to have such a law but if we were going to have it, they ought to not only make it a crime based on race but any crime where a man's constitutional rights were interfered with, whether a man is white, black, yellow, brown, if they are going to let the Federal Government make these Federal crimes they should make it a crime to interfere with any man's exercise of his constitutional rights. But the administration would not buy that. They were anxious to show they were giving one group of our people protection but not the rest.

I studied up about Mississippi because I had heard Mississippi accused of so many things by Brother Coats and others that I was prepared, but Attorney General Clark evidently anticipated something I did not anticipate. He anticipated I would be the only Senator here to cross examine, so he had to pick out something on North Carolina to try to deter me from pressing him on the point. So, I asked him what conditions required the change in the entire legal system of the United States in making crimes of violence Federal crimes for the first time in the history of the country. He said I am glad you asked me that question, on account of certain instances in North Carolina. He said do you want to hear about them? I said, yes. There was not much else I could say under the circumstances. So, he enumerated. He said an explosion in a poolroom, in Mount Holly, N.C., of which neither the sheriff of Gaston County or the chief of police of Mount Holly had ever heard.

Another one, a couple of cross burnings near the home of the mayor of Charlotte, that the mayor of Charlotte always said was done by some pranks.

A couple of others were shooting into homes which are really serious, would have been serious crimes. There were several instances and I asked him—I said what does that prove? He said that proves that law-enforcement officers in North Carolina will not apprehend the guilty parties if the cases have racial overtones.

Well, I said that is a serious reflection on the character of the North Carolina officers but I asume since you know about these things that the FBI was also investigating these cases. And I said everybody knows the FBI is composed of men of character, that they will not be deterred from apprehending the guilty parties because the cases have racial overtones or anything else. I said, did the FBI apprehend the guilty parties in these cases? He said, no.

In other words, there is the Attorney General of the United States using instances where the North Carolina law-enforcement officers and the FBI investigated alleged offenses. Neither one of them according to the Attorney General's statement, had apprehended the guilty parties but that proved that the North Carolina officers could not do their duty because the case had racial overtones. I said, well, what am I to infer from your evidence? You admit the FBI has not found out about the guilty parties. Am I to infer they have low intelligence, because everybody admits they have got character. That is the kind of evidence they used to condemn us.

Now, do you not believe in the doctrine of repentance?

Mr. SUMMER. Yes, sir.

Senator ERVIN. And if the 1964 election showed that these seven Southern States were sinful, do you not believe that they ought to allow a little room for repentance and if they do extend this bill, provide that they are going to make the determination of guilt based on the election figures for 1968?

Mr. SUMMER. I certainly do, Senator.

Senator ERVIN. Well, those proponents to this bill are opposed to that.

Mr. SUMMER. Yes.

Senator ERVIN. And I would like to ask you as a lawyer if you have a presumption of guilt based on figures of the 1964 election and you are able to show by the figures of the 1968 elections that that presumption of guilt has been rebutted, do you not think that any court which is truly a court of justice or any legislative body which believes in justice would say that where the 1964 elections showed guilt and the 1968 elections showed innocence that they would take the 1968 election terms?

Mr. SUMMER. That would be my surmise.

Senator ERVIN. And yet, we find right here those advocating renewal of these bills are strenuously opposed to that because they say that some people would be exonerated by the 1968 elections but they want to keep them condemned by the 1964 elections.

Mr. SUMMER. Yes, and unfortunately, many of those others would be condemned under the 1968 elections as we have for the past 5 years——

Senator ERVIN. Yes.

Mr. SUMMER (continuing). Because there elections did not come out in that fashion.

Senator ERVIN. I want to thank you very much for your appearance here and your very convincing views that you have on this subject. I still live in the hopes all the Southern States would be admitted back into the Union as full fledged States with the same rights as every other State and while many of the brethren are not willing for us to have those rights now, I still hope to live long enough to see those hopes realized.

Mr. SUMMER. Senator, I concur completely and I might just by way of conversation say this, that if many of these States who now would continue this act upon us would open their States up as our States have been opened to these people they are so concerned about, they would find that they are far ahead of them in what they are trying to do. But never will they get the true information by pulling individual instances by individual people that all States have, not only Mississippi and North Carolina, but Indiana, California, and others. You cannot control an individual's act and neither can I and that individual's act should never speak for the whole State or should not be accepted as the attitude of a whole State and my view—you have explained my position perfectly, Senator, when I say to this committee and to Congress that we have abided by this law for 5 years where no other State has done so. We have suffered indignities that no State should be called upon to suffer. I spend half of my time coming back and forth to Washington trying to get our laws approved.

We have shown our good faith. The Attorney General has his eye on us constantly as do the other groups of this Nation. Good faith should be shown somewhere. If we are under suspicion 5 years after, we will be under suspicion 5 years from now. 10 years from now, and 20 years from now. There comes a time when it must come to an end and I say that we have shown our good faith. It should come to an end now.

Senator ERVIN. Thank you very much.

I do not believe we can complete with another witness this afternoon as I was supposed to have an appointment, I think about an hour ago, if it is not too long we will try.

Mr. Glickstein, how long will your testimony be?

Mr. GLICKSTEIN. I can make it as short as you like.

Senator ERVIN. Would you rather give it this afternoon or come back tomorrow?

Mr. GLICKSTEIN. I would rather give it this afternoon.

Senator ERVIN. We will go ahead and take it, then.

Mr. GLICKSTEIN. Thank you, sir. I can very briefly summarize it and then answer whatever questions you might have.

Senator BASKIR. Would you identify yourself for the record, please?

STATEMENT OF HOWARD A. GLICKSTEIN, STAFF DIRECTOR OF THE U.S. COMMISSION ON CIVIL RIGHTS

Mr. GLICKSTEIN. Mr. Chairman, members of the subcommittee, I am Howard A. Glickstein, staff director of the U.S. Commission on Civil Rights. I am here this afternoon to testify on H.R. 4249, which is legislation on voting rights passed by the House of Representatives in December 1969. I would like to thank the chairman for giving us an opportunity to appear here again. As you know, one of our commissioners appeared before this subcommittee back last summer and I

would like to thank you for your consideration in hearing me this afternoon.

If I may, I would like to submit my entire statement for the record.

Senator ERVIN. Let the record show that the entire statement will be printed in full at the conclusion of Mr. Glickstein's testimony.

Mr. GLICKSTEIN. Thank you.

When Commissioner Frankie Freeman testified here in July, she urged the committee to extend the Voting Rights Act of 1965. Since then the House of Representatives has passed H.R. 4249, which you now have under consideration.

We think the circumstances have changed to such an extent that we would like here today to reiterate our support for voting rights legislation.

Our position is that the commission favors the retention of section 5 as it now stands; we favor a national ban on the use of literacy tests but we favor a permanent ban. We favor limiting residency requirements in presidential elections and we do not see the need for the new voting commission that is proposed by H.R. 4249.

The need for section 5 was explained in previous testimony and has been explained by previous witnesses here. The section in effect freezes election procedures in the covered areas unless the changes can be shown to be nondiscriminatory. The legislative reasoning that led to section 5 consisted of a very voluminous record showing long-standing and pervasive evils that were perpetuated over the years. One device to disfranchise Negroes was replaced by another and there never seemed to be an end to new laws that thwarted the right to vote.

A few illustrations of what section 5 does and how it can be used to protect Negro voting strength will shed light on the need for the remedy of section 5. For example, in 1968 Louisiana passed a law permitting elections for police juries to be conducted on an at-large basis in each Louisiana parish. Before that enactment, police juries were selected by subdivisions of parishes called wards. In 109 wards, Negroes were in the majority according to the 1960 census, while Negroes only constituted the majority of voters in five parishes. Thus, a change from ward to at-large voting would have the effect of diluting actual or potential voting power of the Negro inhabitants.

The Attorney General in objecting to this change in September 1969 referred to the Supreme Court's decision in the *Allen* case in which the court stated:

> The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot.

A statute which gives election officials undue discretion can also open the door to discrimination. A 1968 Georgia law was disapproved by the Attorney General because it required persons who hold election and registration offices to be "judicious, intelligent and upright electors." The Attorney General characterized this standard as "vague and subjective."

There is nothing to indicate that the above discriminatory practices are lessening. On the contrary, there is evidence that similar practices are continuing.

In July 1968 Anniston, Ala., a city with a population which is about 27 percent black, changed its municipal elections from election by wards to at-large elections. The city was divided into five wards,

each to be represented by one councilman. Although each councilman must be a representative of his ward, he is elected by the city at large. Since the population of the two of the five wards is predominantly black, Negroes believe that the requirement of at-large elections was designed to prevent them from electing their own councilman and a suit is pending challenging this change.

To give another example, a bill was recently introduced before the General Assembly of Mississippi which would change the qualifications of candidates for school boards. The change would require that only high school graduates could run for these offices. Since in Mississippi a higher percentage of whites than blacks are high school graduates, this law could keep blacks from controlling school boards in areas in which they outnumber whites in registered voters.

The Attorney General, in his testimony before this subcommittee, has claimed that section 5 is not an effective remedy. He stated that: "When local officials have passed discriminatory laws they have usually not been submitted to the Attorney General."

However, since 1965, over 420 laws or regulations have been submitted to the Department of Justice.

In 1969, after the *Allen* case, which made it clear that even minor changes have to be submitted, there was an increase in submissions indicating willingness to comply by many local officials, once standards for submissions were clarified. Since 1965 the Department has sued to compel submission in only four cases. If non-submission is a serious problem, many more suits should have been brought. The mere existence of a requirement of submission has a deterrent effect on manipulation of election laws to disfranchise blacks.

The Department of Justice moreover is not powerless to remedy the problem of non-submissions under section 5.

At the State level it is difficult to conceive that many changes in election laws could escape the attention of the Department since such enactments are published officially. At the county and municipal level a periodic letter to election officials could inquire whether changes have been made in election laws and procedures as well as inform such officials of their obligations under section 5.

A lawsuit to compel submission also is quite simple. The Department only has to show that a change covered by section 5 has not been submitted. No showing of discriminatory purpose or effect is needed.

Even more important, the fact that some jurisdictions may flaunt the requirements of section 5 seems a poor reason for abandoning it. Federal protection of the rights of black people is required precisely because so many local officials do not honor their obligations under the Constitution. If there is widespread noncompliance with section 5, enforcement efforts should be strengthened, not weakened.

The Department of Justice also has claimed that it is virtually impossible to know whether changes in election laws submitted to the Department have a discriminatory purpose or effect. It is our understanding that the Department has been able to obtain from the local election officials, from civil rights leaders, from its own attorneys in the field or from the FBI sufficient information to make this determination. Furthermore, the solution of H.R. 4249 to substitute for section 5 the power to bring suits, a power incidentally, which the Department already enjoys under the Civil Rights Act of 1957, would not solve this problem since the same determination would have to be made to decide

whether or not to sue. The Department, however, would be in a weaker position to prevent discrimination since it would not systematically be informed of changes that might be discriminatory.

Litigation is usually too slow to affect the process of implementing election laws. The provisions of the present law which require the Department to approve or disapprove submissions within 60 days often prevent important actions from being taken on the basis of enactments that might later be invalidated. It is ironic that the Department of Justice should claim that the power to sue to enjoin discriminatory election laws would be more effective to enforce the 15th amendment than section 5, a remedy that was adopted by Congress because of the failure of litigation to provide prompt and effective measures against violations of that amendment.

Between 1957 and 1965, 71 lawsuits by the Department of Justice involving thousands of man hours of preparation did not result in halting discrimination against Negro voters. Before retreating to the frustrations and delays of litigation, it would seem to me more appropriate to consider whether the Department can improve its enforcement of the existing administrative remedy Congress has chosen.

Finally, I should explain why the Commission proposes the retention of section 5 for those areas presently covered by the Voting Rights Act while it supports some of the nationwide features of H.R. 4249. Commission studies and other evidence have amply documented the fact that the most serious problems in voting discrimination arose in the South. Average registration figures in the South for black people are still considerably further below figures for white persons than they are in the North.

Under H.R. 4249 one of the important means used to foster such discrimination, literacy tests, would be abolished. However, H.R. 4249 provides a weak remedy against another common device used in the past, manipulation of election laws and procedures. There would only be justification for abandoning section 5 in the South if areas which have stubbornly resisted Negro rights for many decades were truly reconciled to their existence or if the remedy provided by section 5 were totally ineffective to combat such resistance.

We do not believe that either of these assumptions is correct. We support attempts to eliminate voting discrimination wherever it occurs but at the same time we do not believe that attempts to eradicate discriminatory practices in the South should be lessened.

Section 2 of H.R. 4249 amends section 4 of the Voting Rights Act to prohibit the use anywhere in the Nation of any literacy tests or other tests or devices such as tests of good moral character until January 1, 1974. At the time of the hearing in the House and the earlier hearings before your committee, we felt that it would be appropriate to deal with the question of a national ban on literacy tests in legislation separate from the extension of the Voting Rights Act. The Congress now appears to want to settle both of these matters together. We have no objection to this.

The Commission recently conducted some research on the effects of the use of literacy tests in the North and the West. We found that literacy tests do have a negative effect on voter registration and that this impact of literacy tests falls most heavily on blacks and persons of Spanish surname.

If I may, Mr. Chairman, I would like to submit for the record a copy of this study that we undertook.

Senator ERVIN. Let the record show that it will be received as an exhibit. If it is not too long we will print it. Do you want it printed in the record?

Mr. GLICKSTEIN. I think it would be useful, Mr. Chairman. I think this is one of the first instances where empirical data has been gathered to demonstrate the impact of literacy tests.

Senator ERVIN. Let the record show it will be printed in the record.

(The document referred to follows:)

The Impact of Voter Literacy Tests Upon Voter Participation in States of the North and West: November, 1968

STATEMENT OF THE PROBLEM

Based on available population and voter information, this paper seeks to assess the effect in States outside the South of voter literacy tests upon registration and turnout, especially upon the registration and turnout of minority groups.

CONCLUSIONS

(1) In general, States of the North and West with literacy tests have lower registration and turnout rates than those without literacy tests.

(2) At lower education levels, the difference between literacy State and non-literacy State registration is much greater for Negroes than for whites. Thus, while 38 percent more Negroes with less than ninth grade education are registered in non-literacy States than in literacy States, this difference is only 18 percent for whites.

(3) For Negroes with less than nine years of schooling, a much higher percentage are listed as not registered because they were "not interested" or were "unable to register" in literacy States (27.7 percent) than in States without literacy tests (15.2 percent).

(4) Counties with a high nonwhite or Spanish surname population are more likely to lag behind their State in registration when the State uses a literacy test, than when it does not.

(5) Therefore, the data show a negative correlation between literacy tests and voter registration and turnout levels, both for the general population and for minority groups in particular.

I. STATE COMPARISONS

Comparison of voter behavior by State

Table 1 compares overall voter registration and voter turnout in States which have literacy tests (see Table 1a) with those which do not (see Table 1b).

In general, States with literacy tests have lower registration and turnout rates than those without literacy requirements. There are several exceptions, it should be noted. For example, in the State of Washington (literacy test), almost 90 percent of the voting age population were registered in 1968, while in Montana (no literacy test) less than 82 percent were registed.

There are no significant differences among either literacy or non-literacy States on the basis of the proportion of the voting age population which is nonwhite.

VOTER REGISTRATION AND VOTER PARTICIPATION IN STATES OF THE NORTH AND WEST, NOVEMBER 1968 STATES WITH AND WITHOUT LITERACY TESTS

	1960, percent nonwhite [1]	1968				
		Total voting age population [2]	Total registered [3]	Percent registered	Total voting	Percent Voting
States with literacy tests (ranked in order of percent nonwhite)						
Hawaii [4]	68.0	424,000	274,199	64.7	236,218	55.8
Alaska	22.8	154,000	(5)	(5)	82,975	53.9
Delaware	13.9	306,000	262,632	85.6	214,367	7.30
Arizona	10.2	948,000	614,718	64.8	486,936	51.8
New York	8.9	11,731,000	8,109,259	69.1	6,790,066	57.9
California	8.0	11,904,000	8,587,673	72.1	7,251,550	60.9
Connecticut	4.4	1,825,000	1,435,298	78.6	1,256,232	68.8
Washington	3.6	1,836,000	1,646,831	89.7	1,304,281	71.0
Massachusetts	2.4	3,361,000	2,725,058	81.1	2,331,699	69.4
Wyoming	2.2	186,000	142,739	76.7	127,205	68.4
Oregon	2.1	1,240,000	971,851	78.4	818,477	66.0
Maine	.6	582,000	529,137	90.9	392,936	67.5
New Hampshire	.4	424,000	(5)	(5)	297,190	70.0
States without literacy tests:						
Illinois	10.6	6,605,000	5,676,131	85.9	4,619,749	69.9
Michigan	9.4	4,965,000	4,022,378	81.0	3,306,250	66.6
Missouri	9.2	2,818,000	(5)	(5)	1,809,502	64.2
New Jersey	8.7	4,412,000	3,310,043	75.0	2,875,396	65.2
Ohio	8.2	6,238,000	(5)	(5)	3,959,590	63.5
New Mexico	7.9	534,000	445,776	83.5	325,762	61.0
Nevada	7.7	284,000	(5)	(5)	154,218	54.8
Pennsylvania	7.6	7,261,000	5,599,364	77.1	4,745,600	65.4
Indiana	5.9	2,957,000	(5)	(5)	2,123,561	71.8
Kansas	4.6	1,372,000	(5)	(5)	872,783	63.6
South Dakota	4.0	386,000	348,254	90.2	281,264	72.8
Montana	3.6	405,000	331,078	81.7	274,404	67.8
Colorado	3.1	1,181,000	970,575	82.2	806,445	68.3
Nebraska	2.6	865,000	664,962	76.9	536,850	62.1
Rhode Island	2.4	561,000	471,122	84.0	384,938	68.6
Wisconsin	2.4	2,469,000	(5)	(5)	1,689,196	68.4
North Dakota	2.0	366,000	(5)	(5)	247,848	67.8
Utah	1.9	555,000	542,793	97.8	422,299	76.1
Idaho	1.5	401,000	(5)	(5)	291,183	72.6
Minnesota	1.2	2,091,000	(5)	(5)	1,588,340	76.0
Iowa	1.0	1,650,000	(5)	(5)	1,167,539	70.8
Vermont	.2	246,000	208,293	84.7	161,403	65.6

[1] U.S. Bureau of the Census. U.S. Census of Population, 1960, vol. I, Characteristics of the Population, 1963.
[2] U.S. Bureau of the Census. Current Population Reports, "Voter Participation in November 1968 (Advance Statistics)," series P-20, No. 177, Dec. 27, 1968.
[3] Published and unpublished records furnished by the States.
[4] Hawaii abolished its voter literacy test in 1969.
[5] Not available.

Comparison of voter behavior by State, based on race and years of school completed

Utilizing special tabulations prepared for the Commission by the U.S. Bureau of the Census, we were able to compare voter registration and turnout between States in the North and West with literacy tests and those without literacy tests, examining separately white and Negro voter registration and turnout at two education levels. (See Figures 1 and 2, Table 2).

For persons having a ninth grade education or more, the differences between States with literacy tests and those without were relatively slight. Thus, for Negroes with nine or more years of schooling, 69 percent were registered in States with literacy tests, and 75 percent in States without literacy tests. For whites with nine or more years of schooling, 78 percent were registered in literacy test States, and 81 percent in non-literacy test States.

However, at a lower education level, the differences were pronounced, especially for Negroes. Thus, for Negroes with less than nine years of schooling, 55 percent were registered in States with literacy tests, compared with 76 percent in States without literacy tests. Thus, the Negro registration rate in literacy test States would have to increase by 38 percent [1] to make the rate equal to that in States without literacy tests. The comparable increment necessary for whites, on the other hand, would be only 18 percent [2].

[1] That is, 76−55=21 : 21/55=38%
[2] That is, 72−61=11 : 11/61=18%.

FIGURE 1

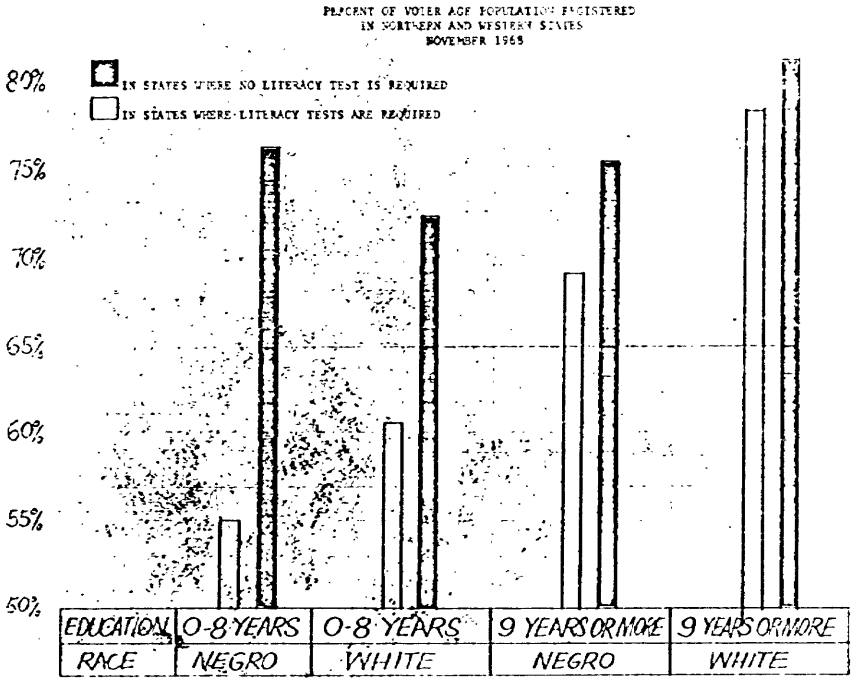
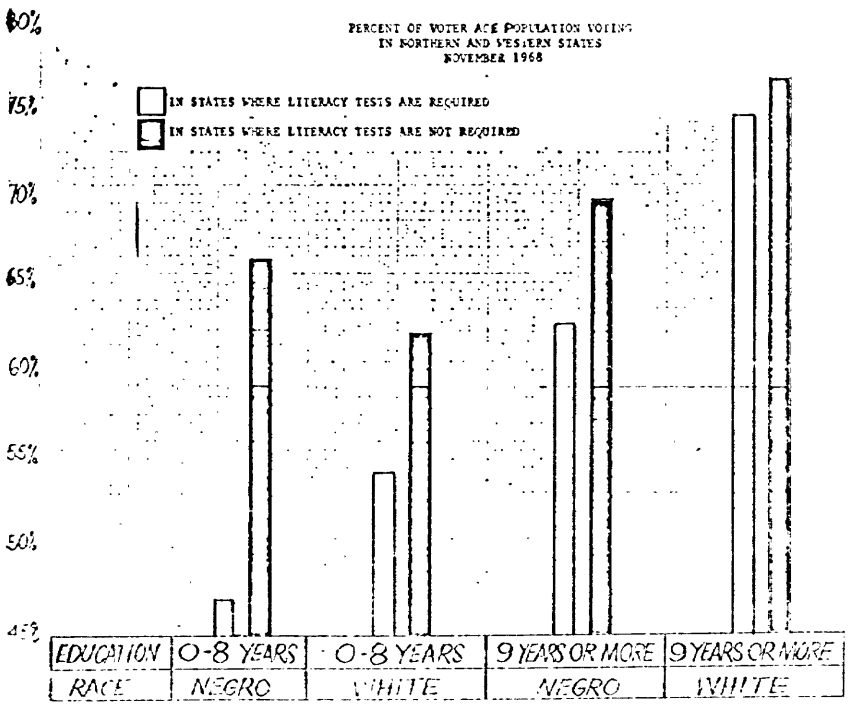


FIGURE 2



ABLE 2.—FOPULATION OF VOTING AGE AND PERCENT REGISTERED AND VOTING IN THE NORTH AND WEST, BY RACE, YEARS OF SCHOOL COMPLETED, AND PRESENCE OF A LITERACY TEST, NOVEMBER 1968

	Total persons of voting age	Percent registered	Percent voting
STATES IN NORTH AND WEST WITH LITERACY TESTS			
Total voting age population	33,628,000	73.4	69.0
Elementary: 0 to 8 years	7,061,000	59.0	52.8
High school: 1 year or more	26,567,000	77.2	73.3
White voting age population	31,064,000	74.6	70.3
Elementary: 0 to 8 years	6,324,000	60.5	54.4
High school: 1 year or more	24,739,000	78.2	74.4
Negro voting age population	1,785,000	65.0	58.3
Elementary: 0 to 8 years	502,000	54.8	47.0
High school: 1 year or more	1,283,000	69.0	62.7
STATES IN NORTH AND WEST WITHOUT LITERACY TESTS			
Total voting age population	47,965,000	78.6	72.5
Elementary: 0 to 8 years	12,130,000	72.6	62.2
High school: 1 year or more	35,836,000	80.7	75.9
White voting age population	44,622,000	79.0	72.9
Elementary: 0 to 8 years	11,113,000	72.3	62.0
High school: 1 year or more	33,510,000	81.2	76.5
Negro voting age population	3,160,000	75.6	68.5
Elementary: 0 to 8 years	974,000	76.2	66.1
High school: 1 year or more	2,186,000	69.6	69.6

Source: Special tabulations prepared by the U.S. Bureau of the Census from data published in Current Population Reports, "Voter Participation in November 1968 (Advance Statistics)," Series P-20, No. 177, Dec. 27 1968.

Reasons for Non-Registration

The Bureau of the Census' special tabulations also provide data, by race and schooling, on reasons given for non-registration. These reasons fall into three categories: (i) "did not satisfy the citizenship or residency requirement," (ii) "was not interested or was unable to register," and (iii) "other reasons, including did not know or did not report."

These data, presented in Figure 3 (with underlying percentages presented in Table 3), show a dramatic difference between States with literacy tests and those without in terms of the proportion of the Negro voting age population with eight years or less of schooling which has failed to register because they were "not interested" or were "unable to register." In States with literacy tests, this percentage was 27.7 percent, while in States without literacy tests it was 15.2 percent.

FIGURE 3

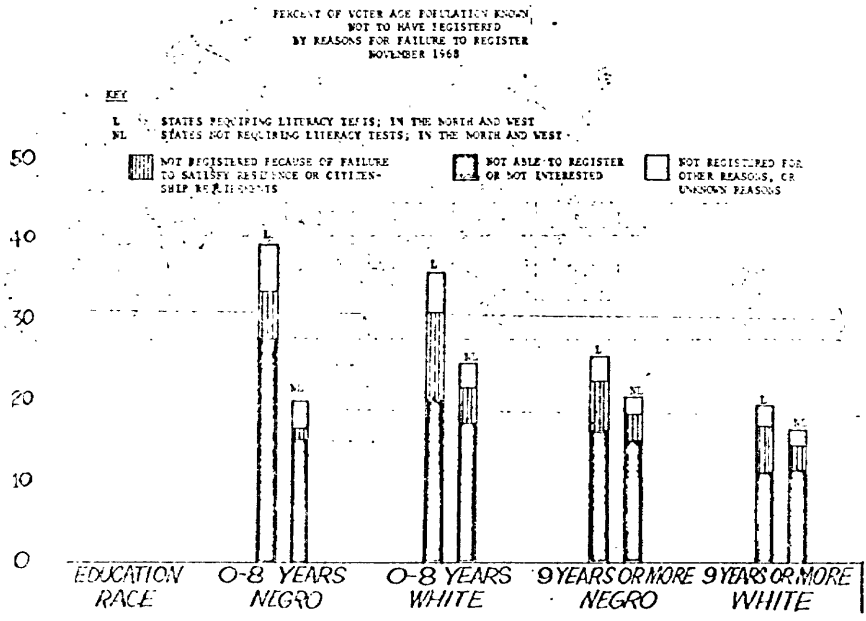


TABLE 3.—REASONS GIVEN FOR NONREGISTERATION IN THE NORTH AND WEST, BY RACE, YEARS OF SCHOOL COMPLETED, AND PRESENCE OF A LITERACY TEST, NOVEMBER 1968

	Percent known not to have registered	Not a citizen or residence requirement not satisfied	Not interested or were unable to register	Other, don't know or not reported
STATES IN NORTH AND WEST WITH LITERACY TESTS				
Total voting age population	23.7	7.4	13.1	3.2
Elementary, 0 to 8 years	35.8	11.7	20.3	4.8
High school, 1 year or more	20.2	6.2	11.2	2.8
White voting age population	22.7	7.0	12.6	3.1
Elementary, 0 to 8 years	35.7	11.3	19.7	4.7
High school, 1 year or more	19.3	5.8	10.8	2.7
Negro voting age population	29.6	6.3	19.4	3.9
Elementary, 0 to 8 years	39.3	6.0	27.7	5.6
High school, 1 year or more	25.7	6.3	16.1	3.3
STATES IN NORTH AND WEST WITHOUT LITERACY TESTS				
Total voting age population	18.9	3.8	12.9	2.2
Elementary, 0 to 8 years	24.4	4.4	16.9	3.1
High school, 1 year or more	17.1	3.6	11.5	2.0
White voting age population	18.7	3.7	12.7	2.3
Elementary, 0 to 8 years	24.6	4.5	17.0	3.1
High school, 1 year or more	16.8	3.5	11.3	2.0
Negro voting age population	20.4	2.7	15.0	2.7
Elementary, 0 to 8 years	20.1	1.6	15.2	3.3
High school, 1 year or more	20.5	3.2	14.9	2.4

Source: Special tabulations prepared by the U.S. Bureau of the Census from data published in Current Population Reports. "Voter Participation in November 1968 (Advance Statistics)." Series P-20, No. 177. Dec. 27, 1968.

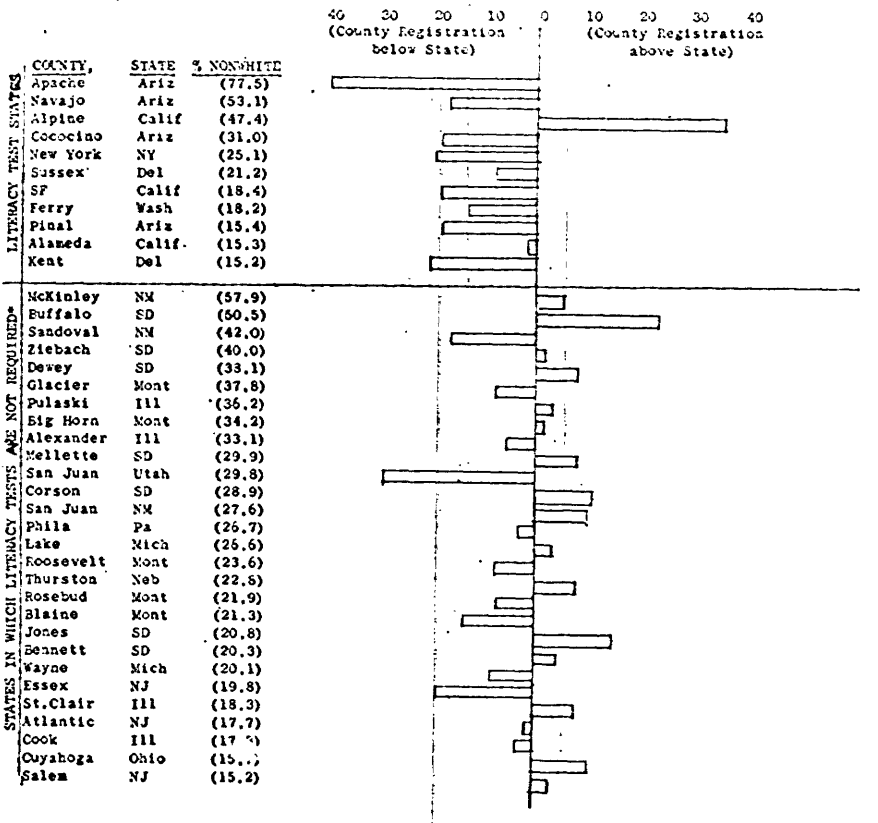
II. COUNTY COMPARISONS

Voter registration levels were ascertained for counties having high nonwhite or Spanish surname concentrations (15 percent or more), and comparisons made between such counties in States with literacy tests and in States without literacy tests. This comparison is presented in Figures 4 and 5. The States of Hawaii and Alaska were not included for this purpose because each has a large nonwhite population in the State as a whole.

Figures 4 and 5 demonstrate that in literacy test States, high minority counties had a much greater tendency to lag behind State-wide registration levels than in States without literacy tests.

FIGURE 4

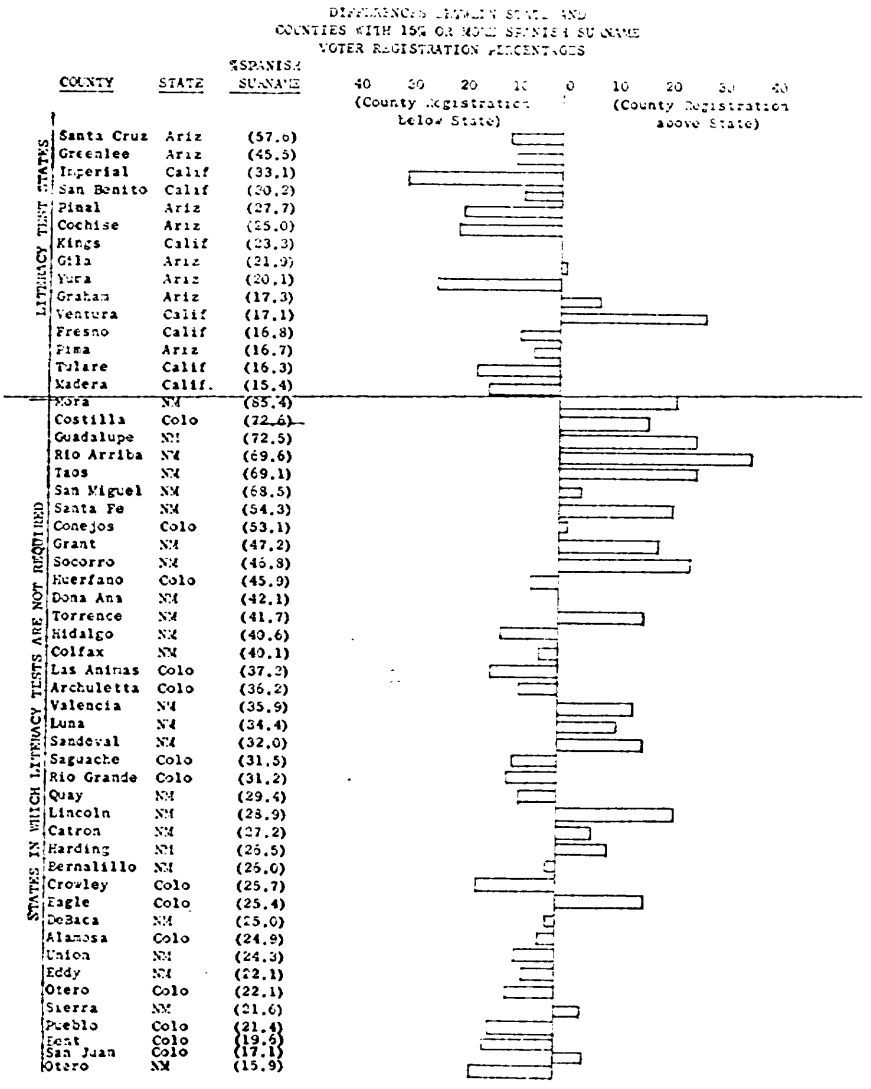
DIFFERENCE BETWEEN STATE AND COUNTIES WITH 15% OR MORE NONWHITE VOTER REGISTRATION PERCENTAGES



	COUNTY,	STATE	% NONWHITE
LITERACY TEST STATES	Apache	Ariz	(77.5)
	Navajo	Ariz	(53.1)
	Alpine	Calif	(47.4)
	Cococino	Ariz	(31.0)
	New York	NY	(25.1)
	Sussex	Del	(21.2)
	SF	Calif	(18.4)
	Ferry	Wash	(18.2)
	Pinal	Ariz	(15.4)
	Alameda	Calif.	(15.3)
	Kent	Del	(15.2)
STATES IN WHICH LITERACY TESTS ARE NOT REQUIRED*	McKinley	NM	(57.9)
	Buffalo	SD	(50.5)
	Sandoval	NM	(42.0)
	Ziebach	SD	(40.0)
	Dewey	SD	(33.1)
	Glacier	Mont	(37.8)
	Pulaski	Ill	(36.2)
	Big Horn	Mont	(34.2)
	Alexander	Ill	(33.1)
	Mellette	SD	(29.9)
	San Juan	Utah	(29.8)
	Corson	SD	(28.9)
	San Juan	NM	(27.6)
	Phila	Pa	(26.7)
	Lake	Mich	(26.6)
	Roosevelt	Mont	(23.6)
	Thurston	Neb	(22.8)
	Rosebud	Mont	(21.9)
	Blaine	Mont	(21.3)
	Jones	SD	(20.8)
	Bennett	SD	(20.3)
	Wayne	Mich	(20.1)
	Essex	NJ	(19.8)
	St.Clair	Ill	(18.3)
	Atlantic	NJ	(17.7)
	Cook	Ill	(17.[illegible])
	Cuyahoga	Ohio	(15.[illegible])
	Salem	NJ	(15.2)

*County registration data were not available for Missouri, Nevada, North Dakota and some counties in South Dakota.

FIGURE 5



III. NOTE ON SOURCE AND INTERPRETATION OF DATA

There is no single source of up-to-date, comprehensive and reliable information on voter registration and turnout by race available.

In November 1968, the U.S. Bureau of the Census asked persons of voting age several questions about their participation in the 1968 general election. The sample was large enough to permit evaluation of differences by race for regions of the country and for groups of States, but not for individual States. The sample permitted estimates of total voting age population in 1968 for each State, but not by race.

County-by-county comparisons could be made only by use of the 1960 *Census of Population* and official State reports of 1968 voter registration and turnout.

As noted in the Conclusions section above, the data do disclose significant differences in voter registration and turnout between States with literacy tests and States without such tests. It is reasonable to attribute at least some of this difference to the impact of the literacy tests themselves.

At the time time, it should be borne in mind that there are important differences other than literacy tests, which may affect registration or turnout levels. Of the 35 non-Southern States, in 1968 13 required potential voters to pass a literacy test while 22 did not. With only two exceptions, the literacy test States are located on the Atlantic or Pacific Oceans. Most traditionally have been ports-of-entry for foreign immigration and therefore, may have greater proportion of non-citizens. They tend also to be predominantly urban and industrial. Most of the non-literacy test States, on the other hand, are located in the Midwest and the Rocky Mountains. These include the major agricultural States outside the South. Few have received large numbers of foreign immigrants, at least since the mid-19th century. Factors such as these also may have significant effects on registration and turnout levels.

In view of these limitations, the reader should neither automatically attribute *all* differences in registration between the two groups of States to the effect of literacy tests, nor regard the data as conclusive demonstration of the effect of literacy tests in any *one* county or State.

Mr. GLICKSTEIN. I also would like to submit, Mr. Chairman, a staff memorandum that describes the current status of literacy tests in the various States that have them. I think this would be useful to the committee in its deliberations.

Senator ERVIN. That will be received and printed in the record.

(The memorandum referred to follows:)

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 13, 1970.

Reply to attn of: OGC.
Subject: Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters.
To: Howard A. Glickstein, Staff Director.

Currently twenty (20) States have constitutional or statutory provisions, or both, which provide for literacy tests or devices as defined by Section 4 of the Voting Rights Act of 1965, for the qualification of prospective voters. Until 1968 Hawaii had a similar constitutional provision. The current status of these provisions is as follows:

1. *Alabama.*—Voters must be able to read and write an article of the United States Constitution in English unless prevented by physical disability. Ala. Const. amend. 223, § 1 (Cum. Supp. 1965); Code of Ala., Tit. 17, § 31 (Cum. Supp. 1965). Currently Alabama is subject to the Voting Rights Act and the enforcement of this requirement has been suspended.

2. *Alaska.*—Qualified voters are required to read or speak English unless prevented by physical disability. Alas. Const. art. V, § 1; Alas. Stat. § 15.05.010 (Cum. Supp. 1969). The State of Alaska considers "any simple conversation" as fulfillment of this requirement. "The conversation could merely be a greeting, such as 'hello', and the individual's name." Letter from Thelma Cutler, Director of Elections, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 12, 1970. The November, 1969 issue of the *Congressional Digest* (Vol. 48, No. 11) adds: "The law has been interpreted to mean that anyone who can speak English can vote, even if he cannot sign his name except with an 'X'." Originally Alaska was subject to the Act, but was later removed by a declaratory judgment of the U.S. District Court for the District of Columbia.

3. *Arizona.*—Electors and voters must be able to read the United States Constitution in English in a manner showing that he is neither prompted nor reciting from memory unless prevented by physical disability and must be able to write his name unless he has a physical disability. Ariz. Rev. Stat. Ann. § 16-101 (1956). In practice, according to the *Congressional Digest*, this has been interpreted as requiring only that the applicant attest to the fact that he is able to read the Constitution of the United States in the English language; if there is any question about his ability, the registrar usually asks him to read other printed matter. Alternatively, voting registrars in the State are directed to accept proof of a sixth-grade education as evidence of literacy. Four counties were originally subject to the Voting Rights Act; three were subsequently removed by declaratory judgment.

4. *California.*—Electors must be able to read the California constitution in English and be able to write their names, except that this qualification does not apply to those unable to comply because of a physical disability. Cal. Const. art.

2, § 1. According to the Secretary of State, California does not have formal literacy tests and the deputy registrar only checks persons when he has any doubt as to their ability to read English. Recently he made an informal survey of the majority of counties in California and concluded that only a nominal number of people were not registered because of their inability to read English. Letter from Frank M. Jordan, Secretary of State, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 23, 1970.

5. *Connecticut.*—Electors must be able to read any article of the constitution or any section of the statutes of the State in the English language. Conn. Const, art. 6, § 1; Conn. Gen. Stat. Ann. § 9–12 (1958). This provision is implemented by means of a voter literacy test. Conn. Gen. Stat. Ann. § 9–20 (Cum. Supp. 1969). The test was developed in conjunction with and approved by the United States Department of Justice. Letter from James F. Daly, Deputy Secretary of State, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 16, 1970. The *Congressional Digest* reports that persons who comply with Section 4(e)(2) of the Voting Rights Act of 1965 (which stipulates acceptance of a sixth-grade education as presumption of literacy) are admitted as electors.

6. *Delaware.*—No person may vote unless able to read the Delaware constitution in English and write his name, except that this qualification does not apply to those unable to comply because of a physical disability. Del. Const. art. 5, § 2 (1965). The *Congressional Digest* reports that in March 1969 the Delaware Deputy Attorney General reported that the statute providing for a literacy test "has not been enforced for some time." The State Election Commissioner stated the view of his office "that each and every voter who has reached the age of 21 since 1900, should at least be able to sign his name and read the ballot so he will know for whom he is voting." Letter from Burton D. Willis, State Election Commissioner, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 9, 1970.

7. *Georgia.*—To register as an elector and to vote a person must be able to read and write in English any paragraph of the Constitution of the United States or of Georgia, or, if unable to do so because of physical disability, the person must be able to "understand and give a reasonable interpretation" of said constitution read to him by one of the registrars. Ga. Const. art. 2, § 704. Currently Georgia is subject to the Voting Rights Act and the enforcement of this provision has been suspended.

8. *Hawaii.*—Voters must speak, read, and write the English or Hawaiian language, unless unable to comply because of physical disability. Hawaii Const. art. II, § 1. According to the Lieutenant Governor's Administrative Assistant, Hawaii's literacy requirement was eliminated by that State's last constitutional convention and approved by the voters in 1968. Letter from Arthur Y. Park, Administrative Assistant, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 13, 1970.

9. *Idaho.*—The State constitution disqualifies from voting persons who are members of organizations which counsel or encourage bigamy or polygamy. Idaho Const. art. 6, § 3 (1962). Elmore County was under the jurisdiction of the Voting Rights Act; it was subsequently removed by declaratory judgment.

10. *Louisiana.*—Electors and voters must be able to read and write and file a written application in English or a mother tongue, except that those unable to write because of a physical disability may qualify by dictating the same to the registration officer. La. Const. art. 8, § 1(c); La. Rev. Stat. § 18:31(3) (1969). Currently Louisiana is subject to the Voting Rights Act and the enforcement of this provision has been suspended.

11. *Maine.*—A voter must read from the constitution of the State of Maine in a manner which shows he is neither being prompted nor reciting from memory and must write his name in English. Me. Const. art. II, § 1; Me. Rev. Stat. Ann. Tit. 21, § 211 (1964). It is a misdemeanor for a registrar to knowingly or willfully fail or refuse to require an applicant to prove he can read and write. Me. Rev. Stat. Ann. Tit. 21, § 1579 (1964).

12. *Massachusetts.*—A voter must read the State constitution in English and write his name, unless unable to read or write because of a physical disability. Mass. Gen. Laws Ann. ch. 51, § 1 (Cum. Supp. 1969). He must write his name and read at the time of registration. Mass. Gen. Laws Ann. ch. 51, § 44 (Cum. Supp. 1969).

13. *Mississippi.*—Voters must be able to read and write. Miss. Const. art. 12, § 244 (1965). The voter must fill out and sign the registration form himself.

Miss. Code. Ann. §§ 3209.7, 3235 (Cum. Supp. 1968). Currently Mississippi is subject to the Voting Rights Act and the enforcement of this provision has been suspended.

14. *New Hampshire.*—A voter "unless he is prevented by physical disability, or unless he had the right to vote, or was sixty years of age or upwards" on January 1, 1904, must read or write in such manner as to show he is not being assisted and is not reciting. N.H. Const. art. 11 (1956); N.H. Rev. Stat. Ann. § 55.10 (1955). There is also a literacy test provision. N.H. Rev. Stat. Ann. § 55:12 (1955). A prospective voter's qualifications for registration are determined in the first instance by the supervisors of the checklist in the various towns and cities of the State and a review of their decisions may be had by filing a petition in the superior court. N.H. Rev. Stat. Ann. § 55:16. Letter from Irma A. Matthews, Assistant Attorney General, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 14, 1970.

15. *New York.*—Voters, unless physically disabled, must be able to read and write English. N.Y. Const. art 2, § 1; N.Y. Election Law § 150 (McKinney Supp. 1968). "[A] new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language. . . ." N.Y. Election Law § 168 (McKinney Supp. 1968).

16. *North Carolina.*—Registrants must be able to read and write any section of the constitution of North Carolina in English. N.C. Const. art. VI, § 4; N.C. Gen. Stat. § 163-58 (Cum. Supp. 1967). Forty counties of the State were originally subject to the Voting Rights Act; one has since been removed by declaratory judgment.

17. *Oregon.*—Unless physically unable, voters must be able to read and write English. Ore. Const. art. II, § 2. He may be required to demonstrate his reading ability at the time of registration. Ore. Rev. Stat. § 247.131 (1968). A voter in a school board election must be able to read and write English. Ore. Const. art. VIII, § 6. However, an assistant secretary of state stated that:

". . . I can report that the voter literacy test has been administered but one time since March 1, 1959.

"This office does not believe in voter literacy tests, and has many times asked our Legislative Assembly to repeal the Statute and Section of the Constitution [sic] relating to same. The response from our Legislature to this case has always been 'you don't administer it—it is not enforced—so why bother.'"

Letter from Jack F. Thompson, Assistant Secretary of State, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 14, 1970.

18. *South Carolina.*—Voters must be able to read and write any section of the constitution. S.C. Const. art 2, § 4(d); S.C. Code Ann. § 23-62(4) (Cum. Supp. 1968). Currently South Carolina is subject to the Voting Rights Act and the enforcement of this provision has been suspended.

19. *Virginia.*—The voting application must be written by an applicant without assistance, unless he is physically unable to do so. Va. Const. art. I, § 20; Va. Code Ann. § 24-68 (1969). Currently Virginia is subject to the Voting Rights Act and the enforcement of this provision has been suspended.

20. *Washington.*—Voters must be able to speak and read English. Wash. Const. art. VI, § 1, amend. 5. On June 15, 1967 the State attorney general opined that Washington's literacy test statute could not be used because of the operation of Federal voting rights statutes. No new literacy test statute has been enacted, and no literacy testing has been done anywhere in the State after the opinion was issued, to the knowledge of either the attorney general or the Board Against Discrimination. However, the literacy *requirement* was upheld by a three judge court in the United States District Court for the Eastern District of Washington on May 2, 1969; the case is currently before the United States Supreme Court on appeal. Letter from Morton M. Tytler, Assistant Attorney General, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 20, 1970.

21. *Wyoming.*—No person may vote who cannot read the constitution of the state. Wyo. Const. art. 6, § 9. According to the secretary of state: "When an elector registers to vote he signs an oath attesting to the fact that he meets the voter qualifications, including being able to read the Constitution of Wyoming.

I know of no instance in which he has been called upon to prove it, either at the time he registers or at the time he offers to vote." Letter from Thyra Thomson, Secretary of State, to Howard A. Glickstein, U.S. Commission on Civil Rights, January 13, 1970.

LAWRENCE B. GLICK,
Acting General Counsel.

Mr. GLICKSTEIN. The results of our analysis show that literacy tests have a racially discriminatory effect. For example, in non-Southern States which require literacy tests, less than 55 percent of the Negro population having an educational attainment of 8 years or less are registered whereas in non-Southern States which do not have literacy tests over 75 percent of the Negro population having 8 years or less education are registered.

There are other reasons why we favor the end of literacy tests. As Father Hesburgh, Chairman of the Commission, stated in a March 28, 1969 letter to the President:

> The lives and fortunes of illiterates are no less affected by the actions of local, state and Federal governments than those of their more fortunate brethren. Today, with television so widely available", he continued, "it is possible for one with little formal education to be a well-informed and intelligent member of the electorate.

We further argued in that letter and in testimony given last spring and summer that the States were in large part responsible for the extent of illiteracy that exists. We concluded, therefore, that although a State may have an otherwise valid interest in a literate electorate, this interest cannot justify a State's use of a disability created in part by its own dereliction as the basis for disenfranchisement.

There are two aspects of the treatment of literacy tests given by H.R. 4249 that I find troublesome. The bill makes the ban on tests temporary and proposes a new commission to study this question and to make a recommendation as to whether the ban should be made permanent or not. In my opinion, this question can and should be settled now. No trial period is needed and certainly no further commissions to study the question are needed.

Mr. Chairman, I also have a memorandum which I think will be particularly of interest to you on the constitutionality of the national ban on literacy tests. I am sure that there are many cases cited in here that you and I could argue about for hours, but——

Senator ERVIN. I have to admit I think under the *Katzenbach* against *Morgan*, everything in the United States below the level of the Federal Government can be abolished so you may as well include literacy tests and marriage and everything else.

(The memorandum referred to follows:)

STAFF MEMORANDUM

The Constitutionality of Legislation by Congress Prohibiting the Use of Literacy Tests as a Prerequisite to Voter Registration.

I. THE PROPOSED LEGISLATION

This memorandum considers the constitutionality of proposed legislation which would ban the use, anywhere in the nation, of literacy tests as a prerequisite to voter registration. Section 2 of H.R. 4249 amends the Voting Rights Act of 1965[1] to add a new subsection 4(a)(1) which provides:

[1] 79 Stat. 437, 42 U.S.C. § 1973–73p.

"Prior to January 1, 1974, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device."

An alternative legislative proposal would make this ban permanent by omitting the initial prepositional phrase. The Voting Rights Act, which both proposals amend, defines the phrase "test or device" to mean

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

It defines the terms "vote" or "voting" broadly to include

"all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." [3]

Thus the coverage of the proposals would include tests or devices other than literacy tests [4] and would require States to assure that illiterates were able to vote effectively.[5]

The enactment would primarily affect the 20 States [6] that currently maintain a test or device. Tests are presently suspended under the Voting Rights Act in six States,[7] as well as in individual counties of a few others.[8] One State which maintains a test or device does not have a literacy test,[9] and a few States with literacy tests on their statute books appear either not to enforce them or to enforce them irregularly.[10]

II. PRIOR LEGISLATION

Earlier civil rights legislation regulated and restricted the use of literacy tests to eliminate particular evils that Congress found associated with the tests.

In the Civil Rights Act of 1957,[1] voting rights were protected by giving the Attorney General of the United States statutory authority to institute suit on behalf of black persons deprived of voting rights. The civil rights legislation passed in 1960 [2] and in 1964 [3] had the effect of strengthening the 1957 Act. The Civil Rights Act of 1964 required that any literacy test must be entirely in writing [4] and created a presumption that a person with a sixth grade education is literate.[5] The Voting Rights Act of 1965 extended this presumption to persons educated in American flag schools in which the language of instruction is other than English [6] and it temporarily banned the use of literacy tests in areas in which presumptively they had been used for improper purposes.[7]

---

[2] Section 4(c), 42 U.S.C. § 1973b(c).
[3] Section 14(c)(1), 42 U.S.C. § 1973*l*(c)(1).
[4] Although this memorandum only discusses the issue of Congressional authority to ban literacy tests, the questions involved with other tests or devices are similar.
[5] *United States* v. *Louisiana*, 265 F. Supp. 703, 708 (E.D. La. 1966), aff'd per curiam, 386 U.S. 270 (1967); *United States* v. *Mississippi*, 256 F. Supp. 344, 348 (S.D. Miss. 1966); *Harris* v. *Fortson*, 261 F. Supp. 538 (N.D. Ga. 1966).
[6] These States are: Alabama, Alaska, Arizona, California, Connecticut, Delaware, Georgia, Idaho, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, Oregon, South Carolina, Virginia, Washington, and Wyoming. For citations, see Hearings on Voting Rights Act Extension Before Subcom. No. 5 of the House Comm. on the Judiciary, 91st Cong., 1st Sess., ser. 3, at 90-91 (1969).
[7] Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. Id. at 273.
[8] Thirty nine counties in North Carolina, one county in Arizona, and one in Hawaii. Id.
[9] Idaho: The State constitution disqualifies from voting persons who are members of organizations which counsel or encourage bigamy or polygamy. Idaho Const. art. 6, § 5 (1962).
[10] U.S. Commission on Civil Rights, Memorandum, Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters (Feb. 13, 1970).
[1] 71 Stat. 637.
[2] 74 Stat. 90.
[3] 78 Stat. 241. These statutes are codified in 42 U.S.C. § 1971.
[4] 42 U.S.C. § 1971(a)(2)(C)(i).
[5] 42 U.S.C. § 1971(e).
[6] Section 4(e), 42 U.S.C. § 1973b(e).
[7] Section 4(a), 42 U.S.C. § 1973b(a).

III. CONGRESS HAS AUTHORITY UNDER THE FOURTEENTH AND FIFTEENTH AMENDMENTS TO ENACT LEGISLATION BANNING LITERACY TESTS.

The basis for congressional power to legislate to prohibit the use of literacy tests by the States is found in Section five of the Fourteenth Amendment which grants Congress "power to enforce, by appropriate legislation, the provisions of this article," and in section two of the Fifteenth Amendment which similarly grants Congress "power to enforce this article by appropriate legislation."

These provisions were initially interpreted by the Supreme Court in the Reconstruction period. While a generally restrictive view was taken of the extent of congressional powers,[1] several distinct formulations as to the minimum extent of the power are found.

In *United States* v. *Harris*, 106 U.S. 629, 639 (1882) the Court held a Federal statute invalid as it attempted to reach private action under the Fourteenth Amendment. The Court made clear, however, that Congress had power to regulate state action when that action violated the Amendment. The *Civil Rights Cases*, 109 U.S. 3, 13–14 (1883) defined congressional power under the Fourteenth Amendment:

"The legislation which Congress is authorized to adopt is . . . corrective legislation, that is, such as may be necessary and proper for counteracting such laws as States may adopt or enforce. . . ."

The mode of enforcement is to be chosen by Congress. In *Virginia* v. *Rives*, 100 U.S. 313, 318 (1880), a case which involved interpretation of a Federal removal statute, the Court in discussing the authority of Congress stated:

"Congress, by virtue of the fifth section of the Fourteenth Amendment, may enforce the prohibitions whenever they are disregarded by . . . the State. The mode of enforcement is left to its discretion."

The fifth section of the Fourteenth Amendment has also been held to make an affirmative grant of power to Congress. In *Ex parte Virginia* 100 U.S. 339, 345 (1879), the Court in upholding a Federal law regulating jury selection stated:

"They [the Thirteenth and Fourteenth Amendments] were intended to be, what they really are, limitations of the power of the States, and enlargements of the power of Congress."

Section 2 of the Fifteenth Amendment has also been historically defined as a grant of power to Congress to enforce the provisions of Section 1. In *United States* v. *Reese*, 92 U.S. 215, 218 (1875), an early decision narrowly defining Section 1 of the Fifteenth Amendment, the Court stated:

"The Amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress."

With the passage of the Voting Rights Act of 1965, the Supreme Court had occasion to spell out clearly the extent of the power granted to Congress by the enforcement sections of these two Amendments.

In *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Supreme Court affirmed the constitutionality of section 4(e). This section provides that persons who have obtained a sixth grade education at any American-flag school could not be prevented from registering to vote because of a State English literacy requirement. New York State's constitution required an ability to read and write in English.[2] The District Court for the District of Columbia had found section 4(e) unconstitutional, as exceeding the authority granted to Congress.[3] In overruling, the Court defined section 5 of the Fourteenth Amendment, the congressional basis for action, as a proper basis for enforcing the Equal Protection Clause of the Fourteenth Amendment. The Court further held that Congress could determine a denial of the equal protection and design legislation to deal with the problem. The Court would not have to judge independently that State action did or did not violate the Constitution. The Court stated:

"A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment."[4]

Congressional legislation, the Court explained,[5] would only have to meet the test of *McCulloch v. Maryland*, 4 Wheat. 316, 421 (1819):

---

[1] See Note, Developments in the Law: Equal Protection, 82 Harv. L. Rev. 1065, 1072 (1969).
[2] N.Y. Const. art. 2 § 1 (1922).
[3] 247 F. Supp. 196 (D. C. D. C. 1965) (3-judge court).
[4] 384 U.S. at 648.
[5] Id. at 650.

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

In *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), the constitutionality of the principal provisions of the Voting Rights Act of 1965 was upheld. South Carolina argued that under Section 2 of the Fifteenth Amendment, Congress' power was limited to preventing or redressing illegal conduct, while remedies must be left to the courts. The Court rejected the argument:

"The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, . . . all point to one fundamental principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting."[6]

The Court also dealt with the argument that the responsibility for determining invalid state procedures is a judicial one. Section 2 of the Amendment, the Court replied, belies the State's theory:

"[T]he Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1."[7]

Professor Cox of Harvard Law School analyzes these two decisions and finds that in the area of voting the Supreme Court is willing to defer to congressional determinations and uphold legislation designed to secure voting rights.[8] If Congress determines that literacy tests are barriers to equality, then Congress has the constitutional authority to ban all literacy tests.[9]

IV. THERE IS AMPLE BASIS FOR CONGRESS TO CONCLUDE THAT A NATIONAL BAN ON LITERACY TESTS IS PROPER

Having established the power of Congress to enforce the Fourteenth and Fifteenth Amendments and its authority to act independently of determinations of constitutionality made by the Supreme Court and in view of the suspect nature of State imposed restrictions on the franchise (discussed below), it is appropriate now to consider the rational basis on which Congress might base a decision to ban the use of literacy tests as a prerequisite to voting in Federal, State or local elections.

A. The equal protection clause of the Fourteenth Amendment

Literacy tests isolate one class of citizens, the illiterates, and deny to them the franchise. If this classification is to be upheld under the Fourteenth Amendment the purpose for which it was made must be a proper one and it must accomplish that purpose. *Kramer* v. *Union Free School District*, 23 L. Ed. 2d 583 (1969).

The commonly stated purpose of literacy tests is to maintain an intelligent electorate. If Congress determines either that this is not a proper purpose or that this purpose is not met Congress has the authority to prohibit the use of literacy tests.

1. THE HISTORICAL PURPOSE OF LITERACY TESTS

While literacy tests have been primarily thought of as having disenfranchising effects on black people in the South, their actual effects have not been limited to the South or to black people. The history of literacy requirements for voting (as well as in other areas) shows that a primary motivation behind these requirements has been to render various racial, ethnic, religious, and national origin groups politically impotent.[1]

Prior to the massive waves of non Anglo-Saxon immigration to this country State literacy tests for voting did not exist. None of the original thirteen colonies had voting literacy requirements.[2] Following the immigration of Irish Catholics

[6] 383 U.S. at 324.

[7] Id. at 326.

[8] A. Cox, Constitutional Adjudication and the Promotion of Human Rights, 80 Harv. L. Rev. 91, 99–108 (1966).

[9] Id. at 107. The Supreme Court does not lightly hold any Federal statute invalid. Since 1936 the Court has held relatively few Federal statutes unconstitutional. In each case the enactment was held to conflict with some explicit constitutional guarantee of individual freedom from arbitrary or unreasonable governmental action.

There have been no successors to *U.S.* v. *Butler*, 297 U.S. 1 (1936) and *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936), which have been substantially repudiated by the Court. See, e.g., *Steward Machine* v. *Davis*, 301 U.S. 548 (1937); *Labor Board* v. *Jones & Laughlin*, 301 U.S. 1 (1937); *United States* v. *Darby*, 312 U.S. 100 (1941); *Wickard* v. *Filburn*, 317 U.S. 111 (1942).

[1] See generally Lelbowitz, English Literacy: Legal Sanctions for Discrimination, 45 Notre Dame Law. 7 (1969).

[2] *Minor* v. *Happersett*, 88 U.S. (21 Wall.) 162, 172 (1874).

in mid-nineteenth century after the potato famine, a number of Northern states, to which the Irish had migrated, enacted literacy statutes. In Connecticut in 1855 and in Massachusetts in 1857 literacy statutes were passed. These statutes reflected the political vitality in these states of the Native American (Know-Nothing) party. During the later part of the nineteenth century through the early part of the twentieth century, the waves of immigration increased, as did the passage of literacy statutes by State legislatures. The whole range of literacy statutes passed in the North and the West has been traced at least partially to a motivation to exclude various ethnic or immigrant groups from the political life of these jurisdictions.[3]

The New York State constitutional provision,[4] which had the effect in the 1960's of restricting the vote of Puerto Rican Americans, provides that in order to vote a person has to be able to "read and write English," was originally passed with the intention of preventing an earlier immigrant group, the Jews, from voting. The New York *Times*, in its report of the debate at the New York Constitutional Convention of 1915, paraphrased one of the proponents of the (Young) literacy amendment as saying

"That after all, this was an Anglo-Saxon country founded on traditions inherited from the bleak islands overseas, now wrapt in war clouds, and urged them, on that ground, to support the Young proposal."[5]

Diverse groups have been the victims of literacy tests in this nation's history—blacks, Jews, Irish, Finns, Chinese, Japanese, American Indians, Eskimos, and the Spanish speaking or Spanish surnamed.

2. THE EFFECT OF LITERACY TESTS ON VOTER REGISTRATION OR PARTICIPATION

A recent study by the U.S. Commission on Civil Rights concluded that, "in general, States with literacy tests have lower registration and turnout rates than those without literacy requirements."[6] Considering the percentage of the voting age population that was registered in 1968, the median percentage for the 12 States reported that do not have literacy tests was about 83 percent; that for the 11 States reported that do have literacy tests was about 78 percent. Furthermore, two of the three highest literacy test States appear not to enforce the test.[7] The lowest percentage reported for a nonliteracy test State is higher than that for four of the literacy test States.

3. THE EXPERIENCE OF STATES NOT HAVING LITERACY TESTS

There are 31 States and the District of Columbia which do not have literacy tests.[8] In addition, the use of literacy tests is suspended by the Voting Rights Act in six States, and in about four other States the test is often or usually not applied.[9]

Thus at this time a literacy requirement is seriously enforced in only about nine States. Given the total absence of any evidence that the quality of government or of elected officials is any higher in these States than in any others, Congress could reasonably conclude that literacy tests are not accomplishing the purpose for which they were designed.

4. LITERACY TESTS DO NOT ACHIEVE THEIR STATED PURPOSE

Congress could reasonably find that literacy tests do not sufficiently disqualify "unintelligent" voters or assure the qualification of "intelligent voters". As Father Theodore M. Hesburgh, Chairman of the United States Commission on Civil Rights, said in a letter to President Nixon on March 28, 1969,

---

[3] Liebowitz, supra note 1, at 35-36.

[4] N.Y. Const. art 11, § 1 (1922).

[5] Liebowitz, supra note 1, at 34 n. 194.

[6] U.S. Commission on Civil Rights, The Impact of Voter Literacy Tests Upon Voter Participation in States of the North and West: November, 1968, at 2 (Jan. 19, 1970).

[7] There are: Delaware—"The Congressional Digest reports that in March 1969 the Delaware Deputy Attorney General reported that the statute providing for a literacy test 'has not been enforced for some time.'" U.S. Commission on Civil Rights, Memorandum, Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters (Feb. 13, 1970).

Washington—"On June 15, 1967 the State attorney general opined that Washington's literacy test statute could not be used because of the operation of Federal voting rights statutes. No new literacy test statute has been enacted, and no literacy testing has been done anywhere in the State after the opinion was issued, to the knowledge of either the attorney general or the Board Against Discrimination." Id.

[8] U.S. Commission on Civil Rights, Memorandum, Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters (Feb. 13, 1970).

[9] Id.

"Today, with television so widely available, it is possible for one with little formal education to be well-informed and intelligent member of the electorate."

5. CONSISTENCY WITH UNDERLYING DEMOCRATIC PRINCIPLES

The basic difficulty with trying to eliminate the "unqualified voter" is that the concept itself has little meaning. The theory of a democratic, representative government is that political power should be distributed equally throughout society, not that control should be given to a certain group meeting certain criteria.[10] The basic inconsistency between the principles of a democratic government and the exclusion of some group from a share in political power has led two Federal Commissions to reject the use of literacy tests.

The President's Commission on Registration and Voting Participation in its November 1963 *Report* recommended that

"Literacy Tests Should Not Be A Requisite for Voting."

The Commission explained:

"Many media are available other than the printed word to supply information to potential voters. The Commission is not impressed by the argument that only those who can read and write or have a sixth grade education should have a voice in determining their future. This is the right of every citizen no matter what his formal education or possession of material wealth. The Commission recommends that no literacy test interfere with the basic right to suffrage." [11]

One of the 11 members of the Commission dissented from this recommendation.[12] Two others concurred in a separate opinion, indicating that they would oppose the use of literacy tests completely if the test "constitutes a bar to voting" or "is being used as a discriminatory device." [13] There is now available to the Congress evidence that literacy tests have both these effects.[14] Finally, the Report contains a separate statement by one Commissioner supporting the Commission recommendation which is concurred in by six other members of the Commission.[15]

Also advocating a ban on the use of literacy tests, the Chairman of the United States Commission on Civil Rights, Father Theodore M. Hesburgh, wrote in a letter to President Nixon (March 28, 1969):

"There is much to be said for the view that it is unfair to deny a voice in their own government to those who cannot read or write. The lives and fortunes of illiterates are no less affected by the actions of local, State and Federal governments than those of their more fortunate brethren. Most States, perhaps for this reason, do not impose a literacy test as a prerequisite to voting." [16]

B. Fifteenth amendment protection of voting rights

Another basis for congressional action prohibiting the use of literacy tests is the Fifteenth Amendment, which provides:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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

If Congress finds that literacy tests deny to or abridge the vote of black people it can under the authority of the Fifteenth Amendment ban their use. In this determination, not only is the preferred position of the right to vote relevant,[17] but also is the suspect nature of any racial classification.[18]

---

[10] Some limitations are consistent with democratic theory. There must, for example, be an arbitrary minimum age. This traditionally has not been set at the age at which a person becomes "intelligent" or "qualified" enough to cast the ballot intelligently, but at an arbitrary point at which society determines the young person becomes a full "member" of society. Secondly, noncitizens and persons residing in the community a short period of time are excluded; third, those declared not responsible to handle their own affairs; fourth, those being confined as punishment.

[11] Report at 40.

[12] Id. at 51.

[13] Id. at 54.

[14] See section IV(A)(2) above and section IV(B) below.

[15] This statement is attached as an Appendix.

[16] The letter states that one of the six Commissioners "was not present at the Commission meeting when the subject matter of this letter was considered."

[17] See section V(C) below.

[18] See *Kramer* v. *Union Free School District*, 23 L. Ed. 2d 583, 590 n. 9 (opinion of the Court by Warren, C. J.) and 596-97 (Stewart, J., dissenting) (1969). See also, e.g., *McLaughlin* v. *Florida*, 379 U.S. 184, 192 (1964); *Takahashi* v. *Fish & Game Comm'n*, 334 U.S. 410, 420 (1948); *Oyama* v. *California*, 332 U.S. 633, 640 (1948).

A recent study by the U.S. Commission on Civil Rights [19] documents the discriminatory impact of literacy requirements. In literacy test States less than 55 percent of the black population having an educational attainment of eight years or less are registered; whereas, in States without literacy tests over 75 percent of the black population having less than eight years of education are registered.

Because of their generally lower educational level, blacks are affected more by literacy tests than are whites. For the same reason, literacy tests have an equally discriminatory effect on persons of Spanish surname and on American Indians.

The United States Office of Education's Coleman Report [20] shows that black ninth graders in the metropolitan Northeast are 2.6 grade levels behind white ninth graders in reading comprehension. Mexican American ninth graders are 1.9 grade levels behind Anglos in the metropolitan Southwest. Puerto Rican ninth graders are 3.3 grade levels behind whites in the metropolitan Northeast. And American Indians are 2.0 grade levels behind whites in the nonmetropolitan North.[21]

Census statistics on number of years of school completed tell a similar story.[22] Nationwide, for persons 25 years of age and over, blacks on the average have completed 9.3 years of school, while whites have completed 12.1, 35.9 percent of the blacks 25 years of age and over have completed less than 8 years of school. Only 13.6 percent of whites 25 and over have as poor an education.

One significant factor in these disparities has been discriminatory State action. Nationally, a wide gap has existed—and continues to exist—between the quality of the public education afforded to white students and the quality of the public education available to blacks, Mexican Americans and members of other minority groups. Studies such as the Coleman Report and the U.S. Commission on Civil Right's *Racial Isolation in the Public Schools* (1967) show the educationally harmful effects upon Negro students of attending—as they do across the nation—schools isolated by race and social class. Evidence at the Commission on Civil Right's hearing in San Antonio, Texas [23] indicated that similar damage is being done to Mexican American students. In addition, evidence at Commission hearings in Cleveland,[24] Boston,[25] Rochester,[26] and San Antonio indicates that schools attended predominantly by minority students often have inferior facilities.

Investigations by the Department of Justice and the Department of Health, Education and Welfare indicate that the physical separation which exists between black and white school children in many Northern areas—and which result in these inequalities—may be attributable in part to racially motivated decisions by school boards. In any event, Congress could find, that the unequal public education stemming from this separation constitutes discrimination in violation of the Fourteenth Amendment. Although a State may nevertheless have an otherwise valid interest in a literate electorate, this interest cannot justify a State's use of a disability created in part by its own dereliction, or that of another State, as the basis for disfranchisement.

The Court in *Gaston County* v. *United States*, 395 U.S. 285, 289-290 (1968), recognized the relation between unequal educational opportunities and the validity of literacy test requirements:

"The legislative history of the Voting Rights Act of 1965 discloses that Congress was fully cognizant of the potential effect of unequal educational opportunities upon exercise of the franchise. This causal relationship was, indeed, one

---

[19] U.S. Commission on Civil Rights, the Impact of Voter Literacy Tests Upon Voter Participation in States of the North and West: November, 1968 (Jan. 19, 1970).
[20] J. Coleman et al., Equality of Educational Opportunity (U.S. Office of Education 1966).
[21] Id. at 274, Table 3.121.2.
[22] U.S. Bureau of the Census, Educational Attainment: March 1968 (Series P-20, No. 182, Apr. 28, 1969).
[23] Hearing before the U.S. Comm. on Civil Rights held in San Antonio, Tex., Dec. 9-14, 1968.
[24] Hearing before the U.S. Comm. on Civil Rights held in Cleveland, Ohio, Apr. 1-7, 1966.
[25] Hearing before the U.S. Comm. on Civil Rights held in Boston, Mass., Oct. 4-5, 1966.
[26] Hearing before the U.S. Comm. on Civil Rights held in Rochester, N.Y., Sept. 16-17, 1966.

of the principal arguments made in support of the Act's test-suspension provisions. Attorney General Katzenbach testified before the Senate Committee on the Judiciary:

"'It might be suggested that this kind of [voting] discrimination could be ended in a different way—by wiping the registration books clean and requiring all voters, white or Negro, to register anew under a uniformly applied literacy test.

"'. . . [S]uch an approach would not solve, but would compound our present problems.

"'To subject every citizen to a higher literacy standard would inevitably work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited "separate but equal" doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunities were pathetically inferior for thousands of Negroes who want to vote today.

"'The impact of a general reregistration would produce a real irony. Years of violation of the 14th amendment right of equal protection through education, would become the excuse for continuing violation of the 15th amendment right to vote.' Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 22–23.'

"Mr. Katzenbach testified similarly before the House Committee. See Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 18–19, 49. And significantly, the Report of the Senate Judiciary Committee explicitly asserted:

"'The educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected 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.'" S. Rep. No. 162, 89th Cong., 1st Sess., 16.

Because Negroes educated in schools such as Gaston County's have moved—as they have a right to—to every part of the country, it is appropriate to guarantee their franchise throughout the country by enacting a national ban on the use of literacy tests.

V. A CONGRESSIONAL BAN ON LITERACY TESTS IS NOT A PROSCRIBED RESTRICTION OF THE POWER OF THE STATES

A. State power to regulate the franchise

Although the Constitution does not specifically confer upon the States the power to regulate State and local elections, under the reserved power of the Tenth Amendment to the Constitution, read in conjunction with Article 1, Section 2 and the Seventeenth Amendment, it has been the traditional view that the power of the State to regulate local elections is almost exclusive. The Tenth Amendment provides that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article I, Section 2 provides in part that:

"The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

The Seventeenth Amendment provides in part that:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

A series of cases illustrates the extent of the power of the States to provide for the qualification of electors. In *Minor* v. *Happersett*, 88 U.S. (21 Wall.) 162 (1874), the Court upheld a provision of the Missouri constitution limiting the suffrage to males. The power of a State to impose a literacy test requiring the

prospective voter to read or interpret any section of the Constitution was upheld in *Williams* v. *Mississippi*, 170 U.S. 213 (1898). Similarly, the Court validated a provision of the Maryland constitution which required new residents to declare their intention to be a citizen before registering to vote, *Pope* v. *Williams*, 193 U.S. 621 (1904). The Court approved the constitutionality of the poll tax as a prerequisite to registering to vote, *Breedlove* v. *Suttles*, 302 U.S. 277 (1937). In more recent cases the Court upheld the literacy test imposed by the State of North Carolina, *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959), and upheld an Illinois statute which provided for the issuance of absentee ballots in many different situations but denied them to prisoners awaiting trial, *McDonald* v. *Board of Election Commissioners*, 22 L. Ed. 2d 739 (1969).

The power of the States to set qualifications for electors, however, is not complete. Article I, Section 2 of the Constitution is not a grant of power to the States from the Constitution, especially since Article I concerns the delegation of powers from the State and the people to the Federal government. The Court considered Article I, Section 2 in *Ex Parte Yarbrough*, 110 U.S. 651 (1884), where the power of Congress to enact laws to protect the right to vote in Federal elections was in issue:

"The states in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State." [1]

Turning to the Fifteenth Amendment to illustrate the nature of Article I, Section 2, the Court stated:

"The Fifteenth Amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the national government, *and was not intended to be left within the exclusive control of the States.*" [2]

Viewed from the standpoint of the Federal government, Article I, section 2 serves to identify the class of persons who shall elect Federal officers; it incorporates by reference those qualified under the laws of the States. Viewed from the standpoint of the States, Article I, Section 2 is a limitation on the power of the Federal government to create a different electorate from that created by the States. Properly speaking, Article I, Section 2 does not concern a grant of power either to the Federal government or to the States.[3]

B. Limitations on State power to regulate the franchise

Not only is State power to regulate the suffrage not complete, it is subject to severe limitations in some areas. Section 1 of the Fourteenth Amendment provides in part that

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

The Fifteenth Amendment provides that

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.[4]

---

[1] 110 U.S. at 663.

[2] Id. at 664 (emphasis added).

[3] The only power involved is the power of the Federal government to protect its elections. This power of protection is implied from the existence of Federal elections, the subject of Article I, Section 2. In this connection the Court in Yarbrough said:

"If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends, from violence and corruption. 110 U.S. at 657–658."

See also *Wiley* v. *Sinkler*, 179 U.S. 58 (1900); *Swafford* v. *Templeton*, 185 U.S. 487 (1902); *United States* v. *Classic*, 313 U.S. 299 (1941). The power of Congress to protect Federal elections, even from racial discrimination, exists under Article I, Section 2 and is independent of authority to do so under the Fourteenth or Fifteenth Amendments.

Federal power over Federal elections is also provided for by Article I, Section 4:

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to the Place of choosing Senators."

[4] The Nineteenth Amendment also places a limitation on the power of the States:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Under these Amendments there have been many cases in which the Supreme Court has overruled State limitations on the suffrage.

Although the courts did not stop the widespread disfranchisement of Negroes that took place in the South in the latter part of the 19th century, they did not deny the principle that the Fifteenth Amendment prohibits the States from denying the right to vote to Negroes. For example, Wilmington, North Carolina redistricted in a way disadvantageous to Negroes, but a Federal court refused to exercise its equity powers to enjoin the subsequent election, holding that other remedies were available. *Holmes* v. *Oldham*, 12 Fed. Cas. No. 6643 (C.C.E.D. N.C. 1877). In *Giles* v. *Harris*, 189 U.S. 475 (1903), the Supreme Court held that equity could not intervene to protect purely political rights such as the right to vote. When the Negro plaintiffs sued at law the Court denied recovery on technical grounds. *Giles* v. *Teasley*, 193 U.S. 146 (1904).

Since these cases the Court has under the Fourteenth and Fifteenth Amendments held invalid a number of State restrictions on the franchise.

1. THE WHITE PRIMARY

One device used by Southern States was the restriction of participation in primary elections to whites. Because of the one party system then prevalent in the South this effectively disfranchised the black population. In *Nixon* v. *Herndon*, 273 U.S. 536 (1927) the Court voided a State statute excluding Negroes from primary elections.[5]

2. THE GRANDFATHER CLAUSE

To avoid disfranchising whites while applying restrictive requirements in order to keep Negroes from registering many Southern States passed a so-called grandfather clause. The effect of the grandfather clause was to permit certain classes of individuals, defined so as to exclude Negroes, to register permanently within a specified period without the necessity of meeting literacy or other tests. The grandfather clause was declared unconstitutional in litigation arising in Oklahoma. *Guinn* v. *United States*, 238 U.S. 347 (1915).[6] *Guinn* was followed in *Lane* v. *Wilson*, 307 U.S. 268 (1939), which held unconstitutional the successor to the statute struck down in *Guinn*. Speaking for the Court Mr. Justice Frankfurter stated:

"The reach of the Fifteenth Amendment against contrivances by a state to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions [citing *Guinn* and *Myers*]. The Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race."[7]

3. RACIALLY MOTIVATED GERRYMANDERING

In *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), the Court held invalid another sophisticated method of disfranchisement. The State of Alabama had redefined the boundaries of the city of Tuskegee in order to exclude Negroes from its jurisdiction; the shape of the city was changed from a square to "an uncouth twenty-eight-sided figure."[8] The Court rejected the State's argument that the prohibition in the Constitution against impairment of the obligation of contracts (Article I, Section 10) validated the action of the State. The Court, again in an opinion by Mr. Justice Frankfurther, did not consider this prohibition to overcome the power of the Fifteenth Amendment:

"The opposite conclusion . . . would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. 'It is inconceivable that guarantees

[5] Herndon's progeny dealt only with the issue of whether State action was involved in various situations involving party primaries. In *Nixon* v. *Condon*, 286 U.S. 73 (1932), the exclusion was voided when it was mandated by the State party executive committee in exercise of a power delegated to it by the State legislature. The Supreme Court upheld exclusion of Negroes from party primaries when required by a resolution of the State party convention acting on its own. *Grovey* v. *Townsend*, 295 U.S. 45 (1935). Grovey was overruled by *Smith* v. *Allwright*, 321 U.S. 649 (1944). For a summary of the history of the white primary, including attempts after the Allwright decision to maintain its effects, see U.S. Commission on Civil Rights, Political Participation 5–10 (1968).

[6] A similar Maryland requirement for the city of Annapolis was struck down in the companion case of *Myers* v. *Anderson*, 238 U.S. 368 (1915).

[7] 307 U.S. at 275.

[8] 364 U.S. at 340.

embedded in the Constitution of the United States may thus be manipulated out of existence.' *Frost & Frost Trucking Co.* v. *Railroad Commission of California*, 271 U.S. 583, 594."[9]

4. POLL TAX

In *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court struck down Virginia's poll tax, overruling *Breedlove* v. *Suttles*, 302 U.S. 277 (1937), and *Butler* v. *Thompson*, 341 U.S. 937 (1951), and holding that the imposition of a fee as a prerequisite to voting violates the equal protection clause of the Fourteenth Amendment.

5. EXCLUSION OF SERVICEMEN

In *Carrington v. Rash*, 380 U.S. 89 (1965) the Court found that the Texas legislature's exclusion of all servicemen from voting in that State violated equal protection requirements.

6. OWNERSHIP OF PROPERTY

In *Kramer v. Union Free School District*, 23 L.Ed. 2d 583 (1969), the Court held unconstitutional a New York statute limiting the vote in certain school district elections to owners or lessees of taxable property and to parents or guardians of children attending school in the district.

7. REAPPORTIONMENT

A series of Supreme Court cases has restricted the authority of State legislatures to apportion various election districts, on the theory that a malapportioned district denies some voters of equal protection. *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

8. SUMMARY

The conclusion to be drawn from these cases is that the authority of the State to regulate the franchise is highly restricted by constitutional limiations. The State may not disfranchise blacks, it may not condition the right to vote on the payment of money, districting must not prevent all votes from having an equal effect, voting may not be conditioned on status as a property owner or lessee or on civilian status. Sophisticated as well as simple methods of effecting such disfranchisements are prohibited.

C. The Preferred Satus of Voting

The Supreme Court attaches special importance to voting rights and uses a stricter standard in reviewing statutes restricting them than it does other statutes. Mr. Justice Matthews, in *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886) stated that "the political franchise of voting . . . under certain conditions . . . is regarded as a fundamental political right, because preservative of all rights." Mr. Justice Matthews cites Chief Justice Shaw of the Supreme Judicial Court of Massachusetts in *Capen* v. *Foster*, 12 Pick. 485, 489, whose view was that a legislature could adopt regulations for voting, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, "in a prompt, orderly, and convenient manner;" but that under such a pretense a legislature could not "subvert or injuriously restrain the right itself."

In *Reynolds* v. *Sims*, 377 U.S. 533, 561-62 (1964), Chief Justice Warren follows the reasoning of *Yick Wo:*

"Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."

Because of this, Chief Justice Warren explains in *Kramer* v. *Union Free School District*, 23 L. Ed. 2d 583, 589 (1969), "we must give the statute a close and exacting examination." This standard applies to statutes requiring the use of literacy tests:

[9] 364 U.S. at 345.

"Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. See Carrington v. Rash, [380 U.S.] at 96." [10]

Thus State literacy requirements do not receive "the general presumption of constitutionality afforded state statutes." [11] It is not sufficient that the Court can "conceive of a 'rational basis' for the distinctions made." [12]

In addition, if the "compelling state goal" found is a valid one, the exclusion made must be "tailored so that" it "is necessary to achieve the articulated state goal." [13]

D. The present authority of Lassiter

While the holding in *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45 (1959) that the application of a literacy test can be constitutional does not conflict with a Congressional determination that in order to enforce the Fourteenth or Fifteenth Amendments it is necessary to ban the use of literacy tests, recent cases and studies cast doubt on the continued validity of the *Lassiter* doctrine.

Since *Lassiter* was decided the Supreme Court has decided *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Carrington* v. *Rash*, 380 U.S. 89 (1965); *Cardona* v. *Power*, 384 U.S. 672 (1966); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966); *Gaston County* v. *United States*, 395 U.S. 285 (1968), and *Kramer* v. *Union Free School District*, 23 L. Ed. 2d 583 (1969). Also since *Lassiter*, the President's Commission on Registration and Voting Participation, the U.S. Office of Education, and the United States Commission on Civil Rights have all published reports that would support a holding that the use of literacy tests is unconstitutional.

Writing for a unanimous Court Mr. Justice Douglas said in *Lassiter*:

"The ability to read and write . . . has some relation to standards designed to promote intelligent use of the ballot." [14]

Under *Kramer* this standard is no longer valid. A literacy test must now "be carefully scrutinized by the Court to determine whether each resident citizen has, as far as is possible, an equal voice in the selections." 23 L. Ed. 2d at 590. Mr. Justice Douglas continued:

"Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show." [15]

Whatever the accuracy of that statement in 1959, recent studies indicate that it can no longer be supported.[16]

Thus one could reasonably expect the Supreme Court to overrule *Lassiter* at its next opportunity. This, indeed, was the view of Mr. Justice Stewart in his dissenting opinion in *Kramer*, 23 L. Ed. 2d 594, 597.[17]

VIII. CONCLUSION

Giving consideration to the present suspect status of literacy tests under the Fourteenth and Fifteenth Amendments, the power and appropriateness of Congressional action to implement these Amendments, and the factual basis to support a determination by Congress that the use of literacy tests should be terminated, one must conclude that there is no obstacle under the Constitution to a national ban on the use of literacy tests.

---

[10] 23 L. Ed. 2d at 589. (footnote omitted).
[11] Id. at 590.
[12] Id.
[13] Id. at 592. The series of cases from *Reynolds* v. *Sims* through Kramer has not had unanimous decision. For example, Mr. Justice Stewart, joined by Mr. Justice Black and Mr. Justice Harlan, complained in his Kramer dissent:

"Today's decision can only be viewed as irreconcilable with the established principle that "[T]he States have . . . broad powers to determine the conditions under which the right of suffrage may be exercised. . . ." [*Lassiter* v. *Northampton*, 360 U.S. 45, 50-51 (1959)] Is entirely sound, I respectfully dissent from the Court's judgment and opinion."

23 L. Ed. 2d at 598.
[14] 360 U.S. at 51.
[15] World Illiteracy at Mid-Century, Unesco (1957) [footnote by the Court].
[16] See section IV(B) above.
[17] He was joined in dissent by Mr. Justice Black and Mr. Justice Harlan.

APPENDIX.—REPORT OF THE PRESIDENT'S COMMISSION ON REGISTRATION AND VOTING PARTICIPATION (1963)

STATEMENT BY COMMISSIONER KIRKPATRICK ON LITERACY TESTS (STANDARD XI) (COMMISSIONERS BENNETT, PHILLIPS, REUTHER, SCAMMON, SCHUCK, AND WASHINGTON CONCURRED)

"I had supposed that the great fundamental principle, that all men were equal in their rights, was settled, and forever settled in this country. I had supposed, sir, that there was some meaning in those words, and some importance in the benefits resulting from them. I had supposed from the blood and treasure which its attainment had cost, that there was something invaluable in it. . . ."

It is now 142 years since these words were spoken by John Cramer in the New York Constitutional Convention of 1821, and we might suppose that this great fundamental principle had long since been firmly established. Unhappily, this is not the case.

I had supposed that this Commission would be unanimous on the fundamental principle that all men are equal in their political rights, but it is not; one member has written a dissent to the recommendation of the Commission that literacy tests should be abolished. As a result, I think it important to make a more extensive statement in support of the Commission recommendation and the principles upon which it is based.

A democratic system rests ultimately on the belief that each man is the best judge of his own interests and that he should have, through the ballot box, a voice in choosing those who govern him. On what grounds should we deny to the person who has not learned to read the rights we accord to others? That he cannot read the ballot? Then shall we also disfranchise the blind? That he cannot read newspapers? Then shall we disfranchise the deaf because they cannot hear radio or television? That he will not be an "informed" voter? Then shall we require that each voter pass a test in current events? The arguments for a literacy requirement lack cogency. Their superficial merits vanish under scrutiny.

The assumption that the illiterate should not be permitted to vote because he cannot have informed himself about the election or the issues rests on a cluster of untenable assumptions. It assumes that information can be acquired only by way of the printed word and that knowledge gleaned from radio, television, or conversation is somehow inferior to that gained from newspapers or magazines. It assumes that persons who can read, do read—to inform themselves about election issues—though no study of voting behavior has demonstrated that knowledge follows literacy. It assumes either that the capacity to judge one's own interests is dependent upon the ability to read, or that persons who cannot read do not deserve to have their interests represented. And when advocated as the sole test for voters, it assumes that of all the differences among adult citizens, the ability to read alone has important implications for voting.

Literate men are not equally well informed, nor equally rational, nor equally moral, nor equally rich, nor equally devoted to their country. Neither are the illiterate. Who would argue that the political judgment of a literate man of doubtful morality or patriotism is better than that of an honest but illiterate patriot? Literacy tests are a remnant of class discrimination. They discriminate against the poor, the aged, and rural inhabitants. It is not the wealthy who can neither read nor write. It is the poor and the dispossessed. Literacy tests have no more place in a modern democracy than property tests, which we have long since abandoned.

Democracy is built on the belief that wise decisions can emerge from the diverse and conflicting beliefs, experiences and conditions of *all* the people. It affirms the still radical doctrine that each individual—by virtue of his humanity—has rights and responsibilities. Should a man be excused from obedience to a law he cannot read? Should he be denied participation in an election because he cannot read the ballot? Or should election officials assist him as they assist the blind?

Voting is the fundamental political right of citizens in a democracy. The right to vote is the right to influence officials and policy. To be denied the vote is to be denied the guarantee that one's interests will be taken into account when policy is made. There is no justifiable test of property, race, color, national origin, religion, or education for disfranchising one class of citizens.

The principles asserted here are as old as our Nation itself. In 1776 all 13 of the original States joined unanimously in declaring:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . . ."

And from the very beginning of our history, these principles found eloquent expression in demands for extension of the suffrage. In 1829, the nonfreeholders of the city of Richmond, Va., presented to the Virginia Constitutional Convention a memorial protesting their exclusion from the suffrage. Based on the principles of the Declaration of Independence, it provides as eloquent a guide today as it did then:

"Experience has but too clearly evinced, what, indeed, reason had always foretold, by how frail a tenure they hold every other right, who are denied this (the suffrage), the highest prerogative of freemen. . . .

"A regulation which, instead of the equality nature ordains, creates an odious distinction between members of the same community; robs of all share, in the enactment of the laws, a large portion of the citizens bound by them, and whose blood and treasure are pledged to maintain them. . . .

"Surely it were much to be desired that every citizen should be qualified for the proper exercise of all his rights, and the due performance of all his duties. But the same qualifications that entitle him to assume the management of his private affairs, and claim the other privileges of citizenship, equally entitled him, in the judgment of your memorialists, to be entrusted with this, the dearest of all his privileges, the most important of all his concerns. . . .

"The enjoyment of all other rights, whether of persons or property, they will not deny, may be as perfect among those deprived of the privilege of voting, as among those possessing it. It may be as great under a despotism, as under any other form of Government. But they alone deserve to be called free, or have a guarantee for their rights, who participate in the formation of their political institutions, and in the control of those who make and administer the laws. To such as may be disposed to surrender this, or any other immunity, to the keeping of others, no practical mischief may ensue from its abandonment; or if any, none that will not be justly merited. Not so with him who feels as a freeman should; who would think for himself and speak what he thinks; who would not commit his conscience or his liberty to the uncontrolled direction of others. To him the privation of right, of that especially, which is the only safeguard of freedom, is practically wrong. So thought the fathers of the republic. It was not the oppressive weight of the taxes imposed by England on America; it was the assertion of a right to impose any burthens whatever upon those who were not represented; to bind by laws those who had no share, personal or delegated, in their enactment, that roused this continent to arms. . . .

It is wholly in accord with our American tradition to live by this eloquent statement of the case for democracy. If we do so, we will abolish literacy tests that are often discriminatory in practice and always wrong in principle; we will give meaning to the Declaration of Independence; we will bring our practices into conformity with the only legitimate basis for democratic government.

Mr. GLICKSTEIN. I, therefore, recommend that section 5 of H.R. 4249 be amended to make the nationwide ban on the use of literacy tests and other tests and devices permanent and that section 7 of the bill which creates a new commission on voting be deleted.

The proposed commission on voting, in our opinion, would only duplicate the work that has already been done by the President's Commission on Registration and Voting Participation, by the Commission on Civil Rights, or work that could be better done by this Commission. Further discussion of this question is contained in the Commission's staff memorandum analyzing S. 2507 which is identical to the present bill and which was submitted for the record before this committee last July.

In conclusion, I think an extension of the 1965 act's section 5, protections against State legislative and administrative interference with the right to vote in the States covered by the triggering provision of the act, a suspension of tests and devices in every State, and provisions to enable citizens to vote for President and Vice President notwithstanding State residency requirements, will constitute the strongest voting rights bill passed by any Congress.

I would be happy, Mr. Chairman, to answer any questions that you might have.

Senator ERVIN. If I interpret your testimony right, you favor the retention or the extension of the 1965 act as to the seven States or parts of States covered by it and you favor deleting from the administration bill a provision for the creation of a commission and you favor the amendment of the administration bill to make it permanent, the ban on literacy tests in all areas of the Nation permanent.

Mr. GLICKSTEIN. That is correct, sir.

Senator ERVIN. Well, I will have to say your position sort of reminds me of the man who got a telegram from his undertaker that his mother-in-law had died and did he want her cremated or buried. He wired back, "Take no chances, cremate and bury."

I would say as to the seven States you want them both cremated and buried.

Thank you very much.

Mr. GLICKSTEIN. Thank you, sir.

(Mr. Glickstein's full statement follows:)

STATEMENT OF HOWARD A. GLICKSTEIN, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS, FEBRUARY 24, 1970

Mr. Chairman and Members of the Subcommittee, I am Howard A. Glickstein, Staff Director of the United States Commission on Civil Rights. I am here this morning to testify on H.R. 4249, which is legislation on voting rights passed by the House of Representatives in December 1969.

Less than five years ago the Congress passed the Voting Rights Act that is in effect today. It has been the most effective piece of civil rights legislation ever enacted by Congress. It is an Act that did more than create false promises or false illusions of progress. It has extended the right of franchise to hundreds of thousands of black persons in this nation to whom it had previously been denied, and it has begun to give these citizens a voice in public affairs and a share in political power.

But let me stop here and state in the clearest possible terms that the inequities that the Voting Rights Act was intended to undo still exist. The effects of almost a hundred years of systematic disenfranchisement of Negroes could not be undone in five years and the progress made under the Act could be lost as quickly as it was gained. It is for these reasons that the Commission views with great concern the prospect that the main provisions of the Act might be allowed to expire later this year or that new legislation might dilute the effectiveness of the present Act.

On July 9 of last year in her testimony before you, Mrs. Frankie Freeman, a member of the Commission, urged you to extend the Voting Rights Act of 1965. She described the long history of frustration between the ratification of the Fifteenth Amendment 100 years ago and the enactment of the Voting Rights Act five years ago. Although the Fifteenth Amendment declared that 'the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," in 1956 only about one fifth of the black persons of voting age residing in the seven States of the South primarily affected by the Voting Rights Act were registered. We then saw a series of civil rights acts, in 1957, 1960, and 1964, that were intended to guarantee the black person's right to vote—primarily

by means of lawsuits—but which had by the time of the enactment of the Voting Rights Act in August of 1965 only raised the percentage of black persons in the seven States that were registered to 29 percent. Since that enactment the percentage has risen to 60. Furthermore, the number of black persons holding elective office in the same States has risen from practically none to over 300 at the present time. The Act also has improved the responsiveness of many elected officials to the needs of black communities. Finally, as one witness at a Commission hearing said, "Basically, this bill gave Negroes hope and it gave them a self-pride enough to fight for their other rights."

THE 1965 ACT

The principal features of the Voting Rights Act are, I am sure, familiar to you. To sum them up, briefly: A State or political subdivision is covered by the Act, if both of two circumstances exist: First, if on November 1, 1964 it applied literacy or similar tests as conditions for voting; and second, if less than 50 percent of its persons of voting age were registered or voted in the presidential election of 1964.

If a State or political subdivision is covered by the Act, then four consequences follow:

First, it may not use any test device to limit voting eligibility.

Second, the Attorney General may under specified circumstances have Federal examiners sent to any county included in the jurisdictions covered by the Act. These examiners list eligible but non-registered voters, who are then fully qualified to vote.

Third, the Attorney General may send Federal observers to any county designated for examiners, to observe the polling places and the counting of the votes.

Fourth, Section 5 of the Act prohibits the State or political subdivision from applying any new voting qualification or procedure without first obtaining either the acquiescence of the Attorney General or a declaratory judgment from the United States District Court for the District of Columbia that the new practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." The burden of proving the nondiscriminatory purpose and effect is on the governmental body seeking exemption.

The Act contains an escape clause. By Section 4(a) a State or political subdivision can obtain a declaratory judgment removing itself from coverage by showing that for the preceding five years it has not used a literacy test or other device to deny the right to vote on account of race or color.

Mrs. Freeman in her testimony described the progress that has occurred since the passage of the Act and reviewed the continued barriers to full participation in the political process that face black persons. She drew upon the report *Political Participation* published by the Commission in May 1968 and on subsequent Commission staff investigation. She concluded that the protection of the Act is still needed and gave special emphasis to the continued importance of Section 5.

Since Mrs. Freeman appeared before you, the House of Representatives has passed the amended H.R. 4249, which you now have under consideration. Because the decision that faces you is different from the one with which you were presented last summer, the Commission has considered it important to return before this Subcommittee to give its views on the legislation that is presently pending and to answer whatever questions you may have.

Let me summarize our position by stating that the Commission favors the retention of Section 5 as it now stands; we favor a national ban on the use of literacy tests, but a permanent national ban; we favor limiting residency requirements in presidential elections; and we do not see a need for a new voting Commission.

PRINCIPAL FEATURES OF H.R. 4249

The principal features of H.R. 4249 are the suspension of literacy tests nationwide until 1974 in Federal, State, or local elections, the broadening of the Attorney General's power to appoint federal examiners and observers to encompass all States, the modification of State residency requirements for presidential elections to facilitate voting, and the substitution of the power to bring suit to enjoin discriminatory voting laws for the present suspension of their enforcement until either the Attorney General or the District Court for the District of Columbia has declared them to be non-discriminatory. In addition, H.R. 4249 establishes a presidential advisory commission on voting.

SECTION 5

In our earlier testimony, we briefly explained why Section 5 of the Act should be retained in its present form. This time, we would like to explain more fully why that section is so crucial—partly because there seems to be some confusion concerning what that section does and partly because the threat of it being repealed has been made more serious by passage of H.R. 4249.

(a) *What Section 5 does.*—Under section 5, if a State or a political subdivision of a State covered by Section 4 of the Act enacts or seeks to administer any voting qualifications, standards, practices or procedures not in effect in November 1964, such a change may not be enforced unless it has been submitted to the Attorney General and the latter has failed to object to it within 60 days or unless the U.S. District Court for the District of Columbia declares that the change does not have the purpose and effect of denying or abridging the right of vote on account of race or color. If the enacting or administering State (or subdivision) submits a change to the Attorney General and he disapproves of it, his decision may be challenged by a lawsuit in the District of Columbia District Court. A State or subdivision may also choose to test a statute directly in the D.C. District Court, without initially submitting it to the Attorney General. A change covered by Section 5, however, may not be enforced unless it has been tested by one of the above methods.

This section, in effect, freezes election procedures in the covered areas unless the changes can be shown to be nondiscriminatory. The legislative reasoning which led to this section was the same as the basis of the suspension of literacy tests in the covered areas. The extensive legislative history of the Voting Rights Act documented the fact that Congress was confronted by a longstanding and pervasive evil which had been perpetuated in the South for almost one hundred years by constant and ingenious defiance of the Constitution and that the time for half measures to deal with this evil was past.

As the House report on the Voting Rights Act noted: "The history of... 15th amendment litigation shows both the variety of means used to ban Negro voting and the durability of such discriminatory policies." [1] The major devices used were the "grandfather clause," the white primaries, the poll tax and discriminatorily enforced literacy tests. Each time one device was struck down, a new one was devised. For example, when a Federal court ordered the registrar of voters in Forrest County, Mississippi, to register Negro and white voters on a nondiscriminatory basis, the Mississippi legislature responded by enacting a "good moral character" requirement for voters designed to eliminate Negro applicants.[2] Similarly, in Dallas County, Alabama (which includes the city of Selma) when registrars were required by a Federal court to register Negroes without discrimination, the process of registration was slowed down to prevent too many new registrations and new tests were adopted for Negro applicants which had not been applied to permanently registered white voters in the county. These tests included the spelling of words such as "emolument," "impeachment" and "apportionment" and the interpretation of excerpts from the State Constitution.[3]

After describing this legislative history the Supreme Court in *South Carolina* v. *Katzenbach* concluded:

"Congress knew that some of the States covered by 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal decrees. Congress had reason to suppose that these States might try similar maneuvers in the future, in order to evade the remedies for voting discrimination contained in the Act itself." [4]

The Voting Rights Act of 1965 was designed to end for once and all those practices which have for decades deprived Negro citizens of their vote. The pre-enforcement submission requirement of Section 5 was compelled by their tendency to change forms without changing purpose.

Since its enactment, Section 5 has been interpreted by the Supreme Court to cover any State enactment which alters election laws in even a minor way.[5] Based on the statute's legislative history, the Court concluded that "the Voting Rights Act was aimed at the subtle, as well as the obvious State regulations which have

[1] H.R. Rep. No. 439, 89th Cong., 1st sess. 8 (1965).
[2] *U.S.* v. *Mississippi*, 229 F. Supp. 925, 997 (S.D. Miss. 1964) (Brown, J., dissenting).
[3] H.R. Rep. No. 439, 89th Cong., 1st sess. 8 (1965).
[4] *South Carolina* v. *Katzenbach* 383 U.S. 301, 335 (1966).
[5] *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969).

the effect of denying citizens their right to vote because of race." [6] Thus, the statute was held to cover changes in election laws which permit the election of county officers at large instead of on a district basis, which provide for the appointment of a previously elective official, which change the requirements for independent candidates running in elections, and which modify rules on assisting disabled voters.

(b) *Need for Section 5.*—A few illustrations of how the changes just described can be used to impair Negro voting strength will shed light on the need for a remedy such as Section 5. For example, in 1968 Louisiana passed a law permitting elections for police juries to be conducted on an at large basis in each Louisiana parish. Before that enactment, police juries were selected by subdivisions of parishes called wards. In 109 wards, Negroes were in the majority, according to the 1960 Census, while Negroes only constituted the majority of voters in five parishes. Thus, a change from ward to at large voting would have the effect of diluting the actual or potential voting power of the Negro inhabitants. The Attorney General, in objecting to the change in September 1969, referred to the decision of the Supreme Court in *Allen*, in which the Court stated:

"The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition in casting a ballot." [7]

A statute which gives election officials undue discretion can also open the door to discrimination. A 1968 Georgia law was disapproved by the Attorney General because it required persons who hold election and registration offices to be "judicious, intelligent and upright electors". The Attorney General characterized this standard as "vague and subjective." [8]

Another example of misuse of election laws occurred in 1966 when the Mississippi legislature passed a resolution submitting to the voters a constitutional amendment to permit the legislature by two-thirds vote to consolidate adjoining counties. Opponents of the resolution charged that it was designed to permit consolidation of counties heavily populated by Negroes with predominantly white counties: "All they're trying to do is avoid a few Negro votes" charged Senator E. K. Collins of predominantly white Jones County.[9] Senator Ben Hilburn of predominantly white Oktibbehah County, who also opposed the measure, commented: "We get so concerned because some Negroes are voting in a few counties, we are going to disrupt our entire institutions of government." [10] The constitutional amendment approved on the basis of this resolution had not yet been implemented and therefore a suit to enjoin its enforcement failed. A three judge court held, however, that it came within the purview of Section 5.[11]

There is nothing to indicate that the above discriminatory practices are lessening. There is evidence that similar practices are continuing in the South. In July 1968, Anniston, Alabama (the population of which is about 27 percent black) changed its municipal elections from election by wards to election at large. The city was divided into five wards, each to be represented by one councilman. Although each councilman must be a resident of his ward, he is elected by the city at large. Since the population of two of the five wards is predominantly black, Negroes believe that the requirement of at-large elections was designed to prevent them from electing their own councilmen.[12]

Another recent Alabama enactment objected to by the Attorney General required a voter to sign a poll list at the voting machine before he would be allowed to enter the machine to vote. This law, passed in 1969, would have the same effect as reinstatement of a literacy test and clearly violated the Voting Rights Act of 1965.[13]

---

[6] *Allen*, at 565.

[7] Letter of September 10, 1969 from Jerris Leonard, Assistant Attorney General, Civil Rights Division, Department of Justice, to Jack P. I. Gremillion, Attorney General of Louisiana, quoting the Supreme Court at 393 U.S. 569.

[8] Letter of July 11, 1968, from Stephen J. Pollak, then Assistant Attorney General, Civil Rights Division, Department of Justice, to Arthur K. Bolton, Attorney General of Louisiana.

[9] U.S. Commission on Civil Rights, *Political Participation* (1968) at 26.

[10] Id.

[11] On April 30, 1969 injunctive relief was denied to challengers of the amendment on the basis of the failure of the legislature to take steps to implement it. *Mississippi Freedom Democratic Party* v. *Johnson*, civil No. 4082, S. D. Miss. filed Jan. 24, 1967.

[12] Brief for plaintiffs in *Odem* v. *Brittain*, Civil No. 69 433, N. D. Ala., filed July 9, 1969.

[13] Letter of December 16, 1969, from Jerris Leonard, Assistant Attorney General, Civil Rights Division, Department of Justice, to McDonald Gallion, Attorney General of Alabama.

To give another example, a bill was recently introduced before the General Assembly of Mississippi which would change the qualifications of candidates for school boards. The change would require that only high school graduates could run for these offices.[11] Since in Mississippi a higher percentage of whites than blacks are high school graduates, this law could keep blacks from controlling school boards in areas in which they outnumber whites in registered voters.

(c) *Effectiveness of Section 5.*—The Attorney General in his testimony before this subcommittee has claimed that Section 5 is not an effective remedy. He stated that "when local officials have passed discriminatory laws they have usually not been submitted to the Attorney General." However, since 1965, over 420 laws or regulations have been submitted to the Department. In 1969, after the *Allen* case, which made it clear that even "minor" changes have to be submitted there was an increase in submissions indicating willingness to comply by many local officials once standards for submission were clarified.

Since 1965, the Department has sued to compel submission in only four cases. If nonsubmission is a serious problem many more suits should have been brought.

The mere existence of a requirement of submission has a deterrent effect on manipulation of election laws to disfranchise blacks. The Department, moreover, is not powerless to remedy the problem of nonsubmissions under Section 5. At the State level, it is difficult to conceive that many changes in election laws could escape the attention of the Department since such enactments are published officially. At the county and municipal level, a periodic letter to election officials could inquire whether changes have been made in election laws and procedures, as well as inform such officials of their obligations under Section 5. A lawsuit to compel submission is quite simple: the Department only has to show that a change is covered by Section 5 and has not been submitted to enjoin its continued enforcement. No showing of discriminatory purpose or effect is needed. A private individual, moreover, can also sue to compel submission, as plaintiffs in the *Allen* case did.

Even more important, the fact that some jurisdictions may flaunt the requirements of Section 5 seems a poor reason for abandoning it. Federal protection of the rights of black people is required precisely because so many local officials do not honor their obligations under the Constitution. If there is widespread noncompliance with Section 5, enforcement efforts should be strengthened, not weakened.

The Department of Justice also has claimed that it is virtually impossible to know whether changes in election laws submitted to the Department have a discriminatory purpose or effect. It is our understanding that the Department has been able to obtain from the local election officials, from civil rights leaders, from its own attorneys in the field or from the FBI sufficient information to determine whether or not to disapprove a proposed change. Furthermore, the solution of H.R. 4249 to substitute for Section 5 the power to bring suits to enjoin discriminatory legislation—a power, incidentally, which the Department already enjoys under the Civil Rights Act of 1957—would not solve this problem, since the same determination would have to be made to decide whether or not to sue. The Department, however would be in a weaker position to prevent discrimination, since it would not systematically be informed of changes that might be discriminatory. Litigation is usually too slow to affect the process of implementing election law changes. The provision in the present law which requires the Department to approve or disapprove submissions within 60 days—during which enactments cannot be enforced—often prevents important actions from being taken on the basis of enactments that might later be invalidated. Suits to declare election laws invalid often come too late, and courts are reluctant to set aside elections once they have taken place.

It is ironic that the Department of Justice should claim that the power to sue to enjoin discriminatory election laws would be more effective to enforce the 15th Amendment than Section 5, a remedy that was adopted by Congress because of the failure of litigation to provide prompt and effective measures against violations of that amendment. Between 1957 and 1965, 71 lawsuits by the Department of Justice, involving thousands of man hours in preparation, did not result in halting Southern disfranchisement of Negro voters. Before retreating to the frustrations and delays of litigation, it would seem to me appropriate to consider whether the Department cannot improve its enforcement of the existing administrative remedy Congress has chosen.

[11] H. Bill No. 61, to amend Section 6328-24 Mississippi Code of 1942.

There are some simple administrative steps the Department might make to increase the effectiveness of Section 5. The Department of Justice should have an information pamphlet on Section 5. This would explain what has to be submitted and what form the submission should take, and it should be sent to all States or political subdivisions which are required to make submissions under Section 5. Commission staff review of submissions to the Justice Department indicates that many of the submissions are unnecessarily complicated. The Department should devise a standard format that submitting jurisdictions can follow.

Secondly, the Department should publish the submissions that it receives so that interested civil rights legal groups or citizens of the area affected could make known to the Department the possibly discriminatory nature of legislation submitted. It should also publish its determinations concerning submissions so that interested persons might take objection to them and covered States and subdivisions might be guided in their future litigation.

Finally, I should explain why the Commission proposes the retention of Section 5 for those areas presently covered by the Voting Rights Act—while it supports some of the nationwide features of H.R. 4249. Commission studies and other evidence have amply documented the fact that the most serious problems in voting discrimination arose in the South. Average registration figures in the South for black people are still considerably further below figures for white persons than they are in the North. Under H.R. 4249 one of the important means used to foster such discrimination—literacy tests—would be abolished. However, H.R. 4249 provides a weak remedy against another common device used by the South in the past—the manipulation of election laws and procedures. There would only be justification for abandoning Section 5 in the South if areas which have stubbornly resisted Negro rights for many decades were truly reconciled to their existence or if the remedy provided by Section 5 were totally ineffective to combat such resistance. We do not believe that either of these assumptions are correct. We support attempts to eliminate voting discrimination wherever it occurs, but at the same time we do not believe that attempts to eradicate discriminatory practices in the South should be lessened.

NATIONAL BAN ON LITERACY TESTS

Section 2 of H.R. 4249 amends Section 4 of the Voting Rights Act to prohibit the use, anywhere in the nation, of any literacy tests or other tests or devices—such as tests of good moral character—until January 1, 1974.

In my testimony of May 14, 1969, before Subcommittee 5 of the House Judiciary on the extension of the Voting Rights Act, I stated that the Commission favored legislation "banning the application—anywhere in the nation—of a literacy test as a prerequisite to voting." This was a recommendation made by the Commission on Civil Rights in its 1961 Report.

At the time of the hearings in the House and the earlier hearings before your Committee, we felt that it would be appropriate to deal with the question of a national ban on literacy tests in legislation separate from the extension of the Voting Rights Act. The Congress now appears to want to settle both of these matters together; we have no objection to this.

The Commission recently conducted some research on the effects of the use of literacy tests in the North and West. We found that literacy tests do have a negative effect on voter registration, and that this impact of literacy tests falls most heavily on blacks and persons of Spanish surname.

Because voting information by race is very difficult to obtain, I would like to explain briefly how our study was conducted. The U.S. Bureau of the Census, as part of its *Current Population Survey*, in November 1968 asked persons of voting age questions about their registration and participation as a voter in the election of November 1968. The construction of the sample by the Bureau did not indicate voting data by race for each State, but it was sufficient to show voting participation by race for regions of the country. The Commission reviewed the data and determined that we could reanalyze voting participation by race for the group of 13 non-southern States having literacy tests and a sample of 22 States not having literacy tests.

The results of our analysis show that literacy tests have a racially discriminatory effect. For example, in nonsouthern States which require literacy tests less than 55 percent of the Negro population having an educational attainment of

eight years or less are registered; whereas, in nonsouthern States which do not have literacy tests over 75 percent of the Negro population having eight years or less education are registered.

We have also recently conducted interviews with a number of persons knowledgeable about the problems of voter registration in the North and West. They have corroborated the view that literacy tests are a deterrent to minority registration. Indeed, many persons interviewed expressed the view that fear of literacy tests may be a more serious obstacle than the tests themselves. Particularly persons for whom English is not a native language are intimidated by the prospect of the test and fear the embarrassment of failing it or, where the test consists of reading a text aloud, of mispronouncing words. Mexican Americans in California, Wyoming, and Washington tend to view literacy tests as directed particularly at them, and feel intimidated by them.

There are other reasons why we favor the end of literacy tests. As Father Theodore M. Hesburgh, Chairman of the Commission, stated in a March 28, 1969 letter to the President, "the lives and fortunes of illiterates are no less affected by the actions of local, State and Federal governments than those of their more fortunate brethren. . . . Today, with television so widely available," he continued, "it is possible for one with little formal education to be a well-informed and intelligent member of the electorate." We further argued in that letter and in testimony given last spring and summer that the States were in large part responsible for the extent of illiteracy that exists. We concluded, therefore, that "although a State may . . . have an otherwise valid interest in a literate electorate, this interest cannot justify a State's use of a disability created in part by its own dereliction as the basis for disfranchisement."

There are two aspects of the treatment of literacy tests given by H.R. 4249 that I find troublesome. The bill makes the ban on tests temporary and proposes a new commission to study this question and to make a recommendation as to whether the ban should be made permanent or not. In my opinion this question can and should be settled now. No trial period is needed and no further commissions to study the question are needed.

I therefore recommend that Section 2 of H.R. 4249 be amended to make the nationwide ban on the use of literacy tests and other tests and devices permanent and that Section 7 of the bill, which creates a new commission on voting, be deleted. The proposed commission on voting, in our opinion, would only duplicate the work that has already been done by the President's Commission on Registration and Voting Participation or by the Commission on Civil Rights or work that could better be done by this Commission. Further discussion of this question is contained in the Commission Staff Memorandum analyzing S. 2507, which is identical to the present bill. This memorandum was submitted for the record last July.

RESIDENCE REQUIREMENTS

Section 2(c) of H.R. 4249 limits residence requirements for voting in presidential elections and requires States to have a system of absentee registration for presidential elections. In the letter to the President referred to earlier, Father Hesburgh stated that "residency requirements seem unreasonable when applied to presidential elections, for which familiarity with local issues and personalities is irrelevant. The Commission is especially concerned because the burden of such requirements falls heavily on migrant workers, mainly Mexican Americans from the Southwest, who are often unable to vote either in their home State or in the State in which they are working."

The Commission favors legislation that would eliminate this impediment to participation in presidential elections.

CONCLUSION

Our Nation is a democracy whose political wellbeing depends upon the participation of all of its citizens in the political process. Artificial, unreasonable and arbitrary restrictions on the right to vote weaken the political health of the Nation. Those of us who supported the 1965 Voting Rights Act in the belief that it would lead to an improvement in conditions for black citizens in the South through the healthy working of a free democracy have not been disappointed. In five years, over two million black voters are registered in the seven States

covered by the Act; three-and-a-quarter million South-wide; over 400 black candidates for office were elected; and significant numbers of moderate white officials hold office because white and black voters have been able to turn out of office the Jim Clarkes and the Bull Conners in many communities. This is what the right to vote is all about: the people have the right to determine who will govern and represent them.

In conclusion, I think an extension of the 1965 Act's Section 5 protections against State legislative and administrative interference with the right to vote in the States covered by the triggering provisions of the Act, a suspension of tests and devices in every State and provisions to enable citizens to vote for President and Vice President notwithstanding State residency requirements, will constitute the strongest voting rights bill passed by any Congress.

Senator ERVIN. The subcommittee will stand in recess until tomorrow morning at 10:30.

(Whereupon, at 5:10 p.m., the hearing was recessed to reconvene at 10:30 a.m., Wednesday, February 25, 1970.)

Page 432 blank

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

WEDNESDAY, FEBRUARY 25, 1970

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Birch Bayh presiding.

Present: Senators Bayh and Thurmond.

Also present: Lawrence Baskir, chief counsel and staff director.

Senator BAYH. We will reconvene our subcommittee.

Our distinguished chairman is busy with other legislative duties this morning and has asked me to substitute, which I am glad to do. I might say for the benefit of those present that I am going to have to leave shortly before 12, and if we are not through with our list then, we will ask those who are not covered if they will come back after noon, because I think the testimony of everyone is extremely important.

The fact of the matter is that I have a rather tight schedule as I look at it right now.

Congressman Thompson, Fletcher Thompson, from Georgia has asked to testify, and we are glad to have him as our first witness.

Congressman Thompson.

STATEMENT OF HON. FLETCHER THOMPSON, A U.S. REPRESENTATIVE FROM THE FIFTH CONGRESSIONAL DISTRICT OF THE STATE OF GEORGIA

Mr. THOMPSON. Mr. Chairman, I appreciate the opportunity of being here. Unfortunately, I do not have a prepared statement. I will be speaking to you primarily from notes and some of the testimony which I gave on the House side to the Judiciary Committee and the Rules Committee.

Mr. Chairman, first let me say this, that the question involved is whether or not in the 91st Congress we are going to provide full protection of the voting rights for every American wherever he may live. That is the first question and that is one of the most important questions.

Why should the laws apply only to one part of the country? Of course, as you are aware, this in effect violates the so-called articles of agreement when the States first formed the Union, that each State would be treated equally.

Secondly, when we formulate a statute which treats each and every—will we formulate a statute which treats each and every State

in the Nation with respect to the qualifications of their electors in the same identical fashion, or are we going to have regional legislation?

Third, will the bill recognize the fundamental presumption of innocence so dear to Americans—innocence of the various States and municipalities rather than presuming their guilt in certain sections of the country?

Now, you know as well as I do, Mr. Chairman, that we make a great point in this country of saying a person is innocent until proven guilty. Yet, in this act, we have singled out some States and said, "You are guilty and you must prove yourself innocent."

And even worse than that, because in some of the areas a State cannot even prove itself innocent by the act, because it has no right or means of proving itself innocent by the act. Will the bill that is enacted give to the States and political subdivisions the presumption of innocence of any wrongdoing of voting rights, and the right to remove themselves from its jurisdiction, and from the limitations and restrictions?

Will the bill recognize the progress that has been made in voter registration from 1964 to 1968?

Now, I submit that the Congress of the United States in setting forth the triggering standards as they did in 1965, using the 1964 voting figures; in effect, made a tacit contract with the people of these States and said that, "If you meet certain criteria, when the time of this voting act expires, you will be exempt from the penalty provisions and the triggering mechanism of this act."

A number of States have done just that. They have performed in a manner in which the act called for. The State of Mississippi, for example, now has a total registration of the Negro race of over 60 percent. In the State of Georgia, unfortunately my own State, in 1968 we had a very low voter turnout. We did not reach the 50-percent requirement in the triggering mechanism, neither did the State of South Carolina, but Mississippi, Louisiana, and Alabama—those areas which had been cited as the hard core by many people—have seen great improvements and a drastic change in the numbers of Negroes registered to vote.

They met the standards set forth in the 1964 act.

Now, the question is asked, "What if the law does not continue to be applied only in the States, and if you make it apply nationwide, will you have Negroes losing their right to vote during this period of time?"

I would like to point out that there has been another law enacted since that time and, Mr. Chairman, this is an important law. It happens to be one that I voted for. It is the Civil Rights Act of 1967, and it guarantees to every person, among other things, the right to register to vote and the right to vote. It further provides for criminal penalties against any person who would attempt to interfere with a person's right to vote.

Now, this may not have been taken into consideration in your proceedings and it is an extremely important point because it is an act that was not enforced at the time of the enactment of the 1965 act. In other words, should there be any official in Mississippi, Alabama, or Louisiana who would attempt in any way to deny a person his right to vote, he now is subject to a criminal penalty under the 1967 Civil Rights Act, which he was not subject to at the original passage of this act.

So, I say there would be no so-called backsliding in this area and if anyone attempts to interfere with any person's right to register to vote, he is subjecting himself to the provisions of this bill and criminal penalties.

You know, I am somewhat amazed in looking at the actual figures and statistics at the progress that has been made. To give you some idea, in Alabama there were 333,000 more people voting in 1968 than in 1964; that is more than a third of a million people in one State. Yet, you are being asked to forget about this.

"So, they made progress; forget about it." That is what the plea is. "So they are above the limits which were set by the 1965 act, forget about it; we are not going to let that bother us, we are going to keep the heavy thumb on this particular State even though they performed. Let's keep the old criteria and not let them take advantage of the progress that they have made."

In Louisiana, there were 201,000 more people voting in 1968 than in 1964; and in Mississippi, there were 245,000 additional people; in Virginia, there were 317,000 more people voting. And may I add this also, Mr. Chairman, that in many of the States when you are considering the total population the military areas sometimes are included in that, even though most of your military personnel vote in their home State.

Granted, this may only be 2 or 3 percent of this total State population, but it does provide a significant figure.

Now, I suppose one thing that bothers me most about this particular act is that where an entire State is covered, and this is the case in Georgia, Mr. Chairman, that a political subdivision may not excuse itself from the provisions of this act.

For example, where a State is not covered in its entirety, but the political subdivision is, it may prove itself innocent. But where an entire State is covered, a political subdivision may not prove itself innocent. Honolulu, Hawaii, for example, was able to be exempted because Hawaii as an entire State was not covered.

In North Carolina, you could have exemptions because the entire State was not covered. In my own district, which encompasses the majority of Atlanta, Ga., the Negro has had no trouble in voting in a number of years, or in registering to vote. In fact, my father was voter registrar back in the late forties and early fifties. He was the tax commissioner and voter registrar of the city of Atlanta and Fulton County. And since that time there has been no real problems for Negroes in registering to vote.

I recall some newspaper headlines when he did away with the yellow and white slips that the jury commissioners had denoting voters by race. It may seem a very small thing today, but it was a big thing there at that time and it almost cost him his job. But the point is that for years and years in Atlanta, there has been no discrimination, and yet we cannot exempt ourselves from this law.

We cannot be exempted because where the entire State is covered a political subdivision, no matter how innocent, may not be exempted.

In fact, if we change a precinct boundary in the city of Atlanta or the county of Fulton, we must have the permision of the Attorney General or, failing in that, we must come to the district court here in the District of Columbia to secure permission to change any of our vot-

ing laws, no matter how badly they be needed or whether they are dictated by population, or what they may be.

So, this is an inequity and oppression against my particular area which I resent.

I was impressed with the testimony of the Attorney General which was given before the Judiciary Committee on the House side and, particularly, when he was making the plea that the law should apply nationwide and all sections of the country should be treated equally.

Now, I will have to confess to you, gentlemen, I personally see nothing horrendous in a literacy test. However, I think you must recognize the fact that if a literacy test is going to be banned in one part of the country, it should be banned in all parts of the country. I, for one, would prefer that every voter voting would at least have a knowledge of the basic issues that are being considered, but if we are going to ban the test in one part of the country, then certainly it should be banned in all parts of the country.

The second provision of the administration bill, which I think is a very good bill, was that the nationwide restrictions on the State residency requirements for presidential elections be altered. In other words, it should be made uniform throughout the entire Nation for presidential elections. This is a very important point.

It is something that would provide a great deal of protection for other States in the Union as well as in the South. It is interesting to note, Mr. Chairman, when we are looking at some of our northern neighbors that in the city of New York the Negro as related to other voters has had a very low turnout in registration. In fact, little more than one-third of voting age Negroes in Manhattan and the Bronx cast their ballots in 1968.

We, in Atlanta, certainly bettered this, and doubled our voter-turnout among Negroes over what New York City had, but yet we cannot be exempted from this particular bill.

I am taking the facts directly from the testimony given on June 26 by the Attorney General before the House Judiciary Committee. The same was true in Brooklyn, Mr. Chairman, and, further, the Negro turnout amounted to little more than one-half of the local white turnout.

I ask you, if the Negro turnout in Atlanta, Ga., were to be only one-half of the turnout of whites in Atlanta, Ga., what cries would go forth to the national press?

Yet, we have heard not a ripple when this occurs in New York State.

Senator Bayh. Do you have any specific examples of black voters being denied the right to vote or being denied the right to register, or polling places being changed, or voters being discriminated against when they try to vote, or any other such examples in those places you have mentioned?

Mr. Thompson. I do not have a specific example in Atlanta, Ga., of a person ever being denied the right to vote or the right to register to vote. I don't think that has ever occurred there.

Senator Bayh. Well, are you familiar with the long records of the committee in the hearings prior to the enactment of the 1965 Voting Rights Act and of the volume that has been prepared here——

Mr. Thompson. Mr. Chairman, I am familiar with what has occurred prior to——

Senator BAYH (continuing). Suggesting continued violations—are you aware of those allegations?

Mr. THOMPSON. I am aware of the testimony that was given at the time of the enactment of this law, and I say this, that at the time the Negro registration was low. Obviously, there had been discrimination, but when the Congress of the United States set certain standards and, in effect, makes a tacit contract with the States in saying "when you meet the standards, you will be relieved of this obligation," for the Congress then to say "we are not going to honor our word, we are going to not give you credit for the progress that you have made even though you may now meet the standards which were set, we are not going to relieve this burden or this yoke from you," that is wrong, Mr. Chairman.

Senator BAYH. Perhaps you read the record a little differently than I. I don't believe Congress made that type of contract——

Mr. THOMPSON. It did through the enactment of the 1965 Voting Rights Act.

Senator BAYH. The purpose of the act was to give people the right to vote and to hope that the environment would change so that this type of law would no longer be necessary. Now, it is your contention that the environment has changed. I don't think the figures themselves really prove anything.

Mr. THOMPSON. Mr. Chairman, the 1968 Civil Rights Act was not in force at the time. There were no criminal penalties that could be placed on a person for denying or even intimidating a person attempting to register to vote, which we have now. There certainly was not the percentage of the minority race resgistered and actually participating, but there is a higher percentage participating in the South than are actually participating in New York City.

Whatever the reason may be, and I say this, the South having met this challenge and haivng exceeded the limits, certainly should be treated as the balance of the Nation.

Senator BAYH. Well, are Echols County and Glascock County in your district?

Mr. THOMPSON. No, they are in the Eighth District of Georgia in the Okefenokee Swamp area.

Senator BYAH. And the 1968 figures show that only 9.7 percent of the nonwhite voters in Echols County and 6.2 percent of the nonwhite voters in Glascock County are registered. You say the job has been completed there?

Mr. THOMPSON. Well, Mr. Chairman, allow me to say this. Echols County is in the Okefenokee, and approximately 2,000 people live there. They live in a very remote area and it may very well be that these people simply will not take the time or bother to come and register.

If there are 2,000 people there, and I don't know what the ratio breakdown is in that particular area, but the mere fact that there may be only 9 percent of the Negroes registered in an area in the middle of the Okefenokee Swamp does not in and of itself say that there is discrimination. It may well be that, just as in New York City, when only one-third of the blacks wanted to go and vote, this does not mean there is discrimination, but means that there are two-thirds that did not care to go and vote and it may well be that in Echols County the balance who are not registered did not care to go and register.

Senator BAYH. It might, indeed, mean that——

Mr. THOMPSON. It may also mean that because of the particular geography of that area—they live in a remote area they are not concerned with the "outer world," so to speak.

Senator BAYH. You, being a Congressman from Atlanta, of course, are particularly concerned with what happens in that area. You have no initial responsibility for steps that may be taken in Echols County or Glascock County which would paint a different picture. But, I think that when you have statistics like this, we ought to examine carefully to see whether the local officials are perhaps still resorting to some of the old tactics.

Mr. THOMPSON. I would suggest, Mr. Chairman, that inasmuch as you are not familiar with that particular area possibly you should go and make a trip to the Okefenokee and see someone living in a rural area and it may well be that he is not concerned about national affairs, as you are, and he may not be as well informed and he may simply not desire to register to vote. I do not know, not being from that area specifically, but the very same thing can be said of New York City when two-thirds of the blacks in New York City did not vote, that does not mean that two-thirds of the black were denied the right to vote.

It simply means that they were complacent and did not want to vote.

Senator BAYH. With all due respect, sir, you have not yet proven one example of discrimination in that area similar to the whole pattern that was the reason for the 1965 act.

Mr. THOMPSON. With all respect to the chairman, you have not given one single example of discrimination in Echols County, Ga. You simply state that there is low registration, which I accept, and I also make the statement back to you that there is a low turnout in registration in New York City.

Senator BAYH. Yes, but you want to repeal an act that was passed because of a whole series of discriminatory acts that were not alleged but testified to, and many of them were proven. Now, you haven't proven anything like this, and yet you suggest that the same act ought to apply in New York, and I thought, perhaps, to be consistent, you would have some examples of this type of activity in New York to sustain your position.

Mr. THOMPSON. Mr. Chairman, first I am not saying "repeal an act." I am saying that if a new act is enacted, it should treat every citizen in the United States the same and every area the same. And if a person's right to vote in New York City is being denied, he should have the same right of recourse as a person in Echols County, Ga.

Now, you have not shown me any facts where a person is being discriminated against in that particular area, just as I have not given you any in New York City. We are both quoting statistics.

Senator BAYH. Well, I am sure we are not going to find too much common ground here, so if you would please continue——

Mr. THOMPSON. Mr. Chairman——

Senator BAYH. We will have other witnesses who may be more familiar with the Echols County and the Glascock County situation than either one of us, but I though perhaps since you were from Georgia, you might be familiar with that. I have never been there. I would like to go sometime.

Mr. THOMPSON. Well, strangely enough, neither have I. I have flown over it many times in a small aircraft and I am familiar with the general topography. I know that there are only some 2,000 residents in the entire county. There is no large city. The people are isolated somewhat from the rest of the country, and I daresay that they may well be not as politically inclined as those in Atlanta, Ga.

But, Mr. Chairman, let me make a quick summary.

First, as an American citizen, there is a presumption that we consider very dear, that a person is innocent until proven guilty. This presumption is not granted in this particular area. I mentioned the fact that in order to exempt itself, those who are able to exempt themselves must prove their innocence, but in the States that are covered in the entirety those political subdivisions that are innocent may not exempt themselves from the law.

If there is no discrimination in an area such as Atlanta, Ga., with a million and a third people, we cannot be exempted under the law the way it is, although, Honolulu, Hawaii, could exempt itself because of the fact the entire State was not covered.

Second, any law enacted by the Congress should apply uniformly throughout the entire Nation. To apply a law in a regional manner is not in keeping with the original agreement by which we formed this Union.

Third, if a person's right to vote is being threatened or denied, whether it be in New York City or Chicago, Ill., or where it may be, he should have the same right of recourse as the person in Atlanta, Ga., or Montgomery, Ala., or wherever it may be.

It may well be, Mr. Chairman, that many of the big city bosses in the North would not like to have Federal observers come in and observe some of these elections. I think, perhaps, it would be a healthy item if we made this law apply nationwide in the same manner it is applied throughout the entire South, where the Federal observers could go in at the initiation of the Attorney General and view some of the elections.

Senator BAYH. You testified to that effect in the House, didn't you?

Mr. THOMPSON. Yes, sir; I did. I spoke on the House floor and, of course, testified to the Judiciary Committee and Rules Committee.

Senator BAYH. Is it fair to suggest that if the act is going to be applied nationwide it would be a larger burden and a bigger effort would be involved?

Mr. THOMPSON. Mr. Chairman, I do not feel whether the burden is small or great, or gigantic, that we should overlook the basic right of uniformity in our law. The fact that an individual is being denied his right to vote through discrimination in New York City, then he should have the same right of redress as a person in Atlanta, Ga., even though it may be a tremendous undertaking.

Senator BAYH. I certainly concur. But my question was, Do you feel that this would be a bigger burden as far as enforcement is concerned?

Mr. THOMPSON. My personal opinion is that with the Civil Rights Act of 1967 having been passed, with the progress that has been made, that the enforcement burden is not going to be anywhere nearly as great as it has been in the past even if it were made nationwide.

Senator BAYH. In other words, you think that with the repeal of section 5, which now gives the responsibility of the States to give notice to the Attorney General, with the repeal of that—and the shifting of the burden to the Attorney General to ferret out all laws, all regulations, and all rules—that the burden would be no greater, that in applying the act to 50 States of the Union, the burden wouldn't be any greater?

Mr. THOMPSON. Mr. Chairman, I believe it is the sixth amendment, or the sixth article of the Constitution which says that the full faith and credit shall be given to all acts passed by the States. Full faith and credit are not given to acts passed by the States in the South at present in dealing with voting rights or in dealing with voting precincts, boundary changes, methods of procedure. We must first have the permission of the Federal Government to go in and enact a law. This, to my way of thinking, places the States of the South in a position of being second-class States, so to speak, and I frankly, although I recognize it has been adjudicated, I feel as though this is a direct conflict with the full faith and credit provision of the Constitution, and that the act itself, although upheld, does violate this particular provision.

Senator BAYH. Well, sir, I appreciate your opinion but I don't necessarily agree with it. I have been trying to get your opinion also on another issue which you inadvertently have not answered.

I have asked twice now about the burden of doing the job that you have recommended before the Rules Committee and the Judiciary Committee and on the floor of the House, that the act be nationwide and apply to 50 States and that the burden be taken from the States and given to the Attorney General to ferret out all these rules, regulations, and laws.

Now, it is relatively simple to say "Yes" or "No," this is going to be a larger burden or it isn't going to be a larger burden.

Mr. THOMPSON. Mr. Chairman, it is also relatively simple to say that regardless of what the burden may be, each State is entitled to being treated equal.

Senator BAYH. I think every voter ought to be given the right to vote wherever he is. If you can prove a case in the North of discrimination, I think it needs to be taken care of. Maybe we have some of that, we are certainly not perfect up there, but the question is from an operational standpoint. You and I have to recognize that if we espouse a certain policy that suggests larger burdens, we had better recognize that we are not talking pie in the sky.

In your judgment, please—maybe you don't want to answer it, that's all right—but is it going to be a larger burden or is it not going to be a larger burden to do this 50-State job with the Attorney General having the entire burden himself of ferreting out all these rules and regulations?

Mr. THOMPSON. Mr. Chairman, your question really answers itself. If five States are going to have to submit certain information and then 50 States, 10 times as many States would have to submit information, obviously, there would be more paperwork. But the point is this: Are we concerned about paperwork or are we concerned about equity?

Are we going to treat all sections of the country equally? Regardless of where they may be, even though it may take more effort to include the State of Indiana, for example.

Senator BAYH. Well, I thought the answer to my question would be rather obvious, but inasmuch as you and I differ on some other things, I wanted to see whether we agreed on that.

Now, if we can agree that there is going to be a significantly larger burden, which I think when we have 10 times as many States is of even greater significance, the Attorney General is going to have to do more than fieldwork. He is going to have to go out in the States and ferret out some of these things, because they are not published in State statutes, for example, when a local community enacts a law or an election ruling.

I just wondered, inasmuch as we agreed it is going to be a larger burden, when you testified before the Judiciary Committee or the Rules Committee, or in your speech on the floor of the House, did you suggest that the Attorney General ought to have more appropriations for more assistance to carry this legislation and larger burden?

Mr. THOMPSON. I have every confidence that the Attorney General, if he feels he needs a greater force would request it, but I also have great confidence that if there is a violation that is taking place in another area and he had the right to go into that area, that he would. The point is simply this, Mr. Chairman: Should the rights of citizens be different in various parts of the country and should various parts be treated differently than other parts?

Now, that is the basic question.

Senator BAYH. Sir, that isn't the question I asked. You still haven't answered it.

Mr. THOMPSON. Senator, you are belaboring the point. I answered your question by stating that if five States were covered and they had to submit information, and then 50 States had to submit it, 10 times more, obviously, it would mean more effort. But, what difference does it make if the rights of citizens of the United States are concerned?

Should not a citizen in New York State or Detroit have the same right of redress as a citizen in Atlanta, Ga.?

Senator BAYH. I agree, I agree, but I now ask another question. Perhaps I didn't state it accurately when I asked if, in your speech before these groups you asked for more authority, more funds? Mr. Leonard in testifying before the House Appropriations Committee suggested he needed additional assistance, not to help him do a bigger job, but to catch up with the job that he was behind in doing now. That is on the record in the House.

Now, it seems to me that if we are going to multiply this problem, we ought to face up to it and bite the bullet and say, Mr. Attorney General, here is a nationwide job, now, we want you to go out and do it, and here is *x* number of dollars to do the job.

Mr. THOMPSON. Mr. Chairman, you never cease to amaze me. Obviously, I cannot ask for more funds in this bill, this is not an appropriations bill. If the Attorney General requested the funds and an appropriations bill comes through, then that would be the time to do it, and

I am certain the chairman is very much aware that this is not an appropriation measure that we are considering, so the request of funds would not be proper in this bill.

Senator BAYH. I thought inasmuch as you provided such leadership in the House, that you would also face up to the size of the burden and recognize this in your testimony before two committees and your speech on the floor, and recognize that if we are going to do a nationwide job that we should be willing to pay for the cost for that nationwide effort that is required.

Mr. THOMPSON. Mr. Chairman, I believe I made it very clear to you that I am in favor of protecting rights nationwide, and if it costs more, then it would cost more. But you are a Senator of the United States and you obviously know that we are not putting an appropriation in this particular bill. So, it would be sheer folly to say in this particular measure that we should provide more money for the Attorney General when he has not made a request. He knows the requirements of his agency much better than I and when he makes a request that would be the appropriate time to consider the appropriation before the Appropriations Committee.

Senator BAYH. I guess we look at that differently because I am a Senator, and I am a member of the Judiciary Committee, which doesn't handle appropriation bills. But the two times when the Attorney General of the United States sat where you are sitting, I asked him this very question. I think I have a responsibility to recognize that when I pass laws that are not appropriation measures, and the result of these are the necessity of additional appropriations, I had better consider those before that first law is passed and that is the only reason why I raised the question.

Mr. THOMPSON. I certainly understand this, but surely the Senator would not put money ahead of human rights and ahead of the rights of people in New York and Detroit, who have the same rights as to those in Atlanta, Ga., simply because it costs more money.

Senator BAYH. Well, we are right back where we started, and we have taken a lot of time and spent some taxpayers' money recording all this, so everybody can read the great circle that we have made.

I appreciate your coming over here and giving us the benefit of your thoughts.

Senator Thurmond, do you have questions that you would like to ask the Congressman?

Senator THURMOND. Congressman Thompson, I just want to congratulate you on your testimony and on your zeal and on your appearance here today to contend that all people in all the States should be treated equally.

Is there any reason in the world why a law on the voting rights as applied to one State should not apply to another? Some States in some sections are so righteous that they do no wrong? Are some leaders who are supposed to be great humanitarians and great Civil Rights leaders so self-righteous that they are the only proper persons to decide on this law?

To my thinking, this thing is getting ridiculous. In 1965, this law was passed mainly because the 20 or so States that voted for Goldwater and some other sections in the web of the law that was passed, and after

the law has expired the question is coming up, shall the law expire altogether or shall it just be renewed, or shall the administration plan be applied nationwide?

I don't think the law is needed at all. I think each State can handle this problem.

Do you know of any citizen in Atlanta, Ga., or even in your State that has been denied their right to vote?

Mr. THOMPSON. No, sir; I know of none. I have had none brought to my attention and there are none that I know of.

Senator THURMOND. Do you see any need for this law at all?

Mr. THOMPSON. I see no need for the law.

Senator THURMOND. If the law is to be—if a law only is enacted, then isn't it fair for the discrimination in Indiana and New York and other places to be under the supervision of the Federal offices just as the discrimination in Georgia, in the South, would be?

Mr. THOMPSON. There is no question but what that is correct.

Senator THURMOND. Is it pure hypocrisy to take the position that a law should apply only to certain States in the South and not to the rest of the Nation?

Mr. THOMPSON. Senator, not only is it a hypocrisy, but it is a great abuse of the power of some people, simply because they may have the force to put an oppressive yoke on one particular area to make that apply in a regional manner when the Constitution clearly provides that all legislation will apply nationwide.

Senator THURMOND. It has been claimed that because of this law thousands of more people have been registered. I don't doubt that, that it is probably true. Thousands of more people have become of age, thousands of people have come South to the working industries because the South is becoming the industrial section of the Nation now, and then thousands of others who could not meet the standards because they were illiterate and don't know who they are voting for have been allowed to vote.

Now, I am in favor of everybody voting who can meet the standard of the State law, whatever the State law is.

In South Carolina, it is very simple. If a man can read and write he can vote. If he can't read and write, he can still vote if he owns $300 worth of property. Now, that is a very low standard, yet thousands of illiterate people who can't read and write have been registered down there to vote who don't know the issues, who don't know the candidates, who don't know hardly as much as what they are doing, and yet they have been allowed to vote.

If those same people lived in New York, they couldn't vote because they have a literacy test.

The law of New York on qualification to voting is still in effect. The law in South Carolina has been nullified by this act of Congress with regard to qualifications for voting. Is that equal treatment to all the States in the Nation?

Mr. THOMPSON. There is no question but what very unequal treatment is being applied in this instance.

Senator Thurmond. Is the same question of forced integration, just like in Chicago where 47 percent of the black students are in 100-percent segregated schools. They have got no more segregation in the city

of Chicago—than they have got in the whole State of North Carolina, and yet there is an effort to force segregation in South Carolina as there is in other Southern States. Is that fair and just?

Mr. THOMPSON. Well, Senator, we must recognize the reality of political power, and through political power people oftentimes are not so much concerned with the equities of the issue, but in the mere exercise of this power in the demonstration of it.

Senator THURMOND. Isn't it pure political expediency on the part of those who are trying to force laws on the Southern States when they are not willing to bear the same treatment in their own States?

Mr. THOMPSON. There is no question in my mind, sir, but that is absolutely correct.

Senator THURMOND. When Mr. Nixon was running for President, there was one thing I asked him to do. I didn't ask any favoritism on the part of the South or my State, but I said we want the South to be treated like the rest of the Nation. If they are going to force integration in the South, we want it done in the North.

If they are going to pass a Federal voting rights law to apply to the South, let it apply to the rest of the Nation. What is unjust about that? What is unfair about that?

Mr. THOMPSON. It is only fair if it is applied equally.

Senator THURMOND. Under the Constitution, don't you feel any provisions that apply to all States shall be equal and just and that such a law such as this actually is unconstitutional anyway?

Mr. THOMPSON. In my personal opinion, it is, although I recognize the fact that it has been upheld, but I cannot, Senator, for the life of me accept the argument of some that if it is applied nationwide that there may be a greater monetary cost of implementation and in providing for the rights of people in Detroit and in New York, and so forth, that we may find that there would be a greater dollar cost.

I think that we should not consider the dollar but should consider the equities and rights of individuals.

Senator THURMOND. Well, there wouldn't be any need for any money to be spent in these other States out of the South unless they have discrimination. If they do have discrimination, then the money ought to be spent to correct it.

Mr. THOMPSON. That is correct.

Senator THURMOND. If you are going to enforce that law in the South—they are going to enforce it in the South, then let them enforce it in the North. I am getting pretty tired of pickets and tired of this hypocrisy. It is completely disgusting.

Again, I want to congratulate you for coming over here.

Mr. THOMPSON. Thank you, Senator.

Senator BAYH. Thank you very much.

Our next witness will be Mr. Edward T. Anderson of the Friends Committee on National Legislation, who has waited patiently previously when we ran out of time, and I am glad to have the opportunity to have him come back and have this opportunity today.

Mr. ANDERSON. Thank you, Mr. Senator. I will try to be brief in the interest of time.

We have a prepared statement which we prepared earlier in the month, but due to the work before the committee, we would ask to come back again, and I wonder now if it wouldn't be better for you to hear Mr. Jordan here from Atlanta. I would be willing, again, to come

back, possibly this afternoon or tomorrow. I understand that you will have to leave earlier and Mr. Jordan has a rather lengthy statement and I would hate to see him put over for another day. If that would be all right with you.

Senator BAYH. Well, it is not a matter of being put over to another day. I will sit here until everyone is through testifying. I do have a problem in about half an hour of having to go to another committee and then come back after lunch. I suppose—this can be off the record——

(Whereupon, there was a short discussion off the record.)

Senator BAYH. Mr. Jordan, perhaps we should have you testify first, if you have commitments this afternoon.

STATEMENT OF VERNON E. JORDAN, JR., DIRECTOR, VOTER EDUCATION PROJECT, SOUTHERN REGIONAL COUNCIL, INC.

Mr. JORDAN. First of all, Mr. Chairman, I want to express my thanks to Mr. Edward Anderson for yielding part of his time for my testimony so that we might make our statement.

Mr. Chairman, I thank you for the opportunity to appear here today. My name is Vernon E. Jordan, Jr. For the past 4 years I have been director of the voter education project of the Southern Regional Council, Inc., whose offices are located in Atlanta, Ga.

I am accompanied here today by Mr. Marvin Walls, director of research of the voter educational project; and Mr. Wiley Branton, director of the community and social action of the alliance of labor action. Mr. Branton, a lawyer, is my predecessor as director of the voter education project.

Since 1962, Mr. Chairman, the voter education project has been giving small grants to various organizations, most of them Negro organizations, in 11 Southern States for the purpose of conducting voter registration drives in their localities. For the most part, these drives have been conducted among black people for the very good reason that most whites in the South are registered to vote, whereas Negro registration in the South has been abysmally low.

Since 1962, Mr. Chairman, Negro registration in the South has more than doubled. This has been accomplished partly through the efforts of my organization, and partly because of the legislation we are here to discuss today: the Voting Rights Act of 1965.

Before the Voting Rights Act was adopted, less than one-third of the Negro voting-age population of the South was registered to vote. The exact figure was 33.1 percent against a white registration of 73.2 percent of the white voting-age population.

In Alabama, less than one-fourth of the voting-age Negroes were registered to vote when the Voting Rights Act was signed by President Johnson, and in Mississippi the figure was an incredibly low 8.3 percent. In fact, in November of 1963, Mr. Chairman, the Voter Education Project reluctantly discontinued the funding of local registration drives in Mississippi because all the money and effort expended by these drives could get only a handful of Negroes registered to vote, and the results thus were running dishearteningly behind the efforts.

Today, 59.5 percent of the black population is registered to vote in the seven States covered by the 1965 act. There has been an increase of

897,000 Negroes registered to vote in these seven States. Nevertheless, black registration continues to run significantly behind white registration. White registration is 83.8 percent in the seven States covered.

The increase in white registration has been 1,058,000—or 161,000 more than the black increase. Let me quickly explain that when I speak of the 11 States covered, I am referring to the six States fully covered, and the State of North Carolina, which is covered to the extent of 39 counties. Let me also explain, just to clear up any misunderstandings, that I have used 1969 census figures on voting-age population, simply because these are the only official population figures available by race for the various political subdivisions of the South.

These 1960 census figures grow more outdated every minute, of course, but they remain useful as guideposts to the various levels of white and black registration.

The remarkable growth of black political strength in the South since 1965 has been amply described in the course of the debate on extension of the 1965 act. I am reviewing that growth briefly today, because my organization has been so much a part of it, and because I feel that it is such an important development in the recent history of the South.

Let me mention just one more statistic that is, like the others cited in this debate, the product of our organization: that is, the 540 black men and women who hold elected offices in the 11 Southern States. Many of these officials—indeed, the largest number of them—hold offices in the States covered by the act. I can assure you, in the strongest way I know how, that only a fraction of these officials could have been elected to office without the dramatic increases in black registration which have occurred over the last several years.

It is because of my first-hand knowledge of what has been accomplished under the 1965 Voting Rights Act, and it is because of my first-hand knowledge of how much more needs to be accomplished, that I have felt deeply and most earnestly that the 1965 act should be extended. Indeed, I feel that the act not only should be extended, but also should be strengthened and put to more effective use than it has been.

Now, I am aware that the administration proposal would continue some provisions of the 1965 act and extend these provisions to the entire Nation. For example, the Attorney General still would have the power to send Federal examiners into the South to register voters, and would have the additional power to also send these Federal examiners to other parts of the country.

But one wonders how meaningful such a provision is when one looks at the number of counties designated for Federal examiners even under the present act. Under the present act, only 64 of the 556 southern counties covered have been designated for examiners. One questions whether if the time has come to expand the coverage of the act, when so little use has been made of the act even in the area presently covered.

Few southern black people, only recently enfranchised by the 1965 Voting Rights Act, will take comfort in knowing that a county in Illinois or Indiana can be designated for Federal examiners, when only two have been designated in South Carolina—and none in Virginia and North Carolina—under the current act. As a footnote, I might add that no county has been designated for Federal examiners

during the current administration, which took office more than a year ago. I might also point out that the percentage of Negro registration remains extremely low in many counties to which no examiners have been sent.

In short, one wonders how examiners and observers are going to be sent all over the country when not even enough can be assigned in the Deep South, where the need for such examiners has been well-established by overwhelming statistical and historical evidence.

But putting all that aside, there remains an important and crucial difference between the present act and the administration bill. The difference, of course, is the deletion of section 5 of the present act, and the substitution of a new section that would be far less effective.

Section 5 of the present law requires any State or political subdivision covered by the act to submit any changes in election laws or procedures to the Attorney General for approval. This is an essential provision of the present act. Without that provision, the States covered could nullify the gains in black registration simply by adopting election laws and procedures that would render black votes ineffective—which is what some of the States and communities are trying to do anyway, as ably reported by the U.S. Commission on Civil Rights in its study, "Political Participation," published in May of 1968.

If it had not been for section 5 of the present act, there is no telling to what extent the States and communities covered might have legislated and manipulated to continue their historical practice of excluding Negroes from the southern political process.

The administration proposal would remove the fragile 1965 wall of protection from around thousands of newly registered Negro voters in the South. If the Attorney General had "reason to believe" that a State, county, city, or town were using discriminatory laws or procedures, he could go to court and try to get a restraining order. Notice that the State, county, city, or town involved would not have to submit its changes in election laws and procedures to the Justice Department.

Rather, the Justice Department would have to seek out these changes. If the Attorney General—through intuition or hard information—felt that the changes were discriminatory, then he could, if he wished, file suit to prevent the use of these laws or procedures. A three-judge court would rule. At some date in the distant future, long after the new laws or procedures had been applied, and quite likely after several elections had been held, the three-judge court could find that the new procedures were indeed discriminatory and order them stopped.

Mr. Chairman, how would the Attorney General find out if the State, county, city, or town had adopted a discriminatory new procedure? Merely reading the changes in the State election code would not be enough. Southern lawmakers, administrative officials, and party officials are adept at their effort to deny the Negro the ballot. They have demonstrated their skill at evading and thwarting every effort to bring black people into the mainstream of southern life.

Our last information at the Voter Education project was that the Civil Rights Division of the Justice Department has fewer than 100 lawyers to enforce all of the civil rights legislation on the books in all of the 50 States of the United States. This is, of course, an impossible task.

But if the task is impossible now, consider how much more impossible it would be if the administration bill is passed. Changes in election laws and procedures would not be mailed in by the Attorney General of Mississippi. Neither would they be mailed in by the city clerk of Selma, Ala.

They would not be submitted by the county commission of Baker County, Ga. Rather, the Justice Department, with its already small and overburdened staff, would have to seek out these discriminatory new procedures, investigate them, prepare a suit, and take them to court.

Mr. Chairman, this is not merely additional work for an already understaffed division of the Justice Department: it is an open invitation to the States, cities, counties, and towns covered by the Voting Rights Act to change their laws and procedures at will. The more the changes, the more the Civil Rights Division of the Justice Department will have to pursue the changes.

Already civil rights laws are being ignored and flouted all over the South, particularly in remote rural areas. The theory was explicitly stated by a white man to one of our fieldworkers in southwest Georgia last summer: "It will take the Justice Department a hundred years to get down to a little county like ours.

The administration proposal is a clear signal to officials of the white South: "Go back to your old ways. Even the meager enforcement machinery that already was there is being taken away. You need no longer fear interference from Washington in your treatment of black people in your communities. You need no longer worry about blacks being elected to your city and county offices."

Mr. Chairman, for the last 4 years the voter education project has helped finance nearly 500 voter registration and citizenship education programs in 11 Southern States. Usually these are short programs lasting 6 or 8 weeks. In exchange for our funding, we require these programs to sed us weekly reports. These reports, Mr. Chairman, provide some of the most fascinating and revealing reading as any to be found anywhere about what is going on in the South today.

Many of these reports tell of harrassment and intimidation of Negroes who fear that if they register to vote that they will be evicted from their farms or discharged from their jobs, or have their welfare checks cut off. Not even the present law and the present enforcement machinery can motivate thousands of southern Negroes to overcome the fear and the apprehension ingrained by generations of white oppression, to go to the courthouse to register, and later to vote.

Consider the report we received last November from Humphreys County, which is located in the Mississippi Delta, and in which a civil rights worker, George Lee, was shot to death in the courthouse square attempting to register in 1955.

In October of last year the project we supported in Humphreys County reported as follows:

> People in this area still feel they will lose their jobs, or will have to move off the plantation with no place to go, or their welfare, social security, et cetera, checks will be cut off because this has happened in the past.

Later in October a field representative of the voter education project visited Humphreys County. He found that only a few days prior to his visit the plantation owner happened to show up at the courthouse precisely at the same time some of this tenants were arriving to

register to vote. The plantation owner, who holds an office in the county, told the tenants that they had a choice between registering to vote and returning to the plantation.

This was reported to the Justice Department. In November came another report from the Humphreys County project saying: "Justice Department sent FBI's into county last week to investigate. We have not gotten any results." We talked to the Humphreys County registration leaders a few days ago, and they had heard nothing further from the Justice Department.

I quote these reports to indicate the slowness and general ineffectiveness of the present enforcement procedure. How much slower and how much more ineffective will the machinery be when the provisions of the act and the task facing the Civil Rights Division of the Justice Department is spread, paper thin across the Nation?

How much more reluctant will black people be to overcome their ingrained fears when the word gets back to the crossroads, bayous and ghettos—as it gradually will—that Uncle Sam no longer will be looking over the shoulders of the Southern whites who control the election machinery of the region.

Already there are efforts to manipulate, gerrymander and baffle the black voters of the South. Predominantly black voting places suddenly are moved without notice on the eve of elections. Voters are shifted from one precinct to another without notification. District elections are changed to at-large elections so as to dilute the black vote. Political boundaries are redrawn, and elected offices are changed to appointive offices. Qualifying fees and other qualifications for seeking offices suddenly are changed in subtle ways designed to make it difficult for Negroes to run.

The same States that were the most efficient, determined, and malicious in their efforts to keep black people off the registration rolls can be expected to be the most efficient, determined, and malicious in their efforts to cancel out the growing black vote. Congress was mindful of this possibility when it put section 5 into the Voting Rights Act. If there were those who felt that the States covered by the act would repent and turn from their evil discriminatory traditions in 5 years, then those people were overly optimistic and sadly mistaken.

Mr. Chairman, I am a lifelong resident of one of the seven States covered by the Voting Rights Act. I am quite familiar with the atmosphere in my State and with the white supremacist attitudes of the politicians who tightly control local politics in my State, particularly in rural areas.

Moreover, Mr. Chairman, my position as director of the voter education project for the past 4 years has carried me into virtually every corner of the other six States. I have been in close contact with blacks at the grassroots level who are seeking to enter and use the political process in order to push for remedies to the injustices imposed on them at birth by a white-controlled society. I know—as well as any man in this room—that Canton and Grenada and Selma and Sandersville and hundreds of other southern communities stand poised and ready to eliminate the burgeoning black vote in their jurisdictions. The slightest flicker of a green light from Washington is all these white-dominated communities need. When they receive the signal, they will act.

More than mere politics is involved here. More than a few legislative seats and school board positions are at stake. In fact, the entire future of black people in the Deep South is at stake. I am sure I do not have to explain to this distinguished subcommittee that politics affect every aspect of our society.

Politics determine whose roads get paved; whose garbage gets collected; who gets job opportunities and what kind; and who gets good schools and who doesn't. Indeed, more than one of the registration projects we have supported have told us in recent months that the level of black voter registration would influence whether or not schools in the community would be peacefully desegregated.

It is ironic, Mr. Chairman, to see States that have established international reputations for practicing discrimination complain that the 1965 Voting Rights Act discriminates against them. These States are under suspicion, and rightfully so. These States have been assigned special obligations toward their black citizens of voting age, and rightfully so.

It is no great burden to require these States to inform the Attorney General of changes in their election laws and procedures. These States know why this requirement has been placed on them. These States know very well—as I do—why it needs to be continued. As Mrs. Taunya Banks, Director of our Mississippi Center for Elected Officials, puts it:

> It is inconceivable that Congress can actually believe that just five years under the Voting Rights Act can eliminate over 100 years of racial discrimination in the South.

Once before, Congress has said to southern Negroes: "If you are wronged, and if your voting rights are abridged, take it to court." The Voting Rights Act was a recognition of the hollowness of that advice. Mrs. Banks, who is a lawyer, points out that the preparation of such cases can involve hundreds of hours. A small corps of lawyers, underpaid and overworked, already carries a heavy responsibility for pressing litigation on behalf of oppressed southern Negroes. It is absurd to expect that they can take on the additional load of combatting the hundreds of discriminatory changes that will be made in election laws and procedures if section 5 is not extended in its present form.

When the attorney general of Mississippi appeared before the House Judiciary Committee last summer to ask that the Voting Rights Act not be extended, he made many interesting statements, according to the transcript. One was that Negroes "could go to the registrars of Mississippi and register themselves without fear."

Mrs. Banks is among the thousands of Mississippi Negroes who would dispute that testimony, for she told us in a recent communication that she expects many Mississippi counties to require complete reregistration and she anticipates that "Many blacks will become disfranchised, since many county and city registrars still insist on intimidating prospective black registrants."

Let me just say, Mr. Chairman, that we could, if we wished, fill this room many times over with black people who would refute the testimony of the attorney general of Mississippi.

Mr. Chairman, we live in a time, when many young black people are advising other blacks to give up working for change through the American political system. I must confess that there are many times when I can see the point of their advice. We live in a time when high governmental officials are insisting that everyone must work through the existing system. One wonders if these officials realize how insensitive that advice must sound to people who must risk their jobs, their livelihood and their well-being even to get their names on the list of registered voters.

When former President Johnson presented the Voting Rights Act to Congress in March of 1965, he said with determination: "We shall overcome." But 5 years later the black voter in the South faces hostile southern white faces just as resourceful and recalcitrant now as they were then.

The new black voter, still substantially outnumbered by whites, must rely on help from Washington to preserve the tenuous gains that have been made. I personally believe, based on my experience and the facts presented here, that the proposal that passed the House will seriously, perhaps tragically, undermine the Federal support.

I hope the Senate will restore section 5 to its present form and do nothing that would weaken the present Voting Rights Act. Unless the Senate does so, I am convinced that the political process in the South will suffer a grievous setback.

Senator BAYH. Mr. Jordan, gentlemen, I want to compliment you for that outstanding statement. It is certainly the strongest statement that I have seen any place presenting the need for continuing to make a maximum effort to get everyone enfranchised in the southern part of our country.

Now, there has been considerable testimony to the effect that things have changed. I have not yet heard anyone who has testified against this bill, from the States affected, who has said that the law was ever needed in the first place. But despite that fact, these witnesses take the approach now that things have changed, times have changed, people's attitudes have changed, and thus there is no longer any need to have this act, now that the voting standards in some of those States have met the prescribed criteria, the States should be removed from the act. Would you care to make an observation from your experience in the area of voting and registration, whether you feel this is the case?

Mr. JORDAN. My own view, Mr. Chairman, is those persons, my own Governor yesterday, and my Congressman who testified just prior to me, are not aware of the greatest principle of equity, which says he who seeks equity must do equity, and it is my view that the South has not done equity by black citizens as it relates to voter registration and political participation.

It seems to me that the South must come to the Congress with clean hands, and at the moment that is not the case.

Senator BAYH. The tactics to which you refer, then, you feel, are going to continue. Do you have evidence that leads you to believe that without section 5, particularly, there is going to be a free rein to apply the old practices?

Mr. JORDAN. Absolutely, Mr. Chairman.

Senator BAYH. Are you familiar with Glascock and Echols Counties?

Mr. JORDAN. I am familiar with Glascock and Echols Counties to the extent that we are aware of the leadership there. We have had some relationship with the local leadership in Glascock County, we have not made a grant to Glascock County because we have not been able to get the leadership there to get up sufficient courage to involve themselves in the voter registration process.

Senator BAYH. Do you believe that 9.7 percent in Echols County and 6.2 percent in Glascock County has any relationship to discrimination——

Mr. JORDAN. I think the relationship is this, Mr. Chairman, that a fear of what happens to black people, especially in the remote rural areas of the South, when they assert themselves to go and get up enough nerve to go to the polls or to go to the registration place to register to vote.

A large part of our difficulty even when we are able to make a grant in a local community is trying to help the local leadership in that community overcome fears, long held, about what the results would be if they were to attempt to register to vote. It is still there, and that is why we advocate that section 5 cannot come out of the Voting Rights Act, for that reason.

The present act ought to be extended in its present form.

Senator BAYH. I must ask you to give us your candid opinion as to the information, the figures, that have been presented to us on which we have been relying to assess the progress or lack of progress in registration and in voting.

Would you care to comment on the statistics provided in the report of the U.S. Commission on Civil Rights published in 1968?

Mr. JORDAN. If you read that carefully, Mr. Chairman, those figures—the footnote of those figures are from the Voter Educational Project Council, so I am here to attest to the accuracy of those figures.

There is no question but the black registration in the South has increased, and it has increased because of the Voting Rights Act of 1965, and if it is going to continue to increase, if blacks are going to continue to involve themselves in the political process, we must have this act.

Senator BAYH. Thank you very much.

I don't think that there is any need to detain you further for questions. You have answered my questions very succinctly and you testimony, I thought, was excellent.

Mr. JORDAN. Thank you, Mr. Chairman.

Senator BAYH. I am going to have to leave briefly. I have been advised that perhaps it would be possible for me to be back here by 12:30 or so, so if our other witnesses can bear with us at this time, or if they want to grab a sandwich, I will be back as quickly as I can get back. I apologize particularly for the double whammy that you have been exposed to, Mr. Anderson.

I would like to put in the record at this time a copy of the bill which is being introduced by the distinguished minority leader, Senator Scott, that is cosponsored by a bipartisan group of eight members of the Judiciary Committee. This is some effort to reconcile the differ-

ences between some of us, and includes a simple extension, incorporating two provisions of the House-passed bill relative to literacy tests and residency requirements.

(The bill above referred to, H.R. 4249, follows:)

[H.R. 4249, 91st Cong., second sess.]

AMENDMENTS (in the nature of a substitute)

Intended to be proposed by Mr. Scott (for himself, Mr. Hart, Mr. Bayh, Mr. Burdick, Mr. Cook, Mr. Fong, Mr. Kennedy, Mr. Mathias, and Mr. Tydings) to H.R. 4249, an Act to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, viz: Strike out all after the enacting clause, and insert in lieu thereof the following:

That this Act may be cited as the "Voting Rights Act Amendments of 1970".

SEC. 2. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq.) is amended by inserting therein, immediately after the first section thereof, the following title caption:

"TITLE I—VOTING RIGHTS"

SEC. 3. Section 4 (a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b) is amended by striking out the words "five years" wherever they appear in the first and third paragraphs thereof, and inserting in lieu thereof the words "ten years".

SEC. 4. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq.) is amended by adding at the end thereof the following new title:

"TITLE II—SUPPLEMENTAL PROVISIONS

"APPLICATION OF PROHIBITION TO OTHER STATES

"SEC. 201. (a) Prior to August 6, 1975, no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State or local election conducted in any State or political subdivision of a State as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act.

"(b) As used in this section, the term 'test or device' means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

"RESIDENCE REQUIREMENTS FOR VOTING

"SEC. 202. (a) No citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in any such election for failure to comply with a residence or registration requirement if he has resided in that State or political subdivision since the 1st day of September next preceding the election and has complied with the requirements of registration to the extent that they provide for registration after that date.

"(b) If such citizen has begun residence in a State or political subdivision after the 1st day of September next preceding an election for President and Vice President of the United States and does not satisfy the residence requirements of that State or political subdivision, he shall be allowed to vote in such election: (1) in person in the State or political subdivision in which he resided on the last day of August of that year if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision; or (2) by absentee ballot in the State or political subdivision in which he resided on the last day of August of that year if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

"(c) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President

and Vice President of the United States shall be denied the right to vote in such election because of any requirement of registration that does not include a provision for absentee registration.

"(d) As used in this section, the term 'State' includes the District of Columbia.

"JUDICIAL RELIEF

"SEC. 203. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation to the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2282 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

"PENALTY

"SEC. 204. Whoever shall deprive or attempt to deprive any person of any right secured by section 201 or 202 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

"SEPARABILITY

"SEC. 205. If any provision of this title or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.".

Amend the title so as to read: "An Act to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and for other purposes.".

Senator BAYH. Counsel for Senator Ervin would like to ask a few technical questions. If you don't mind, I will ask to step out.

Mr. BASKIR. Thank you, Mr. Chairman.

Mr. Jordan, yesterday a point was raised by a witness with respect to statistics on registration by race. And the witness said that he was unable to give statistics by race because it was against the law to keep registration by race. I know that in your report, which the subcommittee has copies of, the registration in the South in the summer of 1968, you do list by race.

Can you tell the committee for the record how you got the racial breakdown of registration?

Mr. WALLS. Well, contrary——

Mr. JORDAN. This is Mr. Walls, director of research for the voter education project.

Mr. WALLS. Contrary to what you were told, figures are kept by race in several States in the South. In North Carolina, for example.

Mr. BASKIR. Are these official figures?

Mr. WALLS. Yes, kept by the—issued periodically by the secretary of state. That is the case in several Southern States.

Mr. BASKIR. You have figures in this report for 11 Southern States. And by race, and all——

Mr. WALLS. Well, where we can obtain figures officially, we use the official figures. In other cases, where we cannot obtain them from officials, we go to nonofficial sources.

Civil rights groups working in that area, for example, that type of information.

Mr. BASKIR. Can you say now, for the record, which of those States you have official records from?

Mr. WALLS. Florida, North Carolina, South Carolina, Louisiana, those States, at least those four States we have official figures kept by race and issued by the secretary of state in those States.

Mr. BASKIR. With respect to the other seven——

Mr. WALLS. We have to get statements or estimates from people in the field, people who are knowledgeable about the registration trend in those States.

Mr. JORDAN. And the local registrars in that local area.

Mr. BASKIR. They don't keep them by race; it is their estimates, I suspect.

Mr. WALLS. In many cases they do keep them by race where they are available and we obtain them, and we use them from official sources. In other cases, we have to use unofficial sources.

Mr. BASKIR. With respect to the voter education project, do you conduct registration drives yourself or do you provide——

Mr. JORDAN. We make grants to community organizations or civil rights organizations across the South, based on proposals submitted to us requesting funds consistent with their proposed programs for registration to carry on a program in that local community and in return for a grant from us, we require weekly financial reports, and weekly research so that we might be kept abreast of the problems and of the progress that they are making at the local level.

Let me make this one other point, the voter education project is a tax-exempt, nonpartisan agency, and we operate or we have been operating since 1962 in the South. And we operate primarily with foundation funds.

Mr. BASKIR. Grants are made to you from foundations and you farm them out?

Mr. JORDAN. That is right.

Mr. BASKIR. Are there other organizations performing the same functions as you do, that is, providing resources, technical assistance and money for voter registration?

Mr. JORDAN. All the civil rights organizations have their own programs for technical assistance and they have their grant-making functions. We do make grants to the local affiliates and branches of the major civil rights organizations.

Mr. BASKIR. So far as the function you perform, it is also performed more or less in the same way by all of the recognized civil rights groups?

Mr. JORDAN. That is correct, I do suspect, Mr. Chairman, that the voter education project has been the largest budget and the largest source of funds for voter registration and voter education anywhere in the country.

Mr. BASKIR. Can you give for the record an estimate of how much money you have given out in grants yearly or over the past 4 or 5 years?

Mr. JORDAN. We have operated with 1962—from 1962 to about 1964, about a million dollars; from 1964 to 1966 about $3 million, since 1962.

Mr. BASKIR. That is total, not by year?

Mr. JORDAN. That is total.

Mr. BASKIR. I see. Would you have an estimate of the amount of funds and advances made by—or donated out to voter registration by other groups?

Mr. JORDAN. No, I do not.

Mr. BASKIR. Would it be fair to say that that might be about the same——

Mr. JORDAN. I doubt it, I suspect that it is less.

Mr. BASKIR. All together, there is less than yours?

Mr. JORDAN. Considerably less.

Mr. BASKIR. You contribute more than 50 percent?

Mr. JORDAN. Yes.

Mr. BASKIR. Do you have any idea of the breakdown of the—A preliminary question. These grants to civil rights organizations, they are exclusively for Negro registration or are they for Negro and white registration?

Mr. JORDAN. They are primarily for black registration. The reason being the historical and arbitrary systematical exclusion of the blacks from the political process. We have, on the other hand, given grants involving low-income whites in several instances and have grants given to Indians in North Carolina, and grants involving Mexican-Americans in Texas.

Mr. BASKIR. Do you have any estimate similar to the estimate in your testimony with respect to those groups and the amount of increased registration in the past 4 or 5 years?

Mr. JORDAN. No, we don't. We had a rather sizable increase in the registration among the Mexican-American community in Texas.

And we were in Lumberton, N.C., and were able to considerably increase the registration there among the Lumberton Indians.

Mr. BASKIR. The figures that you have compare, as I recall, December 1968, figures with approximately pre-1965 act. I have seen those comparisons and some of the 800,000 or 900,000 new registrants among Negroes in the South, and the total for those years. Do you have—can you give for the record an idea of how the registration progressed year by year?

Mr. JORDAN. Well, it is about 200,000 a year, I think; is that right, Mr. Walls?

Mr. WALLS. It would vary from State to State, of course.

Mr. JORDAN. Across the South.

Mr. WALLS. The net increase would be somewhere near 900,000 since the act went into effect in August of 1965.

Mr. JORDAN. Yes, I think that is another thing, Mr. Chairman, substantially, the gain indicated in those States covered under the act applies although——

Mr. WALLS. I have the State-by-State figures——

Mr. BASKIR. You do have the State by State, but I wanted them year by year.

Mr. WALLS. I believe we could compile them year by year.

Mr. JORDAN. We could submit them for the record later.

Mr. BASKIR. I think it would be helpful to have it for the record. The only thing is that we are going to have to close it very quickly. Perhaps you could phone in the figures of your best estimates.

Mr. JORDAN. Sure, we would be glad to do it.

Mr. BASKIR. We could put it in the Congressional Record. But to keep it in the hearing record would be impossible.

Can you give an estimate of the number of grants you have given since 1965?

Mr. JORDAN. Since 1965, about—well, 1964, nearly 500 grants in the 11 states.

Mr BASKIR. Could you give an estimate of the number of people that have been engaged in the voter registration drive out of these 500 grant programs?

Mr. JORDAN. Just hundreds of people. In one small county, it might take a task force of 10 and another large metropolitan area might involve as many as 300 or 400 people as workers, but they are all volunteers.

Mr. BASKIR. Yes. Do you have any estimate of how many people registered as a result of registration drives that you have financed?

Mr. JORDAN. That is largely dependent upon the area, with the first effort, the second effort, the experience of the workers, the attitude of the registrar, the general atmosphere of the community. You cannot really generalize.

Mr. BASKIR. I am wondering, in particular, of the 500 grants and the $3 million that you have spent over the past 4 years, what has been the results in terms of registration, how much registration do you attribute to the program in total?

Mr. JORDAN. Well, first of all, I think you cannot work out a dollar-for-registrant ratio because there are many people who register because there is a campaign going on, but they very often will not be taken down by the worker as a matter of pride, but will go on themselves. It is very difficult to say how many people were registered because it has an indirect effect all over the community.

Mr. BASKIR. With all these qualifications, I realize it is hard to get an estimate——

Mr. JORDAN. There are radio announcements, there are posters up. One other thing here is that it may depend upon the response of whether or not you have neighborhood registration, whether or not it is a deputy registrar or the convenience of the others, all of that makes a difference.

Whether it is night registration, all of that has an effect on the campaign.

Also the operation of the registration offices, whether he has one worker or 10—if a fellow has to stand in line for 2 hours, he may change his mind, but if he can go in and get registered with some facility, he may stay throughout and complete it.

Mr. BASKIR. All told, with respect to the 4-year process and the 500 grants, and the amount of money you have expended. When you make these grants to voter registration drives people report back and say that they have an estimate that blank number of people have registered.

Do you get such reports as that? That the drive was successful and that blank number of people registered?

Mr. JORDAN. Yes——

Mr. BASKIR. Have you made any totals with respect to drives that you have been personally responsible for or contributed money for

that you can give for the record? A fairly round figure to say that the drive that you have been engaged in registered 100,000 voters over the 4 years. Do you have any idea?

Mr. JORDAN. I don't think we can give you at this moment an exact figure, in this relationship to money spent, for the reason I have already assigned.

Mr. BASKIR. Yes; but, I am not trying to get an answer that it cost a buck and a half to register a man. I am wondering if you have an idea of how successful you have been with the VEP program in the past 4 years in terms of names on voter registration lists?

Mr. JORDAN. It is clear to me and it is clear to all of us involved in the voter educational program that had we not been in existence and had we not been providing information and research and technical assistance and the funds, that clearly the Civil Rights Act of 1965 would not be as effective as it has been.

As a matter of fact, we can submit to you a study showing a correlation of the increased registration and the presence of Federal examiners in Mississippi, and Alabama, and Louisiana, showing where there was a VEP grant and Federal examiners and registration really went up because there was emphasis on the local community to respond to the Federal examiner.

Mr. BASKIR. I am trying to get for the record, as it is obvious. I am trying to get an idea of exactly how successful VEP has been in registration.

Mr. JORDAN. Well, I think it has been explained that——

Mr. BASKIR. In terms of numbers. Can you give us a total figure?

Mr. JORDAN. I would say a million voters since 1964.

Mr. BASKIR. VEP has been responsible for a million voters?

Mr. JORDAN. When you say "responsible," that is kind of strong——

Mr. BASKIR. I realize that, but do you think that a million voters is a substantial credit for them?

Mr. JORDAN. That is right, and we have influenced that by programs, by materials, by research, by the people that we have been involved with throughout the region and we are the primary source of voter registration in the South.

Mr. BASKIR. Fine. Thank you very much.

The chairman has asked me to state for the record that we will recess now and will resume subject to the call of the Chair.

(Whereupon, at 11:55, the subcommittee recessed, to reconvene subject to the call of the Chair.)

AFTERNOON SESSION

Senator BAYH. Our next witness is Edward T. Anderson of the Friends Committee on National Legislation, who is one of the most patient men before this committee, and has been most willing to help us out of our problems.

We are looking forward to hearing what you have to say.

STATEMENT OF EDWARD T. ANDERSON, ASSOCIATE SECRETARY FOR HUMAN RIGHTS, FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Mr. ANDERSON. Thank you, Senator.

Mr. Chairman and members of the committee, my name is Edward T. Anderson, associate secretary for human rights with the Friends Committee on National Legislation here in Washington, D.C. I speak today on behalf of the Friends Committee on National Legislation, an organization which seeks to represent the concerns of many Friends in the fields of peace and human rights, but which does not purport to speak for all Friends. The democratic organization of the Religious Sociate of Friends and Friends' own right to speak for themselves as individuals prevents any one Quaker organization from assuming that mantle.

Senator BAYH. That sort of sounds like the Democratic Party right now, who want to speak for themselves as individuals.

Mr. ANDERSON. I appear before you today to discuss the extension of the Voting Rights Act of 1965; the most effective guarantee of the right to vote since the 15th amendment. The right to vote is a basic right of every citizen of this country, and the Voting Rights Act has provided that right to many thousands of previously disenfranchised citizens. It has allowed many Negroes in the Southern States, and the Mexican-Americans and Indians in the Southwestern States to vote without fear of reprisal for exercising this constitutional right.

The act has been a landmark in American justice, and though there are imperfections, only more time is needed, with the strong provisions now included, to achieve the ultimate goals intended by this august body when it passed the act in 1965.

When the Voting Rights Act was passed in 1965, it was thought that 5 years would be sufficient time to put Negroes in the voting register and on the road to exercising the powers of their citizenship; powers previously denied them because of racial discrimination. This was obviously an inadequate assumption.

If the act were allowed to expire, we might see again the tragic situation that existed before its passage. States could easily resume the categorical denial of the constitutional right to vote. The escape clause contained in section 4(a) would enable those States to revert to their discriminatory practices without fear of interference from the Federal Government.

For instance, had a State, upon passage of the bill, stopped all use of literacy tests or other devices with the purpose or effect of denying the right to vote because of race or color, it could, on August 7, 1970, petition the U.S. District Court for the District of Columbia for a declaratory judgment that the State had not used such a test for 5 years. At that time, no Federal examiner could be sent to counties within the State to list eligible voters who had not registered with

the local registrar, no Federal examiner could be sent to observe elections in those counties, and the State would no longer have to submit voting changes for approval to the District Court of the District of Columbia or the Attorney General before enforcing new voting laws.

In addition, the five States covered wholly by the act have not repealed their literacy tests, and these, too, would become operative upon expiration of the act. In one case while the act was still in effect, the State of Mississippi passed voting changes which, by changing from elective to appointive those offices where Negroes held good chances of victory, and by changing constituency requirements of some elected offices from a district to an at-large basis, with the effect of diluting the effectiveness of the black vote.

In appearing before you today to discuss this, I should point out right here, Mr. Senator, that in many areas of the country where it is not really a denial of the right to vote for growing numbers of citizens in many cities across the country, that right is being abridged and diluted. It is being done by what has been called efficient modern regional government.

Senator BAYH. Do you have any examples of that?

Mr. ANDERSON. Indianapolis just extended its county line for the election of mayor to include the entire county and the district has been gerrymandered in such a way that it is cut up into pie-shaped sections with the largest portions of the pie in the center of the county as opposed to the central city.

This is happening in Jacksonville, Fla.——

Senator BAYH. Where was that one?

Mr. ANDERSON. In Indianapolis, Ind.

Senator BAYH. That was the mayor's doing and was strongly opposed by many of us.

Mr. ANDERSON. That has happened in Jacksonville, Fla. where the entire city has been reduced—the effect of the minority vote has been reduced from something like 40 percent to 16 percent. I have been down in that particular State and I noticed that Miami has done the same kind of thing by what they call a metropolitan government.

Senator BAYH. How about these devices in States that are presently covered?

Mr. ANDERSON. The Governor alluded to that yesterday, that we do this under the guise of efficiency by changing an at-large voting from a district voting, and extending the boundaries of the city.

I am only saying this to show that we are very clear, very sure of why these changes are being proposed. However, in others, I would strongly suggest changes be made for some of the reasons that have been proposed. No one has been denied the right to vote, I am only asserting that voting is being diluted. I was only bringing that out.

I would like to say that other things are happening in other portions of the country which would necessarily be affected by this act and that this dilution is very definitely going on.

The publicly given reason was not racial. But the effect was exactly that. The Supreme Court did not announce its decision on this case until March of 1969, and held at that time, in *Allen* v. *the State Board of Elections*, 37 U.S.L.W., 41691 U.S., March 4, 1969, that the Mississippi voting laws were covered by the Voting Rights Act.

Thus, there existed a period of 4 years where Mississippi Negroes

were denied the right to vote. Coverage of the act was extended even more when the Federal Court held in *Gaston County* v. *U.S.*, 288 F. Supp., 678, 1968, that to apply a literacy test in areas where many people have been denied equal education was also unlawful, according to the Voting Rights Act.

Therefore, the Voting Rights Act, despite its tremendous gains, clearly demands extension. After 90 years of denial of the right to vote, the exercise of that right have not been totally implemented in only 5 years.

Among the bills pending before this committee is S. 2507. Though this bill includes many fine proposals, there also exist several defects which, if put into law, would seriously hamper the desired ends of the Voting Rights Act and violate the spirit in which it was passed.

In S. 2507, section 5 of the Voting Rights Act of 1965 would be amended to eliminate the necessity of the States to submit voting law changes to the Federal District Court of the District of Columbia or to the Attorney General before those laws could be enforced. This provision, in effect, places the "burden of proof" upon the Federal Government. It leaves to the Attorney General the task of searching the records of every State and political subdivision for discriminatory laws.

The proposal would encourage some States and political subdivisions to pass such laws, knowing full well that the Attorney General had neither the time nor the staff to search each code book of each State in ample time for each election. This would be a gigantic feat for his office considering the size of his staff and the intricacy of the problems involved. In fact, it appears the Attorney General's Office either cannot handle or does not have the inclination to handle the questions that arise when the States do submit their voting law changes to his Office.

The U.S. Commission on Civil Rights, among others, has repeatedly criticized the Attorney General for seeking court action on far too few cases concerning voting laws already submitted by the States.

Section 5 of the Voting Rights Act would be further amended by sending those cases the Attorney General brought for court action to the local Federal district court, instead of the District of Columbia Federal District Court. It is questionable that a move such as this, simply in the interest of expediency, will better serve the law.

We have had occasion to be a party or a friend to some of these people in the States that have submitted cases to the Attorney General and I have seen a list of cases still pending right now. I know of a case that just happened last year and you might remember the incident, when a busload of people came up from Mississippi and Alabama to protest the pattern against slow desegregation in schools, and at that time all the people were in the Attorney General's Office and he was telling them, don't watch what I say, watch what I do.

At that same moment in the lady's home town in Mississippi, the sheriff was at her house asking her husband where she was and they hoped she was not out of town starting trouble. The American Friends Service Committee sent a strong letter to Attorney General Mitchell and we received a verbal reply, but nothing has been done to advise us on that case on the grounds that they may have interfered with her civil rights.

But to intimidate her husband in the extent in which they have, we have asked her to come back to Washington and she is really afraid to—she had to think twice about this point, about whether she should come back to Washington to testify.

The allegation that the act is a product of regional legislation is simple untrue. The Voting Rights Act of 1965 applies to any State or political subdivision where discrimination in voting procedure can be found. The effect of the act has been felt primarily in those specific subdivisions of the country where the violations have been most acute and flagrant, and where the Attorney General has found time to institute action. There is racism all over the country, however, and the effects of the bill were felt thusly in Alaska, Arizona, Idaho, and Hawaii.

S. 2507 also authorizes the formulation of a commission to study voting rights violations which may occur. It is highly unlikely that this commission would find fresh or additional information to add to that of the U.S. Commission on Civil Rights; a commission designed for the purpose of studying civil rights violations such as voting discrimination. The Justice Department could most assuredly use the funds earmarked for the new commission, to increase its staff to better handle the cases concerning voting rights violations.

Now, we strongly suggest to some members of this committee that they look into legislation that affects my Home State of California, the oil legislation, that also affects Texas and Maine, and I would want to know if they would consider that regional legislation affecting these States when we are going after a problem that exists in a particular place?

I wish the Senator from South Carolina could respond to that, whether we are legislating in Washington against an oil problem and that could be considered a regional legislation, and we are working against certain States by this regional legislation. I think not.

This bill does, however, have some substantive points which demand attention. The elimination of section 4, subsections (d) and (e) of the original act, which would, in effect, ban all literacy tests, is a strong move which the Friends Committee on National Legislation supports. But it is also a move that needs further examination. Approximately 20 States, in 1964, engaged in the use of literacy tests, most of which were not effectively challenged on the basis of racial discrimination. However, the outlawing of all literacy tests, even the nondiscriminatory ones, may very well be a serious Constitutional question and is certainly a question which demands extensive study.

To hold up passage of this vital legislation for such discussion, thus allowing the act to expire, might very well bring into reality those serious consequences the Voting Rights Act was designed to eliminate. A proposal concerning the establishment of national residency requirements for voting in Federal elections is also found in S. 2507.

This requirement would standardize the residency requirements and guarantee that no citizen would be denied the right to vote for the President of the United States. However, its primary concern is directed toward Federal elections, whereas the proposals before this committee exert a thrust toward local elections.

It might be more appropriate that this sound provision be attached to a bill considering the direct election of the President or another

similar measure dealing with the matters of selecting the Chief Executive. These are long-awaited and truly necessary proposals, and would be welcomed by the people. But the Friends Committee on National Legislation, to preserve all that has been gained, would suggest the inclusion of these two measures in separate legislation.

Furthermore, we take exception to the proposed 3½ year extension of the Voting Rights Act. A straight 5-year extension of the act—to August 6, 1975—would give the Attorney General some very precious time in which to make this basic right of citizenship a reality to all. More time is necessary for the Attorney General to act upon the discrimination that has prevailed for too many years, through the provisions provided in the act. To further burden his office with unnecessary tasks would slow down the program even more. To include the very important provisions of S. 2507 in another bill, after further consideration, would assure that all questions on the issue are fully explored.

The direct extension of this bill, embodied in S. 818 and other bills, could then be enacted, denying those who would radically discriminate, the chance to once again disenfranchise citizens of this Nation.

This concludes our testimony, Mr. Chairman, and I want to thank you for the opportunity to testify before this subcommittee.

And since I have been following the testimony for the last three hearings a number of additional questions came to my mind of whether or not all of the citizens of this country are going to be permanently, full-time citizens or at times part-time citizens.

I have just come back from Florida for a week and I was put in a very strenuous position of arguing the point of whether or not we are free, whether or not black people are now fully free, not withstanding certain class problems, and it became very clear to me then, talking with these black students in Gainesville, Fla., that we are full-time Americans at times and part-time Americans at times.

If something as basic as the right to vote did not exist yesterday, does exist today, could be denied against tomorrow, the question of whether we can really move forward with our freedom that exists, or that we think exists. I look at the bill and on line 21, section 5, there is one sentence that I would ask you to explain to us if possible.

What does it mean that a determination of the Attorney General under the section shall not be reviewable by any court. This is in addition to section 5 of the Voting Rights Act of 1965 when we revised the House and the Attorney General was to determine whether or not registrars would be sent into areas, but to give that Attorney General—and I mean the office, not the man—the power to make a decision that is not reviewable by anyone, raises very serious doubts in our minds about the whole judicial process, whether that man can carry that out.

Senator BAYH. I personally feel that your doubts are well founded. That is a matter of particular concern.

Mr. ANDERSON. I would strongly encourage, if the debate on the passage of this bill really gets heated up, that that point be brought out. That hasn't been talked about too much now and I am not completely sure of what it means. I would feel much more comfortable with being here in Washington if I understand, or understood, most of the language in the bill, and that is one section that I don't understand.

I would be the first to admit, I am glad to say, that there are many, many things that are moving forward at a very rapid pace now and we always can't afford to look behind us or to fight behind us as we push for new social changes and new social problems. It is strange to me that in 1964, 1965, when I was in college and we were supporting the Selma movement and the law was passed, we were not told that it was just good for 5 years and that we would have to come back in 1970 to get this act renewed. We just thought that a law had been passed implementing the right to vote and that we could move on to other areas such as poverty and manpower.

Now, we see that we have to stop short and go back and gather up our forces again. In the 1950's, we thought we could move directly from school integration into quality education as a logical progression, but we were wrong. In the sixties we thought we could move directly from dignity issues to exercising manhood powers to eliminate poverty, but we were also wrong.

Also in the sixties, we thought we could assure and guarantee the franchise to all American people to move operationally to solve problems that additional tools would implement voting, but we were wrong again.

I ask you and this committee that if you do not put these basic issues to rest for all times, you should not choose to fluctuate between the two opinions by clearly taking a stand. How do you as a committee expect to explain your stewardship when the revolution comes.

Thank you.

Senator BAYH. I appreciate your taking time to be with us, Mr. Anderson, and your willingness to let others take precedence for their own convenience.

I am hopeful that we will be able to recognize our responsibilities in such a way that a revolution won't come. Not only in this area, but in several others, and I'm afraid that many people in this country don't realize the stakes involved. It is more than just the right of one man or 1 million to vote, but it's a whole retreat from the thrust into the future out of the darkness.

If it is misinterpreted, there is a total desertion of faith that consists of large numbers of our people. For that reason I hope that we will go ahead with this extension and try to continue registering and removing roadblocks and hopefully if we insist long enough we can get enough people realizing that this is not the right way to operate.

The day will come when this type of law won't be necessary.

Thank you very much.

Mr. ANDERSON. Okay, thank you, Senator.

Senator BAYH. Our next witness will be Mr. Sheldon H. Elsen, chairman of the Committee on Federal Legislation of the Association of the bar of the city of New York.

Are you testifying together?

Mr. John D. Ferrick, chairman of the Subcommittee on Election Laws of the Committee on Federal Legislation of the Association of the bar of the city of New York.

STATEMENTS OF SHELDON H. ELSEN AND JOHN D. FEERICK, COMMITTEE ON FEDERAL LEGISLATION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. ELSEN. Thank you, Senator.

Senator, I want to thank you for the opportunity to appear here this afternoon to give testimony on this very important bill. I would like to begin by offering for the record a report of the association through our committee on the extension of the Voting Rights Act of 1965, the administration alternative. Copies have been supplied to the subcommittee staff.

(The document referred to follows:)

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK—EXTENSION OF THE VOTING RIGHTS ACT OF 1965 AND THE ADMINISTRATION'S ALTERNATIVE BY THE COMMITTEE ON FEDERAL LEGISLATION

In 1965, the 89th Congress overwhelmingly adopted the Voting Rights Act of 1965,[1] which persons familiar with its operation have described as the most effective piece of civil rights legislation ever enacted.[2] The Act "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century".[3] Since adoption of the act, approximately 1,000,000 black citizens have been registered to vote in the states affected by the Act, more than 400 blacks have been elected to public offices in these states and salutary changes have occurred as a result of greater participation by black citizens in the political process.[4] These results are attributable in large part to the "stringent new remedies for voting discrimination"[5] contained in the Voting Rights Act. These remedies include (a) the so-called "trigger clause", which suspends literacy tests and certain other voting qualifications in states in which less than 50 percent of the voting-age population as of November 1, 1964 was registered for or voted in the 1964 presidential election, (b) the "prior clearance" provision, which requires that all of those states must obtain prior approval from the Attorney General (or the Federal District Court for the District of Columbia) of any proposed changes in election qualifications and procedures, and (c) the authority of the Attorney General to station Federal examiners and observers in the trigger states to register voters and prevent election abuses. These particular remedies are scheduled to expire in August 1970, and the question of whether they will be extended is currently before Congress.

As originally transmitted to Congress by President Johnson, the bill which became the Voting Rights Act of 1965 prescribed a ten-year term for the key measures noted above. A 5-year term was adopted as a compromise to secure the votes necessary to cloture in the Senate.[6] In 1969, faced with the approaching expiration of these key provisions and acting on the recommendation of former Attorney General Ramsey Clark, the House Judiciary Committee favorably reported to the Congress a bill which would have simply extended these measures for five years to 1975, the expiration date originally proposed for them. The administration expressed opposition to a simple 5-year extension of these provisions and

[1] The bill was passed in the House 328–74 and in the Senate 79–18. This association, in a joint report by the Committee on Federal Legislation and the Committee on the Bill of Rights, urged passage of the act. (20 Record of N.Y.C.B.A. 310 (1965)).

[2] Letter of Theodore M. Hesburgh, Chairman, United States Commission on Civil Rights, Congressional Record, Dec. 10, 1969 (p. H12064; CPR National Journal, Dec. 20, 1969, p. 374).

[3] *South Carolina* v. *Katzenbach* (383 U.S. 301, 308 (1966)).

[4] Remarks of Representative Emanuel Celler (Democrat of New York), Congressional Record, Dec. 10, 1969, (p. H12071); Remarks of Representative William Fitts Ryan (Democrat of New York), Congressional Record, Dec. 11, 1969 (pp. H12142–43).

[5] *South Carolina* v. *Katzenbach* (383 U.S. 301, 308 (1966)).

[6] Letter of Stephen J. Pollak, former Assistant Attorney General in charge of the Civil Rights Division, June 26, 1969, quoted in Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 4249, H.R. 5538 and Similar Proposals, pp. 264–68 (1969) (hereinafter cited as Hearings).

offered instead a substitute proposal which substantially modifies these important remedies. The Administration bill also introduces new provisions to deal with matters not covered by the 1965 act. This alternative proposal, first advocated during the Committee hearings by Attorney General John Mitchell and later introduced by House Minority Leader Gerald R. Ford as H.R. 12695, received the specific endorsement of the President [7] and passed the House in December 1969 by the narrow margin of 208–203. In the Senate the bill rests in the Judiciary Committee, which has been instructed to report by March 1, 1970, at which time it has been agreed that the reported bill will be the pending business.[8]

The administration bill, commonly referred to as the "Mitchell Bill", would impose a nationwide suspension on literacy tests and other voting qualifications until January 1, 1974 (in substitution for the current ban on such devices in the trigger States and counties only); prescribe national residency standards for voting in presidential elections; authorize the Attorney General to send examiners and observers to any precinct in any State (rather than only to precincts covered by the trigger clause); empower the Attorney General to bring injunction suits in local Federal courts to prevent discriminatory voting procedures (replacing the provision for prior clearance of changes in State laws by the Attorney General or the Federal District Court for the District of Columbia); and establish a commission to study the impact of literacy tests and voter fraud. The Mitchell bill would permit the trigger clause and prior clearance provision of the Voting Rights Act of 1965 to expire by their terms in August 1970.

SUMMARY OF RECOMMENDATIONS

It is our considered and firmly held opinion that the trigger clause and prior clearance provision of the 1965 act should be extended unimpaired and undiluted for an additional 5-year period. These remedies have proven far too effective in extending the free exercise of the franchise to be abandoned at this time. We are also concerned about the proposed national extension of the use of Federal examiners, for we perceive that the principal consequence of this measure will be to reduce the number of examiners in the trigger states, where they are most needed.

We endorse the Mitchell bill's nationwide ban on literacy tests and national residency standards for presidential elections as desirable voter reforms, although the latter provision does require clarification and both measures seem more appropriate for treatment in separate legislation.

The Mitchell bill raises three major questions; (1) whether the Voting Rights Act of 1965 (in particular its provision for Federal examiners and its suspension of literacy tests) should be national in scope or whether it should be limited in its application, as at present, to jurisdictions where voting records demonstrate a particular need; (2) whether a jurisdiction subject to the act may alter its voting laws only with the "prior clearance" of the Attorney General (or the District Court for the District of Columbia), or whether it may do so without such clearance and be subject thereafter to suit in the local Federal courts by the Attorney General; and (3) whether it is desirable for Congress to prescribe national standards for residency requirements in presidential elections. Questions of constitutional authority have also been raised by the Mitchell bill and are considered in an appendix to this report.

I. The Issue of Intensive Coverage in Trigger Clause Jurisdictions vs. Extensive but Thinner National Coverage

The Voting Rights Act presently suspends literacy tests and certain other qualifications for voting in any state or political subdivision which maintained a test or device as a prerequisite to registration or voting as of November 1, 1964, and which also had a total population of voting age less than 50 percent of which was registered for or voted in the 1964 presidential election.[9] As a result of this trigger clause, Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia, 39 counties in North Carolina and two counties outside the South are

[7] Letter of President Richard M. Nixon, Congressional Record, Dec. 10, 1969, p. H12074.

[8] Efforts are said to be underway by a bi-partisan Senate bloc to evolve a compromise voting rights bill, restoring intact some of the key provisions of the Voting Rights Act of 1965 which would be eliminated or diluted by the Mitchell Bill and adding some of that bill's innovations with respect to other voting matters. New York Times, Dec. 19, 1969, p. 71.

[9] The constitutionality of this trigger clause was sustained by the Supreme Court in *South Carolina* v. *Katzenbach* (383 U.S. 301 (1966)).

now covered by the act.[10] Once a state or political subdivision is covered by the act, the Attorney General may appoint Federal examiners and observers to conduct voter registration and observe elections in that jurisdiction if he has received 20 meritorious written complaints alleging voter discrimination or if he believes that their appointment is necessary to enforce the guarantees of the 15th amendment.

A State or subdivision may have itself removed from the Act's coverage by bringing a suit before a three-judge District Court in the District of Columbia and establishing that, during the preceding 5 years, no test or device was used for the purpose or with the effect of denying the right to vote because of race or color.[11] A court may not remove a State or subdivision from coverage if within the previous 5 years there has been a court determination that it employed tests or devices to deny the right to vote.

The Mitchell bill would reduce the consequences of the act's coverage by eliminating the requirement of prior clearance for voting law changes. It would appear to extend the act's scope geographically by barring literacy tests and certain other voting qualifications in all 50 States and providing that the Attorney General may send Federal election examiners to any part of the country.[12] The geographic extension has been said by President Nixon to extend protection to millions of citizens not now covered by the act.[13] On the other hand, the ranking Republican on the House Judiciary Committee, Representative William McCulloch, has criticized this geographic extension of the bill:

"The provisions of the administration bill sweep broadly into those areas where the need is the least and retreat from those areas where the need is greatest. We are asked to extend the section 4 ban on literacy tests or devices outside the South into 14 States from which the Department of Justice and the NAACP have never to this day received a complaint alleging the discriminatory use of literacy tests or devices * * *. The administration creates a remedy for which there is no wrong and leaves grievous wrongs without adequate remedy." [14]

Examiners

The effectiveness of the Voting Rights Act has been attributed in large part to the use of Federal election examiners.[15] Although it might be argued that what has worked effectively in a limited area should be extended elsewhere [16] and that voting discrimination in this country is not limited to the jurisdictions now within the purview of the act, the proposed national deployment of examiners is disturbing today because of the unlikelihood that manpower and financial resources will be expanded, in these days of a contracting Federal budget, to meet the act's broadened coverage. It is probable that any Federal examiners sent to States other than those currently subject to the trigger clause

---

[10] House Committee on the Judiciary, *Extension of the Voting Rights Act of 1965* (H.R. Rep. No. 397, 91st Cong., 1st sess: 3 (1969)).

[11] A judgment may be obtained more quickly if the Attorney General advises the Court that he believes the tests were not used for discriminatory purposes during the preceding 5 years. He may also ask the Court to reconsider its decision anytime within 5 years after judgment.

[12] Under section 3(a) of the present statute examiners may be sent into areas not covered by the trigger clause only pursuant to court order.

[13] Letter of President Richard M. Nixon, Congressional Record, Dec. 10, 1969, p. H12074.

[14] Testimony of Representative William M. McCulloch (Republican of Ohio), July 1, 1969, quoted in Hearings, pp. 269–70 (1969).

A similar view was expressed editorially by the New York Times, which commented on the administration claim that the bill was "more comprehensive and equitable":

> "It is more comprehensive in that it indiscriminately squanders the efforts and the personnel required for the law's enforcement. It is more equitable in that it assumes that those who are not violating the law need as much policing as those who do."

New York Times, Dec. 12, 1969, p. 54.

[15] As of Mar. 1, 1969, according to the Civil Rights Commission, examiners had been sent to 58 counties in five Southern States. Examiners in these counties had listed to vote a total of 167,364 persons, including 157,567 nonwhites and 9,797 whites. Letter of Howard A. Glickstein, Acting Staff Director, United States Commission on Civil Rights, Mar. 17, 1969, quoted in hearings, pp. 13–17. Black registration in the 5 States where examiners have been appointed has risen from approximately 29 percent to approximately 52 percent of the black voting-age population. As of December 1968, Federal observers had been appointed to monitor 34 elections in these 5 States.

[16] In a 1965 joint report of the Committee on Federal Legislation and the Committee on the Bill of Rights, 20 Record of N.Y.C.B.A. 310 (1965), this association urged that the provisions for appointment of Federal examiners which appeared in the bill that became the Voting Rights Act of 1965 should have been extended to jurisdictions other than those covered by the trigger clause.

would be withdrawn from the trigger clause States—at a time when a reduction in the number of examiners in the latter States can ill be afforded.[17]

Under an existing provision of the Voting Rights Act, the Attorney General may upon a proper showing obtain a court order directing the appointment of Federal examiners to serve in any State or political subdivision in the Nation. Since this provision will not be expiring this year, and because the need for concentration of examiners in the trigger States has not diminished during the past 5 years, we see no justification for the proposal in the Mitchell bill to station examiners throughout the country. The practical effect of the latter measure would be dilution of the efforts of election examiners in the States where their presence is most needed.

Literacy tests

Although the hearings before the House Judiciary Committee did not demonstrate a real need for a nationwide ban on literacy tests and similar devices,[18] we nevertheless favor such a proscription. We believe that the right to vote is so fundamental that no citizen of this country should be deprived of this right on the ground that he fails to satisfy a literacy requirement. The right to vote is a vital aspect of citizenship which guarantees to every citizen that his interests will be taken into account. Those who cannot pass a literacy test can still participate intelligently in the operations of their government, for media besides the printed word—such as radio, television, oral communication and foreign language newspapers—are available to supply information to potential voters. We concur in the views expressed by a majority of President Kennedy's Commission on Registration and Voting Participation that voter literacy requirements cannot be justified in our society.[19]

II. Prior Clearance

The Voting Rights Act of 1965 provides that before a state or political subdivision covered by the act may change its voting qualifications or procedures from those in effect on November 1, 1964, it must either obtain the approval of the Attorney General or seek a declaratory judgment by the District Court for the District of Columbia that the alteration will not have the purpose or effect of denying the right to vote because of race or color. This requirement of "prior clearance" was deemed to be necessary because of the history of evasive action

---

[17] Statistics compiled by the Commission on Civil Rights indicate that Federal examiners have not yet been appointed in virtually all of those counties in the trigger States in which less than 35 percent of the nonwhite voting age population is registered. Hearings, pp. 65–66.

[18] Aside from the seven Southern States covered by the provisions of the Voting Rights Act of 1965, the following States employ a literacy requirement as a precondition to voting—Alaska, Arizona, California, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Oregon, Washington and Wyoming. (H.R. Rep. No. 397, 91st Cong., 1st sess. 9 (1969)). No evidence was submitted to the House Judiciary Committee that the application of tests in these States operated to deny the right to vote on the basis of race or color.

[19] "A democratic system rests ultimately on the belief that each man is the best judge of his own interests and that he should have, through the ballot box, a voice in choosing those who govern him. On what grounds should we deny to the person who has not learned to read the rights we accord to others?

"That he cannot read the ballot? Then shall we also disfranchise the blind? That he cannot read newspapers? Then shall we disfranchise the deaf because they cannot hear radio or television? That he will not be an 'informed' voter? Then shall we require that each voter pass a test in current events? The arguments for a literacy requirement lack cogency. Their superficial merits vanish under scrutiny * * *.

"Literate men are not equally well informed, nor equally rational, nor equally moral, nor equally rich, nor equally devoted to their country. Neither are the illiterate. Who would argue that the political judgment of a literate man of doubtful morality or patriotism is better than that of an honest but illiterate patriot? * * *

"Democracy is built on the belief that wise decisions can emerge from the diverse and conflicting beliefs, experiences and conditions of *all* the people. It affirms the still radical doctrine that each individual—by virtue of his humanity—has rights and responsibilities. Should a man be excused from obedience to a law he cannot read? Should he be denied participation in an election because he cannot read the ballot? Or should election officials assist him as they assist the blind?

"Voting is the fundamental political right of citizens in a democracy. The right to vote is the right to influence officials and policy. To be denied the vote is to be denied the guarantee that one's interests will be taken into account when policy is made. There is no justifiable test of property, race, color, national origin, religion, or education for disfranchising one class of citizens."

Report of the President's Commission on Registration and Voting Participation, 55–57 (1963).

practiced by some Southern States with respect to voting rights.[20] Although there have been instances in which political subdivisions have ignored the prior clearance provision,[21] it has generally been considered to have operated effectively.[22]

The Mitchell bill would eliminate the prior clearance provision and resort to the pre-1965 enforcement technique of requiring the Attorney General to initiate litigation in Federal courts in the local jurisdiction to have set aside any State action which he believes to be discriminatory. In proposing this enforcement scheme, the bill ignores the long history of evasive tactics which first inspired the prior clearance proviso, imposes on the Department of Justice a task of overseeing and enforcement which seems clearly to be beyond the Department's resources, removes the significant in terrorem effect of the prior clearance provision, relegates the review function to the local Federal courts and places the burden of proof on the Federal Government rather than on the State or subdivision.

The reasons which led to the promulgation of the prior clearance provision apply today with no less force than they did in 1965. Testimony before the House Judiciary Committee demonstrated that the past 5 years have seen no abatement of the efforts in many parts of the South to frustrate the purposes of the Voting Rights Act. Examples include increases in candidate filing fees, substitution of appointment of officials for election, extension of the terms of incumbent white officials and the use of at-large elections or redistricting to nullify local black majorities. Since it would be extremely difficult for the Department of Justice to ferret out all such discriminatory modifications in southern voting laws, countless black citizens will be deprived of basic constitutional guarantees if the requirement of prior clearance does not continue to apply to the trigger jurisdictions after August 1970. It is no less important that judicial review of voting law changes continue to be vested solely in the Federal District Court for the District of Columbia rather than in local Federal courts, and that the state or subdivision bear the burden of proving the nondiscriminatory effect of a modification.

If the 1965 act were to be made national in scope, retention of the prior clearance provision would be inappropriate and would raise questions of constitutionality, for it would be unreasonable to impose the burden of seeking prior approval of any change in voting laws upon jurisdictions which lack any previous history of discrimination.

On the other hand, we feel that every effort should be made to extend the life of the prior clearance provision for 5 additional years. Elimination of the prior clearance clause at this time would constitute a long step backwards in the history of civil rights in this country. If a choice must be made between nationwide extension of the act's scope or retention of the prior clearance provision, we would unequivocably opt for prior clearance.

III. Residency Qualifications

The Mitchell bill prescribes residency requirements for presidential elections, requirements which would be applicable in all 50 States and which would preempt any conflicting state residency qualifications. Under the Mitchell proposal, a person otherwise qualified to vote who has resided in a State since September 1 of the election year would be entitled to vote in that state on election day. A person changing his residence after September 1 would be entitled to vote, in person or by absentee ballot, in the State from which he moved. This provision is designed to eliminate the disenfranchisement of millions each election year who are prevented from voting for President and Vice-President because they fail to meet State and local residency requirements.[23]

---

[20] The constitutionality of the prior clearance provision was upheld by the Supreme Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966). The Court has also ruled that a private citizen may bring suit to enforce the prior clearance proviso. *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969).

[21] Hearings, p. 220. Presumably, in such a case a mere showing of noncompliance with the prior clearance provision would be all that should be necessary to invalidate the local law.

[22] Since 1965, 345 voting enactments have been submitted to the Attorney General for his approval. Ten such enactments were disapproved, including six this year. (H.R. Rep. No. 397, 91st Cong., 1st sess. 4–5 (1969)). The effectiveness of the prior clearance provision will be enhanced by the Supreme Court's ruling that a private citizen may enforce the prior clearance requirement in the courts. *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969).

[23] The Bureau of the Census estimates that in the 1968 presidential election more than 5.5 million persons were unable to vote because they could not meet local residency requirements.

In recognition of the fact that Americans have become increasingly mobile and that as a result many persons have not been able to vote in presidential elections because of local residency qualifications, Congress adopted a concurrent resolution in the 1950's urging State action to meet the problem. Since then, a majority of the States have passed laws establishing special residency requirements for voting in presidential elections.[24] Some States extend the right to vote to new residents even though they do not satisfy local residence requirements; others grant the right to former residents until they are eligible to qualify in their new State; and still others extend the right to new residents as well as former residents.

We believe that no citizen should be denied the right to vote in national elections because he cannot meet local residency requirements. The issues in presidential elections are nationwide in scope and the qualifications of the various candidates are projected nationally. We therefore concur with the thrust of this aspect of the Mitchell bill.

However, the language of this provision in the bill gives rise to a number of problems. For example, although the bill provides that a person changing his residence after September 1 is entitled to vote by absentee ballot in his former State, it sets up no procedures for absentee voting. Since a number of States have no provisions for absentee voting, it is unclear whether these States would be compelled to enact legislation providing for absentee voting or whether the Federal Government itself would be required to operate a system of absentee voting in those States. The Mitchell bill also fails to deal with the problem of double voting—a number of States currently permit new residents who move into the State after September 1 to vote, and unless clarified the Mitchell bill would appear to allow such persons to vote in their former State. Certain other ambiguities of the residency provisions of the bill deserve consideration and possible clarification.[25]

In view of these ambiguities, we suggest that further legislative study of the subject of voter residency qualifications be conducted before this aspect of the Mitchell bill is enacted into law.

NATIONAL VOTING ADVISORY COMMISSION

One final aspect of the Mitchell bill is the proposed establishment of a national voting advisory commission to study discrimination and other corrupt practices.

Obviously, no subject as vital to the functioning of a democracy as a free exercise of the franchise can receive too much study. Yet, we share with the Chairman of the Civil Rights Commission an inability "to understand what purpose such a new commission would serve that is not already within the authority granted by Congress to the U.S. Commission on Civil Rights." [26] The duplicative and superfluous nature of this proposal is further underscored by the fact that title VIII of the 1964 Civil Rights Act provides for a voting rights commission which has never been funded.

CONCLUSION

After a series of well-intentioned but somewhat ineffective legislative efforts to end discrimination in voting, Congress finally adopted in 1965 a series of measures—embodied in the Voting Rights Act—which have proven remarkably effective in dealing with the problem. To curtail or thwart this act at a time when its effectiveness is first becoming manifest would cast serious doubt upon the sincerity of our national commitment to the free exercise of the franchise by all of our citizens, black and white. We strongly believe that it would be unwise,

---

[24] Council of State Governments, *The Book of the States, 1968–69*, p. 30 (1968).

[25] The bill permits a citizen moving into a State after September 1 to vote in the State in which he resided on August 31. Since an individual moving into a State in late October may have moved from a different State from that in which he resided on August 31, it might be advisable for the bill to deal specifically with this problem.

Similar clarification is needed for citizens residing in no State of August 31—i.e., persons who are living abroad on that date—who begin residence in a State after September 1. Since the bill refers only to the "State" in which one resides on August 31, it apparently fails to deal with the disenfranchisement of this category of individuals.

Another ambiguity in the bill's residency provisions concerns the statement that one who moves into a State after September 1 may vote in the State in which he resided on August 31 provided "he had satisfied, as of the date of his change of residence, the requirements to vote in that State". It is not clear whether the citizen would be permitted to vote in his former State if he had not registered to vote in that State by August 31 but had the right to do so during a period subsequent to that date.

[26] Letter of Theodore M. Hesburgh, Chairman, United States Commission on Civil Rights, June 28, 1969, quoted in Hearings, p. 209.

unfair and most unfortunate to impair the effectiveness of the act and to frustrate the hope for equality in voting among people and in areas where this hope is for the first time being experienced.

The Mitchell bill contains desirable features (unrelated to matters dealt with in the 1965 act), but these items can more appropriately be treated in separate legislation. In any event, adoption of these new measures would by no means justify elimination of the essential provisions of the Voting Rights Act.

It is imperative that the trigger clause and prior clearance provision of the 1965 act be retained so that efforts to eradicate discrimination in voting will continue to be concentrated where the need has been demonstrated to be the greatest.

APPENDIX

CONSTITUTIONAL AUTHORITY FOR NATIONWIDE BAN ON LITERACY TESTS AND RESTRICTIONS ON RESIDENCY REQUIREMENTS

Questions have been raised on numerous occasions in the congressional debates on the Mitchell bill as to whether Congress possesses constitutional authority to legislate a nationwide ban on literacy tests and to impose national restrictions on residency requirements. The resolution of these questions turns on whether these measures constitute appropriate legislation for implementing the guarantees of the 14th and 15th amendments. Recent Supreme Court decisions underscore the breadth of Congress' power under these amendments and indicate, we believe, that the proposed legislation would be held constitutional.

In *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), in which the Court sustained the constitutionality of the Voting Rights Act of 1965, South Carolina argued that the congressional authority under section 2 of the 15th Amendment was limited to prohibiting illegal State action. It questioned, therefore, the constitutional basis for legislation which suspended the use of voter literacy tests that were fair on their face and not found to have been discriminatorily administered. The Government contended that the 15 amendment authorized Congress to proscribe State action which, although itself legitimate, would create a danger of discrimination. Accepting the Government's contention, the Court stated that Congress possesses "full remedial powers" to implement the provisions of the 15th amendment and declared: "As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." [17]

In *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Court upheld the constitutionality of section 4(e) of the Voting Rights Act of 1965, which prohibits the application of an English literacy requirement to any person who has completed six grades in an American flag school where the principal classroom language is other than English. The provision principally affects New York State's English literacy test and that test was before the Supreme Court in *Morgan*. The Court expressed the view that Congress could forbid enforcement of New York's English literacy test whether or not it was in conflict with the Constitution. Even though the test might not itself deny equal protection, the Court reasoned, its elimination could be viewed as a measure designed to protect New York's Puerto Rican community against discriminatory treatment by government, for the enhanced political power which section 4(e) ceded to the Puerto Rican community would help to secure nondiscriminatory treatment in such public services as education, housing and law enforcement. The case thus demonstrated that in enacting appropriate legislation under the 14th amendment, Congress is authorized to intrude upon the reserved powers of the states even when its action tends only indirectly to insure compliance with the 14th amendment. And the Court stressed its willingness to accede to the congressional judgment as to the necessity for any such imposition on state interests:

"It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted Federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the State restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the State interests that would be affected by

[17] 383 U.S. at 324.

the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did."[28]

The extent of the Court's deference to Congress in *Katzenbach* v. *Morgan* cannot be overemphasized. As Mr. Justice Harlan pointed out in his dissent, in considering enactment of section 4(e) Congress developed no evidence to support any claim that New York afforded discriminatory treatment to its Puerto Rican community in the rendition of public services. Coupled with the Court's statements that section 4(e) "may be viewed" as designed to secure equal protection and that it was satisfied merely with being able to "perceive a basis" upon which Congress might reach its conclusion, the absence of any such evidence indicates that the judiciary's review function with respect to legislation based upon the 14th amendment is rather limited.[29] If a congressional prohibition of state action tends to inhibit other conduct by the State which is arguably discriminatory, the *Morgan* decision offers constitutional support for the congressional enactment.

Nationwide ban on literacy tests

Although the Mitchell bill's proposed ban on literacy tests would result in the prohibition of a number of State literacy requirements generally regarded to be constitutional,[30] *Katzenbach* v. *Morgan* demonstrates that this would not be a compelling consideration in determining the constitutional basis for the bill. *Morgan* also indicates that it would not be particularly significant that the legislative record is devoid of any evidence of discrimination in the administration of literacy tests by many States employing such tests which are not covered by the Voting Rights Act.

Constitutional support for a nationwide ban on voter literacy requirements can be derived from the reasoning of the *Morgan* decision that extension of the right to vote would help to secure nondiscriminatory treatment in the rendition of Government services.

It is acknowledged that a disporportionate percentage of the illiterate population in this country consists of black citizens, the poor, the aged and other disadvantaged groups.[31] For this reason, a voter literacy requirement can itself be regarded as a form of discrimination. Indeed, the Supreme Court indicated in a recent decision that even a fair and impartially administered literacy test would discriminate against blacks in those States which have failed in the past to provide equal educational opportunities to their black residents.[32] On the basis of the reasoning of this decision, it could be maintained that administration of literacy tests discriminates against blacks even in States offering equal educational opportunities, in view of the fact that numerous black residents of such States migrated from Southern States where they received inferior educations.

We believe that ample constitutional basis exists for a nationwide ban on voter literacy requirements.

---

[28] 384 U.S. at 653.

[29] The Court was equally deferential to Congress in rendering a second rationale in support of its decision in *Morgan*—whether Section 4(e) was based on a determination by Congress that the state action was unconstitutional. The Court found that Congress "might" have determined that New York's English literacy requirement contravened the equal protection clause:

"It is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools * * * constituted an invidious discrimination in violation of the Equal Protection Clause." *Id.* at 656.

[30] In *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959), the Supreme Court ruled that a State voter literacy requirement which is fair on its face and impartially administered would not violate the 14th or 15th amendments. The permissible scope of State literacy tests was circumscribed to some extent by a recent decision in which the Supreme Court made it clear that even a fair and impartially administered literacy requirement would have the effect of denying the right to vote on account of race or color in a county which deprives its black citizens of equal educational opportunities through the maintenance of separate and inferior schools. *Gaston County* v. *United States*, 395 U.S. 285 (1969). Nevertheless, on the basis of the *Lassiter* decision many of the State literacy tests now in effect could be expected to pass constitutional muster.

[31] "Literacy tests are a remnant of class discrimination. They discriminate against the poor, the aged, and rural inhabitants. It is not the wealthy who can neither read nor write. It is the poor and the dispossessed." *Report of the President's Commission on Registration and Voting Participation*, 57 (1963).

[32] *Gaston County* v. *United States*, 395 U.S. 285 (1969). See note 30 *supra*.

National residency requirements

Unlike a literacy ban, a nationwide limitation on residency requirements for voting in presidential elections is not related to ending voting discrimination based on race or color. For this reason, whether it too would be constitutional poses a somewhat more difficult question.[33] Nonetheless, we feel that the breadth of the Supreme Court's decision in *Katzenbach* v. *Morgan* offers constitutional justification for this measure as appropriate legislation under the 14th amendment.

In our opinion, the residency requirements imposed by a number of States are vulnerable to constitutional attack on the ground that they place an unreasonable burden on the right to vote. It is our position that a residency requirement for a residential election of more than a few months would be unreasonable, since presidential elections involve national issues and the interest of a State in acquainting new residents with local issues is not particularly compelling, especially in view of the mobility of our society and the fact that millions of citizens are disenfranchised each election year by local residency requirements. [34]

The Supreme Court has not yet reached this conclusion; in 1965, in its most recent pronouncement on State residency requirements for voting in presidential elections, the Court affirmed a lower court decision which upheld the constitutionality of Maryland's 1-year residency requirement. [35] However, there have been indications more recently that the Supreme Court might now be inclined to hold that state residency requirements for presidential elections in excess of a few months would be unconstitutional. [36] Unless and until the Court so rules, the Mitchell bill will result in the invalidation of many State residency requirements which are constitutionally permissible. Again, however, *Katzenbach* v. *Morgan* demonstrates that this is not particularly relevant to the question of whether Congress has constitutional authority to adopt the bill's residency proposals.

In *South Carolina* v. *Katzenbach* and *Katzenbach* v. *Morgan*, the Supreme Court indicated that Congress may prohibit constitutionally acceptable State laws which may nevertheless involve a danger of discrimination. Since Congress is perfectly justified in determining that lengthy voter residency requirements may discriminate unreasonably against a specific class of citizen—the sizeable group of individuals who change their residences every election year—we believe that Congress is empowered to prescribe national limitations on residency qualifications insofar as they apply to presidental elections.

Furthermore, since State laws on the subject vary substantially and coordination among the States in this area seems practically impossible, Federal legislation concerning voter residency requirements for presidential elections would appear to be the only effective method of dealing with the matter.

FEBRUARY 20, 1970.

---

[33] Professor Archibald Cox has suggested that the constitutionality of Federal voter residency requirements would seem somewhat doubtful. Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 Harv. L. Rev. 91, 107 (1966).

Indeed, we note that the proposed constitutional amendment providing for direct popular election of the President and Vice President, which was approved by the House of Representatives in 1969 and is currently before the Senate Judiciary Committee, contains a provision which grants to Congress the authority to enact legislation in the field of voter residency requirements. Presumably, this provision reflects the concern of the draftsmen of the amendment that Congress might not now possess that authority.

In view of this constitutional uncertainty, it might be desirable for Congress to develop some findings on the matter of voter residency requirements and the need for Federal legislation, particularly since thus far there has been very little discussion in Congress of the Mitchell bill's residency provisions.

[34] See note 23.

[35] *Drueding* v. *Devlin*, 380 U.S. 125 (1965), affirming per curiam 234 F. Supp 721 District of Maryland (1964).

[36] The Supreme Court has recently declared that residency requirements for the receipt of welfare benefits are unconstitutional. *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). The reasoning of the Court in that decision, including its recognition of a constitutional right to travel and disposition toward overturning laws or procedures which unreasonably restrict that right, would appear to apply with equal force to voter residency requirements, and the dissenting justices in *Shapiro* made precisely this observation. 394 U.S. at 644 (Warren, C. J. and Black, J., dissenting). And in a recent case involving voter residency requirements which was dismissed as moot by the Court, *Hall* v. *Beals*, 38 U.S.L. Week 4006 (November 25, 1969), Justices Marshall and Brennan revealed in their dissent that they were prepared to overrule the *Drueding* decision and hold unconstitutional a residency requirement for voting in presidential elections of only 2 months.

For a discussion of this subject and the revelant case law, see Macleod and Wilberding, *State Voting Residency Requirements and Civil Rights*, 38 Geo. Wash. H. Rev. 93 (1969).

This report will later be published through our regular publication, Reports of Committees of the Association of the Bar Concerned With Federal Legislation.

Senator, as I'm sure you know, the association of the bar consisting of some 10,000 members of attorneys practicing in the city of New York speaking on Federal legislation through the Committee on Federal Legislation, we have considered the question of the extension of the Voting Rights Act of 1965 in some detail and the alternatives which have been introduced in the Attorney General's bill in the House which has been passed in the House and it is in connection with that that we wish to speak today.

Now, I would like to give you a general statement of our observations and then Mr. Ferrick will discuss some of the details. You, as all Senators know, Mr. Ferrick is skilled and experienced in the area of voting laws in general and he has headed up a subcommittee which has made detailed consideration of the legal drafting problems involved in this legislation.

I want to say that we start off with the proposition that the national policy is set in section 2 of the current Voting Rights Act. There has been no change whatsoever in national policy; that is, there is no voter qualifications or prerequisites to voting or standard practices of procedures shall be imposed or implied by any State or political subdivision to deny anyone the right as a free citizen of the United States to vote on account of race or color.

I don't think that there is any Senator or any Congressman who is going to disagree with that policy. The question then that we raise is how best to effectuate that national policy.

Now, we think that it is peculiarly a job among the lawyers to sit down and discuss this question because we haven't agreed upon policy; then the question of the best way to effectuate that policy, and a great deal of it comes to do with the question of setting up mechanics, workable legislation, careful drafting, and careful thinking through the process.

That's what we want to do, representing a major bar association with the committee with the presence of attorneys—and skillful attorneys—who are sitting on this bill and are going to report.

The most important single provision which we want to address ourselves to is the question of the trigger clause in the prior clearance section. We are starting off there with the proposition that in drafting either legislation or a contract, whatever a lawyer sets up to draft, there is not a premium on the devising of new forms just for the sake of having new forms. If something works it should be kept.

I don't have to persuade you, I'm sure, that until 1965 the history of the inadequacies of prior legislation, prior methods, prior use of the courts overwhelmingly demonstrated something new is needed, and in 1965 this innovative device came in with this trigger clause and it was upheld by the Supreme Court in *South Carolina* v. *Katzenbach*, and the thing about it is that it worked.

We see no reason whatsoever, howsoever one may disagree on aims or people may have different social philosophies, so long as the national policy remains as stated in section 2 of the Voting Rights Act to abandon a procedure that has worked and will work.

Now, we have no quarrel with the aim of the section in the administration bill which attempts to eliminate literacy tests nationwide or reform the situation with respect to residency requirements.

There are no quarrels with those aims and, indeed, we are in agreement with them. We do have a problem with the draftmanship of the residency requirements particularly because there are gaps in the drafting that have not been carefully thought through.

Mr. Feerick will take you through some of those problems.

We also raise the question of whether it is appropriate to develop a new policy through a bill in an area such as the abolishment of the literacy test, changes in the residency requirements, kind of by the backdoor sort of thrown in in the course of the discussion of the problems of voter registration of overriding national importance as in the Voting Rights Act.

We have some doubt that that should be done and that it is desirable to treat those matters in separate legislation.

Now, in addition, there is a point that has to be thought of in connection with the use of the trigger clause and the aim of the administration bill to abandon the trigger clause as this. The case for the prior clearance has been thoroughly demonstrated. The devices developed over the years in many States to impair the right to vote are so many—it took so long to reach judicial decision, it was so easy to undercut it by a new bill, that prior clearance becomes something of a necessity.

There is a question in our mind, a legal question, as to whether if you abandon the trigger clause the need of bringing the prior clearance provision into effect, where you might not have constitutional grounds, extend prior clearance nationwide.

The Supreme Court pointed out in *South Carolina* v. *Katzenbach* that prior clearance with a reasonably—appropriate legislation within the meaning of the congressional power of the 15th amendment in that act to deal with the problems of racial discrimination, that if you just suspend a State election law changes nationwide and require Attorney General approval or approval in court, in districts where the problem hasn't been demonstrated through the existence of the trigger clause test, less than 50 percent plus the discriminatory devices, it may be an unconstitutional abridgment of the right of the States to set voter qualifications for their electors; and therefore, desirable as it may be to deal with national problems, I think we have to be careful on how we proceed.

Now, in addition to that, in attempting to broaden the use of the Federal examiners, I think there is very little we can say that would add to the very eloquent statement of Mr. Jordan this morning about the relatively small use of Federal examiners today under the—in the present practice and in trigger clauses jurisdictions where there is a prima facia showing of a history of discrimination.

In a time of declining Federal budgets for domestic needs to spend the—to expand the examiners nationwide, I think, little argument is needed to demonstrate that unless the issue of additional resources is faced and met, the only result is going to be a dillution of the efforts of the Federal examiners where they are crucially needed; and that is in the trigger clause jurisdictions.

Finally, before I turn the testimony over to Mr. Ferick, I do want to say that we do not regard this 1966 act as properly characterized as regional legislation.

The bill is aimed at the use of the legal process to impede voting. Now, there is no question that historically the legal process has been used to impede voting in Southern States. But that's where the problem resides and the bill is aimed at the problem, not at the States. If the problem is eliminated, there is no reason why we need to have this bill aimed at those States as such.

And, indeed, the fact that there may be other imperfections in our voting, there are, there is no question that there is, there is no reason to slacken the fight against the improper use of legal process, legislation, courts to impede the right to vote.

It cannot be justified in this day and age.

So that in summary, Senator, we urge this committee and the subcommittee if at all possible to extend every provision of the 1965 act unimpaired. It is something that has worked and meets the problems that are clear and defined and though there are other problems that can be met and dealt with, they should be dealt with on their own merits and there is no reason to slacken the work in this important area and it is crucial, I might add, to deal with other problems it should be treated on their own merits.

Mr. Ferick.

Mr. FERICK. Senator, it is a high honor and privilege for me to appear before the chairman again today. I have had several honors in the past and it is particularly an honor today because I can think of no more of an important subject for our Nation then the subject of assuring the equal right to vote of all our American citizens, black and white.

In my testimony, Mr. Chairman, I would like to address myself to some of the statistics of the proposal before this committee. I refer to the administration proposal which passed the House of Representatives, to the proposal to extend the act for 5 years and to the proposal that was introduced by the chairman this morning with respect to bringing together certain parts of both proposals.

With respect to the subject of nationwide restrictions in the area of residence qualifications, it is the firm feeling of our committee that improvement in this area is necessary and is desirable. However, we think that this particular matter does raise some rather serious questions.

On the one hand we have the question of the constitutional powers of Congress in this particular area, and as the chairman knows, we have proposed constitutional amendment that has been passed by the House of Representatives that has a provision in it authorizing the Congress to legislate in this area.

It seems to me that one of the reasons for this particular plank for this amendment was because it was a serious doubt in the minds of the House of Representatives as to Congress's power in this area, and I believe, Mr. Chairman, that your proposal in that area contains a similar plank.

It was the feeling of our committee that in view of the Supreme Court decision in the *South Carolina* and *Morgan* cases and recently in the *Welfare* cases that the Congress probably does have the power

to legislate by statute in this particular area; however, we do point out that there is a serious question as to Congress' constitutional powers.

It seems to many of us on the federal legislation committee of the association of the bar that perhaps a committee of the subcommittee should specifically deal with that very important subject in a separate piece of legislation.

I'm aware of many proposals that deal with broadening the franchise in the area of the residency qualifications and I do have some reservations as to whether this particular proposal is the most desirable proposal, but with respect to the proposal that is before this subcommittee it has been pointed out in the debates in the House of Representatives as well as in the committee that there are certain ambiguities in the proposal.

And it was our considered judgment that those ambiguities do exist and that they should be dealth with. Specifically, the proposal provides that any citizen who comes into a State after August 31, if he's in the State since September 1 has the right to vote in a particular State.

However, that State may have a shorter residency requirement so that you have the problem of double voting. The possibility of a person having the right to vote in one State and also having an opportunity to vote in another State.

The particular proposals before the subcommittee does not deal in safeguard fashion with the problem of double voting. Another aspect of the proposal has to do with the right of a person who moves to a State after September 1 to vote in a prior State by absentee voting; however, we do note that there are a number of States that—in this country—that do have no provisions for absentee voting.

So, a question is raised as to whether under this proposal the States that do not have absentee provisions would be required to adopt laws in those areas or to perhaps the Government—the National Government—would be required to establish some sort of system of absentee voting.

There are certain other problems, for example, the proposal provides that if a citizen moves into a State after September 1 he has the right to vote in the State that he resides in on the last day of August. However, it may be possible that there is a large group of citizens who are living abroad at that particular point and come back to our country prior to election day.

Under the wording of the act it would seem to us that that group of citizens would be denied an opportunity to vote because on August 31 they did not reside in any particular State.

I also raise for the subcommittee's consideration whether the language might not be reworded to make reference to the State of residence immediately moving into a State after September 1. What I have in mind is if it's not pegged to a specific date, but rather to the concept of the State in which a particular person resided immediately prior to entering a given State, some of these problems might be eliminated.

Another possible technical problem under the language of the bill is the following: The bill provides that if a citizen moves into a State after September 1 he has the right to vote in the State in which he

resides on August 31 provided that he has satisfied as of the date of his change of residence the requirements to vote in that State.

The question is raised, let us suppose a citizen moves from the State of New York to the State of Indiana after September 1 and in fact, when he goes back to vote in New York he discovers that the New York legislation period had expired and that period had extended to let's say, September 15. However, when he left New York on August 31 he had not registered to vote in New York and yet he had an opportunity to register during the subsequent 2 weeks.

So, I think that particular language of the bill is in need of some possible clarification and I might indicate, Mr. Chairman, that these arguments are dealt with in our report.

With respect to the literacy claim it is the view of our committee that literacy as a voting qualification can no longer be justified. However, we did have, as Mr. Elsen indicated, some problems as to whether that subject should be faced with in this legislation which deals with racial discrimination.

Literacy involves a number of considerations that in certain areas has a relation to racial discrimination and in other areas other considerations may be involved. However, our committee was of the view that a ban on the literacy qualification is desirable.

In looking at the issue of amending the Voting Rights Act to extend the ban beyond the three or four States, we felt that, at least from our reading of the record before this committee, before the House Judiciary Committee, that no need was demonstrated for such a ban outside the three or four States.

As a matter of fact, I understand that in those 12 or 13 nontrigger clause literacy States the number of people who failed to satisfy the tests were well under 1,000. In fact, I think statistically some 400 people in the State of New York were not able to vote in the past election because they were not able to pass New York's literacy test.

However, so that our position is clear we do favor the ban on literacy, we do have some reservations as to whether that ban should be dealt with in this particular legislation.

On the constitutional question, it has been reviewed by committee and we set forth in an extensive appendix that Congress does have the power to legislate in this area and in our report we make reference to what, in my opinion, is perhaps the most excellent statement that I have read on the case against literacy containing President Kennedy's Voting Participation Commission report.

And that report stated that the literacy requirement has been—is related to discrimination of some of our poorer citizens.

With respect to the prior clearance provision, Mr. Chairman, in your reference and question to witnesses this morning you made reference to if we nationalized this prior clearance whether the burden on the Justice Department would be so great as to render the provision meaningless.

It was the view of our committee that many of our committee members were former assistant U.S. attorneys and are quite knowledgeable in the affairs of government and it was our feeling that there would be a tremendous burden, so much so that the provision would be rendered meaningless were it nationalized.

But I also make reference, Mr. Chairman, to another point. A point that I have not seen urged before this committee in the Supreme Court's decision in South Carolina against Katzenbach, the court said time and again that this prior clearance provision was an extreme remedy and it was justified with respect to a given group of States because of the overwhelming history of racial discrimination in those areas during the past 100 years.

We have some concern as to the constitutional authorities of Congress to nationalize the prior clearance provision particularly with reference to States where the record does not establish—the record does not show there has been a similar history of racial discrimination.

And in that connection I would make reference to the Supreme Court's decision in South Carolina against Katzenbach and what the Court said to this problem with reference to the trigger provisions, exceptional conditions can justify legislative measure not otherwise appropriate.

The Court went on to say, under compulsion of unique circumstances, Congress was justified in fashioning this remedy with respect to certain States and we have serious question as to Congress' power to nationalize the prior clearance provision.

And in that connection I would also state that the proposal to nationalize the Attorney General authority to appoint examiners is subject to a similar argument. The Supreme Court in the *South Carolina* v. *Katzenbach* case refers to that provision as an extreme remedy, but justified it with respect to a certain group of States because of the prior history of racial discrimination.

So, it seems to us, Mr. Chairman, that the prior clearance provision, the provision with respect to appointment of examiners in certain States is constitutionally appropriate legislation as the Voting Rights Act now exists, but to nationalize these provisions would raise some very serious questions as to the constitutionality of this legislation.

I think I can add very little to what Mr. Elsen said, except to reiterate in my own words our strong conviction that the Congress should extend the Voting Rights Act of 1965 for an additional 5 years.

As Mr. Elsen puts it, the act has worked. It has worked well; it seems to us under those circumstances it would be an abandonment of—and would bring into question the sincerity of our national policy to stamp out racial discrimination to amend that act so as to destroy the act.

Thank you, Mr. Chairman.

Senator BAYH. I appreciate both you and your committee of the New York bar taking the time to address yourselves to this problem.

Let me just ask you, do either of you gentlemen or does the committee, have any evidence of discrimination which prevents black voters or Puerto Rican voters from voting in New York?

Mr. FEERICK. I would just say as a lifelong resident of the Bronx, N.Y., that New York certainly during my lifetime has had a very clear policy. It is a policy of giving the right to vote to both our black and white citizens.

I am not aware of legislative discrimination. On the contrary, New York's legislative policies have been in the direction of broadening to the maximum extent the suffrage.

Mr. Elsen?

Mr. ELSEN. I might simply add, Senator, that our late Senator Kennedy in 1965, as I recall it, was the sponsor of a provision in the Voting Rights Act which has made it possible for many Puerto Rican and citizens of the State of New York to register to vote when they were literate in Spanish only. That was a problem in New York, and it has been eliminated by the Voting Rights Act substantially.

But I think it is very important to distinguish, Senator, between situations where people do not vote because they just do not get up and vote and a situation where a trigger clause is invoked on the basis of a record of the uses of tests and devices and other legal means to prevent voting coupled with a small turnout.

The speaker this morning, the Congressman who was the first witness this morning, neglected to recognize that the trigger clause has two parts and to simply say that where you have a small turnout, you have discrimination, is to neglect the fact that the twofold test was that which gave the prima facie rationality to it. He just skipped the problem.

Mr. BAYH. With all due respect to our distinguished colleague from the other body, I am not too sure if that had been pointed out to him it would have changed his opinion very much.

Counsel has a question relative to constitutional aspects he would like to direct.

Mr. BASKIR. Both of you mentioned—just discussed a moment ago—the difficulty of having preclearance applied nationally. A prime question. Would you see a constitutional difficulty in applying it to the 12 non-Southern States which also have literacy tests?

Mr. ELSEN. The preclearance? Yes; I think there might be difficulty, Mr. Baskir. The reason is that I see the source—we see the source of congressional power to reside in the section of the 15th amendment which gives Congress the right to enact legislation appropriate to prevent the abridgement of the right to vote by reason of race or color. If you have not got some showing, showing, that there has been such an abridgement, there may be a question as to whether Congress has power.

Mr. BASKIR. The Civil Rights Commission yesterday suggested there might be evidence. Presumably if some could be adduced on the record it might justify congressional finding that there was discrimination on race or color in nonsouthern literacy test States and it could be barred. There are a lot of assumptions there but wouldn't you agree with that statement?

Mr. FEERICK. I would say this. In reading the *South Carolina* v. *Katzenbach* case where the constitutionality of this provision was upheld, the Court made it very clear that this was a very unusual, unknown type of remedy, but justified it because of a systematic and pervasive discrimination that occurred over a long period of time in these areas of our country.

It seems to me that in the absence of an overwhelming record of discrimination in those 12 nontrigger clause States, I personally would have some very serious doubts as to the constitutionality of any legislation extending the prior clearance provision.

I might just call your attention to the Court's decision in that case, where the Court stated:

> This may have been an uncommon exercise of congressional power, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate.

It would be my personal opinion that in the absence of a record that demonstrates that such conditions exist in those States, that the Congress might not have the power to extend a prior clearance provision.

Mr. BASKIR. I meant these questions by way of preliminary to my main inquiry. The Civil Rights Commission yesterday presented a study and one of the conclusions which Mr. Glickstein referred to was the fact that in non-Southern States with literacy tests, blacks with education of 8 years or less had one-third less registration than in non-Southern States without literacy tests, showing that the literacy tests in non-Southern States do affect the registration of blacks with 8 years or less education.

Now, I presume the Congress could take that study, find it valid, rely upon it and say we have found the 15th amendment is violated by the use of literacy tests in non-Southern States. And would your constitutional ban then begin to evaporate if we had evidence such as this?

Mr. FEERICK. I would say there are two questions with respect to the constitutionality. Insofar as extending the ban with evidence of discrimination in those other areas, that would support the legislation in terms of its nationality. But to extend the prior clearance provision without overwhelming evidence would——

Mr. BASKIR. What you are saying, if I might interrupt, you need a little more evidence than merely discrimination effects to get preclearance than you would——

Mr. FEERICK. That would be my view and my view is based on a——

Mr. BASKIR (continuing). To ban——

Mr. FEERICK (continuing). On a very careful reading, I believe, of the Supreme Court's decision? *South Carolina* v. *Katzenbach*.

Mr. ELSEN. I think one of the most important things about the literacy test is what came out of the hearing before the Civil Rights Commission before the 1965 act was enacted and that was the record of the deliberate use of literacy tests and devices as part of the legal process, both legislative and administrative and executive, to prevent voting and the fact that where the literacy test exists, there is something of an impediment which has led people to vote less. Though something to be considered, it might not be enough for more strategic legislation. I guess I am saying somewhat the same thing Mr. Feerick is saying.

Mr. BASKIR. The purpose for the literacy test, rather than the effect?

Mr. ELSEN. I think the record, the purposeful use of literacy tests is certainly one of the things that influenced the Court in the 1965 act.

Mr. BASKIR. The 1965 act does talk about purpose or effect. I did not rely upon motive at least in the terms of the statute. At any rate, these constitutional difficulties we are discussing now are obviated because Congress, if I understand you correctly, made a legislative judgment. They said that a test of discriminatory effects of literacy

tests is whether or not 50 percent of the people register. They also went on to say or whether or not 50 percent vote. We will leave off the voting because I am not sure I get the connection between literacy tests or registration and turnout, but that is the test that Congress established. And there is no constitutional difficulty if you accept that test of applying these extraordinary provisions to States and counties which fall below it. Is that correct? Do I understand you correctly?

Mr. FEERICK. I am not sure I do understand the question. What I believe you may be saying is that with respect to the suspension of that particular plan, would there be a constitutional question, and it seems to me that there is sufficient evidence to support a nationwide suspension on those tests. So what I am saying is that in my opinion the provision with respect to suspension by broadening that particular provision, we, the committee, did not have any problem with the constitutionality.

We do have a problem with broadening the prior clearance provision so as to require every State in this country to clear or submit to the Attorney General its voting law changes. It seems to us that that type of remedy can be justified against the background of systematic discrimination over a period of many, many, many years.

Mr. BASKIR. The Chairman is saying that he has to leave. I wonder, with his permission and yours, perhaps after the following witness you could return. I have just one or two other questions along this line.

Senator BAYH. I would suggest we could let the witnesses decide whether they have the time to return. Maybe they could submit answers in writing. You have been very patient and kind and I do not want to cut off the debate. We hope to get these answers. I do want a chance to hear Dr. Henry.

Mr. ELSEN. We would be glad to wait until Mr. Henry is concluded and then go on the record again with Mr. Baskir.

Senator BAYH. I appreciate the contribution you have made, and I want to go over the report in detail because I have had some personal experience about the degree of expertise that the committee brings to bear on any issue it undertakes to study.

Thank you very much.

MR. ELSEN. Thank you.

Senator BAYH. Our next witness is Dr. Aaron Henry whom I have had the good fortune to know for some time and a man who wears many hats. Today he is wearing the hat of the Board of Christian Social Concerns of the U.S. Methodist Church. There are few people that I know of who have had a higher degree of personal participation in the problem before us, and I am looking forward to having his testimony.

STATEMENT OF DR. AARON HENRY, REPRESENTING THE BOARD OF CHRISTIAN SOCIAL CONCERNS OF THE U.S. METHODIST CHURCH, ACCOMPANIED BY JACK CORBETT

Mr. HENRY. Mr. Chairman, again I am very delighted to have the opportunity of having some of my ideas expressed before you and this illustrious body of the U.S. Senate.

As you mentioned earlier, today I am coming in response to and in a request of an opportunity to the church to which I belong, the Methodist Church, and have chaired the Council on Christian Social Concerns for 5 or more years at my church in Clarksdale, and here we take a position that churchmen should seek the removal of every racial barrier to the right to vote which is fundamental, which is the fundamental right within a democratic government.

The church should also assist in community efforts at citizenship classes and voter education.

I take this mandate seriously and I certainly want to express my appreciation to you, Senator Bayh, and all of you who are here and also to Mr. Corbett who is here also from the Methodist Church office here in Washington, D.C., who has been so helpful in arranging for this testimony.

I would not only like to present the position of, shall we say, the church platonically as I see it but I am a realist enough to feel that what the church says is what society, in my opinion at least, ought to agree with, and I try to tie as best I can the activities of those of us who are involved in the various movements, political, civil rights, human rights, Christian religious, otherwise, together, and at any time that there is a situation where these forces conflict, then I am forced to resolve that conflict in my own conscience.

I abide by some philosophy that my conscience has to prove my condition and I would hope that you would understand this as the predicate as I go through what I have to say.

I say again, my fellow Americans, I am pleased to accept and am grateful for this opportunity to appear before you in support of a simple position and that is the extending of the Voting Rights Act of 1965.

I want to say thank you to those of you who voted for the Voting Rights Act of 1965 and I hope help to convince those of you who did not support this act to now vote to extend that. You see, this legislation known as the Voting Rights Act of 1965 guarantees as I understand its language the right of citizens of the United States to vote, that this right to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

To me the law has two central figures. It says, first, that the suspension of a variety of tests must yield because they have been used through the years as a coverup really for denial of people of color the right to vote. And it also says that Federal examiners will be assigned to the areas so designated in the bill to assist in this process.

I will have some good and some bad things to say about both of these before we are through.

This act of voting, the term of voting, to me at least means that we are including all necessary activities that begin with registration and end when the actual vote is counted. Otherwise the issue of voting becomes moot. It becomes a nonentity because unless the fellow who votes, unless we insure the fellow who votes that his vote is counted in the way he wants it to count, then the job has not been done.

Now, I am sure I do not have to remind you, gentlemen, that my unyielding interest in the extending of this act is somewhat subjective

but I think it is basically American, and those of you who know me, you will know it is basically Aaron Henry, and that is in many instances the right to vote in my section of my home State, Mississippi, this right was accomplished only after several persons had paid with their lives for this right to make sure that the fallacy of taxation without representation ceased.

Some of you remember—one Mr. Jordan pointed out today—Dippy Smith, a friend of mine who was killed on the courthouse lawn in Brookhaven, Miss., as he attempted to participate in the election process. George Lee was shot down in Belzon, because he would not take his name off the books. None of you can forget January 1965, at least I never can, the last time the poll taxes were required as a prerequisite to voting in my home State prior to the passage of this act and Vernon Dahmer, loyal friend and worker, decided that to be of assistance, because so many people were afraid to carry their poll tax down to the sheriff in Forrest County, that he would collect it himself and pay it. This was his crime and as a result of this certainly the perhaps darkest day of political democracy in our Nation came into effect because Vernon's house was firebombed, shot into. He died a martyr trying to make sure that the democracy that we so proudly expound in our country becomes a reality.

Certainly I knew all of these men personally and appear before you today in turn that they shall not have died in vain.

While the death of these men is directly attributed to their action of voting, many more, some black, some white—Whorlist Jackson, James Chaney, Andrew Goodman, Michael Schewner, all met death because the activity was devoted to voting rights as well as other general desegregation activity in my home State. And you see, when you have to live with the truth, Andrew Goodman, a young Jewish boy from New York City, a student at Queens College, came to Mississippi at my invitation. I brought him from his mama's house to my house and the only night that Andrew spent alive in Mississippi was in my bed.

We sent him to Meridian the next day and, of course, they went on over to Philadelphia where the church had been burned. Coming back home that night they were arrested and his mama never saw him alive again.

Of course, she commutes now between New York and Washington and I try as often as I can to identify with her to make sure to Carolyn Goodman that those of us that Andrew gave his life for have not forgotten him and that we are going to try our best to make sure that he did not waste his life, realizing that none of us gets out of this life alive anyhow.

I come before you today to ask you, to plead with you for simple extension of the act of 1965. This act has helped more than—has helped make some changes in Mississippi. Prior to 1965 there were between 15,000 and 18,000 black citizens and poor whites registered to vote. In 1970, 5 years later, certainly with the help of the voter education program and the Southern Regional Council, NAACP, the ministry and many other voluntary citizens of our State, this figure has now grown to between 270,000 and 300,000, blacks and poor whites, who could not register before the new law and I fear many of us will be purged from the voting rolls if the act is not extended.

One great benefit of the Voting Rights Act of 1965 is that any area covered by the act in order for that area to alter its voting activity, the alteration must be approved by the Federal district court here in the Nation's Capital, and I refer you to exhibit 1 and I hope all of you have copies of this testimony, and exhibit 1 says "Open Primary Idea Pushed in Mississippi."

Now, I am not disturbed really too much by this. However, I feel that if a person wants to run as a Democrat, a Republican or a Whig or whatever he wants to run as he ought to have that right.

Of course, the law that we are talking about being pushed here is one that says that there be no political identity, and whether the two top guys, Republicans, or Democrats, or whatever they are, these are the two who will be in the running. I do not like that but there is more to it really than that. And in the first, second and third paragraphs, although there has been allusion to the legislation reaction to the 1965 Voting Rights Act, they said very plainly that there is a great fear that any act that they pass that deals with voter registration is going to have to pass the scrutiny of this court.

Now, what we are really dealing with here is if the 1965 Voting Rights Act becomes a nonentity, there is the strong presumption that an immediate reregistration of all citizens is going to be called for in our State and at this point in terms of numbers, there are not enough of us who have come on the books to call them to defeat a move to take us off the Voting Rights Act again, or the voting rights rolls.

To me this is a real danger because once a person has become a part of the voting population and by what is negatively sometimes, positively sometimes referred to as the system, exodus from the voting rolls, then I really feel we are going to have more of a problem with it than some of us perhaps might realize.

I certainly hope we will not have to deal with this, but I feel as an American citizen that I must speak honestly before you in terms of what appears to me to be the situation.

Prior to 1965, five of the seven election officials in Mississippi who were committed to justice and equality, who were residents of Mount Bayou, an all-black community, the other two were white, one living in a Mississippi Delta city, the other on the gulf coast, today because of the Voting Rights Act of 1965 there are now more than 100 black election officials in our State, nearly 100 blacks, 97, and more than 70 white officials from all parts of the State who support the philosophy of justice for all mankind. And I feel very strongly that as we have an opportunity of identifying one or the other and the opportunity to vote remains a possibility, that certainly this number is going to either double, triple, quadruple, every time it goes on.

Now, much more must be accomplished, you see. Quoting from one of the—paraphrasing, rather, from one of the great Democrats of our time, Robert Kennedy, "While many men look at things as they are and ask why," and the paraphrase becomes this, "This 170 and many more are beginning to dream of things that never were and ask why not."

Presently there are about 350 blacks and poor whites not yet registered to vote in our State and consequently, you can see the job is not yet done.

Very recently the Governor of our State, in response to the fact that the registration fee of the blacks and the poor whites does not match the constituency that he knows he controls, vetoed four Headstart programs, thus depriving 500 blacks and poor white children the opportunity of this program. This is included in exhibits 2 and 3 that I hope you will take time to read.

Of course, if there are questions about them, I would like to go into them. One is from Northside reporter, Hazel Browning Smith, and I think many of us know the name. She is a Pulitzer Prize winner, a white woman, and of impeccable character who takes the position that the Governor was completely wrong here and, of course, there is an article from the Clarksdale Press Register, the paper from my hometown, that also deals with how unfair this particular act was.

Now, I do not want to give you the impression that this act, since it has been enacted, the act of 1965, has been pursued vigorously enough. I feel there are some minor administrative remedies that could help change the program much more effectively. Again I want to make it clear that the administrative remedies that I am talking about do not constitute amendments to the present bill because I feel that amendments to the present bill are going to bog the bill down into the vituperation of the House and Senate to the extent that it becomes a nullity and as you know better than I do, the bill expires in August of 1970.

Now, if we can deal with a few administrative remedies without treating them as amendments, and then go the amendment route in a separate bill, this would be what I would propose. But I think that certainly from a minute point of view, we have got to at least keep the bill and then we can go for the amendments we want.

Now, some of the administrative remedies that I feel are presently possible in the bill as I read it—as it was passed in 1965, and I would like—there are a few clarifications. If I am in error on any of these points—(*a*) I do not feel that there should be any prohibition against Federal registrars being placed in areas where the unregistered congregate, and certainly this is not the case in Mississippi today. The Federal register is placed in the Federal building, many times 20, 30, 35 miles away from the poor guy who has not yet registered, who does not have any transportation. And this remains a major problem.

I do not see why we cannot yield to mobile registration into the rural areas as we are largely an agrarian community where people live primarily rural, miles apart, and I am just wondering if the California system that I have seen in operation is not applicable. That is where the registrars do their job from door to door.

However, again I am talking about administrative remedies and if any of the remedies that I mention in your mind call for amendments, then I would certainly defer them at this time and seek our support from our friends here on the Hill and who will appear before you to get amendments passed after the initial work has been done to get the simple bill extended.

(*b*) I do not feel that there should be any prohibition against a person who needs assistance in reading and understanding the ballot, to carry into the voting booth with him a person of his choice. Now, certainly while a person might not be able to read and write fluently,

he knows he does not want the chief of police down the street who has been beating him outside his head every time he sees him, and presently the man or woman who needs help is assigned a person from the election commission, a person most times that they do not know. He has no way of knowing that the person that is assigned to him will pull the lever as he wants it pulled or writing the right name on the ballot as he wants it written, and I think a more serious violation is created in that, and that is we destroy the philosophy of the secrecy of the ballot when you have to tell somebody that you do not know how you want to vote in order to get assistance in voting. I would hope that administrative remedies would clarify that.

I have—this is subjective, yes, but I am very personally disappointed in the activity of the Federal Government which goes back to 1967 and I would hope that you would note the year 1967 which places this complaint completely out of the context of partisan politics, because I do not think partisan politics has any place here, but in 1967 in an election in my home county, in the Coahoma precinct, where a black man was running for justice of the peace, Federal observers were sent in. They observed members of the election team deliberately defacing and destroying ballots that were cast for a black candidate. Of course, several of them reported to me what they had seen. And today there has been no action by the Federal Government on this question.

Now, speaking of the Justice Department, I want to personally express appreciation for many acts, appreciation for the assistance of its agents in numerous voting and human rights problems. Yet today we are faced with a problem that some of you might not feel is related to voting but as I review the kind of association we have had with the Department of Justice as it relates to voting, I cannot help but associate, too, because, you see, the Justice Department for those of us who are determined that the battle of racism, the battle of Americanism, be waged within the law and within the courts of our country and win there, and I think we can win there. I think there is enough room in the first amendment to permit me to demonstrate where I want to, when I want to, and to get before the public what I feel is right or wrong in any situation.

Yet today we are faced with a press report that the Attorney General, John Mitchell—and of course I wired him asking hom to say it is not so. Frankly, I asked him for an appointment today that has not yet been answered.

I also wired the President of the United States. The press report—of course, there is a copy of the wire I sent to Mr. Mitchell here that you can read for yourself—indicates that he and Miss Joan Crawford will address an organization in Mississippi in late April or May known as the "Delta Council."

The Delta Council is an all-white segregationist organization whose director has his office at the federally owned property at the Agricultural Experiment Station at Stoneville, Miss. No blacks have ever been invited to attend this affair or participate in its planning.

Although the U.S. Department of Agriculture does not have a single black county agent in Mississippi, in many counties it does have assistant agents and none of these have been invited to participate in the Delta Council or its annual meeting.

I feel this is illegal and it cripples us tremendously, those of us who are trying to find a way to win this battle within the law, for not only a Federal employee, but the Attorney General of the United States, the office on which we have relied most, in saying to blacks and whites throughout this Nation that you can win within the law, to have him participate in such an un-American activity. And I would say that he should not participate in any kind of a segregationist activity in Mississippi or any place else in America, that he should only become involved and you should only become involved when all of our citizens, black, white, blue, green, or polka dot, are permitted an equal share and an equal right and proceeding with whatever the affair might be.

Now, strengthening our voting members would take care of this in a few years, once the act is reenacted. But I call upon you today as representatives of all the people to help persuade Attorney General John Mitchell not to participate in this affair because it is going to do a tremendous damage to the image of the Federal Government, the administration, and the Congress of the United States if we do not become involved not only in silence and the blatant noise of the bad but if you become a part of the thundering silence of the good I think you will be equally guilty of this.

Finally, I would like to remind you that all of the classic conversation involving Ralph Waldo Emerson who told his friend, Henry David Thoreau, "Where there is freedom, that is my home." I always marveled at Thoreau's response where he said, "Where there is not freedom, that is my home."

In my home State of Mississippi today freedom is not yet reality and I call upon you to help me and thousands of others make Mississippi what it not yet is but what it can be by supporting this simple act of extension of the Voting Rights Act of 1965.

If you will do this—if you will not do this, then you place us in the untenable position of—while other Americans are expounding "I've got a dream," we will be forced to respond, "While Americans generally have a dream, we of Mississippi have a nightmare."

I do have a few suggestions in terms of amendments that I would want to throw out for your knowledge that we will be asking our friends to present to you, once you extend this act, but we do not want to get bogged down in extending the act, in other words, we do not want to be bogged down in the kind of vituperation that goes on that precludes expediency in these particular kinds of situations.

In other words, we do not want to get bogged down in the paralysis of analysis as we go through this exercise.

Now, some of the amendments that we will be asking our friends to present to you, and I am presenting them to you separately today because I do not want you to consider them as a unique part of this testimony, in terms of what we are asking for because here we get into the possibility of amendments and I know what you have to do in order to get an amendment through. So let us talk briefly about a few things that I think are necessary in terms of amendments.

Of course, one certainly welcomes lowering the voting age to 18 and extending it to citizens of Washington, D.C., the right to vote in all measures governing the city. Citizens upon becoming 21 should automatically be placed on the voting rolls where they are as taxpayers automatically placed today. You do not have to worry about demanding a form to pay your taxes on because your name is computerized.

Now, what kind of a tax system would we have if we had to go down just like we do to register to vote and get our names put on tax rolls? And I think that with the cybernation, with the IBM system, that if we want to bad enough, we can find a way to do it.

I feel that the Federal Government should become involved actually in programs of voter registration activity. I know you heard Mr. Jordan point out today the amount of expenses and time that EEP and SRC and NAACP, Delta Ministry, and other units have gone to get the vote to where it is.

Now, not in one instance have we either had State or Federal Government involved in programs, financial, personnel to get American citizens registered and I feel that this is something that we can do. I find it hard to really justify saying other groups get out and do this and we ourselves do not set the pace or afford an example to do it.

I feel that college students should be allowed to vote on the campus where they attend school because most of them do not have money to go back home to vote once the age is lowered and even if they did, classes would have to be missed, et cetera. So I think we ought to give that some thought.

I feel that there should be some kind of reasonable absentee voting law that would be generally applicable that would make it possible for those of us who have to be away on certain days to be able to vote.

In my home State unless you are a part of the armed services, unless you work for a transportation service, which is either the bus company or trucking company, there is no absentee opportunity for you. You have got to be there or you do not get counted.

I am very concerned about the fact that in national elections and in State elections citizens moving from one State to another in our highly mobile society, that we should have immediate registration and voting rights granted.

Any State not now covered by the present voting law where voter registration denial is substantiated, that the law be brought to include these areas because I believe that segregation and discrimination are just as wrong when it happens in Mississippi, or New York, Ohio, Indiana, or wherever it takes place. I do not feel, however, that there should be a voting rights law passed extended to States where there is no record of the denial of the right to vote to any citizen. I think that would be just as absurd as passing the law saying you cannot kill dinosaurs in Washington, D.C. because ——

Senator BAYH. Doctor, will you yield? There are some who may suggest there are still a few dinosaurs around Washington, D.C.

Mr. HENRY. Well, not in my logical sense. You know, I went to a colored school and I might not have gotten the true story about a dinosaur, but they tell me they are extinct.

But these are some of the things that I would hope that certainly we could get many of your friends, and I am going to keep the arm on the carpet as we go along here once we get the act extended about the possibility of getting some of these amendments before you on the floor hopefully passed. Again I would like to express my appreciation to Mr. Corbett and to all of you who have been kind enough to give me—a boy born on a plantation in Mississippi—cotton every morning, something you all know nothing about—the opportunity

to sit in my Nation's Capital and express to you my views. I am deeply grateful to you. Thank you.

Senator BAYH. Dr. Henry, we are grateful to you, sir. for taking the time to come. I have heard a great deal of testimony in the period I have been in the Senate. I never heard any that I felt exceeded yours in its compassionate sincerity——

Mr. HENRY. Thank you.

Senator BAYH (Continuing) And in relating personal experience with a national problem.

I will not detain you now, but if you can, because of your experience in Mississippi, forward to the committee or to me personally examples of activities which would lead you to believe that the almost sinister attempt to keep black voters from voting, that those attitudes have not totally changed. I would like to have that evidence.

Mr. HENRY. Well, I hope you will digest exhibit 1 in the testimony.

Senator BAYH. That is in exhibit 1. If you have evidence to the contrary, of course, I would like to have that, sir.

Mr. HENRY. Sure. I am the kind of guy if it is good I will tell it, bad I will tell it, whatever it is.

Senator BAYH. I will read that with a great deal of interest. I hope the time will come when these attitudes will be changd we will not need a Voting Rights Act. But until that is proven conclusively to me. I am going to take what steps I can to see that everybody has the right to vote.

Mr. HENRY. Mr. Chairman. it might be that we are going to have to take a position that if an act is illegal, if it becomes perpetual, it is just as wrong as slavery was and became—1867, 1965-67. We established the fact that slavery would not exist and I think that we have got to be just as committed to the fact that the right to vote shall not be denied to any citizen, by whatever mechanism you do it. I have no panacea but I think the two evils are parallel and we have to recognize them as such.

Senator BAYH. I am sure that the voting right should be inviolate, and we are going to do everything we can to see that it is. Thank you very much for giving us the benefit of your thoughts, Dr. Henry.

Mr. HENRY. Thank you.

Senator BAYH. If our two previous witnesses will be kind enough to resume the stand.

Mr. HENRY. Are there any questions to me?

Mr. BASKIR. No, sir.

(The prepared statement of Mr. Henry together with attachments follows:)

TESTIMONY OF AARON E. HENRY, 213 4TH STREET, CLARKSDALE, MISSISSIPPI· BEFORE THE JUDICIARY SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, WASHINGTON, D.C., SENATOR SAM J. ERVIN, JR., CHAIRMAN

Subject: In Support of Extending the Voting Rights Act of 1965.

Served five years as Chairman of Commission on Christian Social Concerns. Haven United Methodist Church, Clarksdale, Mississippi; President of Mississippi State Conference NAACP, for past ten years; member of National Board of Directors of National Association for the Advancement of Colored People, the Southern Christian Leadership Conference and The Southern Regional Council.

I am Aaron Henry of Clarksdale, Mississippi. Today I am testifying on behalf of the Board of Christian Social Concerns, an agency of the United Methodist Church.

In 1968 the General Conference of the United Methodist Church—a national representative body of the church which meets every four years—declared the following:

> "Churchmen should seek the removal of every racial barrier to the right to vote, which is a fundamental right within a democratic government. The church should also assist in community efforts at citizenship classes and voter education."

I would like not only to present the official position of the church on this question, but, in addition, I also wish to state my own views, which are based upon many years of experience with election laws of the South and, I believe, are not in contradiction with the church's above statement.

My fellow Americans, please accept my appreciation to all of you who voted to initiate the Voting Rights Act of 1965. Those of you who did not vote for the Act, it is my hope to help convince you to now, support the extension of this very vital piece of legislation. This legislation known as the Voting Rights Act of 1965, as all of you know, guarantees that "The Right of Citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color or previous condition of servitude."

The Law as I see it has two central features:

(1) Provisions for suspending a variety of tests and devices that have been used to deny citizens the right to vote because of their race or color;

(2) Provisions for the appointment of Federal Examiners to list voters in those areas where tests and devices have been suspended.

In this Act the term "Voting" includes all action necessary from the time of registration to the actual counting of the votes, to make a vote for public or party office effective.

I am sure I do not have to remind you gentlemen that my unyielding interests in extending this Act is because, in many instances, the right to vote in many sections of my home state, Mississippi, was accomplished only after several persons had given their lives so that the others of us might be accorded this basic American Right of No "Taxation Without Representation." Some of you remember the sad hours for democracy in our Nation, when Sylvester "Dippy" Smith was shot dead on the Courthouse lawn in Brookhaven, Mississippi as he attempted to participate in the election process. Others of you might remember the horrible death of the Rev. George W. Lee in Belzon, Mississippi after being harrassed to take his name off the registration book and refused to do so—Death became his penalty. None of you can foreget that in January 1965, the last time poll taxes were legal as a prerequisite to voting, an outstanding citizen of Hattiesburg, Mississippi, Mr. Vernon Dahmer who assumed the task of collecting the amount of poll tax from those who were too afraid of the election officials of Forrest County, Mississippi to go down themselves to pay their poll taxes. This was his crime, yet his home was firebombed, shot into and Vernon Dahmer died the death of an American Martyr doing what he should do to help make democracy work. I knew all of these men personally and I appear before you today, determined that they should not have died in vain. While the death of these men is directly attributed to their acting in voting, many more including Medger Evers, Whorlist Jackson, James Chaney, Andrew Goodman, and Michael Schewner all met death because much of their activity was devoted to voting rights while also engaging in general desegregation activities.

I come before you today to ask and to plead with you for a simple extension of the Act passed in 1965. This Act has helped make some change in Mississippi. Prior to 1965 there were between 15,000 and 18,000 Black and Poor White Citizens registered to vote in Mississippi. In 1970, five years later, there are now between 270,000 and 300,000 Blacks and Poor Whites registered who could not register before the new law, and I fear many of us will be purged from the voting rolls if the Act is not extended.

One great benefit of the Voting Rights Act of 1965 is that any area covered by the Act, in order for that area to alter its voting activity, the alteration must be approved by the Federal District Court here in the Nation's Capitol. See Exhibit #1.

Prior to 1965, five of the seven elected officials who were committed to justice and equality were residents of Mount Bayou, an all Black Community. The other two were white, one living in a Mississippi delta city and the other on the Gulf Coast. Today because of the 1965 Voting Rights Act, there are nearly 100 Black elected officials in Mississippi and more than 70 white officials from all parts of the state who support the philosophy of justice for all mankind.

Much more can and must be accomplished; you see, "while many men look at things as they are and ask why" this 170 and many more are beginning to dream of things that never were and ask "why not"?

Presently there are about 350,000 Blacks and Poor Whites not yet registered to vote. This job must be accomplished, if our dreams for justice for all Americans are to be accomplished. Very recently the Governor of our State, Gov. John Bell Williams, vetoed four Head Start programs thus depriving some 5,000 Black and Poor White children the opportunity of this program. See exhibits 2 & 3.

I do not want to give you the impression that this Act, since it was enacted in 1965, has been pursued vigorously enough. I feel there are some minor administrative remedies that could help make the program much more effective. Again, I want to make it clear that the administrative remedies that I am recommending are not to be considered as amendments to the present bill. As the bill is written, I see:

A. No prohibition to the federal registrar being placed in areas where the unregistered congregate. This is not the case in Mississippi today. Federal registrar placed in Federal Buildings and transportation for the poor remains a problem.

B. No prohibition to a person who needs assistance in reading and understanding the ballots to carry into the voting booth with him, a person of his choice.

C. I have been personally disappointed when in my home county, Coahoma, in 1967 Federal observers were present and personally observed ballots for a Black candidate being defaced and uncounted. Some of these men are still with the United States Department of Justice, yet no federal action has been taken in this case.

Speaking of the Justice Department, I want to personally express appreciation for many acts of assistance by its agents in numerous voting and human rights problems. Yet today we are faced with a press report that has caused me to wire Attorney General John Mitchell asking him to "say it isn't so." The press report I am referring to indicated that Attorney General John Mitchell and Miss Joan Crawford will address an organization in Mississippi in late April or early May known as the Delta Council. This is an all white segregated organization whose Director has his office on Federally owned property at the Agricultural Experiment Station at Stoneville, Mississippi. No Blacks have ever been invited to attend their affairs nor participate in planning.

Although the U.S. Department of Agriculture does not have a single Black County Agent in Mississippi, in many counties it does have assistant agents, none of these have been invited to participate in the activities of the Delta Council, nor in its annual meeting. I feel it is illegal for a Federal employee and especially the Attorney General to participate in this kind of a racialy segregated affair.

Strengthening our voting numbers will take care of this in a few years; once the Act is extended. But I call upon you today as representatives of all the people, to help persuade Attorney General John Mitchell not to identify the position in our nation's government, the Attorney General of the United States, with racism or ethnic segregation in any form and especially not with the Delta Council of Mississippi.

Finally I would like to remind you all of the classic conversation involving Ralph Waldo Emerson who told his friend, Henry David Thoreau, "Where there is freedom, that is my home." Thoreau responded, "Where there is not freedom, there is my home." In my home state of Mississippi today, Freedom is not yet a reality, and I call upon you to help me and thousands others help make Mississippi what it not yet is but what it can become by supporting this simple act of extending the Voting Rights Act of 1965.

If you will not do this, then you place us in the untenable position of—while Americans are expounding "I've Got A Dream," we will be forced to respond, "While Americans generally have a Dream, we of Mississippi have a nightmare."

THE FOLLOWING MESSAGE IS A COPY OF A TELEGRAM SENT TO ATTORNEY GENERAL JOHN MITCHELL ON FEBRUARY 20, 1970

Mr. JOHN MITCHELL,
Attorney General of the United States,
U.S. Department of Justice, Washington, D.C.

DEAR ATTORNEY GENERAL MITCHELL: The press of this area reports that you and Miss Joan Crawford are scheduled to address and participate in the annual meeting of the Delta Council of Mississippi in late April or early May 1970.

I feel it my duty as a citizen to either remind or inform you that the Delta Council is an all white segregationist organization with no black participation as members nor guest at their annual meetings.

As the U.S. Department of Agriculture is closely allied with the Delta Council through the years, to some extent this explains why the U.S. Department of Agriculture does not employ a single black county farm agent in the State of Mississippi. There are several assistant black agents, but not even they are involved in membership nor allowed participation with the Delta Council.

Black citizens of Mississippi for the past few years have come to rely upon the U.S. Department of Justice to support our voting rights and other rights in the field of justice. It is inconceivable that the Attorney General of the United States would participate in a function that is so clearly un-American. If the press reports are correct I urge you to seriously reconsider identifying with the Delta Council of Mississippi or any other group anywhere in the Nation where all of our citizens are not allowed to participate.

I will be in Washington on the 25th of February in the afternoon and would appreciate a conference with you to further discuss this matter.

AARON E. HENRY,
President, Mississippi State Conference NAACP.

EXHIBIT 1

[From the Clarksdale Press Register, Clarksdale, Miss., Saturday Afternoon, Feb. 21, 1970]

OPEN PRIMARY IDEA PUSHED

JACKSON, MISS. (AP)—The House made clear today it still wants to end party primaries in the state and place all political candidates into one election field.

By a 91-6 vote Friday, representatives passed the open primary plan for the third time, even after some lawmakers questioned whether it could win the federal approval it needs to become effective.

Under terms of the 1965 Voting Rights Act, any Mississippi election law changes must get federal approval before becoming operative. But when one lawmaker asked Rep. Stone Barefield of Hattiesburg, who handled the measure, whether it could win approval from the attorney general Barefield replied: "I have no opinion on that."

The House passed a similar measure in 1966 and it eventually was vetoed on technical grounds by then-Gov. Paul Johnson. The House passed a similar measure in 1968, but it failed in the Senate.

Under terms of the key bill of the three-measure package, party candidates and independents would qualify at the same time and would pay the same fees, with the political party getting the fees of party candidates and the election commission receiving those of independents. An independent could qualify without having to get voter signatures on a petition.

FEES SET

A candidate for a statewide race such as governor or senator, for Congress or the State Supreme Court, would pay $500 to qualify, compared to the present $300 fee.

Candidates for other statewide posts would pay $300 instead of the present $200; for district posts $200 instead of $100; for legislative and major county posts $30 instead of $15; and for lesser county posts $25 instead of $10.

If there are more than two candidates for an office, Barefield said, they will all run in the same field in an October preferential primary, with the two high men going onto the November general election ballot, even if both belong to the same party.

"Nothing in this plan destroys the party machinery in any way," Barefield told the House when Rep. Jimmy Robertson of Liberty asked about the impact on the parties of the state.

"The passage of this act is going to strengthen the political parties in this state because they'll have to go to work to survive."

Rep. Ed Perry of Oxford offered an amendment to delete a requirement that the ballot show whether a candidate was a party member or an independent. The amendment lost.

The House also approved a companion measure conforming existing election and primary laws to the open primary system.

COMPANION MEASURE

The companion measure contained a provision that no person could claim to be a member of any party executive committee or hold a job as national committeeman or committeewoman unless the party selected him under procedures provided by state law.

There was no explanation of the section or any discussion about whether it was aimed at national committeeman Charles Evers, who won recognition at the last Democratic National Convention at the expense of the regular faction's official.

The section provided that any person violating the provision would be subject to legal penalties and could be enjoined from exercising his office.

Before adjourning until 2 p.m. Monday, the House passed 79-14 a bill to take away from the public safety commissioner the authority to take up a driver's license when he accumulates too many points under a highway patrol suspension system.

Rep. Ney Gore of Marks, chairman of the House Judiciary "B" Committee, said under present law there is no appeal available to a driver who loses his license. He said the point system was set up by regulation and not by legislative act.

The system involves assigning a certain number of points to each type violation, and removing a driver's license when the point total reaches 12.

[From the Northside Reporter, Jackson, Miss., Feb. 19, 1970]

We regret and deplore the action of Governor John Bell Williams in vetoing $5 million in Head Start funds for four Mississippi counties: Hinds, Washington, Coahoma and Sunflower.

HEW Secretary Robert Finch should lose no time in overriding the governor's vote.

We find it reprehensible to play politics with the lives of any persons or groups, especially poor people and more especially poor children in Head Start Schools.

There are probably some who think Governor Williams may have something on his side in demanding the same degree of integration in Head Start schools that HEW is demanding of Mississippi public schools, perhaps a bit of "poetic justice." But the situations are not the same by any means.

In the first place, only children from poverty-level homes are eligible for Head Start Schools. All of those who attend are what is called "disadvantaged." The idea is to give these pre-school children some schooling, training, nutritious food, some health and dental care—so that they may have a better chance to learn when they start school, a "head start" if you please. To see the homes some of these children come from would break your heart. We wish Governor Williams would go visit a few of them.

Poor white children have exactly the same opportunity to enroll in head start schools as the blacks. But there are not nearly so many disadvantaged white children as black. And many of the whites who do fall in this category do not enroll out of pride, fear or for some other reason. The attitudes which have developed in the state and communities over the years have something to do with the reasons why white children don't attend—although they need help as much as anyone. Governor Williams himself, and other politicians in the Legislature, now and previously, are mostly responsible for those attitudes among the whites. It is not something of which to be proud.

Again we say: Washington should lose no time in overriding Governor Wilam's veto and get the Head Start Schools in those four counties going again.

EXHIBIT 3

[From the Clarksdale Press Register, Clarksdale, Miss., Friday Afternoon, Feb. 20, 1970]

HEADSTART CUTOFF PROMPTS PLEA

Clarksdale and Coahoma County residents are being urged to help bring about the restoration of funds for the 1970-71 operation of the Headstart program in this county.

Mississippi Gov. John Bell Williams on Feb. 12 vetoed proposed funds for the local project and for three others in Indianola, Greenville and Jackson. Williams made it clear that his veto was a strategy move designed to help relieve integration pressure from the Department of Health, Education and Welfare. The four Mississippi Headstart projects are funded through HEW.

Local Headstart officials point out however, that the cutoff of funds could have a serious and adverse effect on the local economy and badly cripple if not demolish the program to aid poverty stricken pre-school children.

ENDS FEB. 28

The current fiscal period ends Feb. 28 and continuation of the effort next month depends on how soon the $1,121,837 allocation for 1970–71 can be secured. Most of the people concerned are of the opinion that the funds eventually will be made available, but they hope the money will be forthcoming in time to prevent any interruption in the program.

Under law, the governor is empowered to veto funds for HEW projects in his state. HEW Secretary Robert Finch has authority to override the veto, however.

The Headstart program in Clarksdale is funded locally through Coahoma Opportunities, Inc. and is answerable to the COI board of directors. This is true though COI is an arm of the Office of Economic Opportunity and Headstart now is under the direction of HEW.

FUTURE IN DOUBT

John Crosby, coordinator of social service in the Headstart program, says the future of Headstart is in doubt if the new funds should be delayed for very long. He is asking for support of city, county and area residents in getting the funds freed.

He said many of the workers in the program may be forced out if their pay is withheld for long, and he said the task of retraining new workers then would give the program a serious setback.

A total of 950 children currently are being benefitted at 12 Headstart centers over Coahoma County. Though only 27 of these are white children, Crosby noted that the program is available to members of any race. The small number of white children participating is the result, the coordinator said of white parents choosing not to enroll their children.

In all about 225 people—part-time and full-time, ranging from cook to administrator—are employed in the local Headstart program.

12 CENTERS

Five of the 12 centers in the county are located in Clarksdale, and the other seven are in Lyon, Sunflower community, Dublin, Friars Point, Coahoma, Lula, and Jonestown. Most of them are quartered in churches.

Those desiring to help get the funds approved are asked to write to any or all of the following concerned officials:

The President of the United States, The White House, Washington, D.C.

The Honorable John Bell Williams, Governor of Mississippi, Mississippi State Capitol, Jackson, Mississippi.

The Honorable George Farris, Mayor of the City of Clarksdale. Clarksdale, Mississippi.

The Honorable James Eastland, United States Senate, Washington, D.C.

The Honorable John Stennis, United States Senate, Washington, D.C.

The Honorable Donald Rumsfeld, Director, Office of Economic Opportunity, Washington, D.C.

Mr. James Farmer, Assistant Secretary Administration, Health, Education, and Welfare, Washington, D.C.

Mr. Jule M. Sugarman, Acting Director, Office of Child Development, Washington, D.C.

Mr. Robert Perrin, Acting Deputy Director, OEO, Washington, D.C.

Mr. Robert Finch, Secretary, Health, Education, and Welfare, 330 Independence Avenue S.W., Washington, D.C.

EXHIBIT 3A

[From the Delta Democratic-Times, Greenville, Miss., Feb. 20, 1970]

800 GATHER IN GREENVILLE TO PROTEST WILLIAMS' VETO OF HEAD START FUNDS

(By Bob Boyd, DD-T Staff Writer)

Supporters of four Mississippi Head Start agencies made plans Thursday night for a campaign to pressure the Department of Health, Education and Welfare to

override Gov. John Bell Williams' veto of $5 million in federal grants to the programs.

An estimated 800 persons, the majority of them patrons of the Washington County Mid-Delta Education Association, met at the courthouse. They planned letter-writing campaigns, "prayer meetings" at the governor's mansion in Jackson and a statewide public meeting to protest the veto.

The governor, invoking a seldom used power to reject federal funds approved for anti-poverty projects, last week vetoed pending allocations to Mid-Delta, Sunflower County Progress Inc., Coahoma Opportunities Inc., and the Community Services Association in Hinds County.

Williams complained that the programs primarily serve Negro children, and he urged HEW to demand the same degree of integration as it does in public schools. The federal agency has the power to override the veto and issue the grants to the Head Start agencies, many of whose employees have been working for months without it.

Dr. Matthew Page of Greenville, chairman of Mid-Delta's board of directors, said more than 10,000 signatures had been gathered in Washington County on petitions urging federal officials to ignore Williams' veto. The petitions have been sent to the governor, HEW's regional office in Atlanta, and to HEW Secretary Robert Finch in Washington, Page said.

Mrs. Emma Sanders of Jackson, board chairman of the Hinds County agency, said many Head Start workers there have not been paid since mid-December. They have been "threatened with eviction," she said. Many lights have been cut off.

"We're planning to go to the governor's mansion and have a prayer meeting," she said. Representatives of other programs pledged to join the demonstration set for Sunday.

Kenneth Dean of Jackson, executive director of the Mississippi Council on Human Relations, said his organization has called a statewide meeting in Jackson, Feb. 28 "to display to the nation the plight of the poor . . . and that the governor is hitting at their very existence by taking away food and needed medical assistance.

"We now have a national administration that is willing to say okay to this racism as it comes up from the state," Dean said. Dr. Page said he understood HEW may treat seriously Williams' veto and that "negotiations" had begun between HEW and the governor's office to arrive at a compromise. Page pledged "busloads of people" from Washington County would attend Dean's meeting, at the Heidelberg Hotel in Jackson.

One white Head Start worker from Jackson, Mrs. Mary Sutton, said she would join, and encourage other whites to participate in demonstrations at the governor's mansion. "I'm a former Head Start mother, and now I'm a Head Start teacher," she said. "I know Head Start helps every little child."

STATEMENTS OF MR. FEERICK AND MR. ELSEN—Resumed

Mr. BASKIR. I would like to thank the previous witnesses, Mr. Elsen and Mr. Feerick, for remaining for final questions and thank the indulgence of the Chair for permission to complete the inquiry on the constitutional issue that we were engaged in.

To bring us back up to the point where we left off, I believe you gentlemen had said that you saw constitutional difficulties under the 15th amendment in banning literacy tests among the non-Southern States and even more so in imposing preclearance requirements on the non-Southern literacy test States?

Mr. ELSEN. I am afraid that is not quite our position, Mr. Baskir. Our appendix to our report deals with the question of the constitutional questions involved in banning of literacy tests and I believe our conclusion was that we—that this would be constitutional. The problem we saw lay in the nationwide extension of the prior clearance provision and it was our view that the prior clearance provision is essential, should be preserved, but that it could not be extended, if I

may be informal, willy-nilly beyond trigger clause jurisdictions because of possible constitutional problems.

Mr. BASKIR. That is my understanding also of your statement and with respect to the 15th amendment I assume there would have to be a substantial basis——

Mr. ELSEN. Right.

Mr. BASKIR (continuing). Which I gather you feel is lacking.

Mr. ELSEN. We are not sure it is present.

Mr. BASKIR. Assuming it is not present. Now, these difficulties are eliminated with respect to the States covered by the trigger device, the extraordinary devices which are imposed by the 1965 act are justified by the legislative finding that certain States having literacy tests fell below the standard which Congress felt was the test to determine whether or not these extraordinary devices should be imposed, that is to say, what we are calling the trigger device.

In other words, and I think that the act bears this out, the trigger device, trigger standard, sets a presumption of unconstitutional use of literacy tests requiring the banning and also preclearance. This is a rebuttal presumption because the State may go into court and escape upon certain proof.

Do you believe that the existence of a new set of facts, that is to say, 1968 voting facts, rebutting the factual presumptions set up in the act, the 1964 elections, undercuts any of the constitutional authority you find for the trigger device and the extraordinary provisions?

Mr. FEERICK. No, Mr. Baskir. When one considers the prior clearance provision, it does represent I think the opinoin of those who favor the extension and those who oppose the extension, a rather extraordinary departure from the customary relationship between the Federal Government and our States. Certainly we have 180 years of history up to 1965 where States have had the right to adopt laws. Those laws are unconstitutional, subsequently found to be unconstitutional by our courts and the departure that took place in 1965 with respect to this prior clearance provision was a very drastic departure from this overwhelming history, and it was justified only because of very extraordinary conditions and the records before the Congress, information supplied by the Civil Rights Commission, many court decisions in the trigger clause jurisdictions all went to sustain the constitutionality of that very drastic remedy, and what we are saying here is that to extend this prior clearance to other jurisdictions could and would very well raise constitutional problems in the absence of a similar past history.

Mr. BASKIR. I follow that position. What I am wondering about is that if the extraordinary provisions of preclearance are justified by the failure of certain States to achieve 50 percent requirements on the basis of the 1964 act, and justified only because of their failure to pass that trigger, according to the statute, according to how I understand your testimony, does the existence of a new set of facts require Congress to make a new judgment that, let us say, 60 percent is the new standard, using 1968 figures?

Mr. ELSEN. Mr. Baskir, if I may interject, I do not believe our position was that the demonstration of the factual basis upon which Congress might validly act under the fifth amendment was

found in the failure of the States to obtain 50 percent or more of its citizens—50 percent or more of its citizens registered to vote.

Mr. BASKIR. That is——

Mr. ELSEN. But it was a combination of the history, use of tests and devices and the history in those States, in those same States, of the uses of legislation to undercut right to vote which afforded a constitutional basis for the enactment of the presumption, and it seems to us that the presumption which is meant to trigger individual cases, the basis upon which the Attorney General might act in individual cases, should not be examined by reference to a change on a large scale across the Nation as to the number of people voting. The question really is one of whether there is a change in policies and in use of the legal process to prevent people from voting. And if that is shown to have changed, and we see no evidence that that has been shown, if that is shown to be changed, then we can see a basis for undercutting—for saying that the trigger clause might not be constitutional any longer. We see no such evidence.

Mr. BASKIR. I want to separate the policy question. I understand there may be differences about the policy question from the constitutional question. The statute sets up a test. The test is not "any State which has had a history of discriminatory application of the literacy test or which we know has done improper things" or any of the things you mentioned. The test is very clear and very automatic. It says "any State with the test or device" as it defines it and "also which failed to register or vote 50 percent in 1964", then is determined by Congress to have violated the 15th amendment. It then these extraordinary remedies you mentioned follow.

What I am trying to get at is the impact of new evidence which shows that these States are out from the old test. Do you think constitutional questions arise because of the fact that you are using an old test and you have new tests or new facts? Do you think that the same constitutional difficulty applies with respect to those States in the South which in 1968 have passed the trigger test just as the nonsouthern States passed in 1964 and 1968?

Mr. FEERICK. In terms of the trigger provision, certainly my reading of the Supreme Court's decision is that that particular provision was found to be constitutional against a background of substantial evidence and one has to view the formula not in a total picture, and it seems to us when one views a formula against the background, one may arrive at the conclusion that that formula is constitutional.

On the other hand, when you get to the area of prior clearance, whether that is an appropriate response to the evil, I think as I read the Court's decision requiring a rather overwhelming showing and the fact that the formula is constitutionally permissible, it does not necessarily follow from that that the prior clearance provision, if it is co-extensive with the formula.

Mr. BASKIR. That is the point. Is it an overwhelming showing that all will be affected by the new figures in 1968?

Mr. ELSEN. I have looked closely at the *Gaston County* case for a little while. I may not have the facts exactly correct. Maybe Mr. Feerick may want to check me. But as I understand the rationale of that case, it would bear upon the question in that the Court draws a distinction between an adequate basis to justify the initial use of the

trigger device as a method of bringing in, bringing to bear the extraordinary remedies of the Voting Rights Act, and the subsequent situation in which the exact same facts which were relied upon initially to bring the remedies to bear might not be the same.

The Court said, nevertheless, the role of the presumption of the trigger in the initial case was to determine whether there was a basis for bringing these remedies to bear in the first place, but it does not determine the question of whether they should be removed. Would you agree with that as a statement of the case?

Mr. FEERICK. Yes.

Mr. ELSEN. And it is the kind of problem we have. The trigger clause is a method of I would not say adjudicating but resolving the question of whether in a particular instance action should be brought to bear and as you say, it creates presumption and what I would think you would have to show in order to undercut the presumption is a change in the historical situation sufficient to say that a presumption of this sort is no longer rational.

Mr. BASKIR. Well, isn't the change in historical fact the history as shown by 1968?

Mr. ELSEN. No. We would not think that that is——

Mr. BASKIR. If I may paraphrase your position, in other words, you feel that if Congress in 1965 in passing this act should have set up a trigger device which said any State which in 1940 failed to register or failed to vote 50 percent, in 1965 and thereafter for 5 years, one, could not impose a test or device and, two, had to submit all changes to the Attorney General. You feel there is no problem?

Mr. ELSEN. I would not want to speculate on a hypothetical of that nature because there may be aspects of your hypothetical that we have not thought through.

Mr. BASKIR. 1960?

Mr. ELSEN. Well, that would of course come closer. But in the *Gaston County* case the Court said presumption at that time was enough to start and when you look at the fact that with the presumption was intent to start you start you off which was to remedy a long-term historical situation, you are able to adjudicate it at that time and that is enough to continue. And this is the kind of problem.

Mr. BASKIR. In other words, getting out from under the act is different from——

Mr. ELSEN. From getting in under the act and that is a problem we have in other areas of the law, too. In the antitrust field, for example.

Mr. BASKIR. You view the issue before Congress the same as the issue in the *Gaston County* case, whether we should let the States free?

Mr. ELSEN. No. I am simply bringing the *Gaston County* case to bear to respond to your question as to whether the appropriate basis of determining the rationality of the presumption should be a reference to voting figures as of a later date, and I would say that there the rationale of the *Gaston County* case is relevant and I would say the answer is that would not be determinative, and it is like any other

situation. When you have a method of starting the jurisdiction of the Court or other body, the conditions may change but that does not necessarily mean that the jurisdiction of the Court or the body should be removed.

Mr. BASKIR. Of course, the issue before the Congress is not whether the bill—not whether the act which says 10 years should now be changed to 5 years, but what it is saying is 5 years should be extended to 10 years. I think the question before Congress is not the same question that is before the Court in the *Gaston County* case. It is not freeing the States from the imposition of the 1965 act but continuing the imposition of the 1965 act for another 5 years.

Mr. ELSEN. Well, I think the question, Mr. Baskir, is whether the Congress should extend the set of remedies which have been devised under the 1965 act, to deal with a historical situation which was demonstrated in the hearings before the 1965 act, and to permit jurisdiction that has been taken either by examiners or by the courts to continue. And that the proper basis which Congress—the proper facts to which Congress should look in making its determination is the historical situation and not the question of whether particular States have gone over the 50-percent line.

Mr. BASKIR. Thank you.

I think counsel has a question.

Mr. MODE. I have just one question. In giving your views as to the constitutionality of continuing to rely on 1964 trigger figures, do you think it is important that there has been a lot of testimony before this subcommittee regarding continuing problems between 1964 and this date? Specifically, there has been testimony that Congress might construe as indicating a lack of good faith in some of the States subject to the trigger provisions, States in which it was hoped that good faith might be shown in the electoral process.

Mr. ELSEN. Yes. We most certainly do. And in addition, we might point out that where in an individual situation there is a change of the circumstances the act which we would urge you, which we would urge the Congress to reenact, provides for court jurisdiction to relieve a political subdivision from the operation of the act. But what we are now talking about here is the continuation of the act itself and the situation that has been testified to by witnesses such as Dr. Henry is most relevant to that question.

Those are what we consider the relevant facts supporting the legislative finding which, if I may say, despite our calm, law-school-like analysis of these situations, cries out for action.

Mr. MODE. But from a constitutional point of view, then, you think that a record of continuing difficulty is sufficient to justify extension of the act, even if the act continues to rely on 1964 figures?

Mr. ELSEN. Yes, sir. We think that the court has made that clear from a constitutional point of view. That would be sufficient. The Supreme Court has made that clear.

Mr. BASKIR. Did you mention in your report—I do not recall you mentioning it in your statement—any comment about the exclusive jurisdiction of the District of Columbia court under the law? Did you address yourself in the report to that question?

Mr. FEERICK. Very briefly, and the feeling of the committee was that this is appropriate and desirable and I do not think we dwelt

on that particular point in the report but I think there is an expression in support of this particular provision of the Voting Rights Act.

Mr. BASKIR. And you would be opposed to opening the venue to courts of appeals in the localities where the States are?

Mr. FEERICK. Right, but, of course, as you well know, under the Voting Rights Act there are areas where the courts of appeal can get involved. For example, if an examiner registers someone, then in his review of the hearing officer's decision, that would be in the particular circuit court.

Mr. BASKIR. Not with respect, however, to clearance of statutes or getting out from under the act?

Mr. FEERICK. That is correct.

Mr. ELSEN. No, because there, as in other situations where a national court has been involved, I believe under the price control during the Second World War, for example, it is highly important that there be one central court setting national policy and we believe that is quite an important provision in the act and really should be continued.

Mr. BASKIR. Thank you.

The chairman has asked me—have you got anything more to add?

Mr. FEERICK. No. I just wanted to express our appreciation for the opportunity to appear here today.

Mr. ELSEN. And for the excellent discussion of issues that we consider to be of overriding national importance. Thank you.

Mr. BASKIR. Thank you, gentlemen, for staying on after your time was up.

The chairman has asked me to recess the hearing until tomorrow morning at 10 o'clock.

(Whereupon, at 3:15 p.m. the committee recessed, to reconvene on the following day, at 10 a.m. Thursday, February 26, 1970.)

Page 502 blank

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965

THURSDAY, FEBRUARY 26, 1970

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 2228, New Senate Office Building, Senator Sam Ervin (chairman of the subcommittee) presiding.

Present: Senators Ervin (presiding), Bayh, Hruska, and Kennedy.

Also present: Lawrence Baskir, chief counsel.

Senator ERVIN. The subcommittee will come to order.

I understand Mr. Norman is our first witness and I want to welcome him to the subcommittee and express our appreciation for your appearing before us to give us your views and, I also understand, the views of the Department of Justice.

Mr. NORMAN. Thank you, Mr. Chairman.

Senator ERVIN. You may proceed in your own way.

STATEMENT OF DAVID L. NORMAN, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. NORMAN. Mr. Chairman and members, I am very honored to be here on behalf of the Department of Justice. I think the Attorney General asked me to appear here for the Department because of the many years that I have worked with voting rights in the Department of Justice, going back to about 1956.

I have been with the Civil Rights Division in a legal capacity since the inception of the Division in 1957.

Rather than reading my statement, with the permission of the committee, I would like to submit the statement and have it made a part of the record and to make a few general observations in addition to those already made about the proposed legislation.

Senator ERVIN. That will be entirely satisfactory to the committee. Let the record show that Mr. Norman's written statement will be printed in full in the record immediately after his oral remarks.

Mr. NORMAN. Thank you.

May it please the committee, there are three general areas that I would like to discuss without trying to cover specifically a great deal of ground that has already been covered here. The first relates to the residency restrictions for voting for President and Vice President. There has been discussion about the need for the legislation and some

discussion about the authority of the Congress to enact such legislation. I think the need is fairly clear, if, as we think the facts are, there are several million—2 million or 3 million citizens of the United States who would otherwise be eligible to vote for President and Vice President, who were ineligible to do so by reason of their having moved from one jurisdiction to another in the last general election.

I think that as our society becomes more industrial and technological, there is a decentralization of industry, with companies having branch offices and divisions all around the country. As a result there is a great deal more moving around than there used to be, and I should expect a lot more movement of people in the United States from one State to another. Sometimes this may be on very short notice and it makes sense to us that the person moving should carry with him the right to vote for President and Vice President, or stated another way, that he should not lose it by reason of having moved.

That is the real thrust of the proposed suggestions we have made. I think the authority for Congress to enact such legislation derives from the 14th amendment, from the equal protection clause, and from the expressed grant of authority to Congress to enact appropriate legislation to enforce that amendment's provisions.

The equal protection theory is that a State may not classify people in such a way as to deprive them of a privilege or of general benefits, unless the State has a compelling interest in doing so. In view of the recent Supreme Court decisions in which it has been expressed and affirmed that citizens had a constitutional right to move from one State to another and that that right cannot be infringed by States, the authority is clear for Congress to provide that when people move from one State to another, they should not lose the right to vote for President and Vice President.

It is very difficult to find a compelling interest these days in any State for requiring long-term residency in the State as a prerequisite for voting for President and Vice President.

With mass media and mass communications as it is, with the movement of people as it is, and with the fact that the States differ a great deal in the length of residency requirements, all of those things suggest that States' residency requirements for voting for President and Vice President are matters of convenience rather than compelling interest.

We think it would be perfectly proper for Congress to make that kind of finding and, having so done, this would provide a proper basis for the exercise of the authority of the Congress to enact this residency provision.

Secondly, I wanted to discuss briefly the suspension of literacy tests on a nationwide basis. Again, I think the need and the justification for doing so are fairly clear. We have in the Nation a large number of people, classes of people, who have been deprived or at least have not been afforded equal educational opportunities in the public schools, who are the adults of today and are of voting age. The Court has held that to apply literacy tests across the board in those circumstances has a discriminatory effect, and those very people who have been denied equal educational opportunities are among those who move from State to State in large numbers.

So, if any State is to be prohibited from applying literacy tests, we think that all States should be thus prohibited because the justification for doing so is the same, in one situation as it is in the other. And I think, again, the authority of Congress rests on the expressed authority granted to Congress in the 14th and 15th amendments to enact appropriate legislation to enforce these amendments.

Again, we are at a day when radio and television, the spoken word, are probably more popular than the kinds of things people would normally read or would have to read in order to qualify to be a citizen or an elector, so that to rely on literacy tests as a prerequisite for voting and to apply them strictly seems to us no longer to be justifiable.

Thirdly, I wish to speak to the question of section 5 of the Voting Rights Act of 1965 at a little more length than it has been discussed in the past. It has been my assignment to work on section 5 submissions and problems that have come to the Department of Justice over the last 4 or 5 years. Based on this experience, it is my judgment that the effectiveness of section 5 has been largely overstated.

The first point I want to make about section 5 that I think often escapes us is that when States submit proposed voting changes to the Attorney General, those changes normally come to us in the form of a statute or an ordinance. I have not seen a statute or an ordinance which you could tell on its face, by reading it, that its purpose or its effect was discriminatory.

When the statutes or ordinances are submitted to the Attorney General, we read them to determine if there is discrimination there. In order to find out anything more about the statute or ordinance, it requires some investigation and inquiry. In order to find out whether there is a discriminatory purpose, one might have to search through legislative journals or newspapers. It is almost impossible to probe into the minds of legislators to determine what purpose they had.

In order to determine whether there is any discriminatory effect, or a potential discriminatory effect, we often have to interview witnesses, interview people in the communities about what they think. In order to determine the effect, we very often have to obtain maps, precinct maps, for example, when a change involves changing a precinct line.

In short, it is impossible to simply read a statute or ordinance and to make a judgment. There is a lot of work that goes into the section 5 submission for approval or objection. Most of them, I would think more than 95 percent of the submissions, are approved.

As of January 29, 1970, we had received 436 submissions and out of that number only 23 had been objected to by the Attorney General. Eighteen of those objections followed the Supreme Court decision of last year relating to section 5 and most of those objections since the decision were related to the laws that the Court had before it.

Senator BAYH. Excuse me. The total number, again, was what? The total submitted? I missed that.

Mr. NORMAN. By January 29, the total amount was 436.

Senator BAYH. 436, and 22 were turned down, 18 since the last Supreme Court decision.

Mr. NORMAN. Twenty-two—Mr. Marblestone has corrected me, 22 have been objected to, 18 of those since the Supreme Court decision of last year.

Senator BAYH. Fine.

Mr. NORMAN. So, about 5 percent of the submissions have been objected to.

Now, it has been said, I think, by some that section 5 had advantages because the Attorney General could bring lawsuits in order to enjoin the operation of a voting change and he wouldn't have to prove anything except that the law was not submitted to him. He would just simply file a paper in the Court saying that Alabama has changed one of the laws to affect voting and they haven't submitted it to him and, therefore, he would ask for an order of the Court requiring the State to do so, or enjoining the State from using this voting change until it has been approved by the Attorney General or by the District Court for the District of Columbia.

I think that idea overlooks a very important practical fact. There are, in my judgment, no such lawsuits and cannot be such a lawsuit because when the Attorney General goes into Court and says to the Court, "I have a defendant here, the State of Alabama, or another State, and I am complaining because they didn't submit a change to me, which I know about or I couldn't have brought the suit," and any judge that I know of would say, "That is right, Mr. Attorney General, now that you are here tell us whether you object or don't object to this change, because if you do object to it, we will litigate; but if you don't object to it, then you are out of court anyway."

In my judgment as a practical matter, there could be no such thing as that type of lawsuit by the Attorney General under section 5.

I think the private citizen is no better off, really, because while there have been some suits under section 5 by private citizens, as a practical matter his relief would be to require the election officials or the defendant to submit the change to the Attorney General for his approval.

I do not have any decision by the courts setting aside an election because a voting change was not submitted to the Attorney General. I would be very surprised if any court ever would do that.

So, that in a private citizen's suit under section 5 his proof would be easy, it would be an easy lawsuit, but his remedy is very little. He hasn't much of a remedy.

Now, the third point about section 5. Among the little known facts, I think, is that the way we read the Court decision almost every change affecting voting has to be submitted to the Attorney General, no matter how trivial, how wise, how beneficial a change might be, it must be submitted. A consequence of this is that if little towns decide to change their polling place from the fire station, which is hot and has no room, to the new courthouse across the street which is air-conditioned and has lots of room, it must submit this change.

They have got to have the permission of the Attorney General of the United States in order to move that polling place from the fire station to the new courthouse. We have seen examples, I saw one just the other day, where a little town in Georgia wanted to increase the filing fees for local candidates from $5 to $25. It had been $5 for a long time. I don't know the reasons for the increase, probably because of inflation. Well, they have to submit that to the Attorney General of the United States of America for his approval to raise the filing fee from $5 to $25. There are some legal scholars among us who would hold in good faith that such a change has a discrimina-

tory effect because in that community the poor people are the blacks, and to increase the filing fees places a heavier burden, therefore, on the blacks. It would follow, then, that the Attorney General of the United States should prevent this little town from raising its filing fee from $5 to $25.

I say there are legal scholars among us, I am not one of them because I approved that change on behalf of the Attorney General.

Now, I think we tend also to overlook the fact that the administration's proposed legislation extends certain features of old section 5. In my judgment, the real innovation about section 5, the old one, was that it contained language that changes with discriminatory effect are in violation of the law.

Most of us used to assume, and the courts, I think, pretty well held, that if you were to attack a State law as being in violation of the 15th amendment, you would need to prove that there was a discriminatory legislative purpose. Well, our proposed section 5 also provides that if the legislation has a discriminatory effect it cannot be used.

Therefore, you don't have to probe into the minds of legislators, you need only to prove that the effects will be discriminatory.

Senator ERVIN. Mr. Norman, on that point, I am very much interested in testimony you have given. A statute may be discriminatory on its face, or there may be a violation of the 15th amendment because of its application.

Now, a statute which is perfectly valid may be applied in a discriminatory manner, but there is no way readily to tell whether it is going to be applied in a discriminatory manner if the State cannot put it into effect until after the question has been passed on. Normally, in judging a law we judge it on the facts which are in existence at the time the law is applied, but under this act, since most of the proposed statutes are valid on their face, the Attorney General must uphold their validity or deny their validity based on what he supposes would happen if they were permitted to operate, isn't that true?

Mr. NORMAN. That is quite right. The ordinary statute or ordinance doesn't give you any clue on its face as to the purpose or as to what kind of an effect it will have once it is applied. There are some exceptions to that because if you have an ordinance that raised the filing fees for candidates, you know from reading it what it is going to do, and you may be able to make some judgments about it.

There are exceptions. You can, for example, when a statute or ordinance is passed which changes precinct lines, and—incidentally, I agree that, from court decisions, all these redistricting plans are going to have to be submitted to the Attorney General for his approval because they are voting changes.

As to the changing of precinct boundaries, once you have such a submission, you need some kind of demographic information about what is within those lines, in order to make some judgment. You are quite right that to sit in Washington at my desk and read a statute, there is no way normally that you can tell what it is going to do or what its purpose in effect is.

Senator ERVIN. In other words, where they proposed to raise the filing fee for local candidates running in the primary from $5 to $25, you would have to pass on whether that could be discriminatorily

applied and you would have to go down to see how many black people have that kind of money and could pay the filing fee.

Mr. NORMAN. Well, I think that is right. I would be reluctant to do that because of the amount of effort involved, and I think in the end you would probably approve it anyway. I don't know. But that is quite right.

Senator ERVIN. That is the reason, I think, that the statute punishes people for past sins and denies them their rights because of fear that sometime in the future they may commit a sin. That is the fundamental objection among my many objections to the statute.

Mr. NORMAN. Yes, sir. There is one final point I wanted to make in relation to the new section 5 under the proposed legislation. I think it has almost been forgotten that in the Voting Rights Act itself, in section 3(c), which is carried forward under the new legislation, a provision is made by which, when suits are brought under the 15th amendment by the Attorney General, the court having jurisdiction retains jurisdiction for such period as it may deem appropriate and during that period any voting changes have to be submitted to the court for its approval. That is a sound provision.

Section 3(c) is carried forward in the administration proposal so that it is not as though in the absence of old section 5, State and political subdivisions would be free to enact discriminatory legislation.

Mr. Chairman, that is the end of the remarks I would like to make, but I would be pleased to answer any questions that the subcommittee may have.

Senator ERVIN. I appreciate your statement. I happen to be from North Carolina; 105 years ago next April, Robert E. Lee surrendered in Northern Virginia at Appamattox. I was of the opinion until I came to the Senate that North Carolina had been readmitted to the Union as a full-fledged member.

I tried not to be only a Southerner, I tried not to be only a Democrat, I tried to be an American. I fought in the First World War, my son has served in the Korean conflict and the Second World War, and thousands of North Carolinians have died on battlefields abroad in the hope that America might remain free.

Yet, North Carolina, with this Voting Rights Act of 1965, is denied the right to be a full-fledged State of the Union. It is denied the right to exercise its powers under these four provisions of the Constitution, section 2 of article I, the first section of article II, the 10th amendment, and the 17th amendment.

Whereas, with the exception of six other States, the other 43 States of the Union can exercise those rights. I regret very much that it seems to be politically profitable in some sections of the country to browbeat the South.

If there is anything in the world that I defend it is due process, which requires fair play, fair treatment, fair trial.

It is a strange thing to me that the North Carolina legislature cannot pass an election law. All our laws apply to 100 counties, but only 39 are condemned under this legislation. The legislature of North Carolina cannot make a change in the voting laws without first coming up here and getting approval of the Attorney General, or in case the Attorney General disapproves, getting approval of the District Court of the District of Columbia.

When the constitutional convention was in session, it was proposed that all laws passed by Congress should be submitted to the Supreme Court before they could take effect. And if the Supreme Court disapproved of them, they had to be repassed by two-thirds majority of each House of Congress, before they became law. Of course this proposal was rejected.

Now, they don't make us bring all our laws up here, but they make seven States bring laws passed by their legislators up there and make those States get approval of the Attorney General or the approval of a three-judge court here in the District of Columbia.

They insult every Federal judge sitting in the South in these seven States, by nailing shut the courthouse doors. They do this by nailing shut the courthouse doors to any suits by States under this provision.

I don't know why people wish to insult one region of the country like that, because we have got a lot of good people down there. We, like the other sections of the country, have people who are good, and some who are bad, and it is virtually impossible to pass a law which a bad administrator could not use for discriminatory purposes.

My own personal opinion is that the due process clause demands fair play, but here is a provision which says that you have to bring your witnesses anywhere from 200 to 1,000 miles to exonerate yourself from a conviction under a bill of attainder. The Supreme Court itself has said that it is a bill of attainder, but they said a bill of attainder doesn't apply to States. What they were applying it to were State election officials, not to States. A State consists of the people. People inhabiting a certain territory with certain powers of self-rule.

This statute condemns all of the people of 39 counties of North Carolina, and all the people of six entire States of violating the 15th amendment through their election officials. But the court said, in effect, it doesn't apply to State election officials, or State offices. And yet, one of the last decisions interpreting the prohibition on the bill of attainder the *Levitt* case, held that the bill of attainder did protect Federal offices.

It is a queer thing that a law which would protect Federal offices would not protect State offices. Talk about unifying this country and at the same time Congress sits up here and passes laws which make for division. I have to agree with you that under the decision in the *Morgan* case and under the decision in the *South Carolina* case, Congress can nullify all the constitutional provisions which give States the power to prescribe qualifications for voting.

I think those are bad decisions because they reverse what the Supreme Court always said before. They said before those cases that the Constitution consisted of harmonious provisions of equal dignity and should be interpreted so as to give each one of them its meaning. Those cases say, in effect, that the Constitution is now composed of mutually repugnant provisions of unequal dignity and that some of these provisions are so much stronger than others that Congress can use them to nullify the other provisions of the Constitution.

I don't think that a more intellectually insupportable decision was ever handed down than the *Morgan* case where the Court held, in substance, that in passing upon the question of whether a State had violated the equal protection clause that the Court wouldn't even consider

whether the State had violated the equal protection clause or had abided by it. That, they said, was immaterial to the decision. But they held under the fifth section of the 14th amendment that Congress had the power to nullify in substantial part a State voting qualification which was in perfect harmony with the equal protection clause of the 14th amendment, and to substitute a Federal voting qualification which the Congress was forbidden to pass by four sections of the Constitution. They said, the only test of the validity of an act of Congress under section 5 of the 14th amendment was whether the Court conceived that the act had a tendency to enforce the equal protection clause.

Under that decision, Congress could abolish the power of the States to make, enforce, and interpret laws because if Congress abolished the power of States to make, enforce, and interpret laws, the Congress could make it absolutely impossible for a State ever to violate the equal protection clause of the 14th amendment.

I don't care how many Supreme Courts say that is a sound interpretation of the Constitution, I don't believe it is. I don't believe that the Constitution permits Congress to abolish the States, which is exactly what that case stands for.

And for the Court to say that the Court will not even inquire into the constitutionality of the State statute which is being nullified, that that is irrelevant and immaterial to the controversy, is ridiculous.

I don't like the administration bill because I don't think it is in the power of the Congress to nullify four provisions of the same Constitution that the Supreme Court Justices and Congress are sworn to uphold. We are not sworn to support all the Constitution except section 2 of article I, section 1 of article II, and the 10th amendment, and the 17th amendment. But you have to say this in favor of the administration bill: it proposes to act in a manner which is impartial even though it is unconstitutional, rather than in a manner which is both partial and discriminatory against certain areas of the country, and unconstitutional.

I have appealed to the supporters of the proposal to extend the Voting Rights Act of 1965 to substitute for the 1964 election returns the 1968 election returns, but I can't find any of them that would agree to that substitution.

Senator HRUSKA. Will the Senator yield?

Under the present law, with the 1964 formula for voter registration and participation, is it not true that the application of the 1965 act only pertains to certain parts of the country?

Senator ERVIN. Oh, a matter of fact, there is no provision in the 1965 act that applies to any States except Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississipi, and Louisiana. It was recommended by President Johnson, a resident of the State of Texas. The voting record for Texas in the 1964 election was far inferior to those of other States in which the law applies.

Senator HRUSKA. Well, the reason I asked that question was to lay a foundation for a further comment. The Senator from North Carolina is quite correct in many of his observations, in fact, the bulk of his observations about the nature of the present act.

However, I would not be disposed, to go along with the chairman's idea of changing the formula from 1964 to 1968 voting statistics. If it is achieved and if the law is amended only in that respect, it will mean that we will have a law that would not be available in many of the States of the Union where discrimination is practiced either by way of literacy tests or otherwise. There would be no equivalent Federal law that would apply to any of the other sections or other States of the Union.

On the other hand the administration bill H.R. 4249, does apply to all the States, and examiners and registrars can be sent to any part of the United States, not just to those presently covered by the 1965 act nor just to the few States that would be covered if 1968 voting statistics are used It seems to me that this fact must be recognized by anyone who is sincere and really earnest in his effort to try to improve this picture of discrimination and disqualification of voters, not just on the basis of so-called minority groups, but on the basis of people. The Constitution applies to people, and if we are going to make any effort to enforce the guarantee of the Constitution that all eligible voters are not disqualified unconstitutionally and illegally, then the purview of this present law must be broadened to include 50 States and applied to all the people.

Now, I don't see how that can be done by a simple amendment of the present law to remove the 1964 statistics and to relace them with the 1968 statistics.

All this would do would be to shrink the jurisdiction of the law so that it would be applicable only to a very, very small geographical portion of the 50 States. It seems to me that the administration bill which the testimony of this witness fortifies, will make the law applicable generally to people. And I, for the world of me, cannot understand why that is objected to.

Mr. Norman, you mentioned the simple example of an increase of filing fee from $5 to $25, and that under the 1965 act, it will take the majesty and the might and the time of the Attorney General to approve such a change, in advance.

Let me ask you this question. If the proposed change by a covered jurisdiction was from a $5 filing fee to a $6 filing fee would that same procedure have to be followed?

Mr. Norman. That is right, Senator. It is even worse than that because if they changed the filing fee from $5 to $3, they would still have to have it approved by the Attorney General of the United States.

Senator Hruska. So that even an obvious effort to improve voting procedures and practices by the legislating authority of that State would be stultified, wouldn't it? Not only would oppressive changes be stultified, but also beneficient changes. It seems to me that this approach is predicated on the idea that everything that will be done, anything that will be proposed or considered, is for the detriment of the so-called minority groups within those States; isn't that its basis?

Mr. Norman. That is the basis.

Senator Hruska. Mr. Chairman, I have other questions here but I understand that we are supposed to go into executive session and I guess there are other Senators with questions.

Senator Ervin. I am not a theologian, but I look to the King James version of the Bible for spiritual guidance and it says that those upon

whom the tower in Siloam fell were not sinners above the rest of them that dwelt in Jerusalem. I would like to say the administration bill does, at least, have some Biblical meaning, in that it says to the people of North Carolina and Virginia and South Carolina and Georgia and Alabama and Mississippi that Congress no longer is going to pass laws based upon the theory that they are sinners above those who dwell in other areas of this country.

Senator THURMOND. Mr. Chairman, will the Senator yield a minute?

Mr. Norman, I noticed on page 5 of your statement you said that the underlying rationale which formed the basis of that decision applies equally in the States of the North and West, which have literacy tests; is that correct?

Mr. NORMAN. That is correct.

Senator THURMOND. And you further state that thousands of adult Negroes now living in those States, you mean the North and the West?

Mr. NORMAN. Yes.

Senator THURMOND. Were not afforded equal educational opportunities. Is that your statement?

Mr. NORMAN. That is right.

Senator THURMOND. Now, you are a deputy attorney general of the United States telling this committee that thousands of adult Negroes living in the North and West were not afforded equal educational opportunities; is that correct?

Mr. NORMAN. This is correct.

Senator THURMOND. And the administration's provision that those Negroes in the North and the West, as well as white or anyone else, should be treated in the same way and given the same protection as anybody who may be afforded any protection under the 1965 voting rights bill; is that your opinion?

Mr. NORMAN. That is correct.

Senator THURMOND. Now, I notice on the same page you also state that literacy tests outside the South have a discriminatory effect and it says that this position is supported by the recent study made by the Bureau of the Census at the request of the Commission on Civil Rights. I construe from that that the Commission on Civil Rights requested the Bureau of the Census to propound some questions and that in propounding those questions they found that the literacy tests in other sections, in other words, you mean the North and the West?

Mr. NORMAN. Yes.

Senator THURMOND. Have a discriminatory effect and that that position is supported by the results of the questions propounded by the Census at the request of the Commission on Civil Rights; is that true?

Mr. NORMAN. That is true. I think the Bureau of the Census study had already obtained data and that, at the request of the Commission on Civil Rights, it made a study and obtained statistical information showing a correlation between the use of literacy tests and the relative disenfranchisement of minority group persons in the North and in the West.

Senator THURMOND. Now, I did not favor the 1965 Voting Rights Act and I think it is unconstitutional, I think it is discriminatory, and I

was opposed to it then, and I am now, but as I understand the position

Senator THURMOND. Now, I did not favor the 1965 Voting Rights Act and I think it is unconstitutional, I think it is discriminatory, and I was opposed to it then, and I am now, but as I understand the position of the Justice Department, it is that if such a law is to be enacted, it should apply to all the States and protect all the people of all races throughout the whole country and not just apply to certain States; is that correct?

Mr. NORMAN. That is correct, absolutely correct.

Senator THURMOND. Thank you.

Thank you, Mr. Chairman.

Senator BAYH. Mr. Chairman, I want to say that I appreciate Mr. Norman giving us his opinion.

You have served at length and with distinction as an official of the United States in the Department of Justice and I, for one, compliment you for that. I know how strongly our distinguished chairman feels about this and I know—I would literally stake my life on the fact—that he speaks from conviction.

He feels the purpose of the Voting Rights Act and our desire to extend it is to browbeat the South, as he said, or to discriminate against the South, as others have said. I have just a tinge of envy, I think, in my voice, and I have just a tinge of envy in my heart when I think of the illustrious record that he has, not only in this body, but as he pointed out, having served in the Armed Forces of this country in World War I and having a son who served in World War II and the Korean conflict. But I can't help but wonder how I would feel if my face were black and I had served this country in World War I and my son's face was also black and he had served in World War II and the Korean struggle, but my grandchildren couldn't vote. And that is the background behind the 1965 Voting Rights Act. We have looked at figures and discussed them with other witnesses. We have compared, in Georgia, the nonwhite registration in 1962, of 27.4 percent compared with white registration of 62.6 percent. And we have seen because of the Voting Rights Act, that this has doubled, more than doubled, as far as the registration of black voters is concerned. We looked at the State of Mississippi and found in 1964 only 6.7 percent of the nonwhite voters were registered, and we see that in a 3-year period this registration went from 6.7 to 59.8. This seems to me what we are trying to accomplish.

Now, am I accurately informed when I was told that you participated in the drafting of the 1965 act?

Mr. NORMAN. That is correct.

Senator BAYH. Can you tell us why section 5 was included in the act, please.

Mr. NORMAN. Yes. It had been our experience in the early sixties, in our rather vast litigation program to enforce voting rights that in some areas where we were working the officials would change voting requirements, they would make voting requirements and procedures more stringent than they had been. For example, when it became clear to them that everyone was going to have to be registered to vote, they would change the procedures and requirements and make them more stringent, so that it would be harder for a newcomer to register to

vote than the oldtimers who were already on the rolls. The court held that in the specific cases we had brought, that the States couldn't do that because making those procedures more stringent, itself had a discriminatory effect.

The thinking that went into that section 5 in the Voting Rights Act was to provide a vehicle by which, instead of litigation the Attorney General could pass upon all changes in voting requirements. I am sure the Congress at that time felt the need to enact that kind of provision.

Whether that need exists now is very doubtful in my mind, particularly in view of the lack of effectiveness of section 5.

Senator ERVIN. Do you know of any suits that have been brought in North Carolina to enforce voting rights at any time in the sixties?

Mr. NORMAN. I do not.

Senator ERVIN. Neither do I.

Senator BAYH. You were of the opinion that section 5 was needed as of 1965 when you helped in drafting the 1965 Voting Rights Act, I take it, then?

Mr. NORMAN. That was a response to practices which we found to exist in our litigation program of stiffening voting requirements and procedures.

Senator BAYH. Could you give us your opinion of the U.S. Commission on Civil Rights. Do you feel they perform a worthy service in this area?

Mr. NORMAN. I think that the Commission has done some very valuable studies, and through those studies has made available to the Congress and to the public, valuable information. I very often find myself not sharing their opinions or evaluations. Since they are not in litigation where you have to really prove facts in court, they don't have to prove them, they can assert them.

Senator BAYH. I understand as an attorney, that it is easier to allege than it is to prove, and I appreciate your making that distinction, but in the study——

Senator ERVIN. Excuse me one moment. One of the marvelous jobs they did was to find a certain county in North Carolina which was discriminating against blacks in registering to vote, and in making that finding they didn't bother to find out that not a single black lived in that county. That shows how inaccurate they were.

Senator BAYH. Mr. Norman, has it been your opinion, although you might disagree with the Commission's interpretation of the facts, that they have made a good faith, conscientious finding of facts and that the facts they have recorded under most circumstances have been accurate?

Mr. NORMAN. I have to assume, and I want to assume, that they do go about the work in a professional way, and in good faith, but whether the facts are accurate or not, I haven't any judgment about that.

Senator BAYH. But you feel that they use the best evidence available and don't try to present a distorted picture?

Mr. NORMAN. Well, I would suppose that they would use the best evidence available. Whether they present or seek to present all the evidence on all sides of an issue, I am not prepared to say.

Senator BAYH. You were prepared to say earlier, just a moment ago, that you thought they provided valuable services and valuable information in this field and valuable studies in this field. It seems to me that if we are going to be consistent in this, the information they give is reasonably accurate or it isn't reasonably accurate. If it isn't reasonably accurate, I don't see how your earlier assessment could be accurate or consistent.

Senator ERVIN. If you would pardon me for interjecting there, he said he thought that they were sincere people, but I would confess right here and now that I think that some of the most sincere people who have ever lived were those who burned Jan Hus at the stake because of his religious views.

Senator BAYH. Mr. Chairman, I would be glad to have the record read back. I am not trying to put anybody in an embarrassing position, but I think Mr. Norman has had a lot of experience in this area. I am not sure he is in a position in which I would envy him right now, but he comes as a lawyer for the Attorney General of the United States and he may or may not share the complete opinion of the Attorney General of the United States, but he is a good lawyer, I suppose, and would make a tremendous effort to try to represent his client.

He said earlier that he thought the U.S. Commission on Civil Rights had provided us some valuable studies. Now, it seems to me that a valuable study would have reasonably accurate information in it. That is what I am trying to find out, whether this information was valid, and to get this witness' opinion of it because I respect his opinion.

Mr. NORMAN. Senator, I would be glad to give you my opinion about it. I think that the studies that the Civil Rights Commission has made over the years, and that includes studies regarding voting and schools, have been valuable studies that have provided a valuable service. In some ways, it has helped the Department of Justice, for example, in our litigation program because when they bring out facts about a particular place we can pursue those facts as they are alleged or complained about, and determine whether or not some kind of litigation action should be taken based on the evidence we find.

In that sense, it has been very valuable to the Department of Justice. I would suppose it has been very valuable to Congress. But whether everything they say is accurate, I have no way of knowing.

Senator BAYH. Do you have reason to believe that what they say is inaccurate?

Mr. NORMAN. I have no reason to believe that anybody in the Commission would ever say anything intentionally that was inaccurate.

Senator ERVIN. As I recall on one occasion the Civil Rights Commission conducted investigations into voting in Louisiana. Some election officials of Louisiana, who had charges made against them, asked for permission to come in and have their lawyers cross-examine witnesses against them. The Civil Rights Commission refused to permit them to do so and the case came to the Supreme Court of the United States which affirmed it. A majority of the Court held that the Civil Rights Commission had the power to deny the officials the right to confront those who were testifying against them because it was an investigatory action and not a trial.

And certainly when they do have a chance to hear both sides of the subject they have refused to do so.

That was just my observation and you might care to comment on it.

I think it would be fitting to tell a story here about a North Carolina justice of the peace who was trying a little case and when the plaintif had rested his case the defendant started to put in evidence and the justice of the peace said, "I would like to ask you just as a favor to the court not to offer any testimony because sometimes when I hear both sides of a case, I get confused. It is much easier to decide a case when you hear only one side."

That has been the method of the Civil Rights Commission in its operation so far as I have been able to observe.

Senator BAYH. I suggest that probably is germane.

What I am trying to find out is whether our distinguished witness feels that when the U.S. Commission on Civil Rights, comprised of what it is reasonable to say are conscientious men, provides us a study of voting trends with registration figures, the figures that I mentioned earlier, whether he feels those are reasonably accurate or not.

Now, if you think that everybody who has a black face in Mississippi was registered in 1964 when the figures that were presented by the Commission on Civil Rights say that less than 10 percent were registered, then I think we have a problem. If you say it is a ball park figure, whether it is 6.7 or 10 percent, I don't think that is important. But I think if you go as high as 80 percent instead of 6.7, I think we have a credibility gap.

Mr. NORMAN. Let me say this, Senator, I am a good friend of Mr. Glickstein. I respect him highly and I think he is a very competent fellow, highly professional and ethical, and he is a good lawyer and I am sure that when the Commission publishes information that they do the best they can to make it accurate, and I don't think we have a credibility gap.

Senator BAYH. The reason I have been trying to find your opinion on this particular Commission is that I gather from your testimony regarding section 5 that although you admit there was a need for this type of legislation in 1964–65, your view as to the extension is that the same conditions, same attitudes, same problems don't exist today.

In other words, there must have been a sort of a renaissance of thought that black people should have the right to vote. In the 1968 report, "Political Participation," published by the Commission, plus the testimony given by Mr. Vernon Jordan yesterday, by Dr. Aaron Henry yesterday, as well as Mr. Glickstein, there is an abundant amount of testimony that some of these conditions do exist. For example, evidence that white legislatures have extended or expanded terms of incumbent white officials instead of having them go through elections. It is a rather unique coincidence that this occurs at the time when large numbers of black voters are present in the constituency which elects white officials.

We have the example of redrawing municipal boundaries, we have had offices abolished that were sought by black candidates, we have had formerly elective offices suddenly made appointive, without stated reasons, but just in the area where black voters are being registered in large numbers. We have had candidates filing fees increased, with-

out stated reasons, but in just the area where large numbers of black voters were registered.

Now, this is the thing that concerns some of us—that these patterns still do exist. Would you care to comment on that or not?

Mr. NORMAN. I can understand that, Senator. Those examples that you give were solved by litigation on their merits, they weren't solved by section 5. And it is just not accurate if some witness said they were solved by section 5; they were not. They were solved by litigation on their merits. And the power to conduct such legislation still exists and will continue to exist.

As to your earlier question about a need that existed in 1965, whether it exists now, I think our experience over the last 4, almost 5 years, under section 5, tells more about the effectiveness of section 5 than anything else. It seems to me that it has been almost ineffective and that the problems that we have come up with under section 5 can be handled, and have been during the last 4 years, by litigation on the merits.

I don't shrink at all from taking on those problems by litigation.

Senator BAYH. I want to refer to the numbers that you gave us, the 436 statutes that have been referred, or laws that have been referred, or regulations that have been referred, of which only 22 were turned down.

Do you have any idea of how many people were deterred from passing ordinances or laws because they knew they had to submit them to the Attorney General?

Mr. NORMAN. I do not, and I don't know how we can assume, either, that people have been deterred or that they have not.

Senator BAYH. Of course, everyone can make his own judgment as to whether a person desirous of discriminating against black voters, who knows that the Attorney General is going to have to look at this, whether that might deter him from proceeding or not.

In your judgment, it is that they wouldn't, I suppose, but it is my judgment that you could reasonably expect that a person would be somewhat reluctant to pass a discriminatory statute if he knew that you and the officials down at the Department of Justice were going to look at it first.

Perhaps the very absence of discriminatory statutes speak to the effectiveness of section 5.

Mr. NORMAN. I didn't see any discriminatory statutes before section 5. There were changes, there were changes that had discriminatory effects which we have had in the courts, but it has been many, many years since people have stopped writing discrimination into statutes.

Senator BAYH. I think we can—I think we are playing with semantics if we try to distinguish between effect and actual discrimination statutes. You are not going to deny that there were large numbers of statutes having a discriminatory effect before section 5, are you?

Mr. NORMAN. No, that is right, there were.

Senator BAYH. Now, do you have any idea how many of the 436 that were submitted to the Department of Justice and how many were administrative ordinances and election board rules?

Mr. NORMAN. I do not have that breakdown, Senator. It could be done. You would have to go through all the files and analyze each one and break it down by that method.

Senator BAYH. You stress the burden that this places on the Department of Justice when they are submitted. I am sure that is right. In your experience in the Department of Justice, are there certain types of statutes that tend to wave a red flag? Have you learned by experience that in certain areas changes need to be looked into more carefully than others?

Mr. NORMAN. Well, I think so. I think that precinct changes, for example, ward line changes are of this type. But you can't predict anything about what kind of effect it is going to have simply from the face of it. You need to look into it. I think statutes which tend to restrict voting opportunities, for example, statutes or changes which reduce the number of registration days a week from 5 days a week to 3 days a week, you might want to look into. I would say on the face of the change, those which appear to restrict voting opportunities or registration opportunities, you look at a little harder than those which seem to relax voting restrictions.

Senator BAYH. So that, indeed, there are some areas that require additional burdens where others really don't.

Mr. NORMAN. That is right.

Senator BAYH. I notice that you referred to the $5 fee going up to $25.

Mr. NORMAN. Yes, sir.

Senator BAYH. And this was not a matter of too much concern, but what if that had gone up to $2,500 instead of just $25?

Mr. NORMAN. If it had, I would have looked at it much harder than I did.

Senator BAYH. But you wouldn't have a chance to look at it in the same way without section 5 as with section 5, would you?

Mr. NORMAN. Well, that is right, that is exactly right.

Senator ERVIN. That would indicate they were attempting to exclude poor folks of all races, wouldn't it? The discrimination in that case would be a discrimination against poor people rather than black people.

Mr. NORMAN. That is right.

Senator BAYH. That doesn't make it any less desirous, Mr. Chairman.

Could you take that through the different burdens—take it through the course that you would have to follow with section 5 and without section 5. I am an election board official in County X and 2 weeks before the election we meet and we decide that we are going to change the criteria. We are going to change the filing fee from $25 to $2,500.

How would you proceed under section 5, and without section 5?

Mr. NORMAN. Based on our experience in your hypothetical example, I wouldn't expect an election board to submit it within 2 weeks. It would probably take them a lot longer before they could do that, before they got around to submitting it. But, assuming they submitted it, we would——

Senator BAYH. Before we go further, under section 5, if I were a voter in a particular area and I could call this to your attention, would that be possible?

Mr. NORMAN. You could do that without section 5.

Senator BAYH. All right.

Mr. NORMAN. That is right, you could.

Senator BAYH. Without section 5 you, as a Justice Department official, really have no way of saying that is unlawful because it hasn't been brought to your attention. With section 5, if I bring it to your attention before the election and you suddenly realize it is there and nobody has brought it to your attention, then you have a course of action to take before the election; is that correct?

Mr. NORMAN. That is correct, but we have that course of action without section 5.

Senator BAYH. Without section 5, what burden do you have to sustain?

Mr. NORMAN. Almost the same in terms of energy because that kind of change from $5 to $2,500, I would have the FBI go out and do some interviewing and determine the pertinent facts.

Now, that was under section 5. I could do the same thing without section 5, I would have the FBI go out and find out what was involved. If it were discriminatory, I could file a suit and get a temporary injunction.

Senator BAYH. Then you are really telling us, and I still have got the opposite impression, you really have the same burden—you are going to be required to meet the same standards and expend the same effort with or without section 5, so that just repealing section 5 doesn't diminish the amount of effort that you have to spend in proving your own case.

Mr. NORMAN. We wouldn't have 436 laws submitted to us, many of which we did investigate and then learn that they were not objectionable. That is energy wasted. We had only 22 objections, and many of those arose as a result of court decisions. I suppose that we could have handled the 22 through a lawsuit, and that is not many lawsuits over a four and a half-year period.

Senator BAYH. You told me just a minute ago, sir, there were some areas you felt that you had to pursue more diligently than others because they wave a red flag, and I suppose there would be some of those 436 that you felt did not need to be examined as closely as others. Did I misinterpret——

Mr. NORMAN. That is correct, some don't get examined as closely as others.

Senator BAYH. Given the $25 to $2,500 example that I used a moment ago, you would use the FBI and all your investigators and prove to yourself that this thing needs to be pursued. All right, given this 2 weeks before election under section 5, if you had made this determination yourself, you can indeed take immediate action to keep this from being enforced prior to the election. But without section 5 you have to sustain a burden of proof before you can get a temporary restraining order; do you not?

Mr. NORMAN. Yes; although the action that I would take under section 5 is to write a letter to the election board, or call them up if there was no time, and say that we had gotten this information and we object to it and they had better not use it. If the board said that we are going to use it anyway, then the Department would have to go to court.

Senator BAYH. Now, given this situation, what do you have to

prove in court if they say they are going to go ahead and use it anyway?

Mr. NORMAN. Well, you would have to prove that it would have a discriminatory effect.

Senator BAYH. No: I respectively suggest that that isn't what it says in section 5.

Under section 5, all you have to do is to prove that it wasn't submitted to you. It would even strengthen your case if you could prove that it wasn't submitted to you but you found out about it and you told them not to use it and they said, "To heck with you, Mr. Attorney General, we are going to use it anyway."

That is an easy case to prove, whereas it would be a more difficult case to prove actual discrimination, as you would be required to do without section 5 to sustain the burden necesary in court to get a restraining order.

Mr. NORMAN. I don't shrink from that burden of proof.

Senator BAYH. But you have to admit that it is a more significant burden without section 5 than with section 5.

Mr. NORMAN. In the example that you gave if, indeed, a court would enter an order based on my proof that we objected, and that is all the proof that would be put in, that would be an easier burden of proof than proving discrimination, that is correct.

But I don't think a court would do that.

Senator ERVIN. It would be a lot easier to pass a law that we couldn't change any of our laws; wouldn't it?

Senator BAYH. Nobody in this committee, Mr. Chairman, suggested that at all.

Is it necessary for me to read the words of section 5 to take issue with our distinguished witness as to whether the court would be violating the words and the intent of section 5 if it held the course that you suggested?

Mr. NORMAN. No; if we went to court and filed a paper and said we objected to this and they threatened to use it anyway, please enjoin them from using it, it is not inconceivable to me that a court would say that that was right, why did you object, what was wrong with it?

Senator BAYH. It may not be inconceivable to you, but what does the law say?

Mr. NORMAN. I don't think the law prohibits the court from making that inquiry.

Senator BAYH. But the law says whether the court makes the inquiry or not, if that ruling or regulation or change has not been submitted to you on its face, it is invalid. Now, that is what it says right here in the words of section 5. I won't bother to prolong the hearing by reading that, but that is what it says.

Now, what you are saying, Mr. Norman, is that although it says that, the court isn't going to read the law, it is going to ask for a higher burden of proof to be sustained.

Senator ERVIN. My objection to that is that it makes the seven States come up here with hat in hand and beg for permission to exercise the legislative power reserved to them by the Constitution of the United States.

Senator BAYH. Well, we are each entitled to our own opinion.

The thing that concerns me still is that I am convinced after listening to our distinguished witness that without section 5 you have to sustain a significantly larger burden of proof that you do with section 5. This was the ultimate conclusion we got from the Attorney General himself when he was up here. After taking 45 minutes of running around Robin Hood's barn, then he finally concurred with us.

Now, let me ask another question——

Senator KENNEDY. Will the Senator yield?

As to these 436 cases that were brought to the Attorney General's attention of which I understand 22 were rejected, could you tell us the term of time when those were brought?

For example, how many were rejected during 1969, could you give us that information?

Mr. NORMAN. Yes, partly. Of the 22 that were objected to out of the 436, 18 of them were objected to within the last year and four prior to last year.

Senator KENNEDY. Thank you.

And have you submitted for the record at least as to some, if not all, of these 22, the reasons why they were rejected? Have you made that a part of the record or is that so voluminous that you could not? Could you do that precisely, or does that present a problem?

Mr. NORMAN. Senator, that is not a part of the record now. I think I could make a brief synopsis of those submissions and send the synopsis to the subcommittee if it so desires.

Senator BAYH. If the Senator would yield on that point, I would appreciate it, as long as you are looking to find the answers to these questions, if you would find answers to the questions I posed earlier as to the numbers of those 436 that were State laws and the number that were ordinances, election board rules, et cetera, because it seems to me that with section 5 it is relatively easy to find a State law, but without section 5, it is going to be very difficult to get at the more subtle, more specific and immediate problem of the local election board or municipal ordinance.

Mr. NORMAN. Yes; I can do that, Senator. I can tell you now that a vast majority of the submissions have been statutes.

Senator BAYH. So that the ones that are really going to cause the greater amount of harm are——

Mr. NORMAN. Are not submitted.

Senator BAYH. Are not submitted, but you have immediate recourse to prohibit them whereas without section 5 you have to go to court and prove your case to get a restraining order.

Mr. NORMAN. That is right.

Senator KENNEDY. Mr. Chairman, would it be possible to get just a brief summation of the ones that have been rejected? If he could do that for us?

Senator ERVIN. It might be impossible to put it in the record because we do have a deadline for Monday, and we have got to send the hearing to the printer today if we are going to have them printed in time for next Monday.

Senator KENNEDY. Well, I think they could be made available and be included in the appropriate place, in the Congressional Record, if we could get a brief summation on that.

Senator ERVIN. He says he would be glad to do that and furnish this committee with that information.

Senator KENNEDY. On this point, Mr. Norman, could you give us any reason why you think that more were rejected in the period of last year than were rejected earlier?

Mr. NORMAN. Yes, last year the Supreme Court had before it four cases which it consolidated, all involving section 5. In one way or another, they all involved section 5, and the Supreme Court held that the changes that were involved in thoses cases, should have been submitted to the Attorney General under section 5 and gave some indication that it thought that the changes were bad; that is, that they were discriminatory. Of the 18 laws objected to since the Supreme Court's decision in the *Allen* case, some were the very laws involved in that case and others were very similar.

The holding of the Supreme Court in *Allen* was that the changes should have been submitted to the Attorney General and after the decision, they were submitted to the Attorney General.

Senator ERVIN. If I may interject for a moment for clarification, if I remember that case correctly, the majority of the Court held that they wouldn't pass on the question whether those changes violated the 15th amendment unless they had been submitted first to the Attorney General or the district court.

Mr. NORMAN. That is correct.

Senator KENNEDY. Thank you.

Senator BAYH. Inasmuch as we have been talking about this burden of proof, let me just read excerpts from a letter included in the record of hearings before the House of Representatives to the Judiciary Committee, from Father Hesburgh, who happens to be one of my constituents, and also Chairman of the Civil Rights Commission. He refers to the proposal to eliminate existing protection changes in the voting rights of American citizens.

"It is in no sense an advance in protection of the voting rights of American citizens. It is a distinct retreat. It is an open invitation to those States which denied the vote to minority citizens in the past to resume doing so in the future through insertion of these disingenuous technicalities and changes in their election laws."

Then I shall skip a paragraph here, "Your proposal would turn back the clock to 1957, relying on the slow process of litigation to try to keep up with rapidly enacted changes in the law. It would mean that the Department of Justice would not have notice of such changes before they went into effect. The inadequacy of litigation as the sole technique of protecting right to vote was recognized by Congress when it passed the Voting Rights Act of 1965. Now is not the time to cut one of the act's key provisions."

Father Hesburgh there is talking only of the statutes. I suggest that you multiply that several times if you also realize that it affects the lesser measures, more subtle measures, that have immediate effect. Just before an election, the election board and other local authorities can change laws. Do you care to comment on that further, on what you previously said? I am afraid Father Hesburgh's discussion of it is not going to change your mind, but I wanted you to know that this is not only my opinion I am voicing here.

Mr. NORMAN. I think that we are at a time in history when the kind of problems that come up can be handled readily by litigation. There are a great number of black people of the South that are registered to vote and have a voice in their selecting of their officials. They are not going to be disenfranchised. I think we are at a point in time that we can handle the problems readily by litigation, and this is also suggested by the fact that we had only 22 objections out of 436 laws submitted.

I think it is true that the Civil Rights Commission doesn't have as much faith in litigation processes as we do in the Department of Justice. No question about that.

Senator BAYH. Of course, none of us really know if this is an inaccurate sign. I just happen to be among those who would rather err on the side of increasing the chance of voting, than err on the side of decreasing the chance of voting.

I wonder how I would feel or you would feel about the great change in attitudes, and the fact that we do have significant change in the hearts of many since 1965, if you lived in Mississippi, where in 1966—after passage of the act—they passed a statute requiring that all candidates for school boards be resident freeholders and hold property worth $5,000 or more and just limited that increased requirement to three counties which had a preponderance of black voters?

Mr. NORMAN. I would feel bad. If I lived in Mississippi, I would write to the Department of Justice and the Department of Justice would sue to prevent the change. This is a better way to deal with them than having the Attorney General look at every little change whether it is a stringent change or a relaxation of a voting law.

Senator BAYH. The fact that the Attorney General would sue in response to my letter would be little comfort after the election had already taken place. I just use that as one example of attitudes which have continued to prevail in the electoral process since we passed the act.

Let me go on quickly to——

Senator ERVIN. To keep from having to drag over this later, it comes to my mind, you could get operation of those statutes stopped as soon as the Department of Justice lawyers could draw a complaint for a temporary injunction, couldn't you? And the judge could sign it on the basis of the allegations pleaded without evidence. They could have a hearing on the merits later.

Mr. NORMAN. And you could get a temporary restraining order on very little proof.

Senator BAYH. But you do have to have proof, don't you?

Mr. NORMAN. You have to have an affidavit for a temporary restraining order.

Senator BAYH. You have to have sufficient proof that this is discriminatory, right?

Mr. NORMAN. You have to have for a temporary restraining order, which is different from a preliminary injunction, it is a 10-day order and can be extended another 10 days under Federal law, and you have to have a sufficient proof. The proof could be in the form of an affidavit, say, by me—an affidavit by me on the basis of which the judge could conclude that there may be something wrong and that he

had better maintain the status quo for 10 days while he looks into this matter.

You don't have to have a preponderance of proof for a temporary restraining order.

Senator BAYH. Here we go back to the same question that you and I were discussing earlier, and the question on which we spent 45 minutes with the Attorney General before he finally admitted that it would be more difficult—a more difficult burden under the administration proposal without section 5 than it is now. You can go over this, I am not too sure yet——

Senator KENNEDY. Has he agreed on that?

Mr. NORMAN. I can agree on the hypothetical case you gave which is——

Senator BAYH. Is that such a ridiculous case in——

Mr. NORMAN. With the hypothetical case you gave, where something happens within 2 two weeks, the burden of proof would be less under section 5.

Senator BAYH. Thank you.

In my opinion I don't think that hypothetical question is too ridiculous.

Senator KENNEDY. Just to carry that point further under any set of circumstances, would not the burden of proof be less under section 5 even if there were not a 2-week time factor?

Mr. NORMAN. I don't think so, as a practical matter, Senator, because if we file a suit complaining that a State has not submitted to us a voting change, our prayer to the court is to require this State to submit it to us and the court, I think, quite justifiably can safely say, "Now, Mr. Attorney General, you know about the voting changes or you wouldn't be here, now tell us, why are you objecting, or are you objecting?"

And that is the end of the lawsuit.

Senator BAYH. Will the Senator yield?

I take issue with that. If this is happening at a time before an election where you have the election or you don't have the election with the questionable regulation in mind, and the election is imminent and extremely important, the court would absolutely ignore the provisions of section 5 if they would not rule on your motion without requiring you to prove that there is discrimination. Under section 5 it says that any such change is inoperative until it has been submitted to you and 60 days have elapsed, or until a decision had been reached by the District Court, for the District of Columbia. Now, how can they ignore that? Can you give us examples of courts which have done this, any court which has said, "Wait a minute. Just a minute. We are not going to rule on what the law says, we want to go one step further?"

Mr. NORMAN. Senator, I don't take issue with what you say at all as long as what you have in mind is the case where you are running up against an election and you have to do something fast. I think the courts would say, "All right, let's hold this election aside for a while and get this thing straightened out."

I don't take issue with that.

Senator ERVIN. If I may interject myself, I think there is just in a little bit of a misunderstanding about how the injunction process

works. As a trial judge in a court of general jurisdiction for 7 years and a member of the Supreme Court of North Carolina, which had jurisdiction to review equitable procedures, my experience is this. As soon as those seeking a temporary restraining order can draw up the necessary complaint alleging the fact which, if true, would entitle them to relief they present it to the judge, ex parte, and if the allegations, supported by affidavits, would entitle the plaintiff to relief the judge would automatically issue a temporary restraining order. Is that not true?

Mr. NORMAN. That is true.

Senator ERVIN. So, it is very quick and one of the great values of the injunctive powers in that it can operate so quickly. The whole object is to maintain the status quo until the Court can hear the matter on its merits.

Senator BAYH. I appreciate the distinguished chairman's elucidation here. I must say, when he paints this picture as being so automatic under the temporary restraining order, I think he perhaps overlooks the fact that the people who have passed these regulations are going to be arguing as strenuously as they can.

Senator ERVIN. They are not there when the application is filed for a restraining order. They are not even there.

Senator BAYH. Does the Senator suggest that the same burden of proof is required with section 5 as without section 5? With section 5, all you have to do is prove that a measure has not been submitted to the Attorney General under the section, whereas without section 5 you have to prove discrimination.

Now, the Senator cannot be suggesting that there is the same burden of proof.

Senator ERVIN. You have got two different questions there.

Senator BAYH. I think that is the only question.

Senator ERVIN. Section 5 provides that changes in election laws are not to become effective until they had been approved by the Attorney General or submitted to the District Court of the District of Columbia, and all you have to do in that case is to show that it was not submitted and then you get a restraining order and then a temporary injunction until it is submitted.

The other question problem is you have to show discriminatory changes, but you have got two different questions there.

Senator BAYH. I concur there. There are two different questions and what I have been trying to drive at is that of these two different questions——

Senator ERVIN. That does not alter the fact that the nearest thing in law to being automatic is the issuance of a temporary restraining order. Any lawyer knowing enough to draw an action entitling him to an injunction can make a plea which will automatically get him a restraining order and the other side doesn't even know about the thing because normally it is an ex parte proceeding.

Senator BAYH. Let me just ask our witness to tell me why——

Senator KENNEDY. Just on this point here now, Mr. Norman, isn't it still true that initially you are still going to have to rely on the private individuals to trigger these cases and to bring them to the attention of the Justice Department before these series of events are put into motion?

Mr. NORMAN. Yes, Senator, that is generally true.

Senator KENNEDY. So I think the question really is whether the guaranteeing of the right to vote is of sufficient importance and significance so that we are going to give the kinds of assurances to all sides that they are going to be protected carefully by the Justice Department, or whether we are going to ignore the background and the tradition and certain patterns of voting in certain parts of the country and merely depend upon individuals to set into motion even the temporary restraining orders.

As I understand it, the Department of Justice feels, and the administration feels, that you can provide sufficient guarantees by depending upon individuals who set into motion the temporary restraining orders or the other kind of protection provided automatically under the 1965 act, which recognizes that the burden has to be easy to meet that there has to be a greater assurance and a greater protection, as outlined here by the discussion of Senator Bayh and Senator Ervin regarding the submission of plans under section 5.

Senator ERVIN. If you pardon me, I don't know of any people whose misdeeds and sins have been more critically called to public attention than those of Southerners, especially those who operate the election process or the schools.

Senator BAYH. I must——

Senator KENNEDY. Even Northerners have been talking about some of our deficiencies.

Senator BAYH. I respectfully suggest the Senator is about a year out of date.

Senator ERVIN. I haven't talked about the Northern misdeeds, myself.

Senator BAYH. I must say that that is not what a Governor of one of our illustrious States said, and was not quite so kind in saying, day before yesterday.

Senator KENNEDY. But, Mr. Norman, do you care to make a brief comment about that observation that has been made and then we will go on?

Mr. NORMAN. Yes, Senator, what you say is correct. That is, we are quite interested, very interested in protecting the right to vote, but our position is we think that section 5 does not add measurably to the protection of the right to vote especially when you weigh it against the burdens involved in it and its possible abuses.

Under section 5, very little, if anything, has been done to protect the right to vote.

Senator KENNEDY. What are the abuses?

Mr. NORMAN. Well, the abuses are these. The way it is written now every change, no matter how insignificant or how minor or how beneficial, every voting change has to be submitted. In my judgment when registration hours are increased from 6 hours a day to 10 hours a day to accommodate voters or prospective voters, it is in the nature of abuse to require that thing to be submitted before you can start registering.

Senator KENNEDY. Now it would depend on whether those were changed from daylight hours to night hours. It just doesn't necessarily mean that because you are adding more hours that you are inducing

registration and it doesn't necessarily mean that you are going to get a greater encouragement, does it?

Mr. NORMAN. Well, my point is that it is a voting change that has to be submitted to the Attorney General of the United States for approval.

Senator KENNEDY. And how long does that take for you to look at the change and find out whether those hours are reasonable, and how much time would it take to make a decision? Would that take much time?

Mr. NORMAN. If it looks like an urgent—if that example that you gave, it would not take much time or energy.

Senator KENNEDY. You must have some others that are more burdensome——

Mr. NORMAN. We sure do. You take, for example, the State of South Carolina which revised its entire election code and sent us a package of statutes which represented revised election code and we had to go through every one of the sections and subsections and carefully analyze them and try to determine from them whether they should have some investigation undertaken to determine the effect of that statute. It is very common for States to periodically revise the election codes.

The State of North Carolina did it, I understand, 2 years ago, although I haven't seen it yet.

Senator KENNEDY. Well, with all respect, that is a burden that has been placed on you under the 1965 act and I fail to see how that is an abuse. It seems to me, when we are giving assurances to individuals about their right to vote, they are going to have a greater sense of equity if they feel that the Justice Department, in reviewing these changes, is not depending solely upon individual action, particularly in an atmosphere where there has been a record intimidation.

Mr. NORMAN. We are, indeed, reviewing them.

Senator KENNEDY. As I see it there may be an additional burden, Mr. Norman, upon the Justice Department, but I fail to see what you mentioned before, and that there are abuses involved.

Mr. NORMAN. Well, the potential abuses that I speak to are not only because of the trivial changes that local officials are required to submit. I also think there is potential abuse in lodging that kind of authority, essentially administrative authority, in the Attorney General or some other agency without giving any real standard about what changes should be objected to and what should be done.

Some Attorney General some day could object to almost every statute.

Senator KENNEDY. Is it your complaint, then, that you want additional regulations or additional rules from Congress defining what your responsibilities are? If that is what you're saying, aren't you throwing out the baby with the bath water merely because the Department is somewhat confused as to the nature of your responsibility and, therefore, you want to abolish the provision entirely.

Mr. NORMAN. We are not confused and we prefer to modify the provision because we think that in its practical effect it has had very little to do with the protection of the right to vote and it has been accompanied by burdens not only on local officials and State officials but on the Department of Justice.

Senator KENNEDY. Well, it seems that your fears about the potential abuse by future Attorneys General is one of the important reasons for your opposition, as well as any additional kind of burden imposed on the Department.

I think everybody would agree that there may be additional functions but I think it is clear that these are justified in terms of protection o fthe right to vote. I think that, obviously, is a judgment we have to make, just as we made it in 1965, and I think the reason for deciding in favor of protection are clear and compelling.

I want to thank the Senator from Indiana for letting me interrupt at this point.

Senator BAYH. That is quite all right.

In our previous discussion here, Mr. Norman, you said that there were areas in which a change of regulation or ruling or statutes submitted required closer scrutiny than others. I would imagine that the example that was alluded to, a reduction in the filing fee, was to show how ridiculous the act was, in that you still have to examine. Surely you are not suggesting that it would be a significant burden on the Department, that is rather ridiculous in itself. Some of these things you just have to let go through because there is no reason to believe that they are discriminatory.

I would like to make one additional comment relative to the assessment made by our distinguished chairman, and I don't want to get into any further debate on this, that although it is his judgment that the temporary restraining order is automatic or practically automatic, I know a number of lawyers who have been involved in trying to provide voting opportunities to black citizens in the southern part of the country where they had to get a restraining order in the Federal District Court of Mississippi and if they were so automatic, I don't think there would be quite this problem.

Let me just——

Senator ERVIN. May I just make an observation on that?

Most of the lawyers who do that are crusaders for a cause and I have never seen a crusader who thought justice prevailed unless he had his way 100 percent immediately.

Senator BAYH. If I am crusading for getting a man a right to vote, I would take a dim view of somebody who doesn't want to give the right to vote. And, of course, I would take the same view of any legal mechanism to do the same thing.

Senator ERVIN. If the people from Indiana think they can run North Carolina better than North Carolina can, based on a visit of 24 or 48 hours, I have to respect fully disagree with them.

Senator BAYH. I don't believe people of Indiana would even want to have any details, or want to be involved in any details, of North Carolina when we have plenty ourselves. I have no reluctance for the Attorney General to take a look at those areas where black people can't vote and hadn't been permitted to vote until a Federal statute was passed.

Now, that is my concern, and I think both the chairman and I can appreciate each other's opinion.

Let me go on to another question that I have: why is it, in your judgment, that the administration bill doesn't ban literacy tests permanently?

Mr. NORMAN. It is our feeling that there should be a suspension during which a thorough study would be made of the impact of the whole voting problem. I don't know whether we have the kinds of facts right now that might justify a permanent abolition of literacy tests, but I would suppose by January 1, 1974, as a result of study, we may well have those facts.

Senator BAYH. You are concerned that it might be unconstitutional to suspend literacy tests; is that your reason?

Mr. NORMAN. No, it is not. It is not my reason.

Senator BAYH. It seems to me it is a good policy to suspend literacy tests because they may be discriminatory in their nature, which I am inclined to believe from the evidence we now have. But if we can constitutionally suspend them for a few years, then we ought to pursue good policy and suspend them permanently. If it is bad policy to do it permanently, then it is bad policy to do it until 1974.

Mr. NORMAN. I think there is a need to suspend literacy tests now. I would hope that as time goes by and our educational system improves and everyone really gets a qualified education in our next generation, that there would be no need at all for a literacy test. After all, a literacy test is basically an exclusionary test which seeks to exclude those who can't sufficiently read and write.

There must be a day soon, I would think, when almost everyone in this country will be able to read and write. Hopefully, I would think, the States could decide for themselves that it would be pointless to have a literacy test.

Senator BAYH. I think you could also argue the other side of the coin, Mr. Norman, if you pursue this. When the day comes when almost everyone has a first-class education, then it is even less discriminatory to say that because you don't know how to read and write we are going to exclude you from the voting process.

Mr. NORMAN. Well, it would be less discriminatory, but it wouldn't have any function.

Senator BAYH. I hope that day comes tomorrow, if that were the case. Still, I think it seems to me that if we are really sincere about doing a job on literacy tests we should get rid of them permanently instead of just piecemeal.

Why is it, may I ask, that you would establish a new voting commission rather than the Civil Rights Commission that has been in effect for a number of years?

Mr. NORMAN. I think it is because the field of work that the Civil Rights Commission is authorized to get into is vaired and they look at schools, and voting, and I think it was because we felt that it would be good to have a commission which would devote exclusive energy to voting studies and the voting problem.

Senator BAYH. You don't feel that there is any way we could make any more effective the present governmental structure that has been established for this purpose without setting up a whole new structure?

Mr. NORMAN. I really haven't thought about that very much. Perhaps there is.

Senator BAYH. One last question, and this is rather a broad question. Maybe you would rather not deal with it, but it is a question that I did ask the Attorney General and I wanted to know if anybody's

thought had changed down at the Department of Justice in the last year.

I wonder if you have any concern at all about the fact that there are large numbers of people in this country who have not yet had any equal opportunity to take advantage of the system, to obtain an equal share of our free enterprise structure. We have been doing a great deal of talking about the importance of sustaining the system and getting a better education and using your energy in the ballot box and in registration and, really, this is the way that each citizen can develop his maximum potential.

There are a lot of people who have been listening now and who are beginning to be concerned when they see how we are dealing with the area of segregated schools, for example. They see questions raised by the Supreme Court Justices we nominate. They see the administration refusing to support an extension of an act that has put 1 million more citizen on the voter list.

Are you at all concerned that all of this is going to have a dramatic effect on those who have been looking to the system as their method of redress, or grievance, and that they may resort to means outside the system?

Mr. NORMAN. Of course, we are concerned that everyone in the society have an equal opportunity to the various benefits of our lives and I really think that the Legislation we have proposed would lead us in that direction.

Senator BAYH. Do you know of any one person with a black face or brown face who has supported the administration's position on the Voting Rights Act?

Mr. NORMAN. I don't know. I haven't talked to black people about this and we don't know whether they do or whether they do not.

Senator BAYH. I have no further questions.

Senator ERVIN. I think the act is bad—I think it violates the Constitution in significant aspects, and I also think that it is a matter of policy which is extremely unwise. A college professor took occasion to state in a book he wrote that I was opposed to Negroes voting. I have always advocated that every man of every race who is qualified to vote has an absolute right to vote, and anyone who willfully denies him that right should be punished.

There are a lot of people that have notions that are not very sound and I would say that he drew an unsound conclusion of my position on the Voting Rights Act of 1965.

I had some colloquy with Attorney General Kennedy a few years ago, in which he was advocating passage of the Civil Rights Act, and since I was questioning him he mentioned the fact that he had looked at the census of the United States for 1960 and found that there were 30,000 black people in North Carolina who were functionally illiterate. I didn't see what it had to do with what we were talking about, but I asked him, how old were they, and he said he didn't have their ages.

I said that there had been compulsory education in North Carolina a long time and despite the assertion of some people that blacks couldn't learn to read and write in a school taught by a black teacher, attended by other blacks, that all of our people who had attended school could read and write.

I went out that afternoon and looked at the census myself, and I found that virtually all of those people who were functionally illiterate in North Carolina were at least 25 or 30 years older than Attorney General Kennedy and hadn't had the benefit of compulsory education. I also discovered to my consternation that the State of Massachusetts had 62,000 white people who were functionally illiterate as disclosed by the 1960 census.

Well, I didn't condemn Massachusetts for that because they harbor many of the great institutions of learning, but I thought it rather queer that Attorney General Kennedy from Massachusetts would draw very invidious notions about North Carolina because it had 30,000 blacks who were functionally illiterate and at the same time ignore 62,000 white people who were functionally illiterate in Massachusetts.

So, we get a lot of curious things up here and a lot of curious deductions.

Mr. NORMAN. Mr. Chairman, may I have your permission to amend my last answer to Senator Bayh's question.

I remember now that I did discuss our procedure with Mr. Rauh and Mr. Mitchell, and Mr. Rauh and Mr. Mitchell were opposed to it.

Senator ERVIN. Yes.

Senator BAYH. If I may make one observation, and I will not make any others, I am not trying to entrap this witness I am concerned about the growing frustation that minority groups have with their inability to be heard and the outcome of the system, and the fact that they feel that the administration is headed in the wrong direction. I think it is extremely dangerous and harmful that a number of people feel that a change from the system is due—and I was perfectly willing to take it at face value that you had not talked to anyone about this—and the administration has espoused this new Voting Rights Act. The administration, I will say in good conscience, has suggested that this will increase, enhance the opportunity for black citizens to participate in the democratic system; it seems to me that this is not accurate.

It is rather strange that I have yet to hear one black person, including Clarence Mitchell or Mr. Jordan yesterday, who both have been literally spending their lives trying to find ways to give black people the chance to vote, why hasn't one come forward and said this is an advance, this is what we are looking for. Quite the contrary, everyone of them, every man feels that this is a step backward, and this deeply concerns me.

I appreciate the forbearance and tolerance of our witness. I know that he has worked hard in this area and I just don't agree with his views. I certainly feel that he gives them in good conscience when he states his position.

Senator ERVIN. I wonder why Mr. Rauh and Mr. Mitchell don't come forward to advocate equality of the right for people from my area to exercise their constitutional power. I guess I have trouble establishing my credentials as a liberal, but there is one thing they have always preached that I wish they would practice—and that is the injustice of convicting people on the theory of guilt by association. Now North Carolina is included under this bill, and it has been included because of guilt by association.

North Carolina has a literacy test any third-grade child could pass as it is administered. In certain counties less than 50 percent of the registered voters voted in the 1964 election.

Two of those counties are Cumberland County, which is the seat of Fort Bragg, where there are thousands of soldiers that are not registered in North Carolina and not allowed to vote in North Carolina for that reason, because they are registered in other States.

By counting those soldiers, which they did, they brought Cumberland County within the purview of this act. If they had left those soldiers out, Cumberland County wouldn't have been in this act.

Another one of those counties is Onslow County, which has the Camp Lejuene Marine Base, and by counting those marines who are not residents of North Carolina and are not eligible to vote, they made Onslow County included in this group with less than 50 percent who voted for President.

Now, it is a queer thing that they count soldiers to disqualify these two counties. That is the way this act operates there. Now, originally, they condemned Wake County, where a lot of prisoners in North Carolina are located. They counted the felons in the State prison as a part of the voting age population that didn't vote in the 1964 election.

If they hadn't counted the felons, Wake County wouldn't be covered. Of course, the felons couldn't vote anyway because they lost their right to vote by reason of the felonies they committed. That is the only county south of the Mason-Dixon Line that was able to acquit itself of being guilty of this act because they were a little too bold in counting the felons in the State prison.

That is the way it operates in North Carolina. Now, another thing. Gilford County, which is one of the most enlightened counties in North Carolina, and which has many college students, was included in the act by counting the college students who do not live in Gilford County and are not eligibile to vote. Gilford County elected a black man to represent it in the Legislature and elected a black woman to be one of its district judges, and it has elected two blacks to be members of the City Council of the County Seat, and yet it is condemned under this Act.

The North Carolina Legislature passed a proposed constitutional amendment, which was submitted by the black representative from Gilford County and which is to be voted on in the forthcoming general election, to abolish literacy tests in North Carolina. And yet, that county is under this act.

Isn't it true that a State could register every person of voting age in that State, but there is no way of compelling them to go out and vote. Isn't that true?

Mr. NORMAN. There is no way to compel them to vote, that is correct.

Senator ERVIN. And this is a funny world that we live in, and in talking about a sense of frustration, I have a sense of frustration in the fact that my State still is not permitted to become a full-fledged member of the United States. I hope to live to see the day we will be accepted back into the Union.

Some of my friends have advocated the extension of the Civil Rights Act of 1965. And some of them are not satisfied with that, they want to keep the 1965 act and add some of the administration bill to it. It

reminds me of the man who was absent from home and got a telegram from the undertaker stating that his mother-in-law had died and asking whether he wanted her cremated or buried, and this man wired back and said, take no chances, cremate and bury.

Thank you, Mr. Norman. We appreciate your appearance here very much.

There is just one other observation. A few years ago in North Carolina a law was on the books that provided that the polls should open at sunrise and close at sunset. North Carolina is a long State and as a result of this the time varied in the eastern part of the State from the west. So the time was changed to have the polls open at 6 a.m. and close at 6 p.m.

The legislature passed this provision but if it had been after the 1965 act became effective, this would have had to have gone to the Attorney General for approval or the district court before it could be put into effect.

Mr. NORMAN. That is correct. It would be.

Senator ERVIN. Thank you very much.

Senator BAYH. Before we leave that point, if we are going to pursue this to a degree of ridiculousness, how difficult would it be for you or someone else in your Department to determine whether that required investigation or not?

Mr. NORMAN. That wouldn't be very difficult.

Thank you, Senator Bayh.

Senator BAYH. Thank you.

Senator ERVIN. The States ought not to be required to submit there legislation to a Federal political officer.

Senator BAYH. I hope the day will come when it will be that we treat each State equally and there would be no necessity for a law like this.

Senator ERVIN. There is no reason why we can't treat North Carolina equally at this time.

(The complete prepared statement of Mr. Norman, above-referred to, follows:)

STATEMENT OF DEPUTY ASSISTANT ATTORNEY GENERAL DAVID L. NORMAN, BEFORE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE SENATE JUDICIARY COMMITTEE ON THE VOTING RIGHTS ACT AMENDMENTS OF 1970—FEBRUARY 26, 1970

Mr. Chairman, and members of the Subcommittee, I am honored to appear before this Subcommittee with some further observations regarding the protection of voting rights.

I believe the Attorney General asked me to appear on behalf of the Department of Justice in view of the experience I have had over the years in the effort to eliminate voting discrimination. I came to the Department of Justice in 1956 when Mr. Brownell was Attorney General. I assisted in the drafting of the Civil Rights Act of 1957 which dealt entirely with voting. I have been in the Civil Rights Division almost the entire period since its inception in 1957, and I have had the opportunity to work on or supervise most of the voting problems that have come to the Division, including legislation, litigation, and implementation of the Voting Rights Act of 1965.

Since a great deal of ground has already been covered in previous hearings, I should like to focus these additional remarks on three principal areas—the authority and need for removing residency restrictions as prerequisites for voting for President and Vice President; the basic justification for the nationwide suspension of literacy requirements; and some practical factors regarding the effectiveness of Section 5 of the Voting Rights Act of 1965.

The proposed Voting Rights Act Amendments of 1970 include a section which would limit locally imposed residency requirements for voting for President and Vice President. We have previously provided this Subcommittee with facts showing that more than 3,000,000 of our citizens were unable to vote in the 1968 Presidential election because they had moved from one jurisdiction to another. We think also that the Congress can act upon the reality that our industrial society has become a very mobile one, and that increasing numbers of people move more freely from one state to another.

It is not difficult to recognize the justification and need to preserve the right of such persons to vote for President and Vice President. However, some have questioned the authority of Congress to provide a solution. We have submitted to this Subcommittee a memorandum which treats the legal question at some length; and so today I wish to speak to that question only briefly.

The basic theory of the equal protection clause of the Fourteenth Amendment is that the states, in regulating human conduct, may distinguish between classes or groups of persons only if the classification is reasonable, that is, if it is reasonably related to a legitimate objective of the state. Moreover, classifications which restrict the all-important right to vote must be the narrowest possible and in furtherance only of a compelling state interest. The classification we deal with here is sharply although varyingly drawn under state law—those who have resided in our state for x period of time may vote for President and Vice President; those who have not, may not. Is that a reasonable classification? Perhaps when our country was predominantly rural, when transportation and communication were not well developed, and there was relatively little movement of citizens, some uniform, short limitation might have been reasonable. We think, however, that such a classification is no longer reasonable, and that it is proper for Congress to make such a finding.

In the most extreme example, when a citizen moves from the District of Columbia across the river into Arlington, Virginia, or vice versa, is it reasonable to deny him the right to vote for President and Vice President on residency grounds? We think not. Admittedly, there may be a few issues involving local peculiarities, as to which local familiarity would be helpful; but, for the most part, the issues in Presidential campaigns are national and international in scope. And so, although arguably the state might have some small interest in residence requirements, that interest is far outweighed by the individual's interest in participating in the decision which involves issues of national and international scope which so dramatically affects his own life.

In addition, there are presently wide variations among the residency requirements of our states. We submit that our citizens should not be treated differently—with respect to a national issue that affects us all alike—depending upon where they live. Equally important, perhaps, is that the present variations indicate that these requirements are matters of state convenience, at most, rather than compelling interest.

It is not a new doctrine to assert that what a state might reasonably have regulated 50 years ago is no longer reasonable. It has aptly been said that the Constitution is a living document, and its vitality lies in its capacity to meet the needs of our rapidly charging environment.

It is our conclusion, then, that Congress has the authority to restrict residency requirements as to voting for President and Vice President; and that our proposal represents an approriate exercise of that authority.

Under the proposed legislation, literacy tests would be suspended throughout the nation until January 1, 1974. In our view, there is no longer any justification for making literacy a precondition for registering to vote. Not only is the printed word now more than supplemented by modern mass communications media, but available evidence suggests that, in the states where literacy requirements are presently operative, such requirements have a racially discriminatory effect.

In his July 11, 1969, statement to this Subcommittee, Attorney General Mitchell discussed the decision of the Supreme Court in *Gaston County* v. *United States*, 395 U.S. 285 (1969). We believe that the underlying rationale which formed the basis of that decision applies equally in the states of the North and West which have literacy tests. Thousands of adult Negroes now living in those states were not afforded equal educational oportunity. It does not seem reasonable to us that persons similarly situated should be treated differently on the basis of region.

Our view that literacy tests outside the South have a discriminatory effect is supported by the recent study made by the Bureau of the Census at the request of the Commission on Civil Rights. We are informed that this study is being made available to this Subcommittee.

Under these circumstances, the Fourteenth and Fifteenth Amendments afford Congress a proper basis for suspending the use of literacy tests throughout the nation. In at least one respect, the residency and literacy suspensions embodied in the proposed legislation have a common thread—the right of citizens to move from one state to another, like the right to vote, cannot be penalized by state restrictions unless they can be shown to be necessary to promote a compelling state interest. The fact that such restrictions as residency and literacy requirements vary from state to state and do not even exist in some states, strongly suggests that they are matters of convenience or taste rather than compelling interests.

We think that the effectiveness of Section 5 of the Voting Rights Act of 1965, as a means for policing discriminatory changes in voting practices and procedures, has been overstated. And because there are available equally effective alternatives, which do not entail the disadvantages that presently accompany this Section's marginal benefits, we do not recommend its reenactment.

From the standpoint of action by the Attorney General under Section 5, he, of course, can and does pass upon voting changes which are submitted to him. He cannot, as a practical matter, require the submission of changes to him. In passing on such changes, he must base his judgment either on the language of the statute, ordinance, or regulation, or upon a field investigation going to the purpose or effect of the change. Since state and local authorities do not now-a-days write discrimination expressly into their statutes and ordinances, this means, as a practical matter, investigations by the Department of Justice. In view of the fact that only a very small percentage of submissions have been found by the Attorney General to be objectionable, and because initiating regular lawsuits under the Fifteenth Amendment in those few instances is an option for the Attorney General, the Congress might well ask itself whether the result justifies the kind of expenditure and energy that must be put into it.

In short, in those few instances where the Attorney General finds a discriminatory purpose or effect, he could remedy the problem by instituting regular lawsuits. And I should note that the power of the courts to void unfair elections, and order that new ones be held, has been confirmed in such suits.

It has sometimes been said that one virtue of Section 5 is that it permits the Attorney General to bring a lawsuit solely because the state or local authority failed to submit a voting change to him; and obtain an injunction on that ground with the whole burden of proof on the defendant. This indeed would be an easy lawsuit, but the argument overlooks one simple practical principle. If the Attorney General brought such a suit complaining solely that the state authority failed to submit to him a voting change, the court has only to say: "true enough, Mr. Attorney General; but now that you are here and before the court tell us whether or not you object to the change on grounds that it has a discriminatory purpose or effect." For the Attorney General to bring such a suit, he must have knowledge of the voting change; and with his knowledge of the change, fairness and common sense would seem to dictate that he either object or not object on grounds of discrimination, rather than convening a three-judge court simply to hold that the voting change was not formally submitted to him.

Even though I have worked for many years to further the right to vote, I am sometimes surprised by the kinds of trivial voting changes that little hamlets are required to submit to the federal government for approval. The latest one I saw, just the other day, was a request by a small town in Georgia for permission to raise the filing fees for local candidates from $5.00 to $25.00. The fee had been $5.00 since before November 1, 1964, but apparently inflation caught up with them. In view of recent court decisions this is quite probably a voting change which must be submitted to the Attorney General or taken to a three-judge court in the District of Columbia before it can be implemented. Perhaps even more difficult, there are legal scholars among us who would contend in good faith that this increase in filing fees has a discriminatory effect and therefore must be disapproved by the Attorney General. The argument is that the increase places a heavier burden on the poor who in that community are Negroes. As much as we are concerned that everybody have the right to vote free from discrimination, we think Congress should consider whether this kind of result should be carried forward in future legislation.

In addition to authorizing suits by the Attorney General, Section 5 also provides the basis for suits by private individuals. Private citizens are authorized to sue in a three-judge court to enjoin the enforcement of a voting change if it has not been submitted and approved by the Attorney General or by the District Court for the District of Columbia. It is an easy lawsuit because all one has to prove is that the voting change was not submitted; he does not have to prove, or even confess, whether the change has a discriminatory purpose or effect. So far as I know the courts have not yet relied solely upon a Section 5 claim to set aside an election; and so the practical advantage to such lawsuits by private citizens is to require local authorities to submit their voting changes to the Attorney General or to the court in the District of Columbia.

Recently, such a private suit was brought in a three-judge federal court in which it was claimed that since a city lowered its filing fees for candidates but did not submit that change to the Attorney General, the election should be enjoined. We might concede that lowering the filing fees is a voting change within the meaning of Section 5, and therefore, at some point, should be submitted to the Attorney General for approval. However, Congress might well consider whether at least in the future submission to the Attorney General of such a voting change is to be desired.

What we conclude, then, from more than four years experience with Section 5, is that while it may have some benefits they are outweighed by the burdens incident to its enforcement and the possible abuses inherent in it. Thus, we have not recommended including such a provision in the "Voting Rights Act Amendments of 1970."

I think up to now that two important features of the proposed amendments have been largely overlooked. First, a most important aspect of the original Section 5 is carried forward in the new Section 5. Until the enactment of the Voting Rights Act of 1965, it was quite widely assumed that attacks against state legislation as being in violation of the Fifteenth Amendment necessitated proof that the purpose of the legislation was racially discriminatory. Section 5 made it very clear that such legislation could be attacked by showing that the effect would be discriminatory. No longer do we have to search cryptic legislative journals to ascertain law-makers' intent. That very important principle is carried forward in Section 5 of the proposed legislation.

Secondly, Section 3(c), which remains unchanged, has been all but forgotten. It provides essentially that in any suit brought by the Attorney General to enforce the Fifteenth Amendment in any state or political subdivision, where the court finds violations of the Fifteenth Amendment justifying judicial relief, the court retains jurisdiction and during that period no new voting change can be adopted without approval either by the court or the Attorney General holding that the voting change does not have the purpose or effect or discriminating. Thus, the submission and approval feature of old Section 5 can be triggered anywhere in the Nation by the institution of a lawsuit to enforce the Fifteenth Amendment.

I appreciate this opportunity to appear before the Subcommittee and would be pleased to answer any questions you may have.

(Whereupon, at 12:33 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.)

APPENDIX

[S. 818, S. 2456 and title IV of S. 2029, 91st Cong., first sess.]

A BILL To extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b(a)) is amended as follows:

In the first and third paragraphs, after the words "during the", strike the word "five" and substitute the word "ten".

In the first paragraph, after the words "a period of" strike the word "five" and substitute the word "ten".

[S. 2507, 91st Cong., first sess.]

A BILL To amend the Voting Rights Act of 1965, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act Amendments of 1969."

SEC. 2. Section 4 of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b) is amended as follows:

(a) Strike subsection (a) and substitute the following:

"(a)(1) Prior to January 1, 1974, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device."

(b) Strike subsection (b) and designate present subsection (c) as (a)(2).

(c) Strike subsections (d) and (e) and add the following as subsection (b):

"(b)(1) No citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in any such election for failure to comply with a residence or registration requirement if he has resided in that State or political subdivision since the first day of September next preceding the election and has complied with the requirements of registration to the extent that they provide for registration after that date.

"(2) If such citizen has begun residence in a State or political subdivision after the first day of September next preceding an election for President and Vice President of the United States and does not satisfy the residence requirements of that State or political subdivision, he shall be allowed to vote in such election: (A) in person in the State or political subdivision in which he resided on the last day of August of that year if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision; or (B) by absentee ballot in the State or political subdivision in which he resided on the last day of August of that year if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

"(3) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in such election because of any requirement of registration that does not include a provision for absentee registration.

"(4) 'State' as used in this subsection includes the District of Columbia."

SEC. 3. Section 5 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973c) is amended to read as follows:

"SEC. 5. (a) Whenever the Attorney General has reason to believe that a State or political subdivision has enacted or is seeking to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting which has the purpose or effect of denying or abridging the right to vote on account of race or color, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order or a preliminary or permanent injunction, or such other order as he deems appropriate.

"(b) An action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall be to the Supreme Court."

SEC. 4. Section 6 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973d) is amended by striking the words "unless a declaratory judgment has been rendered under section 4(a)" and by striking, immediately after the words "political subdivision," the words "named in, or included within the scope of, determinations made under section 4(b)."

SEC. 5. Section 8 of the Voting Rights Act of 1965 (79 Stat. 441; 42 U.S.C. 1973(f)) is amended by striking the words "Whenever an examiner is serving under this Act in any political subdivision the Civil Service Commission may" and substituting the following:

"Whenever the Attorney General determines with respect to any political subdivision that in his judgment the designation of observers is necessary or appropriate to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall".

Section 8 is further amended by adding the following sentence at the end thereof:

"A determination of the Attorney General under this section shall not be reviewable in any court."

SEC. 6. Section 14 of the Voting Rights Act of 1965 (79 Stat. 445; 42 U.S.C. 1973l) is amended by striking subsections (b) and (d) and designating subsection (c) as (b).

SEC. 7. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973) is amended by redesignating sections 17, 18, and 19 as sections 18, 19, and 20, respectively, and inserting the following new section:

"SEC. 17. (a) There is hereby created a temporary Commission, to be known as the National Advisory Commission on Voting Rights (hereafter called the Commission) which shall be composed of not more than nine members who shall be appointed by the President. The President shall designate one member to serve as Chairman.

"(b) The Commission shall undertake to make a study of the effects upon voting and voter registration of laws restricting or abridging the right to vote, including laws making residence, economic status or passage of literacy tests and other tests or devices a prerequisite to voting. The Commission shall also study the impact of fraudulent and corrupt practices upon voting rights. The Commission shall conduct such hearings as it deems appropriate and shall consult with the Attorney General, the Secretary of Commerce, and the Civil Rights Commission, and with such other persons and agencies as it deems appropriate. The Commission shall report to the President and the Congress, not later than January 15, 1973, the results of its study and make its recommendations for legislative or other action to protect the right to vote. The Commission shall cease to exist thirty days following the submission of its report.

"(c) As soon as practicable following enactment of this statute and after consultation with the Attorney General and the Civil Rights Commission, the Secretary of Commerce shall make special surveys, in States which utilize literacy and other tests or devices, and in other States, to collect data regarding voting in Presidential and other elections, by race, national origin, and income groups. The Secretary of Commerce shall transmit this data, together with other pertinent data from the Nineteenth Decennial Census, to the Commission.

"(d) The Commission is authorized to request from any executive department or agency any information and assistance deemed necessary to carry out its functions under this section. Each department or agency is authorized, to the extent permitted by law and within the limits of available funds, to cooperate with the Commission and to furnish information and assistance to the Commission.

"(e) Members of the Commission who are Members of Congress or in the executive branch of the Government shall serve without additional compensation, but shall be permitted travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons intermittently employed. Other members of the Commission shall be entitled to receive compensation at the rate now or hereafter provided for GS–18 of the General Schedule for employees for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Commission. While traveling on official business in performance of services for the Commission, members of the Commission shall be allowed expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons intermittently employed. The Commission shall have an Executive Director who shall be designated by the President and shall receive such compensation as he may determine, not in excess of the maximum rate now or hereafter provided for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Commission is authorized to appoint and fix the compensation of such other personnel as may be necessary to perform its functions. The Commission may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code."

SEC. 8. The provisions of this Act shall become effective on August 6, 1970, except that section 7 shall become effective immediately.

Page 540 blank

87-499 O—70——35

Public Law 89-110
89th Congress, S. 1564
August 6, 1965

An Act

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

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

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

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

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

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

79 STAT. 437.
79 STAT. 438.

submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Use of tests or devices prohibited. Declaratory judgment proceedings.

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

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

62 Stat. 968.

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

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

Publication in Federal Register.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

"Test or device."

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

79 STAT. 438.
79 STAT. 439.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) (1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. 62 Stat. 968.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Appointment of examiners.

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

53 Stat. 1148; 64 Stat. 475.

Duties of examiners.

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

List of eligible voters.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act

unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

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

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

Observers at elections.

SEC. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

Challenges to eligibility listings, hearings.

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

Procedural regulations.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

Subpena power.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpena the attendance and testimony of witnesses and the

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

Poll tax.

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

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

62 Stat. 968.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote

for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

Prohibitions.

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

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

Penalty.

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

Applicability.

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

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

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

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

Injunctions, etc.

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

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

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

Listing procedures, termination.

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such

survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

Criminal contempt proceedings.

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

71 Stat. 638.

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

"Vote" or "voting."

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

"Political subdivision."

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

Subpenas.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

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

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

Repeal.

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

Armed Forces, voting rights study.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

Report to Congress.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

Appropriation.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 439 accompanying H. R. 6400 (Comm. on the Judiciary) and No. 711 (Comm. of Conference).
SENATE REPORTS: No. 162, 162 pt. 2, 162 pt. 3 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 111 (1965):
Apr. 13, 22, 23, 26-30, May 3-7, 10-14, 17-21, 24, 25: Considered in Senate.
May 26: Considered and passed Senate.
July 6-8: Considered in House.
July 9: Considered and passed House, amended, in lieu of H. R. 6400.
Aug. 3: House agreed to conference report.
Aug. 4: Senate agreed to conference report.

SUPREME COURT OF THE UNITED STATES

No. 701.—October Term, 1968.

Gaston County, North Carolina, Appellant, *v.* United States.	On Appeal From the United States District Court for the District of Columbia.

[June 2, 1969.]

Mr. Justice Harlan delivered the opinion of the Court.

The Voting Rights Act of 1965 suspends the use of any test or device[1] as a prerequisite to registering to vote in any election, in any State or political subdivision which, on November 1, 1964, maintained a test or device, and in which less than 50% of the residents of voting age were registered on that date or voted in the 1964 presidential election.[2] Suspension is automatic upon publication in the Federal Register of determinations by the Attorney General and the Director of the Census, respectively, that these conditions apply to a particular governmental unit. If the unit wishes to reinstate the test or device, it must bring suit against the Government in a three-judge district court in the District of Columbia and prove "that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color,"

[1] "The phrase 'test or device' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." Voting Rights Act of 1965, § 4 (c), 79 Stat. 438, 42 U. S. C. § 1973b (c) (1964 ed., Supp. III).

[2] § 4 (a), 79 Stat. 437, 42 U. S. C. § 1973b (a) (1964 ed., Supp. III).

§ 4 (a). The constitutionality of these provisions was upheld in *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966).

On March 29, 1966, the Attorney General and the Director of the Census published the necessary determinations with respect to appellant, Gaston County, North Carolina. Use of the State's literacy test [3] within the County was thereby suspended. On August 18, 1966, appellant brought this action in the District Court, making the requisite averments and seeking to reinstate the literacy test.

The United States opposed the granting of relief on the ground, *inter alia*, that use of the test had "the effect of denying or abridging the right to vote on account of race or color" because it placed a specially onerous burden on the County's Negro citizens for whom the County had maintained separate and inferior schools.

After a full trial on this and other issues, the District Court denied the relief requested, holding that appellant had not met its burden of proving that its use of the literacy test, in the context of its historic maintenance of segregated and unequal schools, did not discriminatorily deprive Negroes of the franchise.[4] *Gaston County* v. *United States*, 288 F. Supp. 678 (1968). The court made clear:

> "[W]e do not rely solely on the fact that the schools in Gaston County have been segregated during the

---

[3] N. C. Const., Art. VI, § 4, provides: "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." At all times relevant to this case, N. C. Gen. Stat. § 163-28 mirrored the constitutional provision. In 1967 the statute was renumbered § 163-58 and its wording was amended in minor aspects.

[4] Judge Wright wrote the majority opinion, in which Judge Robinson joined. Judge Gasch dissented from the court's holding, see *infra*, at 5-6, but would have denied appellant relief for different reasons.

> period when persons presently of voting age were of school age, but instead have reviewed the evidence adduced by the Government *in this case* and concluded that the Negro schools were of inferior quality in fact as well as in law." *Id.*, at 689–690, n. 23.

Pursuant to § 4 (a) of the Act, the County appealed directly to this Court. We noted probable jurisdiction, 393 U. S. 1011 (1969), and we affirm for substantially the reasons given by the majority in the District Court.

Appellant contends that the decision of the District Court is erroneous on three scores: first, as a matter of statutory construction and legislative history, the court could not consider Gaston County's practice of educational discrimination in determining whether its literacy test had the effect of discriminatorily denying the franchise; second, on the facts of this case, appellant met its burden of proving that the education it provided had no such effect; and third, whatever may have been the situation in the past, Gaston County has not fostered discrimination in education or voting in recent years. We consider these arguments in turn.

I.

The legislative history of the Voting Rights Act of 1965 discloses that Congress was fully cognizant of the potential effect of unequal educational opportunities upon exercise of the franchise. This causal relationship was, indeed, one of the principal arguments made in support of the Act's test-suspension provisions. Attorney General Katzenbach testified before the Senate Committee on the Judiciary:

> "It might be suggested that this kind of [voting] discrimination could be ended in a different way—by wiping the registration books clean and requiring

all voters, white or Negro, to register anew under a uniformly applied literacy test.

". . . [S]uch an approach would not solve, but would compound our present problems.

"To subject every citizen to a higher literacy standard would inevitably work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited 'separate but equal' doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunities were pathetically inferior for thousands of Negroes who want to vote today.

"The impact of a general reregistration would produce a real irony. Years of violation of the 14th amendment right of equal protection through education, would become the excuse for continuing violation of the 15th amendment right to vote." Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 22–23.

Mr. Katzenbach testified similarly before the House Committee. See Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 18–19, 49. And significantly, the Report of the Senate Judiciary Committee explicitly asserted:

"The educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected 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 attrib-

37-439 O - 70 - 36

utable to the States and localities involved." S. Rep. No. 162, 89th Cong., 1st Sess., 16.[5]

Appellant's response to this seemingly unequivocal legislative history is, in essence, that it proves too much. As Judge Gasch put it in his separate opinion below:

> ". . . [I]t is clear that the Voting Rights Act was primarily directed at the Southern states. In the Act, the Congress allowed a fair opportunity for a certified unit to rebut the presumption that its literacy test was used in a discriminatory manner. Thus, sections 4 and 5 of the Act provide a procedure whereby a State or political subdivision which has been the subject of a certification under the Act, may petition this Court for declaratory relief to reinstate its test before the 5-year suspension period has elapsed. Sections 4 and 5 will provide no remedy to a Southern state, however, if, as the majority finds, a segregated school system coupled with census data showing higher literacy and education for whites than for Negroes, is sufficient to preclude recovery under the Act. We can take judicial notice that the segregated school system was the prevailing system throughout the South. If this is what Congress had in mind, it would have stated that no test could be used where literacy was higher

[5] In view of this obvious relationship, and acknowledgment of it by the Attorney General and Congress, it is of no consequence that the Act was explicitly designed to enforce the Fifteenth, and not the Fourteenth, Amendment. See, *e. g.*, Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 141–142; Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 49–50, 66, 102. The Act was, of course, concerned solely with voting rights, and discrimination in education bears on the Act only insofar as it may result in discriminatory abridgment of the franchise.

> among whites than among Negroes. I do not believe that Congress intended that the Act be interpreted in such a way as to render §§ 4 and 5 inapplicable to Southern states or those which had segregated educational systems." 288 F. Supp., at 690, 695.

Appellant's contentions fundamentally misconceive the import of the majority opinion below, as we read it. That opinion explicitly disclaims establishing any *per se* rule. The court's decision is premised not merely on Gaston County's historic maintenance of a dual school system, but on substantial evidence that the County deprived its black residents of equal educational opportunities, which in turn deprived them of an equal chance to pass the literacy test. Consistent with the court's holding, a State or subdivision may demonstrate that although its schools suffered from the inequality inherent in any segregated system, see *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the dual educational system had no appreciable discriminatory effect on the ability of persons of voting age to meet a literacy requirement.

It is of no consequence that Congress *might* have dealt with the effects of educational discrimination by employing a coverage formula different from the one it enacted. The coverage formula chosen by Congress was designed to be speedy, objective, and incontrovertible;[6] it is triggered appropriately by voting or registration figures. The areas at which the Act was directed

> "share two common characteristics incorporated by Congress into the coverage formula: the use of tests

[6] Section 4 (b) of the Act makes the determinations by the Attorney General and the Director of the Census unreviewable in any court. "[T]he findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 333 (1966).

> and devices for voting registration, and a voting rate in the 1964 presidential election of at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetuating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 330 (1966).

In contrast, a coverage formula based on educational disparities, or one based on literacy rates, would be administratively cumbersome: the designation of racially disparate school systems is not susceptible of speedy, objective, and incontrovertible determination; and the Bureau of the Census collects no accurate county statistics on literacy. Furthermore, a coverage formula based on either of these factors would not serve as an appropriate basis for suspending all of the tests and devices encompassed by § 4 (c) of the Act—for example, a "good moral character" requirement.[7]

We conclude that in an action brought under § 4 (a) of the Voting Rights Act of 1965, it is appropriate for a court to consider whether a literacy or educational requirement has the "effect of denying the right to vote on account of race or color" because the State or subdivision which seeks to impose the requirement has maintained separate and inferior schools for its Negro residents who are now of voting age.[8]

---

[7] See n. 1, *supra;* Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 30–31.

[8] We have no occasion to decide whether the Act would permit reinstatement of a literacy test in the face of racially disparate edu-

II.

In an action for declaratory relief under § 4 (a) of the Voting Rights Act of 1965, the plaintiff carries the burden of proof. The plaintiff cannot be expected to raise and refute every conceivable defense, however, cf. Federal Rules of Civil Procedure, Rule 9 (c), and it was incumbent upon the Government in the case at bar to put into issue its contention that appellant's use of the literacy test, coupled with its racially segregated and unequal school system, discriminatorily deprived Negroes of the franchise. The plaintiff-appellant would then have the burden of proving the contrary. See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 332 (1966). The Government did place this contention in issue, and in support thereof it introduced considerable evidence, which we now summarize.

All persons of voting age in 1966 who attended schools in Gaston County[9] attended racially separate and unequal schools.[10] Between the years 1908 and 1929, when approximately 45% of the voting age population was of school age, the salaries of Negro teachers in the County ranged from a low of about 20% to a high of about 50% of those of their white colleagues. In 1919,

---

cational or literacy achievements for which a government bore no responsibility.

[9] We assume, and appellant does not suggest otherwise, that most of the adult residents of Gaston County resided there as children. Cf. Bureau of the Census, 1960 Census of Population, Vol. I, pt. 35, table 39. It would seem a matter of no legal significance that they may have been educated in other counties or States also maintaining segregated and unequal school systems.

[10] *Gaston County* v. *United States*, 288 F. Supp. 678, 686 (1968). Unless otherwise indicated, the facts and statistics set out below, which are not controverted, appear in the opinion of the District Court, 288 F. Supp., at 686-687, or in Government's Exhibit No. 2 (Excerpts from the Reports of the Superintendent of Public Instruction of North Carolina).

when uniform teacher certification was first required in North Carolina, 98% of the white teachers, but only 5% of the Negro teachers, qualified for regular state teaching certificates. The remaining 95% of the Negro teachers held "second grade" certificates. The Biennial Report of the State Superintendent of Public Instruction, 1918–1920, described a second grade certificate as "the lowest permit issued in the State. It is not a certificate in the proper sense, but merely a permit to teach until someone is found who is competent to take the place."

During this same period, the per-pupil valuation of Negro school property in the County ranged from 20% to about 40% of that of the white schools. A much higher proportion of Negro than of white children attended one-room, one-teacher, wooden schoolhouses which contained no desks.

By the 1938–1939 school year, Negro teachers' salaries had increased to about 70% of that of white teachers, and by the 1948–1949 school year, salaries were almost equal. At this later date, the per-pupil value of Negro school property was still only about one-third that of the white schools.

Of those persons over 25 years old at the time of the 1960 census, the proportion of Negroes with no schooling whatever was twice that of whites in Gaston County; the proportion of Negroes with four or less years of education was slightly less than twice that of whites.

In 1962, Gaston County changed its system of registration and required a general reregistration of all voters. North Carolina law provides that "[e]very person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." N. C. Const., Art. VI, § 4; see n. 3, *supra*. The State Supreme Court has described this requirement as "relatively high, even after more than half a century of free public schools and universal education," *Bazemore*

v. *Bertie County Board of Education*, 254 N. C. 398, 402, 119 S. E. 2d 637, 641 (1961),[11] and a Negro minister active in voter registration testified that it placed an especially heavy burden on the County's older Negro citizens. Appendix, 131–132. It was publicized throughout the County that the literacy requirement would be enforced. A registrar told a Negro leader not to bring illiterates to register. Some Negroes who attempted to register were, in fact, rejected because they could not pass the test, and others did not attempt to register, knowing that they could not meet the standard.

With this evidence, the Government had not only put its contention in issue, but had made out a prima facie case. It is only reasonable to infer that among black children compelled to endure a segregated and inferior education, fewer will achieve any given degree of literacy than will be so among their better-educated white contemporaries.[12] And on the Government's showing, it was certainly proper to infer that Gaston County's inferior Negro schools provided many of its Negro residents with a subliterate education, and gave many others little inducement to enter or remain in school.

The only evidence introduced by the appellant in rebuttal was the testimony of Thebaud Jeffers, a Negro principal of a Negro high school, who had first come to Gaston County in 1932. He stated that "all of our schools . . . would have been able to teach any Negro child to read and write so that he could read a newspaper, so that he could read any simple material," and so that he could pass the literacy test. Appendix, p. 169.

---

[11] Elsewhere in its opinion, the court stated that a registrant must be able to read aloud, as well as copy, a section of the State Constitution. 254 N. C., at 404; 119 S. E. 2d, at 642. Appellant's registrars required only that a registrant copy one of three sentences of the Constitution.

[12] This is, indeed, an inference that appears throughout the Act's legislative history. See *supra*, at 3–5.

The District Court characterized Mr. Jeffers as an "interested witness," and found his testimony "unpersuasive" when measured against the Government's evidence. The court further noted that the principal's knowledge about the school system dated only from 1932, by which time some of the more blatent educational disparities were being reduced. Almost one-half of the county's black adults were of school age well before Mr. Jeffers' arrival.

The District Court concluded that appellant had not met the burden imposed by § 4 (a) of the Voting Rights Act of 1965. This was not clearly erroneous.

III.

Appellant urges that it administered the 1962 reregistration in a fair and impartial manner, and that in recent years it has made significant strides toward equalizing and integrating its school system. Although we accept these claims as true, they fall wide of the mark. Affording today's Negro youth equal educational opportunities will doubtless prepare them to meet, on equal terms, whatever standards of literacy are required when they reach voting age. It does nothing for their parents, however. From this record, we cannot escape the sad truth that throughout the years, Gaston County systematically deprived its black citizens of the educational opportunities it granted to its white citizens. "Impartial" administration of the literacy test today would serve only to perpetuate these inequities in a different form.

The judgment of the District Court is

Affirmed.

MR. JUSTICE BLACK dissents for substantially the same reasons he stated in § (b) of his dissenting opinion in *South Carolina* v. *Katzenbach,* 383 U. S. 301, 355, 358.

Syllabus.

SOUTH CAROLINA *v.* KATZENBACH, ATTORNEY GENERAL.

ON BILL OF COMPLAINT.

No. 22, Orig. Argued January 17–18, 1966.—Decided March 7, 1966.

Invoking the Court's original jurisdiction under Art. III, § 2, of the Constitution, South Carolina filed a bill of complaint seeking a declaration of unconstitutionality as to certain provisions of the Voting Rights Act of 1965 and an injunction against their enforcement by defendant, the Attorney General. The Act's key features, aimed at areas where voting discrimination has been most flagrant, are: (1) A coverage formula or "triggering mechanism" in § 4 (b) determining applicability of its substantive provisions; (2) provision in § 4 (a) for temporary suspension of a State's voting tests or devices; (3) procedure in § 5 for review of new voting rules; and (4) a program in §§ 6 (b), 7, 9, and 13 (a) for using federal examiners to qualify applicants for registration who are thereafter entitled to vote in all elections. These remedial sections automatically apply to any State or its subdivision which the Attorney General has determined maintained on November 1, 1964, a registration or voting "test or device" (a literacy, educational, character, or voucher requirement as defined in § 4 (c)) and in which according to the Census Director's determination less than half the voting-age residents were registered or voted in the 1964 presidential election. Statutory coverage may be terminated by a declaratory judgment of a three-judge District of Columbia District Court that for the preceding five years racially discriminatory voting tests or devices have not been used. No person in a covered area may be denied voting rights because of failure to comply with a test or device. § 4 (a). Following administrative determinations, enforcement was temporarily suspended of South Carolina's literacy test as well as of tests and devices in certain other areas. The Act further provides in § 5 that during the suspension period, a State or subdivision may not apply new voting rules unless the Attorney General has interposed no objection within 60 days of their submission to him, or a three-judge District of Columbia District Court has issued a declaratory judgment that such rules are not racially discriminatory. South Carolina wishes to apply a recent amendment to its voting laws without following these procedures. In

any political subdivision where tests or devices have been suspended, the Civil Service Commission shall appoint voting examiners whenever the Attorney General has, after considering specified factors, duly certified receiving complaints of official racial voting discrimination from at least 20 residents or that the examiners' appointment is otherwise necessary under the Fifteenth Amendment. § 6 (b). Examiners are to transmit to the appropriate officials the names of applicants they find qualified; and such persons may vote in any election after 45 days following transmission of their names. § 7 (b). Removal by the examiners of names from voting lists is provided on loss of eligibility or on successful challenge under prescribed procedures. § 7 (d). The use of examiners is terminated if requested by the Attorney General or the political subdivision has obtained a declaratory judgment as specified in § 13 (a). Following certification by the Attorney General, federal examiners were appointed in two South Carolina counties as well as elsewhere in other States. Subsidiary cures for persistent voting discrimination and other special provisions are also contained in the Act. In addition to a general assault on the Act as unconstitutionally encroaching on States' rights, specific constitutional challenges by plaintiff and certain *amici curiae* are: The coverage formula violates the principle of equality between the States, denies due process through an invalid presumption, bars judicial review of administrative findings, is a bill of attainder, and legislatively adjudicates guilt; the review of new voting rules infringes Art. III, by directing the District Court to issue advisory opinions; the assignment of federal examiners violates due process by foreclosing judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; the challenge procedure denies due process on account of its speed; and provisions for adjudication in the District of Columbia abridge due process by limiting litigation to a distant forum. *Held:*

1. This Court's judicial review does not cover portions of the Voting Rights Act of 1965 not challenged by plaintiff; nor does it extend to the Act's criminal provisions, as to which South Carolina's challenge is premature. Pp. 316–317.

2. The sections of the Act properly before this Court are a valid effectuation of the Fifteenth Amendment. Pp. 308–337.

(a) The Act's voluminous legislative history discloses unremitting and ingenious defiance in certain parts of the country of

the Fifteenth Amendment (see paragraphs (b)–(d), *infra*) which Congress concluded called for sterner and more elaborate measures than those previously used. P. 309.

(b) Beginning in 1890, a few years before repeal of most of the legislation to enforce the Fifteenth Amendment, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia enacted tests, still in use, specifically designed to prevent Negroes from voting while permitting white persons to vote. Pp. 310–311.

(c) A variety of methods was used thereafter to keep Negroes from voting, one of the principal means being through racially discriminatory application of voting tests. Pp. 311–313.

(d) Case-by-case litigation against voting discrimination under the Civil Rights Acts of 1957, 1960, and 1964, has not appreciably increased Negro registration. Voting suits have been onerous to prepare, protracted, and where successful have often been followed by a shift in discriminatory devices, defiance or evasion of court orders. Pp. 313–315.

(e) A State is not a "person" within the meaning of the Due Process Clause of the Fifth Amendment; nor does it have standing to invoke the Bill of Attainder Clause of Art. I or the principle of separation of powers, which exist only to protect private individuals or groups. Pp. 323–324.

(f) Congress, as against the reserved powers of the States, may use any rational means to effectuate the constitutional prohibition of racial voting discrimination. P. 324.

(g) The Fifteenth Amendment, which is self-executing, supersedes contrary exertions of state power, and its enforcement is not confined to judicial invalidation of racially discriminatory state statutes and procedures or to general legislative prohibitions against violations of the Amendment. Pp. 325, 327.

(h) Congress, whose power to enforce the Fifteenth Amendment has repeatedly been upheld in the past, is free to use whatever means are appropriate to carry out the objects of the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Ex parte Virginia*, 100 U. S. 339, 345–346. Pp. 326–327.

(i) Having determined case-by-case litigation inadequate to deal with racial voting discrimination, Congress has ample authority to prescribe remedies not requiring prior adjudication. P. 328.

(j) Congress is well within its powers in focusing upon the geographic areas where substantial racial voting discrimination had occurred. Pp. 328-329.

(k) Congress had reliable evidence of voting discrimination in a great majority of the areas covered by § 4 (b) of the Act and is warranted in inferring a significant danger of racial voting discrimination in the few other areas to which the formula in § 4 (b) applies. Pp. 329-330.

(l) The coverage formula is rational in theory since tests or devices have so long been used for disenfranchisement and a lower voting rate obviously results from such disenfranchisement. P. 330.

(m) The coverage formula is rational as being aimed at areas where widespread discrimination has existed through misuse of tests or devices even though it excludes certain areas where there is voting discrimination through other means. The Act, moreover, strengthens existing remedies for such discrimination in those other areas. Pp. 330-331.

(n) The provision for termination at the behest of the States of § 4 (b) coverage adequately deals with possible overbreadth; nor is the burden of proof imposed on the States unreasonable. Pp. 331-332.

(o) Limiting litigation to a single court in the District of Columbia is a permissible exercise of power under Art. III, § 1, of the Constitution, previously exercised by Congress on other occasions. Pp. 331-332.

(p) The Act's bar of judicial review of findings of the Attorney General and Census Director as to objective data is not unreasonable. This Court has sanctioned withdrawal of judicial review of administrative determinations in numerous other situations. Pp. 332-333.

(q) Congress has power to suspend literacy tests, it having found that such tests were used for discriminatory purposes in most of the States covered; their continuance, even if fairly administered, would freeze the effect of past discrimination; and re-registration of all voters would be too harsh an alternative. Such States cannot sincerely complain of electoral dilution by Negro illiterates when they long permitted white illiterates to vote. P. 334.

(r) Congress is warranted in suspending, pending federal scrutiny, new voting regulations in view of the way in which some States have previously employed new rules to circumvent adverse federal court decrees. P. 335.

(s) The provision whereby a State whose voting laws have been suspended under § 4 (a) must obtain judicial review of an amendment to such laws by the District Court for the District of Columbia presents a "controversy" under Art. III of the Constitution and therefore, does not involve an advisory opinion contravening that provision. P. 335.

(t) The procedure for appointing federal examiners is an appropriate congressional response to the local tactics used to defy or evade federal court decrees. The challenge procedures contain precautionary features against error or fraud and are amply warranted in view of Congress' knowledge of harassing challenging tactics against registered Negroes. P. 336.

(u) Section 6 (b) has adequate standards to guide determination by the Attorney General in his selection of areas where federal examiners are to be appointed; and the termination procedures in § 13 (b) provide for indirect judicial review. Pp. 336–337.

Bill of complaint dismissed.

David W. Robinson II and *Daniel R. McLeod*, Attorney General of South Carolina, argued the cause for the plaintiff. With them on the brief was *David W Robinson.*

Attorney General Katzenbach, defendant, argued the cause *pro se.* With him on the brief were *Solicitor General Marshall, Assistant Attorney General Doar, Ralph S. Spritzer, Louis F. Claiborne, Robert S. Rifkind, David L. Norman* and *Alan G. Marer.*

R. D. McIlwaine III, Assistant Attorney General, argued the cause for the Commonwealth of Virginia, as *amicus curiae*, in support of the plaintiff. With him on the brief were *Robert Y. Button*, Attorney General, and *Henry T. Wickham. Jack P. F. Gremillion*, Attorney General, argued the cause for the State of Louisiana, as *amicus curiae*, in support of the plaintiff. With him on the brief were *Harry J. Kron*, Assistant Attorney General, *Thomas W. McFerrin, Sr., Sidney W. Provensal, Jr.*, and *Alfred Avins. Richmond M. Flowers*, Attorney General, and *Francis J. Mizell, Jr.*, argued the cause for

the State of Alabama, as *amicus curiae*, in support of the plaintiff. With them on the briefs were *George C. Wallace*, Governor of Alabama, *Gordon Madison*, Assistant Attorney General, and *Reid B. Barnes*. *Joe T. Patterson*, Attorney General, and *Charles Clark*, Special Assistant Attorney General, argued the cause for the State of Mississippi, as *amicus curiae*, in support of the plaintiff. With them on the brief was *Dugas Shands*, Assistant Attorney General. *E. Freeman Leverett*, Deputy Assistant Attorney General, argued the cause for the State of Georgia, as *amicus curiae*, in support of the plaintiff. With him on the brief was *Arthur K. Bolton*, Attorney General.

Levin H. Campbell, Assistant Attorney General, and *Archibald Cox*, Special Assistant Attorney General, argued the cause for the Commonwealth of Massachusetts, as *amicus curiae*, in support of the defendant. With *Mr. Campbell* on the brief was *Edward W. Brooke*, Attorney General, joined by the following States through their Attorneys General and other officials as follows: *Bert T. Kobayashi* of Hawaii; *John J. Dillon* of Indiana, *Theodore D. Wilson*, Assistant Attorney General, and *John O. Moss*, Deputy Attorney General; *Lawrence F. Scalise* of Iowa; *Robert C. Londerholm* of Kansas; *Richard J. Dubord* of Maine; *Thomas B. Finan* of Maryland; *Frank J. Kelley* of Michigan, and *Robert A. Derengoski*, Solicitor General; *Forrest H. Anderson* of Montana; *Arthur J. Sills* of New Jersey; *Louis J. Lefkowitz* of New York; *Charles Nesbitt* of Oklahoma, and *Charles L. Owens*, Assistant Attorney General; *Robert Y. Thornton* of Oregon; *Walter E. Alessandroni* of Pennsylvania; *J. Joseph Nugent* of Rhode Island; *John P. Connarn* of Vermont; *C. Donald Robertson* of West Virginia; and *Bronson C. LaFollette* of Wisconsin. *Alan B. Handler*, First Assistant Attorney General, argued the cause for the State of New Jersey, as *amicus curiae*, in

support of the defendant. Briefs of *amici curiae*, in support of the defendant, were filed by *Thomas C. Lynch*, Attorney General, *Miles J. Rubin*, Senior Assistant Attorney General, *Dan Kaufmann*, Assistant Attorney General, and *Charles B. McKesson*, *David N. Rakov* and *Philip M. Rosten*, Deputy Attorneys General, for the State of California; and by *William G. Clark*, Attorney General, *Richard E. Friedman*, First Assistant Attorney General, and *Richard A. Michael* and *Philip J. Rock*, Assistant Attorneys General, for the State of Illinois.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

By leave of the Court, 382 U. S. 898, South Carolina has filed a bill of complaint, seeking a declaration that selected provisions of the Voting Rights Act of 1965[1] violate the Federal Constitution, and asking for an injunction against enforcement of these provisions by the Attorney General. Original jurisdiction is founded on the presence of a controversy between a State and a citizen of another State under Art. III, § 2, of the Constitution. See *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439. Because no issues of fact were raised in the complaint, and because of South Carolina's desire to obtain a ruling prior to its primary elections in June 1966, we dispensed with appointment of a special master and expedited our hearing of the case.

Recognizing that the questions presented were of urgent concern to the entire country, we invited all of the States to participate in this proceeding as friends of the Court. A majority responded by submitting or joining in briefs on the merits, some supporting South Carolina and others the Attorney General.[2] Seven of these States

[1] 79 Stat. 437, 42 U. S. C. § 1973 (1964 ed., Supp. I).

[2] States supporting South Carolina: Alabama, Georgia, Louisiana, Mississippi, and Virginia. States supporting the Attorney General: California, Illinois, and Massachusetts, joined by Hawaii, Indiana,

also requested and received permission to argue the case orally at our hearing. Without exception, despite the emotional overtones of the proceeding, the briefs and oral arguments were temperate, lawyerlike and constructive. All viewpoints on the issues have been fully developed, and this additional assistance has been most helpful to the Court.

The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The Act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and in addition the statute strengthens existing remedies for pockets of voting discrimination elsewhere in the country. Congress assumed the power to prescribe these remedies from § 2 of the Fifteenth Amendment, which authorizes the National Legislature to effectuate by "appropriate" measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us are an appropriate means for carrying out Congress' constitutional responsibilities and are consonant with all other provisions of the Constitution. We therefore deny South Carolina's request that enforcement of these sections of the Act be enjoined.

I.

The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 wit-

---

Iowa, Kansas, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

nesses.[3] More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all.[4] At the close of these deliberations, the verdict of both chambers was overwhelming. The House approved the bill by a vote of 328–74, and the measure passed the Senate by a margin of 79–18.

Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment. We pause here to summarize the majority reports of the House and Senate Committees, which document in considerable detail the factual basis for these reactions by Congress.[5] See H. R. Rep. No. 439, 89th Cong., 1st Sess., 8–16 (hereinafter cited as House Report); S. Rep. No. 162, pt. 3, 89th Cong., 1st Sess., 3–16 (hereinafter cited as Senate Report).

---

[3] See Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as House Hearings); Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as Senate Hearings).

[4] See the Congressional Record for April 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26; July 6, 7, 8, 9; August 3 and 4, 1965.

[5] The facts contained in these reports are confirmed, among other sources, by *United States* v. *Louisiana*, 225 F. Supp. 353, 363–385 (Wisdom, J.), aff'd, 380 U. S. 145; *United States* v. *Mississippi*, 229 F. Supp. 925, 983–997 (dissenting opinion of Brown, J.), rev'd and rem'd, 380 U. S. 128; *United States* v. *Alabama*, 192 F. Supp. 677

The Fifteenth Amendment to the Constitution was ratified in 1870. Promptly thereafter Congress passed the Enforcement Act of 1870,[4] which made it a crime for public officers and private persons to obstruct exercise of the right to vote. The statute was amended in the following year[5] to provide for detailed federal supervision of the electoral process, from registration to the certification of returns. As the years passed and fervor for racial equality waned, enforcement of the laws became spotty and ineffective, and most of their provisions were repealed in 1894.[6] The remnants have had little significance in the recently renewed battle against voting discrimination.

Meanwhile, beginning in 1890, the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia enacted tests still in use which were specifically designed to prevent Negroes from voting.[9] Typically, they made the ability to read and write

---

(Johnson, J.), aff'd, 304 F. 2d 583, aff'd, 371 U. S. 37; Comm'n on Civil Rights, Voting in Mississippi; 1963 Comm'n on Civil Rights Rep., Voting; 1961 Comm'n on Civil Rights Rep., Voting, pt. 2; 1959 Comm'n on Civil Rights Rep., pt. 2. See generally Christopher, The Constitutionality of the Voting Rights Act of 1965, 18 Stan. L. Rev. 1; Note, Federal Protection of Negro Voting Rights, 51 Va. L. Rev. 1051.

[4] 16 Stat. 140.

[5] 16 Stat. 433.

[6] 28 Stat. 36.

[9] The South Carolina Constitutional Convention of 1895 was a leader in the widespread movement to disenfranchise Negroes. Key, Southern Politics, 537–539. Senator Ben Tillman frankly explained to the state delegates the aim of the new literacy test: "[T]he only thing we can do as patriots and as statesmen is to take from [the 'ignorant blacks'] every ballot that we can under the laws of our national government." He was equally candid about the exemption from the literacy test for persons who could "understand" and "explain" a section of the state constitution: "There is no particle of fraud or illegality in it. It is just simply showing partiality, perhaps, [laughter,] or discriminating." He described the alternative exemp-

a registration qualification and also required completion of a registration form. These laws were based on the fact that as of 1890 in each of the named States, more than two-thirds of the adult Negroes were illiterate while less than one-quarter of the adult whites were unable to read or write.[10] At the same time, alternate tests were prescribed in all of the named States to assure that white illiterates would not be deprived of the franchise. These included grandfather clauses, property qualifications, "good character" tests, and the requirement that registrants "understand" or "interpret" certain matter.

The course of subsequent Fifteenth Amendment litigation in this Court demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote. Grandfather clauses were invalidated in *Guinn* v. *United States*, 238 U. S. 347, and *Myers* v. *Anderson*, 238 U. S. 368. Procedural hurdles were struck down in *Lane* v. *Wilson*, 307 U. S. 268. The white primary was outlawed in *Smith* v. *Allwright*, 321 U. S. 649, and *Terry* v. *Adams*, 345 U. S. 461. Improper challenges were nullified in *United States* v. *Thomas*, 362 U. S. 58. Racial gerrymandering was forbidden by *Gomillion* v. *Lightfoot*, 364 U. S. 339. Finally, discriminatory application of voting tests was condemned in *Schnell* v. *Davis*, 336 U. S. 933; *Alabama*

---

tion for persons paying state property taxes in the same vein: "By means of the $300 clause you simply reach out and take in some more white men and a few more colored men." Journal of the Constitutional Convention of the State of South Carolina 464, 469, 471 (1895). Senator Tillman was the dominant political figure in the state convention, and his entire address merits examination.

[10] Prior to the Civil War, most of the slave States made it a crime to teach Negroes how to read or write. Following the war, these States rapidly instituted racial segregation in their public schools. Throughout the period, free public education in the South had barely begun to develop. See *Brown* v. *Board of Education*, 347 U. S. 483, 489–490, n. 4; 1959 Comm'n on Civil Rights Rep. 147–151.

v. *United States*, 371 U. S. 37; and *Louisiana* v. *United States*, 380 U. S. 145.

According to the evidence in recent Justice Department voting suits, the latter stratagem is now the principal method used to bar Negroes from the polls. Discriminatory administration of voting qualifications has been found in all eight Alabama cases, in all nine Louisiana cases, and in all nine Mississippi cases which have gone to final judgment.[11] Moreover, in almost all of these cases, the courts have held that the discrimination was pursuant to a widespread "pattern or practice." White applicants for registration have often been excused altogether from the literacy and understanding tests or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers.[12] Negroes, on the other hand, have typically been required to pass difficult versions of all the tests, without any outside assistance and without the slightest error.[13] The good-morals require-

---

[11] For example, see three voting suits brought against the States themselves: *United States* v. *Alabama*, 192 F. Supp. 677, aff'd, 304 F. 2d 583, aff'd, 371 U. S. 37; *United States* v. *Louisiana*, 225 F. Supp. 353, aff'd, 380 U. S. 145; *United States* v. *Mississippi*, 339 F. 2d 679.

[12] A white applicant in Louisiana satisfied the registrar of his ability to interpret the state constitution by writing, "FRDUM FOOF SPETGH." *United States* v. *Louisiana*, 225 F. Supp. 353, 384. A white applicant in Alabama who had never completed the first grade of school was enrolled after the registrar filled out the entire form for him. *United States* v. *Penton*, 212 F. Supp. 193, 210–211.

[13] In Panola County, Mississippi, the registrar required Negroes to interpret the provision of the state constitution concerning "the rate of interest on the fund known as the 'Chickasaw School Fund.'" *United States* v. *Duke*, 332 F. 2d 759, 764. In Forrest County, Mississippi, the registrar rejected six Negroes with baccalaureate degrees, three of whom were also Masters of Arts. *United States* v. *Lynd*, 301 F. 2d 818, 821.

ment is so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials.[14] Negroes obliged to obtain vouchers from registered voters have found it virtually impossible to comply in areas where almost no Negroes are on the rolls.[15]

In recent years, Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination. The Civil Rights Act of 1957 [16] authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Perfecting amendments in the Civil Rights Act of 1960 [17] permitted the joinder of States as parties defendant, gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 [18] expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.

Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination. According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration.

---

[14] For example, see *United States* v. *Atkins*, 323 F. 2d 733, 743.
[15] For example, see *United States* v. *Logue*, 344 F. 2d 290, 292.
[16] 71 Stat. 634.
[17] 74 Stat. 86.
[18] 78 Stat. 241, 42 U. S. C. § 1971 (1964 ed.).

The previous legislation has proved ineffective for a number of reasons. Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration.[19] Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls.[20] The provision of the 1960 law authorizing registration by federal officers has had little impact on local maladministration because of its procedural complexities.

During the hearings and debates on the Act, Selma, Alabama, was repeatedly referred to as the pre-eminent example of the ineffectiveness of existing legislation. In Dallas County, of which Selma is the seat, there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voting discrimination. Yet in those four years, Negro registra-

[19] The Court of Appeals for the Fifth Circuit ordered the registrars of Forrest County, Mississippi, to give future Negro applicants the same assistance which white applicants had enjoyed in the past, and to register future Negro applicants despite errors which were not serious enough to disqualify white applicants in the past. The Mississippi Legislature promptly responded by requiring applicants to complete their registration forms without assistance or error, and by adding a good-morals and public-challenge provision to the registration laws. *United States* v. *Mississippi*, 229 F. Supp. 925, 996–997 (dissenting opinion).

[20] For example, see *United States* v. *Parker*, 236 F. Supp. 511; *United States* v. *Palmer*, 230 F. Supp. 716.

tion rose only from 156 to 383, although there are approximately 15,000 Negroes of voting age in the county. Any possibility that these figures were attributable to political apathy was dispelled by the protest demonstrations in Selma in the early months of 1965. The House Committee on the Judiciary summed up the reaction of Congress to these developments in the following words:

> "The litigation in Dallas County took more than 4 years to open the door to the exercise of constitutional rights conferred almost a century ago. The problem on a national scale is that the difficulties experienced in suits in Dallas County have been encountered over and over again under existing voting laws. Four years is too long. The burden is too heavy—the wrong to our citizens is too serious—the damage to our national conscience is too great not to adopt more effective measures than exist today.
>
> "Such is the essential justification for the pending bill." House Report 11.

II.

The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting.[21] The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant. Section 4 (a)-(d) lays down a formula defining the States and political subdivisions to which these new remedies apply. The first of the remedies, contained in § 4 (a), is the suspension of literacy tests and similar voting qualifications for a period of five years from the last occurrence of substantial voting discrimination. Section 5 prescribes a second

[21] For convenient reference, the entire Act is reprinted in an Appendix to this opinion.

remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. The third remedy, covered in §§ 6 (b), 7, 9, and 13 (a), is the assignment of federal examiners on certification by the Attorney General to list qualified applicants who are thereafter entitled to vote in all elections.

Other provisions of the Act prescribe subsidiary cures for persistent voting discrimination. Section 8 authorizes the appointment of federal poll-watchers in places to which federal examiners have already been assigned. Section 10 (d) excuses those made eligible to vote in sections of the country covered by § 4 (b) of the Act from paying accumulated past poll taxes for state and local elections. Section 12 (e) provides for balloting by persons denied access to the polls in areas where federal examiners have been appointed.

The remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds. Sections 3, 6 (a), and 13 (b) strengthen existing procedures for attacking voting discrimination by means of litigation. Section 4 (e) excuses citizens educated in American schools conducted in a foreign language from passing English-language literacy tests. Section 10 (a)–(c) facilitates constitutional litigation challenging the imposition of all poll taxes for state and local elections. Sections 11 and 12 (a)–(d) authorize civil and criminal sanctions against interference with the exercise of rights guaranteed by the Act.

At the outset, we emphasize that only some of the many portions of the Act are properly before us. South Carolina has not challenged §§ 2, 3, 4 (e), 6 (a), 8, 10, 12 (d) and (e), 13 (b), and other miscellaneous provisions having nothing to do with this lawsuit. Judicial review of these sections must await subsequent litiga-

tion.[22] In addition, we find that South Carolina's attack on §§ 11 and 12 (a)–(c) is premature. No person has yet been subjected to, or even threatened with, the criminal sanctions which these sections of the Act authorize. See *United States* v. *Raines*, 362 U. S. 17, 20–24. Consequently, the only sections of the Act to be reviewed at this time are §§ 4 (a)–(d), 5, 6 (b), 7, 9, 13 (a), and certain procedural portions of § 14, all of which are presently in actual operation in South Carolina. We turn now to a detailed description of these provisions and their present status.

Coverage formula.

The remedial sections of the Act assailed by South Carolina automatically apply to any State, or to any separate political subdivision such as a county or parish, for which two findings have been made: (1) the Attorney General has determined that on November 1, 1964, it maintained a "test or device," and (2) the Director of the Census has determined that less than 50% of its voting-age residents were registered on November 1, 1964, or voted in the presidential election of November 1964. These findings are not reviewable in any court and are final upon publication in the Federal Register. § 4 (b). As used throughout the Act, the phrase "test or device" means any requirement that a registrant or voter must "(1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his quali-

[22] Section 4 (c) has been challenged in *Morgan* v. *Katzenbach*, 247 F. Supp. 196, prob. juris. noted, 382 U. S. 1007, and in *United States* v. *County Bd. of Elections*, 248 F. Supp. 316. Section 10 (a)–(c) is involved in *United States* v. *Texas*, 252 F. Supp. 234, and in *United States* v. *Alabama*, 252 F. Supp. 95; see also *Harper* v. *Virginia State Bd. of Elections*, No. 48, 1965 Term, and *Butts* v. *Harrison*, No. 655, 1965 Term, which were argued together before this Court on January 25 and 26, 1966.

fications by the voucher of registered voters or members of any other class." § 4 (c).

Statutory coverage of a State or political subdivision under § 4 (b) is terminated if the area obtains a declaratory judgment from the District Court for the District of Columbia, determining that tests and devices have not been used during the preceding five years to abridge the franchise on racial grounds. The Attorney General shall consent to entry of the judgment if he has no reason to believe that the facts are otherwise. § 4 (a). For the purposes of this section, tests and devices are not deemed to have been used in a forbidden manner if the incidents of discrimination are few in number and have been promptly corrected, if their continuing effects have been abated, and if they are unlikely to recur in the future. § 4 (d). On the other hand, no area may obtain a declaratory judgment for five years after the final decision of a federal court (other than the denial of a judgment under this section of the Act), determining that discrimination through the use of tests or devices has occurred anywhere in the State or political subdivision. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 4 (a).

South Carolina was brought within the coverage formula of the Act on August 7, 1965, pursuant to appropriate administrative determinations which have not been challenged in this proceeding.[23] On the same day, coverage was also extended to Alabama, Alaska, Georgia, Louisiana, Mississippi, Virginia, 26 counties in North Carolina, and one county in Arizona.[24] Two more counties in Arizona, one county in Hawaii, and one county in Idaho were added to the list on November 19, 1965.[25]

---

[23] 30 Fed. Reg. 9897.

[24] *Ibid.*

[25] 30 Fed. Reg. 14505.

Thus far Alaska, the three Arizona counties, and the single county in Idaho have asked the District Court for the District of Columbia to grant a declaratory judgment terminating statutory coverage.[26]

Suspension of tests.

In a State or political subdivision covered by § 4 (b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a "test or device." § 4 (a).

On account of this provision, South Carolina is temporarily barred from enforcing the portion of its voting laws which requires every applicant for registration to show that he:

> "Can both read and write any section of [the State] Constitution submitted to [him] by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars or more." S. C. Code Ann. § 23-62 (4) (1965 Supp.).

The Attorney General has determined that the property qualification is inseparable from the literacy test,[27] and South Carolina makes no objection to this finding. Similar tests and devices have been temporarily suspended in the other sections of the country listed above.[28]

Review of new rules.

In a State or political subdivision covered by § 4 (b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a voting qualification or procedure different from those in force on

---

[26] *Alaska* v. *United States*, Civ. Act. 101–66; *Apache County* v. *United States*, Civ. Act. 292–66; *Elmore County* v. *United States*, Civ. Act. 320–66.

[27] 30 Fed. Reg. 14045–14046.

[28] For a chart of the tests and devices in effect at the time the Act was under consideration, see House Hearings 30–32; Senate Report 42–43.

November 1, 1964. This suspension of new rules is terminated, however, under either of the following circumstances: (1) if the area has submitted the rules to the Attorney General, and he has not interposed an objection within 60 days, or (2) if the area has obtained a declaratory judgment from the District Court for the District of Columbia, determining that the rules will not abridge the franchise on racial grounds. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 5.

South Carolina altered its voting laws in 1965 to extend the closing hour at polling places from 6 p. m. to 7 p. m.[29] The State has not sought judicial review of this change in the District Court for the District of Columbia, nor has it submitted the new rule to the Attorney General for his scrutiny, although at our hearing the Attorney General announced that he does not challenge the amendment. There are indications in the record that other sections of the country listed above have also altered their voting laws since November 1, 1964.[30]

Federal examiners.

In any political subdivision covered by § 4 (b) of the Act, the Civil Service Commission shall appoint voting examiners whenever the Attorney General certifies either of the following facts: (1) that he has received meritorious written complaints from at least 20 residents alleging that they have been disenfranchised under color of law because of their race, or (2) that the appointment of examiners is otherwise necessary to effectuate the guarantees of the Fifteenth Amendment. In making the latter determination, the Attorney General must consider, among other factors, whether the registration ratio of non-whites to whites seems reasonably attributable to

[29] S. C. Code Ann. § 23-342 (1965 Supp.).

[30] Brief for Mississippi as *amicus curiae*, App.

racial discrimination, or whether there is substantial evidence of good-faith efforts to comply with the Fifteenth Amendment. § 6 (b). These certifications are not reviewable in any court and are effective upon publication in the Federal Register. § 4 (b).

The examiners who have been appointed are to test the voting qualifications of applicants according to regulations of the Civil Service Commission prescribing times, places, procedures, and forms. §§ 7 (a) and 9 (b). Any person who meets the voting requirements of state law, insofar as these have not been suspended by the Act, must promptly be placed on a list of eligible voters. Examiners are to transmit their lists at least once a month to the appropriate state or local officials, who in turn are required to place the listed names on the official voting rolls. Any person listed by an examiner is entitled to vote in all elections held more than 45 days after his name has been transmitted. § 7 (b).

A person shall be removed from the voting list by an examiner if he has lost his eligibility under valid state law, or if he has been successfully challenged through the procedure prescribed in § 9 (a) of the Act. § 7 (d). The challenge must be filed at the office within the State designated by the Civil Service Commission; must be submitted within 10 days after the listing is made available for public inspection; must be supported by the affidavits of at least two people having personal knowledge of the relevant facts; and must be served on the person challenged by mail or at his residence. A hearing officer appointed by the Civil Service Commission shall hear the challenge and render a decision within 15 days after the challenge is filed. A petition for review of the hearing officer's decision must be submitted within an additional 15 days after service of the decision on the person seeking review. The court of appeals for the circuit in which the person challenged resides is to

hear the petition and affirm the hearing officer's decision unless it is clearly erroneous. Any person listed by an examiner is entitled to vote pending a final decision of the hearing officer or the court. § 9 (a).

The listing procedures in a political subdivision are terminated under either of the following circumstances: (1) if the Attorney General informs the Civil Service Commission that all persons listed by examiners have been placed on the official voting rolls, and that there is no longer reasonable cause to fear abridgment of the franchise on racial grounds, or (2) if the political subdivision has obtained a declaratory judgment from the District Court for the District of Columbia, ascertaining the same facts which govern termination by the Attorney General, and the Director of the Census has determined that more than 50% of the non-white residents of voting age are registered to vote. A political subdivision may petition the Attorney General to terminate listing procedures or to authorize the necessary census, and the District Court itself shall request the census if the Attorney General's refusal to do so is arbitrary or unreasonable. § 13 (a). The determinations by the Director of the Census are not reviewable in any court and are final upon publication in the Federal Register. § 4 (b).

On October 30, 1965, the Attorney General certified the need for federal examiners in two South Carolina counties,[31] and examiners appointed by the Civil Service Commission have been serving there since November 8, 1965. Examiners have also been assigned to 11 counties in Alabama, five parishes in Louisiana, and 19 counties in Mississippi.[32] The examiners are listing people found eligible to vote, and the challenge procedure has been

---

[31] 30 Fed. Reg. 13850.

[32] 30 Fed. Reg. 9970–9971, 10863, 12363, 12654, 13849–13850, 15837; 31 Fed. Reg. 914.

employed extensively.[33] No political subdivision has yet sought to have federal examiners withdrawn through the Attorney General or the District Court for the District of Columbia.

III.

These provisions of the Voting Rights Act of 1965 are challenged on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution. South Carolina and certain of the *amici curiae* also attack specific sections of the Act for more particular reasons. They argue that the coverage formula prescribed in § 4 (a)–(d) violates the principle of the equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impairs the separation of powers by adjudicating guilt through legislation. They claim that the review of new voting rules required in § 5 infringes Article III by directing the District Court to issue advisory opinions. They contend that the assignment of federal examiners authorized in § 6 (b) abridges due process by precluding judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; also that the challenge procedure prescribed in § 9 denies due process on account of its speed. Finally, South Carolina and certain of the *amici curiae* maintain that §§ 4 (a) and 5, buttressed by § 14 (b) of the Act, abridge due process by limiting litigation to a distant forum.

Some of these contentions may be dismissed at the outset. The word "person" in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and to our knowledge

[33] See Comm'n on Civil Rights, The Voting Rights Act (1965).

this has never been done by any court. See *International Shoe Co.* v. *Cocreham*, 246 La. 244, 266, 164 So. 2d 314, 322, n. 5; cf. *United States* v. *City of Jackson*, 318 F. 2d 1, 8 (C. A. 5th Cir.). Likewise, courts have consistently regarded the Bill of Attainder Clause of Article I and the principle of the separation of powers only as protections for individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt. See *United States* v. *Brown*, 381 U. S. 437; *Ex parte Garland*, 4 Wall. 333. Nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate *parens patriae* of every American citizen. *Massachusetts* v. *Mellon*, 262 U. S. 447, 485–486; *Florida* v. *Mellon*, 273 U. S. 12, 18. The objections to the Act which are raised under these provisions may therefore be considered only as additional aspects of the basic question presented by the case: Has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?

The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general doctrines of constitutional interpretation, all point to one fundamental principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. Cf. our rulings last Term, sustaining Title II of the Civil Rights Act of 1964, in *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 258–259, 261–262; and *Katzenbach* v. *McClung*, 379 U. S. 294, 303–304. We turn now to a more detailed description of the standards which govern our review of the Act.

Section 1 of the Fifteenth Amendment declares that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." This declaration has always been treated as self-executing and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. See *Neal* v. *Delaware*, 103 U. S. 370; *Guinn* v. *United States*, 238 U. S. 347; *Myers* v. *Anderson*, 238 U. S. 368; *Lane* v. *Wilson*, 307 U. S. 268; *Smith* v. *Allwright*, 321 U. S. 649; *Schnell* v. *Davis*, 336 U. S. 933; *Terry* v. *Adams*, 345 U. S. 461; *United States* v. *Thomas*, 362 U. S. 58; *Gomillion* v. *Lightfoot*, 364 U. S. 339; *Alabama* v. *United States*, 371 U. S. 37; *Louisiana* v. *United States*, 380 U. S. 145. These decisions have been rendered with full respect for the general rule, reiterated last Term in *Carrington* v. *Rash*, 380 U. S. 89, 91, that States "have broad powers to determine the conditions under which the right of suffrage may be exercised." The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power. "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." *Gomillion* v. *Lightfoot*, 364 U. S., at 347.

South Carolina contends that the cases cited above are precedents only for the authority of the judiciary to strike down state statutes and procedures—that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, § 2 of the Fifteenth Amendment expressly declares that "Congress shall have power to enforce this article by appropriate legislation." By adding this

37-499 O - 70 - 38

authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1. "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective." *Ex parte Virginia*, 100 U. S. 339, 345. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

Congress has repeatedly exercised these powers in the past, and its enactments have repeatedly been upheld. For recent examples, see the Civil Rights Act of 1957, which was sustained in *United States* v. *Raines*, 362 U. S. 17; *United States* v. *Thomas, supra;* and *Hannah* v. *Larche*, 363 U. S. 420; and the Civil Rights Act of 1960, which was upheld in *Alabama* v. *United States, supra; Louisiana* v. *United States, supra;* and *United States* v. *Mississippi*, 380 U. S. 128. On the rare occasions when the Court has found an unconstitutional exercise of these powers, in its opinion Congress had attacked evils not comprehended by the Fifteenth Amendment. See *United States* v. *Reese*, 92 U. S. 214; *James* v. *Bowman*, 190 U. S. 127.

The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the Fifteenth Amendment was ratified:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421.

The Court has subsequently echoed his language in describing each of the Civil War Amendments:

> "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." *Ex parte Virginia*, 100 U. S., at 345–346.

This language was again employed, nearly 50 years later, with reference to Congress' related authority under § 2 of the Eighteenth Amendment. *James Everard's Breweries* v. *Day*, 265 U. S. 545, 558–559.

We therefore reject South Carolina's argument that Congress may appropriately do no more than to forbid violations of the Fifteenth Amendment in general terms—that the task of fashioning specific remedies or of applying them to particular localities must necessarily be left entirely to the courts. Congress is not circumscribed by any such artificial rules under § 2 of the Fifteenth Amendment. In the oft-repeated words of Chief Justice Marshall, referring to another specific legislative authorization in the Constitution, "This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons* v. *Ogden*, 9 Wheat. 1, 196.

IV.

Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965. First: The measure prescribes remedies for voting discrimination which go into

effect without any need for prior adjudication. This was clearly a legitimate response to the problem, for which there is ample precedent under other constitutional provisions. See *Katzenbach* v. *McClung*, 379 U. S. 294, 302–304; *United States* v. *Darby*, 312 U. S. 100, 120–121. Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits.[34] After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. The question remains, of course, whether the specific remedies prescribed in the Act were an appropriate means of combatting the evil, and to this question we shall presently address ourselves.

Second: The Act intentionally confines these remedies to a small number of States and political subdivisions which in most instances were familiar to Congress by name.[35] This, too, was a permissible method of dealing with the problem. Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future.[36] In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See *McGowan* v. *Maryland*, 366 U. S. 420, 427; *Salsburg* v. *Maryland*, 346 U. S. 545, 550–554. The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for that doctrine applies only to the terms

---

[34] House Report 9–11; Senate Report 6–9.

[35] House Report 13; Senate Report 52, 55.

[36] House Hearings 27; Senate Hearings 201.

upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared. See *Coyle* v. *Smith*, 221 U. S. 559, and cases cited therein.

Coverage formula.

We now consider the related question of whether the specific States and political subdivisions within § 4 (b) of the Act were an appropriate target for the new remedies. South Carolina contends that the coverage formula is awkwardly designed in a number of respects and that it disregards various local conditions which have nothing to do with racial discrimination. These arguments, however, are largely beside the point.[37] Congress began work with reliable evidence of actual voting discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act. The formula eventually evolved to describe these areas was relevant to the problem of voting discrimination, and Congress was therefore entitled to infer a significant danger of the evil in the few remaining States and political subdivisions covered by § 4 (b) of the Act. No more was required to justify the application to these areas of Congress' express powers under the Fifteenth Amendment. Cf. *North American Co.* v. *S. E. C.*, 327 U. S. 686, 710–711; *Assigned Car Cases*, 274 U. S. 564, 582–583.

To be specific, the new remedies of the Act are imposed on three States—Alabama, Louisiana, and Mississippi—in which federal courts have repeatedly found substantial voting discrimination.[38] Section 4 (b) of the Act also embraces two other States—Georgia and South Carolina—plus large portions of a third State—North Carolina—for which there was more fragmentary evidence of

[37] For Congress' defense of the formula, see House Report 13–14; Senate Report 13–14.

[38] House Report 12; Senate Report 9–10.

recent voting discrimination mainly adduced by the Justice Department and the Civil Rights Commission.[39] All of these areas were appropriately subjected to the new remedies. In identifying past evils, Congress obviously may avail itself of information from any probative source. See *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 252–253; *Katzenbach* v. *McClung*, 379 U. S., at 299–301.

The areas listed above, for which there was evidence of actual voting discrimination, share two characteristics incorporated by Congress into the coverage formula: the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory. It was therefore permissible to impose the new remedies on the few remaining States and political subdivisions covered by the formula, at least in the absence of proof that they have been free of substantial voting discrimination in recent years. Congress is clearly not bound by the rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under § 2 of the Fifteenth Amendment. Compare *United States* v. *Romano*, 382 U. S. 136; *Tot* v. *United States*, 319 U. S. 463.

It is irrelevant that the coverage formula excludes certain localities which do not employ voting tests and

---

[39] Georgia: House Hearings 160–176; Senate Hearings 1182–1184, 1237, 1253, 1300–1301, 1336–1345. North Carolina: Senate Hearings 27–28, 39, 246–248. South Carolina: House Hearings 114–116, 196–201; Senate Hearings 1353–1354.

devices but for which there is evidence of voting discrimination by other means. Congress had learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed.[40] At the same time, through §§ 3, 6 (a), and 13 (b) of the Act, Congress strengthened existing remedies for voting discrimination in other areas of the country. Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience. See *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 488–489; *Railway Express Agency* v. *New York*, 336 U. S. 106. There are no States or political subdivisions exempted from coverage under § 4 (b) in which the record reveals recent racial discrimination involving tests and devices. This fact confirms the rationality of the formula.

Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years. Despite South Carolina's argument to the contrary, Congress might appropriately limit litigation under this provision to a single court in the District of Columbia, pursuant to its constitutional power under Art. III, § 1, to "ordain and establish" inferior federal tribunals. See *Bowles* v. *Willingham*, 321 U. S. 503, 510–512; *Yakus* v. *United States*, 321 U. S. 414, 427–431; *Lockerty* v. *Phillips*, 319 U. S. 182. At the present time, contractual claims against the United States for more than $10,000 must be brought in the Court of Claims, and, until 1962, the District of Columbia was the sole venue of suits against

[40] House Hearings 75–77; Senate Hearings 241–243.

federal officers officially residing in the Nation's Capital.[41] We have discovered no suggestion that Congress exceeded constitutional bounds in imposing these limitations on litigation against the Federal Government, and the Act is no less reasonable in this respect.

South Carolina contends that these termination procedures are a nullity because they impose an impossible burden of proof upon States and political subdivisions entitled to relief. As the Attorney General pointed out during hearings on the Act, however, an area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government.[42] Section 4 (d) further assures that an area need not disprove each isolated instance of voting discrimination in order to obtain relief in the termination proceedings. The burden of proof is therefore quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves. See *United States* v. *New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5; cf. *S. E. C.* v. *Ralston Purina Co.*, 346 U. S. 119, 126.

The Act bars direct judicial review of the findings by the Attorney General and the Director of the Census which trigger application of the coverage formula. We reject the claim by Alabama as *amicus curiae* that this provision is invalid because it allows the new remedies of

---

[41] Regarding claims against the United States, see 28 U. S. C. §§ 1491, 1346 (a) (1964 ed.). Concerning suits against federal officers, see *Stroud* v. *Benson*, 254 F. 2d 448; H. R. Rep. No. 536, 87th Cong., 1st Sess.; S. Rep. No. 1992, 87th Cong., 2d Sess.; 28 U. S. C. § 1391 (e) (1964 ed.); 2 Moore, Federal Practice ¶ 4.29 (1964 ed.).

[42] House Hearings 92–93; Senate Hearings 26–27.

the Act to be imposed in an arbitrary way. The Court has already permitted Congress to withdraw judicial review of administrative determinations in numerous cases involving the statutory rights of private parties. For example, see *United States* v. *California Eastern Line*, 348 U. S. 351; *Switchmen's Union* v. *National Mediation Bd.*, 320 U. S. 297. In this instance, the findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute, as South Carolina apparently concedes. In the event that the formula is improperly applied, the area affected can always go into court and obtain termination of coverage under § 4 (b), provided of course that it has not been guilty of voting discrimination in recent years. This procedure serves as a partial substitute for direct judicial review.

Suspension of tests.

We now arrive at consideration of the specific remedies prescribed by the Act for areas included within the coverage formula. South Carolina assails the temporary suspension of existing voting qualifications, reciting the rule laid down by *Lassiter* v. *Northampton County Bd. of Elections*, 360 U. S. 45, that literacy tests and related devices are not in themselves contrary to the Fifteenth Amendment. In that very case, however, the Court went on to say, "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." *Id.*, at 53. The record shows that in most of the States covered by the Act, including South Carolina, various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been ad-

ministered in a discriminatory fashion for many years.[43] Under these circumstances, the Fifteenth Amendment has clearly been violated. See *Louisiana* v. *United States*, 380 U. S. 145; *Alabama* v. *United States*, 371 U. S. 37; *Schnell* v. *Davis*, 336 U. S. 933.

The Act suspends literacy tests and similar devices for a period of five years from the last occurrence of substantial voting discrimination. This was a legitimate response to the problem, for which there is ample precedent in Fifteenth Amendment cases. *Ibid.* Underlying the response was the feeling that States and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about "dilution" of their electorates through the registration of Negro illiterates.[44] Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants.[45] Congress permissibly rejected the alternative of requiring a complete re-registration of all voters, believing that this would be too harsh on many whites who had enjoyed the franchise for their entire adult lives.[46]

Review of new rules.

The Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment. This may have been an uncommon exercise of congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate. See *Home*

---

[43] House Report 11–13; Senate Report 4–5, 9–12.
[44] House Report 15; Senate Report 15–16.
[45] House Report 15; Senate Report 16.
[46] House Hearings 17; Senate Hearings 22–23.

Bldg. & Loan Assn. v. *Blaisdell*, 290 U. S. 398; *Wilson* v. *New*, 243 U. S. 332. Congress knew that some of the States covered by § 4 (b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees.[47] Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.

For reasons already stated, there was nothing inappropriate about limiting litigation under this provision to the District Court for the District of Columbia, and in putting the burden of proof on the areas seeking relief. Nor has Congress authorized the District Court to issue advisory opinions, in violation of the principles of Article III invoked by Georgia as *amicus curiae*. The Act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension. A State or political subdivision wishing to make use of a recent amendment to its voting laws therefore has a concrete and immediate "controversy" with the Federal Government. Cf. *Public Utilities Comm'n* v. *United States*, 355 U. S. 534, 536–539; *United States* v. *California*, 332 U. S. 19, 24–25. An appropriate remedy is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment.

Federal examiners.

The Act authorizes the appointment of federal examiners to list qualified applicants who are thereafter

[47] House Report 10–11; Senate Report 8, 12.

entitled to vote, subject to an expeditious challenge procedure. This was clearly an appropriate response to the problem, closely related to remedies authorized in prior cases. See *Alabama* v. *United States, supra; United States* v. *Thomas,* 362 U. S. 58. In many of the political subdivisions covered by § 4 (b) of the Act, voting officials have persistently employed a variety of procedural tactics to deny Negroes the franchise, often in direct defiance or evasion of federal court decrees.[48] Congress realized that merely to suspend voting rules which have been misused or are subject to misuse might leave this localized evil undisturbed. As for the briskness of the challenge procedure, Congress knew that in some of the areas affected, challenges had been persistently employed to harass registered Negroes. It chose to forestall this abuse, at the same time providing alternative ways for removing persons listed through error or fraud.[49] In addition to the judicial challenge procedure, § 7 (d) allows for the removal of names by the examiner himself, and § 11 (c) makes it a crime to obtain a listing through fraud.

In recognition of the fact that there were political subdivisions covered by § 4 (b) of the Act in which the appointment of federal examiners might be unnecessary, Congress assigned the Attorney General the task of determining the localities to which examiners should be sent.[50] There is no warrant for the claim, asserted by Georgia as *amicus curiae,* that the Attorney General is free to use this power in an arbitrary fashion, without regard to the purposes of the Act. Section 6 (b) sets adequate standards to guide the exercise of his discretion, by directing him to calculate the registration ratio of nonwhites to whites, and to weigh evidence of good-faith

[48] House Report 16; Senate Report 15.

[49] Senate Hearings 200.

[50] House Report 16.

efforts to avoid possible voting discrimination. At the same time, the special termination procedures of § 13 (a) provide indirect judicial review for the political subdivisions affected, assuring the withdrawal of federal examiners from areas where they are clearly not needed. Cf. *Carlson* v. *Landon*, 342 U. S. 524, 542–544; *Mulford* v. *Smith*, 307 U. S. 38, 48–49.

After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively. Many of the areas directly affected by this development have indicated their willingness to abide by any restraints legitimately imposed upon them.[51] We here hold that the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

The bill of complaint is

Dismissed.

APPENDIX TO OPINION OF THE COURT.

Voting Rights Act of 1965.

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress

---

[51] See Comm'n on Civil Rights, The Voting Rights Act (1965).

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

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

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

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

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

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been

made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided,* That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

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

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

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

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

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

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant

classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4 (a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, prac-

37-499 O - 70 - 39

tice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3 (a), or (b) unless a declaratory judgment has been rendered under section 4 (a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4 (b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to

enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9 (a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U. S. C. 118i), prohibiting partisan political activity: *Provided,* That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

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

(b) Any person whom the examiner finds, in accordance with instructions received under section 9 (b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9 (a) and shall not be the basis for a prosecution under section 12 of this Act. The ex-

aminer shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided,* That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

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

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

Sec. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose

of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3 (a), to the court.

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

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commision shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

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

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such per-

sons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

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

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political

subdivision with respect to which determinations have been made under subsection 4 (b) and a declaratory judgment has not been entered under subsection 4 (a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

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

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

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another

individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however,* That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

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

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

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

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

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

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibilty to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy pro-

vided in this subsection shall not preclude any remedy available under State or Federal law.

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

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3 (a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney

General's refusal to request such survey or census to be arbitrary or unreasonable.

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

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

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

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

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hun-

dred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

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

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

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

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.

MR. JUSTICE BLACK, concurring and dissenting.

I agree with substantially all of the Court's opinion sustaining the power of Congress under § 2 of the Fifteenth Amendment to suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, § 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgment no matter how subtle. Compare my dissenting opinion in *Bell* v. *Maryland*, 378 U. S. 226, 318. I have no doubt whatever as to the power of Congress under § 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional power necessarily exists to authorize appointment of federal examiners. I also agree with the judgment of the Court upholding § 4 (b) of

the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. I reach this conclusion, however, for a somewhat different reason than that stated by the Court, which is that "the coverage formula is rational in both practice and theory." I do not base my conclusion on the fact that the formula is rational, for it is enough for me that Congress by creating this formula has merely exercised its hitherto unquestioned and undisputed power to decide when, where, and upon what conditions its laws shall go into effect. By stating in specific detail that the major remedial sections of the Act are to be applied in areas where certain conditions exist, and by granting the Attorney General and the Director of the Census unreviewable power to make the mechanical determination of which areas come within the formula of § 4 (b), I believe that Congress has acted within its established power to set out preconditions upon which the Act is to go into effect. See, *e. g., Martin* v. *Mott,* 12 Wheat. 19; *United States* v. *Bush & Co.,* 310 U. S. 371; *Hirabayashi* v. *United States,* 320 U. S. 81.

Though, as I have said, I agree with most of the Court's conclusions, I dissent from its holding that every part of § 5 of the Act is constitutional. Section 4 (a), to which § 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of § 4 (b). Section 5 goes on to provide that a State covered by § 4 (b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional on at least two grounds.

(a) The Constitution gives federal courts jurisdiction over cases and controversies only. If it can be said that any case or controversy arises under this section which gives the District Court for the District of Columbia jurisdiction to approve or reject state laws or constitutional amendments, then the case or controversy must be between a State and the United States Government. But it is hard for me to believe that a justiciable controversy can arise in the constitutional sense from a desire by the United States Government or some of its officials to determine in advance what legislative provisions a State may enact or what constitutional amendments it may adopt. If this dispute between the Federal Government and the States amounts to a case or controversy it is a far cry from the traditional constitutional notion of a case or controversy as a dispute over the meaning of enforceable laws or the manner in which they are applied. And if by this section Congress has created a case or controversy, and I do not believe it has, then it seems to me that the most appropriate judicial forum for settling these important questions is this Court acting under its original Art. III, § 2, jurisdiction to try cases in which a State is a party.[1] At least a trial in this Court would treat the States with the dignity to which they should be entitled as constituent members of our Federal Union.

The form of words and the manipulation of presumptions used in § 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. By requiring a State to ask a federal court to approve the validity of a proposed law which has in no way become operative, Congress has asked the State to

[1] If § 14 (b) of the Act by stating that no court other than the District Court for the District of Columbia shall issue a judgment under § 5 is an attempt to limit the constitutionally created original jurisdiction of this Court, then I think that section is also unconstitutional.

secure precisely the type of advisory opinion our Constitution forbids. As I have pointed out elsewhere, see my dissenting opinion in *Griswold* v. *Connecticut*, 381 U. S. 479, 507, n. 6, pp. 513–515, some of those drafting our Constitution wanted to give the federal courts the power to issue advisory opinions and propose new laws to the legislative body. These suggestions were rejected. We should likewise reject any attempt by Congress to flout constitutional limitations by authorizing federal courts to render advisory opinions when there is no case or controversy before them. Congress has ample power to protect the rights of citizens to vote without resorting to the unnecessarily circuitous, indirect and unconstitutional route it has adopted in this section.

(b) My second and more basic objection to § 5 is that Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. As the Court says the limitations of the power granted under § 2 are the same as the limitations imposed on the exercise of any of the powers expressly granted Congress by the Constitution. The classic formulation of these constitutional limitations was stated by Chief Justice Marshall when he said in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but consist with the letter and spirit of the constitution*, are constitutional." (Emphasis added.) Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One

of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them.[2] Moreover, it seems to me that § 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government." I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far-away places for approval of local laws before they can become effective is to

[2] The requirement that States come to Washington to have their laws judged is reminiscent of the deeply resented practices used by the English crown in dealing with the American colonies. One of the abuses complained of most bitterly was the King's practice of holding legislative and judicial proceedings in inconvenient and distant places. The signers of the Declaration of Independence protested that the King "has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures," and they objected to the King's "transporting us beyond Seas to be tried for pretended offences." These abuses were fresh in the minds of the Framers of our Constitution and in part caused them to include in Art. 3, § 2, the provision that criminal trials "shall be held in the State where the said Crimes shall have been committed." Also included in the Sixth Amendment was the requirement that a defendant in a criminal prosecution be tried by a "jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution or its Amendments. Of course I do not mean to cast any doubt whatever upon the indisputable power of the Federal Government to invalidate a state law once enacted and operative on the ground that it intrudes into the area of supreme federal power. But the Federal Government has heretofore always been content to exercise this power to protect federal supremacy by authorizing its agents to bring lawsuits against state officials once an operative state law has created an actual case and controversy. A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly re-

jected.[3] The refusal to give Congress this extraordinary power to veto state laws was based on the belief that if such power resided in Congress the States would be helpless to function as effective governments.[4] Since that time neither the Fifteenth Amendment nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state laws either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress—denied a power in itself to veto a state law—can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases—they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval.

In this and other prior Acts Congress has quite properly vested the Attorney General with extremely broad power to protect voting rights of citizens against discrimination on account of race or color. Section 5 viewed in this context is of very minor importance and in my judgment is likely to serve more as an irritant to

---

[3] See Debates in the Federal Convention of 1787 as reported by James Madison in Documents Illustrative of the Formation of the Union of the American States (1927), pp. 605, 789, 856.

[4] One speaker expressing what seemed to be the prevailing opinion of the delegates said of the proposal, "Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them . . . ." *Id.*, at 604.

the States than as an aid to the enforcement of the Act. I would hold § 5 invalid for the reasons stated above with full confidence that the Attorney General has ample power to give vigorous, expeditious and effective protection to the voting rights of all citizens.[5]

---

[5] Section 19 of the Act provides as follows:

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

Syllabus.

KATZENBACH, ATTORNEY GENERAL, ET AL. *v.* MORGAN ET UX.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

No. 847. Argued April 18, 1966.—Decided June 13, 1966.*

Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4 (e) of the Voting Rights Act of 1965 to the extent that the provision prohibits enforcement of the statutory requirement for literacy in English as applied to numerous New York City residents from Puerto Rico who, because of that requirement, had previously been denied the right to vote. Section 4 (e) provides that no person who has completed the sixth grade in a public school, or an accredited private school, in Puerto Rico in which the language of instruction was other than English shall be disfranchised for inability to read or write English. A three-judge District Court granted appellees declaratory and injunctive relief, holding that in enacting § 4 (e) Congress had exceeded its powers. *Held:* Section 4 (e) is a proper exercise of the powers under § 5 of the Fourteenth Amendment, and by virtue of the Supremacy Clause, New York's English literacy requirement cannot be enforced to the extent it conflicts with § 4 (e). Pp. 646–658.

(a) Though the States have power to fix voting qualifications, they cannot do so contrary to the Fourteenth Amendment or any other constitutional provision. P. 647.

(b) Congress' power under § 5 of the Fourteenth Amendment to enact legislation prohibiting enforcement of a state law is not limited to situations where the state law has been adjudged to violate the provisions of the Amendment which Congress sought to enforce. It is therefore the Court's task here to determine, not whether New York's English literacy requirement as applied violates the Equal Protection Clause, but whether § 4 (e)'s prohibition against that requirement is "appropriate legislation" to enforce the Clause. *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45, distinguished. Pp. 648–650.

---

*Together with No. 877, *New York City Board of Elections* v. *Morgan et ux.*, also on appeal from the same court.

(c) Section 5 of the Fourteenth Amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining the need for and nature of legislation to secure Fourteenth Amendment guarantees. The test of *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, is to be applied to determine whether a congressional enactment is "appropriate legislation" under § 5 of the Fourteenth Amendment. Pp. 650–651.

(d) Section 4 (e) was enacted to enforce the Equal Protection Clause as a measure to secure nondiscriminatory treatment by government for numerous Puerto Ricans residing in New York, both in the imposition of voting qualifications and the provision or administration of governmental services. Pp. 652–653.

(e) Congress had an adequate basis for deciding that § 4 (e) was plainly adapted to that end. Pp. 653–656.

(f) Section 4 (e) does not itself invalidly discriminate in violation of the Fifth Amendment for failure to extend relief to those educated in non-American flag schools. A reform measure such as § 4 (e) is not invalid because Congress might have gone further than it did and did not eliminate all the evils at the same time. Pp. 656–658.

247 F. Supp. 196, reversed.

Solicitor General Marshall argued the cause for appellants in No. 847. With him on the brief were *Assistant Attorney General Doar, Ralph S. Spritzer, Louis F Claiborne, St. John Barrett* and *Louis M. Kauder.*

J. Lee Rankin argued the cause for appellant in No. 877. With him on the brief were *Norman Redlich* and *Seymour B. Quel.*

Alfred Avins argued the cause and filed a brief for appellees in both cases.

Rafael Hernandez Colon, Attorney General, argued the cause and filed a brief for the Commonwealth of Puerto Rico, as *amicus curiae*, urging reversal.

Jean M. Coon, Assistant Attorney General, argued the cause for the State of New York, as *amicus curiae*, urging affirmance. With her on the brief were *Louis J. Lefko-*

witz, Attorney General, and *Ruth Kessler Toch*, Acting Solicitor General.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

These cases concern the constitutionality of § 4 (e) of the Voting Rights Act of 1965.[1] That law, in the respects pertinent in these cases, provides that no person who has successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English. Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4 (e) insofar as it *pro tanto* prohibits

[1] The full text of § 4 (e) is as follows:

"(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

"(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English." 79 Stat. 439, 42 U. S. C. § 1973b (e) (1964 ed., Supp. I).

the enforcement of the election laws of New York [2] requiring an ability to read and write English as a condition of voting. Under these laws many of the several hundred thousand New York City residents who have migrated there from the Commonwealth of Puerto Rico had previously been denied the right to vote, and appellees attack § 4 (e) insofar as it would enable many of

[2] Article II, § 1, of the New York Constitution provides, in pertinent part:

"Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

Section 150 of the New York Election Law provides, in pertinent part:

". . . In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A 'new voter,' within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight."

Section 168 of the New York Election Law provides, in pertinent part:

"1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

. . . . .

"2. . . . But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of

these citizens to vote.[3] Pursuant to § 14 (b) of the Voting Rights Act of 1965, appellees commenced this proceeding in the District Court for the District of Columbia seeking a declaration that § 4 (e) is invalid and an injunction prohibiting appellants, the Attorney General of the United States and the New York City Board of Elections, from either enforcing or complying with

---

Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance."

Section 168 of the Election Law as it now reads was enacted while § 4 (e) was under consideration in Congress. See 111 Cong. Rec. 19376–19377. The prior law required the successful completion of the eighth rather than the sixth grade in a school in which the language of instruction was English.

[3] This limitation on appellees' challenge to § 4 (e), and thus on the scope of our inquiry, does not distort the primary intent of § 4 (e). The measure was sponsored in the Senate by Senators Javits and Kennedy and in the House by Representatives Gilbert and Ryan, all of New York, for the explicit purpose of dealing with the disenfranchisement of large segments of the Puerto Rican population in New York. Throughout the congressional debate it was repeatedly acknowledged that § 4 (e) had particular reference to the Puerto Rican population in New York. That situation was the almost exclusive subject of discussion. See 111 Cong. Rec. 11028, 11060–11074, 15666, 16235–16245, 16282–16283, 19192–19201, 19375–19378; see also Voting Rights, Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H. R. 6400, 89th Cong., 1st Sess., 100–101, 420–421, 508–517 (1965). The Solicitor General informs us in his brief to this Court, that in all probability the practical effect of § 4 (e) will be limited to enfranchising those educated in Puerto Rican schools. He advises us that, aside from the schools in the Commonwealth of Puerto Rico, there are no public or parochial schools in the territorial limits of the United States in which the predominant language of instruction is other than English and which would have generally been attended by persons who are otherwise qualified to vote save for their lack of literacy in English.

§ 4 (e).[4] A three-judge district court was designated. 28 U. S. C. §§ 2282, 2284 (1964 ed.). Upon cross motions for summary judgment, that court, one judge dissenting, granted the declaratory and injunctive relief appellees sought. The court held that in enacting § 4 (e) Congress exceeded the powers granted to it by the Constitution and therefore usurped powers reserved to the States by the Tenth Amendment. 247 F. Supp. 196. Appeals were taken directly to this Court, 28 U. S. C. §§ 1252, 1253 (1964 ed.), and we noted probable jurisdiction. 382 U. S. 1007. We reverse. We hold that, in the application challenged in these cases, § 4 (e) is a proper exercise of the powers granted to Congress by § 5 of the Fourteenth Amendment[5] and that by force of the

[4] Section 14 (b) provides, in pertinent part:

"No court other than the District Court for the District of Columbia . . . shall have jurisdiction to issue . . . any restraining order or temporary or permanent injunction against the . . . enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto." 79 Stat. 445, 42 U. S. C. § 1973*l* (b) (1964 ed., Supp. I).

The Attorney General of the United States was initially named as the sole defendant. The New York City Board of Elections was joined as a defendant after it publicly announced its intention to comply with § 4 (e); it has taken the position in these proceedings that § 4 (e) is a proper exercise of congressional power. The Attorney General of the State of New York has participated as *amicus curiae* in the proceedings below and in this Court, urging § 4 (e) be declared unconstitutional. The United States was granted leave to intervene as a defendant, 28 U. S. C. § 2403 (1964 ed.); Fed. Rule Civ. Proc. 24 (a).

[5] "SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

It is therefore unnecessary for us to consider whether § 4 (e) could be sustained as an exercise of power under the Territorial Clause, Art. IV, § 3; see dissenting opinion of Judge McGowan below, 247 F. Supp., at 204; or as a measure to discharge certain treaty obligations of the United States, see Treaty of Paris of 1898, 30 Stat. 1754, 1759; United Nations Charter, Articles 55 and 56;

Supremacy Clause, Article VI, the New York English literacy requirement cannot be enforced to the extent that it is inconsistent with § 4 (e).

Under the distribution of powers effected by the Constitution, the States establish qualifications for voting for state officers, and the qualifications established by the States for voting for members of the most numerous branch of the state legislature also determine who may vote for United States Representatives and Senators, Art. I, § 2; Seventeenth Amendment; *Ex parte Yarbrough*, 110 U. S. 651, 663. But, of course, the States have no power to grant or withhold the franchise on conditions that are forbidden by the Fourteenth Amendment, or any other provision of the Constitution. Such exercises of state power are no more immune to the limitations of the Fourteenth Amendment than any other state action. The Equal Protection Clause itself has been held to forbid some state laws that restrict the right to vote.[6]

Art. I, § 8, cl. 18. Nor need we consider whether § 4 (e) could be sustained insofar as it relates to the election of federal officers as an exercise of congressional power under Art. I, § 4, see *Minor* v. *Happersett*, 21 Wall. 162, 171; *United States* v. *Classic*, 313 U. S. 299, 315; Literacy Tests and Voter Requirements in Federal and State Elections, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on S. 480, S. 2750, and S. 2979, 87th Cong., 2d Sess., 302, 306–311 (1962) (brief of the Attorney General); nor whether § 4 (e) could be sustained, insofar as it relates to the election of state officers, as an exercise of congressional power to enforce the clause guaranteeing to each State a republican form of government, Art. IV, § 4; Art. I, § 8, cl. 18.

[6] *Harper* v. *Virginia Board of Elections*, 383 U. S. 663; *Carrington* v. *Rash*, 380 U. S. 89. See also *United States* v. *Mississippi*, 380 U. S. 128; *Louisiana* v. *United States*, 380 U. S. 145, 151; *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45; *Pope* v. *Williams*, 193 U. S. 621, 632–634; *Minor* v. *Happersett*, 21 Wall. 162; cf. *Burns* v. *Richardson*, *ante*, p. 73, at 92; *Reynolds* v. *Sims*, 377 U. S. 533.

The Attorney General of the State of New York argues that an exercise of congressional power under § 5 of the Fourteenth Amendment that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce. More specifically, he urges that § 4 (e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by § 4 (e) is forbidden by the Equal Protection Clause itself. We disagree. Neither the language nor history of § 5 supports such a construction.[7] As was said with regard to § 5 in *Ex parte Virginia*, 100 U. S. 339, 345, "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment.[8] It would confine the legislative power

[7] For the historical evidence suggesting that the sponsors and supporters of the Amendment were primarily interested in augmenting the power of Congress, rather than the judiciary, see generally Frantz, Congressional Power to Enforce the Fourteenth Amendment Against Private Acts, 73 Yale L. J. 1353, 1356–1357; Harris, The Quest for Equality, 33–56 (1960); tenBroek, The Antislavery Origins of the Fourteenth Amendment 187–217 (1951).

[8] Senator Howard, in introducing the proposed Amendment to the Senate, described § 5 as "a direct affirmative delegation of power to Congress," and added:

"It casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in

in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of 'merely informing the judgment of the judiciary by particularizing the "majestic generalities" of § 1 of the Amendment. See *Fay* v. *New York*, 332 U. S. 261, 282–284.

Thus our task in this case is not to determine whether the New York English literacy requirement as applied to deny the right to vote to a person who successfully completed the sixth grade in a Puerto Rican school violates the Equal Protection Clause. Accordingly, our decision in *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45, sustaining the North Carolina English literacy requirement as not in all circumstances prohibited by the first sections of the Fourteenth and Fifteenth Amendments, is inapposite. Compare also *Guinn* v. *United States*, 238 U. S. 347, 366; *Camacho* v. *Doe*, 31 Misc. 2d 692, 221 N. Y. S. 2d 262 (1958), aff'd 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho* v. *Rogers*, 199 F. Supp. 155 (D. C. S. D. N. Y. 1961). *Lassiter* did not present the question before us here: Without regard to whether the judiciary would find that the Equal Protection Clause itself nullifies New York's English literacy requirement as so applied, could Congress prohibit the enforcement of the state law by legislating under § 5 of the Fourteenth Amendment? In answering this question, our task is limited to determining whether such

---

good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this power and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Cong. Globe, 39th Cong., 1st Sess., 2766, 2768 (1866).

This statement of § 5's purpose was not questioned by anyone in the course of the debate. Flack, The Adoption of the Fourteenth Amendment 138 (1908).

legislation is, as required by § 5, appropriate legislation to enforce the Equal Protection Clause.

By including § 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18.[9] The classic formulation of the reach of those powers was established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

Ex parte Virginia, 100 U. S., at 345–346, decided 12 years after the adoption of the Fourteenth Amendment, held that congressional power under § 5 had this same broad scope:

> "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."

---

[9] In fact, earlier drafts of the proposed Amendment employed the "necessary and proper" terminology to describe the scope of congressional power under the Amendment. See tenBrock, The Anti-slavery Origins of the Fourteenth Amendment 187–190 (1951). The substitution of the "appropriate legislation" formula was never thought to have the effect of diminishing the scope of this congressional power. See, *e. g.*, Cong. Globe, 42d Cong., 1st Sess., App. 83 (Representative Bingham, a principal draftsman of the Amendment and the earlier proposals).

Strauder v. *West Virginia*, 100 U. S. 303, 311; *Virginia* v. *Rives*, 100 U. S. 313, 318. Section 2 of the Fifteenth Amendment grants Congress a similar power to enforce by "appropriate legislation" the provisions of that amendment; and we recently held in *South Carolina* v. *Katzenbach*, 383 U. S. 301, 326, that "[t]he basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States." That test was identified as the one formulated in *McCulloch* v. *Maryland*. See also *James Everard's Breweries* v. *Day*, 265 U. S. 545, 558–559 (Eighteenth Amendment). Thus the *McCulloch* v. *Maryland* standard is the measure of what constitutes "appropriate legislation" under § 5 of the Fourteenth Amendment. Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.

We therefore proceed to the consideration whether § 4 (e) is "appropriate legislation" to enforce the Equal Protection Clause, that is, under the *McCulloch* v. *Maryland* standard, whether § 4 (e) may be regarded as an enactment to enforce the Equal Protection Clause, whether it is "plainly adapted to that end" and whether it is not prohibited by but is consistent with "the letter and spirit of the constitution." [10]

---

[10] Contrary to the suggestion of the dissent, *post*, p. 668, § 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated sys-

There can be no doubt that § 4 (e) may be regarded as an enactment to enforce the Equal Protection Clause. Congress explicitly declared that it enacted § 4 (e) "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English." The persons referred to include those who have migrated from the Commonwealth of Puerto Rico to New York and who have been denied the right to vote because of their inability to read and write English, and the Fourteenth Amendment rights referred to include those emanating from the Equal Protection Clause. More specifically, § 4 (e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.

Section 4 (e) may be readily seen as "plainly adapted" to furthering these aims of the Equal Protection Clause. The practical effect of § 4 (e) is to prohibit New York from denying the right to vote to large segments of its Puerto Rican community. Congress has thus prohibited the State from denying to that community the right that is "preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370. This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community.[11] Sec-

---

tems of education would not be—as required by § 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohibits such state laws.

[11] Cf. *James Everard's Breweries* v. *Day*, *supra*, which held that, under the Enforcement Clause of the Eighteenth Amendment, Congress could prohibit the prescription of intoxicating malt liquor for medicinal purposes even though the Amendment itself only prohibited the manufacture and sale of intoxicating liquors for beverage purposes. Cf. also the settled principle applied in the *Shreveport*

tion 4 (e) thereby enables the Puerto Rican minority better to obtain "perfect equality of civil rights and the equal protection of the laws." It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support § 4 (e) in the application in question in this case. Any contrary conclusion would require us to be blind to the realities familiar to the legislators.[12]

The result is no different if we confine our inquiry to the question whether § 4 (e) was merely legislation aimed

---

Case (*Houston, E. & W. T. R. Co.* v. *United States*, 234 U. S. 342), and expressed in *United States* v. *Darby*, 312 U. S. 100, 118, that the power of Congress to regulate interstate commerce "extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end . . . ." Accord, *Atlanta Motel* v. *United States*, 379 U. S. 241, 258.

[12] See, *e. g.*, 111 Cong. Rec. 11061–11062, 11065–11066, 16240; Literacy Tests and Voter Requirements in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–508.

at the elimination of an invidious discrimination in establishing voter qualifications. We are told that New York's English literacy requirement originated in the desire to provide an incentive for non-English speaking immigrants to learn the English language and in order to assure the intelligent exercise of the franchise. Yet Congress might well have questioned, in light of the many exemptions provided,[13] and some evidence suggesting that prejudice played a prominent role in the enactment of the requirement,[14] whether these were actually the interests being served. Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise.[15] Finally, Congress might well have concluded that

---

[13] The principal exemption complained of is that for persons who had been eligible to vote before January 1, 1922. See n. 2, *supra*.

[14] This evidence consists in part of statements made in the Constitutional Convention first considering the English literacy requirement, such as the following made by the sponsor of the measure: "More precious even than the forms of government are the mental qualities of our race. While those stand unimpaired, all is safe. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale, but valuable and necessary infusion of Southern and Eastern European races . . . . The danger has begun. . . . We should check it." III New York State Constitutional Convention 3012 (Rev. Record 1916).

See also *id.*, at 3015–3017, 3021–3055. This evidence was reinforced by an understanding of the cultural milieu at the time of proposal and enactment, spanning a period from 1915 to 1921—not one of the enlightened eras of our history. See generally Chafee, Free Speech in the United States 102, 237, 269–282 (1954 ed.). Congress was aware of this evidence. See, *e. g.*, Literacy Tests and Voter Requirements in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–513; Voting Rights, House Hearings, n. 3, *supra*, 508–513.

[15] Other States have found ways of assuring an intelligent exercise of the franchise short of total disenfranchisement of persons not

as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs.[16] Since Congress undertook to legislate so as to preclude the enforcement of the state law, and did so in the context of a general appraisal of literacy requirements for voting, see

---

literate in English. For example, in Hawaii, where literacy in either English or Hawaiian suffices, candidates' names may be printed in both languages, Hawaii Rev. Laws § 11-38 (1963 Supp.); New York itself already provides assistance for those exempt from the literacy requirement and are literate in no language, N. Y. Election Law § 169; and, of course, the problem of assuring the intelligent exercise of the franchise has been met by those States, more than 30 in number, that have no literacy requirement at all, see *e. g.*, Fla. Stat. Ann. §§ 97.061, 101.061 (1960) (form of personal assistance); New Mexico Stat. Ann. §§ 3-2-11, 3-3-13 (personal assistance for those literate in no language), §§ 3-3-7, 3-3-12, 3-2-41 (1953) (ballots and instructions authorized to be printed in English or Spanish). Section 4 (e) does not preclude resort to these alternative methods of assuring the intelligent exercise of the franchise. True, the statute precludes, for a certain class, disenfranchisement and thus limits the States' choice of means of satisfying a purported state interest. But our cases have held that the States can be required to tailor carefully the means of satisfying a legitimate state interest when fundamental liberties and rights are threatened, see, *e. g.*, *Carrington* v. *Rash*, 380 U. S. 89, 96; *Harper* v. *Virginia Board of Elections*, 383 U. S. 663, 670; *Thomas* v. *Collins*, 323 U. S. 516, 529-530; *Thornhill* v. *Alabama*, 310 U. S. 88, 95-96; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153, n. 4; *Meyer* v. *Nebraska*, 262 U. S. 390; and Congress is free to apply the same principle in the exercise of its powers.

[16] See, *e. g.*, 111 Cong. Rec. 11060-11061, 15666, 16235. The record in this case includes affidavits describing the nature of New York's two major Spanish-language newspapers, one daily and one weekly, and its three full-time Spanish-language radio stations and affidavits from those who have campaigned in Spanish-speaking areas.

South Carolina v. *Katzenbach, supra,* to which it brought a specially informed legislative competence,[11] it was Congress' prerogative to weigh these competing considerations. Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause.

There remains the question whether the congressional remedies adopted in § 4 (e) constitute means which are not prohibited by, but are consistent "with the letter and spirit of the constitution." The only respect in which appellees contend that § 4 (e) fails in this regard is that the section itself works an invidious discrimination in violation of the Fifth Amendment by prohibiting the enforcement of the English literacy requirement only for those educated in American-flag schools (schools located within United States jurisdiction) in which the language of instruction was other than English, and not for those educated in schools beyond the territorial limits of the United States in which the language of instruction was also other than English. This is not a complaint that Congress, in enacting § 4 (e), has unconstitutionally denied or diluted anyone's right to vote but rather that Congress violated the Constitution by not extending the

[11] See, *e. g.*, 111 Cong. Rec. 11061 (Senator Long of Louisiana and Senator Young), 11064 (Senator Holland), drawing on their experience with voters literate in a language other than English. See also an affidavit from Representative Willis of Louisiana expressing the view that on the basis of his thirty years' personal experience in politics he has "formed a definite opinion that French-speaking voters who are illiterate in English generally have as clear a grasp of the issues and an understanding of the candidates, as do people who read and write the English language."

relief effected in § 4 (e) to those educated in non-American-flag schools. We need not pause to determine whether appellees have a sufficient personal interest to have § 4 (e) invalidated on this ground, see generally *United States* v. *Raines*, 362 U. S. 17, since the argument, in our view, falls on the merits.

Section 4 (e) does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law. Thus we need not decide whether a state literacy law conditioning the right to vote on achieving a certain level of education in an American-flag school (regardless of the language of instruction) discriminates invidiously against those educated in non-American-flag schools. We need only decide whether the challenged limitation on the relief effected in § 4 (e) was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights, see n. 15, *supra*, is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone farther than it did," *Roschen* v. *Ward*, 279 U. S. 337, 339, that a legislature need not "strike at all evils at the same time," *Semler* v. *Dental Examiners*, 294 U. S. 608, 610, and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 489.

Guided by these principles, we are satisfied that appellees' challenge to this limitation in § 4 (e) is without merit. In the context of the case before us, the congressional choice to limit the relief effected in § 4 (e) may,

for example, reflect Congress' greater familiarity with the quality of instruction in American-flag schools, [18] a recognition of the unique historic relationship between the Congress and the Commonwealth of Puerto Rico,[19] an awareness of the Federal Government's acceptance of the desirability of the use of Spanish as the language of instruction in Commonwealth schools,[20] and the fact that Congress has fostered policies encouraging migration from the Commonwealth to the States.[21] We have no occasion to determine in this case whether such factors would justify a similar distinction embodied in a voting-qualification law that denied the franchise to persons educated in non-American-flag schools. We hold only that the limitation on relief effected in § 4 (e) does not constitute a forbidden discrimination since these factors might well have been the basis for the decision of Congress to go "no farther than it did."

We therefore conclude that § 4 (e), in the application challenged in this case, is appropriate legislation to enforce the Equal Protection Clause and that the judgment of the District Court must be and hereby is

Reversed.

MR. JUSTICE DOUGLAS joins the Court's opinion except for the discussion, at pp. 656–658, of the question whether the congressional remedies adopted in § 4 (e) constitute means which are not prohibited by, but are consistent with "the letter and spirit of the constitution." On that

---

[18] See, *e. g.*, 111 Cong. Rec. 11060–11061.

[19] See Magruder, The Commonwealth Status of Puerto Rico, 15 U. Pitt. L. Rev. 1 (1953).

[20] See, *e. g.*, 111 Cong. Rec. 11060–11061, 11066, 11073, 16235. See Osuna, A History of Education in Puerto Rico (1949).

[21] See, *e. g.*, 111 Cong. Rec. 16235; Voting Rights, House Hearings, n. 3, *supra*, 362. See also Jones Act of 1917, 39 Stat. 953, conferring United States citizenship on all citizens of Puerto Rico.

question, he reserves judgment until such time as it is presented by a member of the class against which that particular discrimination is directed.

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART joins, dissenting.*

Worthy as its purposes may be thought by many, I do not see how § 4 (e) of the Voting Rights Act of 1965, 79 Stat. 439, 42 U. S. C. § 1973b (e) (1964 ed. Supp. I), can be sustained except at the sacrifice of fundamentals in the American constitutional system—the separation between the legislative and judicial function and the boundaries between federal and state political authority. By the same token I think that the validity of New York's literacy test, a question which the Court considers *only* in the context of the federal statute, must be upheld. It will conduce to analytical clarity if I discuss the second issue first.

I.

The Cardona Case (No. 673).

This case presents a straightforward Equal Protection problem. Appellant, a resident and citizen of New York, sought to register to vote but was refused registration because she failed to meet the New York English literacy qualification respecting eligibility for the franchise.[1] She maintained that although she could not read or write English, she had been born and educated in Puerto Rico and was literate in Spanish. She alleges that New York's statute requiring satisfaction of an English literacy test is an arbitrary and irrational classification that violates the

*[This opinion applies also to *Cardona* v. *Power*, *post*, p. 672.]

[1] The pertinent portions of the New York Constitution, Art. II, § 1, and statutory provisions are reproduced in the Court's opinion, *ante*, pp. 644–645, n. 2.

Equal Protection Clause at least as applied to someone who, like herself, is literate in Spanish.

Any analysis of this problem must begin with the established rule of law that the franchise is essentially a matter of state concern, *Minor* v. *Happersett*, 21 Wall. 162; *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45, subject only to the overriding requirements of various federal constitutional provisions dealing with the franchise, *e. g.*, the Fifteenth, Seventeenth, Nineteenth, and Twenty-fourth Amendments,[2] and, as more recently decided, to the general principles of the Fourteenth Amendment. *Reynolds* v. *Sims*, 377 U. S. 533; *Carrington* v. *Rash*, 380 U. S. 89.

The Equal Protection Clause of the Fourteenth Amendment, which alone concerns us here, forbids a State from arbitrarily discriminating among different classes of persons. Of course it has always been recognized that nearly all legislation involves some sort of classification, and the equal protection test applied by this Court is a narrow one: a state enactment or practice may be struck down under the clause only if it cannot be justified as founded upon a rational and permissible state policy. See, *e. g.*, *Powell* v. *Pennsylvania*, 127 U. S. 678; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61; *Walters* v. *City of St. Louis*, 347 U. S. 231.

It is suggested that a different and broader equal protection standard applies in cases where "fundamental liberties and rights are threatened," see *ante*, p. 655, note 15; dissenting opinion of DOUGLAS, J., in *Cardona*, *post*,

---

[2] The Fifteenth Amendment forbids denial or abridgment of the franchise "on account of race, color, or previous condition of servitude"; the Seventeenth deals with popular election of members of the Senate; the Nineteenth provides for equal suffrage for women; the Twenty-fourth outlaws the poll tax as a qualification for participation in federal elections.

pp. 676–677, which would require a State to show a need greater than mere rational policy to justify classifications in this area. No such dual-level test has ever been articulated by this Court, and I do not believe that any such approach is consistent with the purposes of the Equal Protection Clause, with the overwhelming weight of authority, or with well-established principles of federalism which underlie the Equal Protection Clause.

Thus for me, applying the basic equal protection standard, the issue in this case is whether New York has shown that its English-language literacy test is reasonably designed to serve a legitimate state interest. I think that it has.

In 1959, in *Lassiter* v. *Northampton Election Bd.*, *supra*, this Court dealt with substantially the same question and resolved it unanimously in favor of the legitimacy of a state literacy qualification. There a North Carolina English literacy test was challenged. We held that there was "wide scope" for State qualifications of this sort. 360 U. S., at 51. Dealing with literacy tests generally, the Court there held:

> "The ability to read and write . . . has some relation to standards designed to promote intelligent use of the ballot. . . . 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 campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . 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." 360 U. S., at 51–53.

I believe the same interests recounted in *Lassiter* indubitably point toward upholding the rationality of the New York voting test. It is true that the issue here is not so simply drawn between literacy *per se* and illiteracy. Appellant alleges that she is literate in Spanish, and that she studied American history and government in United States Spanish-speaking schools in Puerto Rico. She alleges further that she is "a regular reader of the New York City Spanish-language daily newspapers and other periodicals, which . . . provide proportionately more coverage of government and politics than do most English-language newspapers," and that she listens to Spanish-language radio broadcasts in New York which provide full treatment of governmental and political news. It is thus maintained that whatever may be the validity of literacy tests *per se* as a condition of voting, application of such a test to one literate in Spanish, in the context of the large and politically significant Spanish-speaking community in New York, serves no legitimate state interest, and is thus an arbitrary classification that violates the Equal Protection Clause.

Although to be sure there is a difference between a totally illiterate person and one who is literate in a foreign tongue, I do not believe that this added factor vitiates the constitutionality of the New York statute. Accepting appellant's allegations as true, it is nevertheless also true that the range of material available to a resident of New York literate only in Spanish is much more limited than what is available to an English-speaking resident, that the business of national, state, and local government is conducted in English, and that propositions, amendments, and offices for which candidates are running listed on the ballot are likewise in English. It

is also true that most candidates, certainly those campaigning on a national or statewide level, make their speeches in English. New York may justifiably want its voters to be able to understand candidates directly, rather than through possibly imprecise translations or summaries reported in a limited number of Spanish news media. It is noteworthy that the Federal Government requires literacy in English as a prerequisite to naturalization, 66 Stat. 239, 8 U. S. C. § 1423 (1964 ed.), attesting to the national view of its importance as a prerequisite to full integration into the American political community. Relevant too is the fact that the New York English test is not complex,[3] that it is fairly adminis-

---

[3] The test is described in McGovney, The American Suffrage Medley 63 (1949) as follows: "The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade . . . . These are uniform for any single examination throughout the state. The examination is given by school authorities and graded by school superintendents or teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible." The 1943 test, submitted by the Attorney General of New York as representative, is reproduced below:

NEW YORK STATE REGENTS LITERACY TEST
(To be filled in by the candidate in ink)

Write your name here.....
First name Middle initial Last name
Write your address here.....
Write the date here.....
Month Day Year

Read this and then write the answers to the questions
Read it as many times as you need to

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United

tered,[4] and that New York maintains free adult education classes which appellant and members of her class are encouraged to attend.[5] Given the State's legitimate concern with promoting and safeguarding the intelligent use of the ballot, and given also New York's long experience with the process of integrating non-English-speaking residents into the mainstream of American life, I do not see how it can be said that this qualification for suffrage is unconstitutional. I would uphold the validity of the New York statute, unless the federal statute prevents that result, the question to which I now turn.

States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capitol at Washington.

The answers to the following questions are to be taken from the above paragraph

1 How many houses are there in Congress? .....
2 What does Congress do? .....
3 What is the lower house of Congress called ?.....
4 How many members are there in the lower house? .....
5 How long is the term of office of a United States Senator? .....
6 How many Senators are there from each state? .....
7 For how long a period are members of the House of Representatives elected? .....
8 In what city does Congress meet? .....

[4] There is no allegation of discriminatory enforcement, and the method of examination, see n. 3, *supra*, makes unequal application virtually impossible. McGovney has noted, *op. cit. supra*, at 62, that "New York is the only state in the Union that both has a reasonable reading requirement and administers it in a manner that secures uniformity of application throughout the state and precludes discrimination, so far as is humanly possible." See *Camacho* v. *Rogers*, 199 F. Supp. 155, 159–160.

[5] See McKinney's Consolidated Laws of New York Ann., Education Law § 4605. See generally Handbook of Adult Education in the United States 455–465 (Knowles ed. 1960).

II.

The Morgan Cases (Nos. 847 and 877).

These cases involve the same New York suffrage restriction discussed above, but the challenge here comes not in the form of a suit to enjoin enforcement of the state statute, but in a test of the constitutionality of a federal enactment which declares that "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language." Section 4 (e) of the Voting Rights Act of 1965. Section 4 (e) declares that anyone who has successfully completed six grades of schooling in an "American-flag" school, in which the primary language is not English, shall not be denied the right to vote because of an inability to satisfy an English literacy test.[6] Although the statute is framed in general terms, so far as has been shown it applies in actual effect only to citizens of Puerto Rican background, and the Court so treats it.

The pivotal question in this instance is what effect the added factor of a congressional enactment has on the straight equal protection argument dealt with above. The Court declares that since § 5 of the Fourteenth Amendment[7] gives to the Congress power to "enforce"

---

[6] The statute makes an exception to its sixth-grade rule so that where state law "provides that a different level of education is presumptive of literacy," the applicant must show that he has completed "an equivalent level of education" in the foreign-language United States school.

[7] Section 5 of the Fourteenth Amendment states that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

the prohibitions of the Amendment by "appropriate" legislation, the test for judicial review of any congressional determination in this area is simply one of rationality; that is, in effect, was Congress acting rationally in declaring that the New York statute is irrational? Although § 5 most certainly does give to the Congress wide powers in the field of devising remedial legislation to effectuate the Amendment's prohibition on arbitrary state action, *Ex parte Virginia*, 100 U. S. 339, I believe the Court has confused the issue of how much enforcement power Congress possesses under § 5 with the distinct issue of what questions are appropriate for congressional determination and what questions are essentially judicial in nature.

When recognized state violations of federal constitutional standards have occurred, Congress is of course empowered by § 5 to take appropriate remedial measures to redress and prevent the wrongs. See *Strauder* v. *West Virginia*, 100 U. S. 303, 310. But it is a judicial question whether the condition with which Congress has thus sought to deal is in truth an infringement of the Constitution, something that is the necessary prerequisite to bringing the § 5 power into play at all. Thus, in *Ex parte Virginia, supra*, involving a federal statute making it a federal crime to disqualify anyone from jury service because of race, the Court first held as a matter of constitutional law that "the Fourteenth Amendment secures, among other civil rights, to colored men, when charged with criminal offences against a State, an impartial jury trial, by jurors indifferently selected or chosen without discrimination against such jurors because of their color." 100 U. S., at 345. Only then did the Court hold that to enforce this prohibition upon state discrimination, Congress could enact a criminal statute of the type under consideration. See also *Clyatt* v. *United States*, 197 U. S. 207, sustaining the constitutionality of the anti-

peonage laws, 14 Stat. 546, now 42 U. S. C. § 1994 (1964 ed.), under the Enforcement Clause of the Thirteenth Amendment.

A more recent Fifteenth Amendment case also serves to illustrate this distinction. In *South Carolina* v. *Katzenbach*, 383 U. S. 301, decided earlier this Term, we held certain remedial sections of this Voting Rights Act of 1965 constitutional under the Fifteenth Amendment, which is directed against deprivations of the right to vote on account of race. In enacting those sections of the Voting Rights Act the Congress made a detailed investigation of various state practices that had been used to deprive Negroes of the franchise. See 383 U. S., at 308–315. In passing upon the remedial provisions, we reviewed first the "voluminous legislative history" as well as judicial precedents supporting the basic congressional finding that the clear commands of the Fifteenth Amendment had been infringed by various state subterfuges. See 383 U. S., at 309, 329–330, 333–334. Given the existence of the evil, we held the remedial steps taken by the legislature under the Enforcement Clause of the Fifteenth Amendment to be a justifiable exercise of congressional initiative.

Section 4 (e), however, presents a significantly different type of congressional enactment. The question here is not whether the statute is appropriate remedial legislation to cure an established violation of a constitutional command, but whether there has in fact been an infringement of that constitutional command, that is, whether a particular state practice or, as here, a statute is so arbitrary or irrational as to offend the command of the Equal Protection Clause of the Fourteenth Amendment. That question is one for the judicial branch ultimately to determine. Were the rule otherwise, Congress would be able to qualify this Court's constitutional decisions under the Fourteenth and Fifteenth Amendments,

37-439 O - 70 - 42

let alone those under other provisions of the Constitution, by resorting to congressional power under the Necessary and Proper Clause. In view of this Court's holding in *Lassiter, supra,* that an English literacy test is a permissible exercise of state supervision over its franchise, I do not think it is open to Congress to limit the effect of that decision as it has undertaken to do by § 4 (e). In effect the Court reads § 5 of the Fourteenth Amendment as giving Congress the power to define the *substantive* scope of the Amendment. If that indeed be the true reach of § 5, then I do not see why Congress should not be able as well to exercise its § 5 "discretion" by enacting statutes so as in effect to dilute equal protection and due process decisions of this Court. In all such cases there is room for reasonable men to differ as to whether or not a denial of equal protection or due process has occurred, and the final decision is one of judgment. Until today this judgment has always been one for the judiciary to resolve.

I do not mean to suggest in what has been said that a legislative judgment of the type incorporated in § 4 (e) is without any force whatsoever. Decisions on questions of equal protection and due process are based not on abstract logic, but on empirical foundations. To the extent "legislative facts" are relevant to a judicial determination, Congress is well equipped to investigate them, and such determinations are of course entitled to due respect.[8] In *South Carolina* v. *Katzenbach, supra,* such legislative findings were made to show that racial discrimination in voting was actually occurring. Similarly, in *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U. S. 241, and *Katzenbach* v. *McClung,* 379 U. S. 294, this Court upheld

[8] See generally Karst, Legislative Facts in Constitutional Litigation, 1960 The Supreme Court Review 75 (Kurland ed.); Alfange, The Relevance of Legislative Facts in Constitutional Law, 114 U. Pa. L. Rev. 637 (1966).

Title II of the Civil Rights Act of 1964 under the Commerce Clause. There again the congressional determination that racial discrimination in a clearly defined group of public accommodations did effectively impede interstate commerce was based on "voluminous testimony," 379 U. S., at 253, which had been put before the Congress and in the context of which it passed remedial legislation.

But no such factual data provide a legislative record supporting § 4 (e)[9] by way of showing that Spanish-speaking citizens are fully as capable of making informed decisions in a New York election as are English-speaking citizens. Nor was there any showing whatever to support the Court's alternative argument that § 4 (e) should be viewed as but a remedial measure designed to cure or assure against unconstitutional discrimination of other varieties, *e. g.*, in "public schools, public housing and law enforcement," *ante*, p. 652, to which Puerto Rican minorities might be subject in such communities as New York. There is simply no legislative record supporting such hypothesized discrimination of the sort we have hitherto insisted upon when congressional power is brought to bear on constitutionally reserved state concerns. See *Heart of Atlanta Motel, supra; South Carolina* v. *Katzenbach, supra.*

Thus, we have here not a matter of giving deference to a congressional estimate, based on its determination of legislative facts, bearing upon the validity *vel non* of a statute, but rather what can at most be called a legislative announcement that Congress believes a state law to entail an unconstitutional deprivation of equal protection. Although this kind of declaration is of course

---

[9] There were no committee hearings or reports referring to this section, which was introduced from the floor during debate on the full Voting Rights Act. See 111 Cong. Rec. 11027, 15666, 16234.

entitled to the most respectful consideration, coming as it does from a concurrent branch and one that is knowledgeable in matters of popular political participation, I do not believe it lessens our responsibility to decide the fundamental issue of whether in fact the state enactment violates federal constitutional rights.

In assessing the deference we should give to this kind of congressional expression of policy, it is relevant that the judiciary has always given to congressional enactments a presumption of validity. *The Propeller Genesee Chief* v. *Fitzhugh*, 12 How. 443, 457–458. However, it is also a canon of judicial review that state statutes are given a similar presumption, *Butler* v. *Commonwealth*, 10 How. 402, 415. Whichever way this case is decided, one statute will be rendered inoperative in whole or in part, and although it has been suggested that this Court should give somewhat more deference to Congress than to a state legislature,[10] such a simple weighing of presumptions is hardly a satisfying way of resolving a matter that touches the distribution of state and federal power in an area so sensitive as that of the regulation of the franchise. Rather it should be recognized that while the Fourteenth Amendment is a "brooding omnipresence" over all state legislation, the substantive matters which it touches are all within the primary legislative competence of the States. Federal authority, legislative no less than judicial, does not intrude unless there has been a denial by state action of Fourteenth Amendment limitations, in this instance a denial of equal protection. At least in the area of primary state concern a state statute that passes constitutional muster under the judicial standard of rationality should not be permitted to be set at naught by a mere contrary con-

[10] See Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv. L. Rev. 129, 154–155 (1893).

gressional pronouncement unsupported by a legislative record justifying that conclusion.

To deny the effectiveness of this congressional enactment is not of course to disparage Congress' exertion of authority in the field of civil rights; it is simply to recognize that the Legislative Branch like the other branches of federal authority is subject to the governmental boundaries set by the Constitution. To hold, on this record, that § 4 (e) overrides the New York literacy requirement seems to me tantamount to allowing the Fourteenth Amendment to swallow the State's constitutionally ordained primary authority in this field. For if Congress by what, as here, amounts to mere *ipse dixit* can set that otherwise permissible requirement partially at naught I see no reason why it could not also substitute its judgment for that of the States in other fields of their exclusive primary competence as well.

I would affirm the judgments in each of these cases.[11]

---

[11] A number of other arguments have been suggested to sustain the constitutionality of § 4 (e). These are referred to in the Court's opinion, *ante*, pp. 646–647, n. 5. Since all of such arguments are rendered superfluous by the Court's decision and none of them is considered by the majority, I deem it unnecessary to deal with them save to say that in my opinion none of those contentions provides an adequate constitutional basis for sustaining the statute.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C.

HON. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: We are writing to you as members of The Mississippi State Advisory Committee to the U.S. Commission on Civil Rights to support the extension of the Voting Rights Act of 1965 for another five years.

The Mississippi Advisory Committee, like our sister committees, consists of citizens appointed by the Commission on Civil Rights to advise them of matters within its jurisdiction. From our beginning in 1957, we have considered the right to vote a keystone in the effort to secure equal opportunity. Not until the Voting Rights Act of 1965 was it possible for all Negro citizens in Mississippi to register and vote. Problems still remain, however, in achieving greater participation in the political process due to economic and other pressures.

As you know, the Voting Rights Act of 1965 suspended the use of literacy tests and other discriminatory devices which had been used to deny the right to vote to Negro citizens in Mississippi and other Deep South States. Of equal importance is Section 5 of the Act which requires States to submit changes in voting qualifications, practices, or procedures to the Attorney General. The power of the Attorney General under Section 5 to object to changes in voting procedures which he has reason to believe will have a discriminatory effect is essential to the effective guarantee of the right to vote. The evidence of recent history shows that election officials in Mississippi will seek to change existing voting procedures and practices in ways which will deny the vote to black citizens or dilute the black vote.

The Administration's amendments to the Voting Rights Act would do away with the present authority of the Attorney General to prevent States and localities from making changes in their election laws designed to disenfranchise black voters. The Commission on Civil Rights' report of its investigation of the May 13 elections in Mississippi and its 1968 report on Political Participation demonstrate that local election officials have not abandoned their efforts to prevent black voters from exercising their political rights to the fullest.

The Voting Rights Act has been attacked as being "regional" legislation. We see nothing wrong in this. It is useful to be reminded that fear is not a condition of voting in most States; it still is for many blacks in Mississippi. The persons responsible for that fear have no moral standing to seek relief from a law enforcing a constitutional right which these same persons for many years denied to black citizens solely because of their race. These persons lose nothing under the Voting Rights Act; many others, however, lost their lives seeking the right it guarantees.

We ask, as citizens of Mississippi, that you act to extend the Voting Rights Act of 1965 in its present form.

Sincerely yours,

ALBERT B. BRITTON, Jr., M.D.,
Chairman, Mississippi State Advisory Committee.

MEMBERS, MISSISSIPPI STATE ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Chairman, Albert B. Britton, Jr., M.D., Jackson.
Secretary, Dr. A. D. Beittell, Jackson.
Andrew R. Carr, Sr., Clarksdale.
Hodding Carter III, Greenville.
Mrs. Martin L. Harvey, Jackson.
Rev. Garland H. Holloman, Tupelo.
Msgr. Charles C. Hunter, Jackson.
Gilbert R. Mason, M.D., Biloxi.
Amzie Moore, Cleveland.
Matthew J. Page, M.D., Greenville.
Rev. Charlemagne Payne, Jackson.
Mrs. William W. Pearson, Webb.
Mrs. J. H. Price, Jackson.
Mrs. Hazel Brannon Smith, Lexington.
Mrs. Beulha Washington, Grenada.

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH,
August 5, 1969.

Senator SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, United States Senate, Washington, D.C.

The Anti-Defamation League of B'nai B'rith welcomes this opportunity to express its support and to urge early passage by the Congress of S. 818 and S. 2456, bills to extend the Voting Rights Act of 1965 for an additional five years.

The Anti-Defamation League is the educational arm of B'nai B'rith which was founded over 125 years ago in 1843 and is America's oldest and largest Jewish service organization. It seeks to improve relations among the diverse groups in our nation and to translate into greater effectiveness the principles of freedom, equality and democracy. It is dedicated to securing fair treatment and equal rights for all Americans regardless of race, religion, color or national origin.

It is not our intention in this brief statement to review the evidence already submitted in support of the extension of the Voting Rights Act of 1965. To do so would be needlessly cumulative for the case in support of S. 818 and S. 2456 has been fully and extensively documented in the testimony presented to this Subcommittee by the U.S. Commission on Civil Rights and others, including the Leadership Conference on Civil Rights. That testimony cited the impressive gains made during the four years since the Voting Rights Act was enacted in 1965. An estimated 800,000 previously disenfranchised Negroes in the seven states affected in whole or in part by the Act were enabled to acquire and exercise the basic right of all American citizens—the right to vote. The number of Negroes elected to public office in those seven states has increased from almost none in 1965 to over 300 today. A significant beginning has been made in giving the Negro a voice in the democratic process in the jurisdiction covered by the Act.

Despite these gains there is still a widespread disparity between white and non-white voter registration. Negro registration, while much higher now than before passage of the 1965 Act, still lags well behind white registration in the areas affected by the Act and there is still a long way to go before the goal of the legislation will have been fully achieved.

As the Supreme Court pointed out, the Voting Rights Act "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308 (1966). If that objective is to be realized, all the provisions of the Act must be continued unchanged for an additional five years.

The Voting Rights Act of 1965 became law with overwhelming bipartisan support after extended hearings and debate in both the Senate and the House. It was adopted out of a painful recognition that prior congressional efforts beginning with the 1957 Civil Rights Act to insure to Negro citizens the right to vote had proved wanting. The piecemeal judicial case by case approach provided for by the 1957 Civil Rights Act and in the subsequent legislation of 1960 and 1964 proved inadequate to cope with the evil of racial discrimination in voting which was so widespread and pervasive. Litigation was burdensome and time-consuming and even when voting rights cases were finally successfully prosecuted resourceful legislators were frequently quick to devise new tests and requirements in an effort to circumvent the courts' decrees.

Because of the continued wholesale Negro disenfranchisement, Congress adopted the 1965 Act which had the effect of suspending for five years literacy tests and other devices in those areas which had a long history of widespread discrimination against Negroes in voting. The rise of Negro voter registration in the intervening four years when compared with the minimal progress made under the earlier laws has clearly demonstrated the wisdom of Congress in passing the 1965 Act.

One of the key provisions, if not the heart, of the Act is Section 5, which requires states and political subdivisions covered by the Act to obtain the prior approval of either the Attorney General or the Federal District Court in the District of Columbia of all changes in their election laws before they can take effect. As the Supreme Court in speaking of this provision observed: ". . . Congress apparently feared that the mere suspension of existing tests would not

completely solve the problem, given the history some States had of simply enacting new and slightly different requirements with the same discriminatory effect. Not understanding the ingenuity of those bent on preventing Negroes from voting, Congress therefore enacted Section 5. . . ." *Allen* v. *State Board of Elections*, 393, U.S. 544, 548 (1969).

In light of that history, Congress not unreasonably also provided in Section 5 that the burden of proving the non-discriminatory purpose and effect of such voting law changes would be on the affected States and counties. As the Supreme Court so aptly stated: "After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966)

To eliminate Section 5 as has been suggested would in the words of Rev. Theodore M. Hesburgh, Chairman of the Commission on Civil Rights, be: ". . . a distinct retreat. . . . an open invitation to those States which denied the vote to minority citizens in the past to resume doing so in the future, through insertion of disingenuous technicalities and changes in their election laws. . . . [It] would turn back the clock to 1957. . . ." *Letter to Attorney General* June 28, 1969.

As the Supreme Court noted in upholding the constitutionality of the general scheme of the Voting Rights Act: "After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 337 (1966)

Passage of the Act represented a commitment on the part of Congress to the disenfranchised Negro citizen. It was an expression by Congress of its determination finally to bring to an end 100 years of indifference to the plain command of the Fifteenth Amendment. Noteworthy progress has been made in the past four years in increasing Negro voter registration. If that progress is to continue—and indeed not be undone—it is essential that the demonstrated effectiveness of the Act not be impaired and that the Act be renewed without delay. Failure to extend the law would constitute a tragic retreat from the commitment which Congress made in 1965 to open the door to full citizenship for Negroes in the South.

It is for this reason we believe that other proposals designed to remove obstacles to the right to vote such as some of those contained in S. 2507 should be considered in their own right as separate legislation and not as part of the extension of the Voting Rights Act of 1965. We, therefore, urge Congress to extend the Act without amendment for an additional five years.

We respectfully request that this statement be included in the printed record of the hearings.

Sincerely yours,

DAVID A. BRODY.

STATE OF SOUTH CAROLINA, THE SENATE,
Barnwell, S.C., July 10, 1969.

Senator SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR: Mr. Smith, who I believe is investigator or attorney for your Subcommittee on Constitutional Rights, called the Chief of our Law Enforcement Division, Mr. J. P. Strom, and also called my legislative colleague, Mr. Blatt, about some statement that Clarence Mitchell has made before your Subcommittee. Both have contacted me because I was and am in position to know more about the Mitchell statement and my reply relative to what happened in meetings of our County Board of Registration in 1965. I not only was County Chairman here at the time and still am, but I was on the National Committee at that time and a member of the Lawrence Committee investigating civil rights problems.

I am enclosing you a statement which gives much of the authentic information which you might want in connection with what happened in Barnwell on registration days in September and October 1965.

The appearance of Mitchell before the Lawrence Committee came at a meeting at which I was not present, and his statement was not called to my attention until some months later, I believe after Governor Lawrence's death and the

appointment of Governor Hughes as Chairman of the Committee. I promptly took the matter up with Governor Hughes' office and discussed the matter with the gentleman who handled the civil rights committee matters before the Lawrence Committee and was advised to prepare a statement giving the facts surrounding the incident involved and did so, and at a subsequent meeting of the then Hughes Committee, I had Mr. Joe Sapp, a loyal and devoted Democrat and friend of mine, a lawyer of Columbia, attend a meeting of the Hughes Committee and read and file my statement in reference to what happened, copy of which is enclosed.

This fellow Mitchell is either a vicious liar, or, and I am inclined to think the latter, got his information from a Negro woman, who is an atrocious trouble maker in Barnwell, one Barfield, who constantly stirs up trouble by giving out false statements in regard to how the colored people are treated in Barnwell. She is way ahead of the Black Panthers when it comes to trouble making. As a matter of fact, we never had the slightest trouble with the colored people in Barnwell County until this Barfield woman came along, and I think she is responsible for sending these false statements up to Mitchell and NAACP headquarters.

With personal regards, I am

Yours very truly,

EDGAR A. BROWN.

STATEMENT BY SENATOR EDGAR A. BROWN, OF BARNWELL, S.C., A MEMBER OF THE SPECIAL EQUAL RIGHTS COMMITTEE OF THE NATIONAL DEMOCRATIC COMMITTEE

My attention has been called to a statement made by Clarence Mitchell, Director, Washington Bureau NAACP, before this Committee on October 6, 1965, pages 117, 118, 119, 120, etc., which provokes this statement by me. I was not present at the October 6th meeting and until recently knew nothing of this vicious statement, completely false, except as to names and places.

After 50 years in public life,I have learned that one cannot take notice of every wild statement made by just anybody, but this statement is a public record before a committee of which I am a member and my failure to respond to same might well be misconstrued. As members of the Special Committee or of the whole Committee are interested in fair play, I hope that you will examine Mr. Mitchell's vicious statement or at least the part I here quote and read what I say concerning the matter.

I quote excerpts from the Mitchell statement:

(Page 119) * * * The Democratic Party must rid itself of such officials as State Committeeman Edgar Brown of South Carolina. He is quoted in the newspapers as saying that Barnwell County, which he represents as a Senator in the South Carolina legislature, could not offer protection to Federal registrars. At the same time he is one of the main roadblocks to voter registration.

"On September 6, which was Labor Day, over 700 colored citizens sought to register at the County Court House but only 69 were accommodated. Although this was a very hot day, the drinking fountains were turned off and the rest rooms were locked. In spite of this obvious attempt to humiliate and discourage colored voters, the United States Department of Justice has continued to temporize and has not appointed examiners in Barnwell County.

"On October 4, when a large part of the colored population was at work harvesting the cotton crop, a single day of registration was conducted with great fanfare. I understand they had bank officials and retired preachers, a lot of people down there who treated colored people with kid gloves, but they still did not register all of them. In fact, they loved them right out of their registration rights. Promptly at 5:00 P.M. with Senator Brown on hand as an observer, the place of registration was closed."

How this troublemaker, of whom I have only heard through the press, picked me out of all the Democrats in the South to assault in this fashion, I do not know. Considering the source, I might well have ignored his malicious attack. However, in fairness to my state, my party and myself, it is my responsibility to set the record straight.

First, let me make it clear that, as Senator, I am responsible for the appointment of the Barnwell County Board of Registration and I gladly hold myself accountable for their proper performance of their duties.

As to Mr. Mitchell's statement, it is composed of information either manufactured by himself or falsely reported by persons seeking to manufacture an incident. Mr. Mitchell says that press reports are so and so, but I have never seen

any press report, certainly not published in South Carolina, which carried any of the statements contained in his attack on me.

Mr. Mitchell's statement refers to the registration days on the first Monday in September, 1965, and on the first Monday in October, 1965, the latter being two days prior to his statement before our Committee. He says that on that extremely hot Labor Day Monday over 700 people, presumably Negro, gathered at the Court House in Barnwell to register; that only 69 were registered; that at my direction this large gathering, suffering in the heat, had no rest rooms available, and that the drinking fountains were turned off.

I have checked with the County Board of Registration, and the truth is that there were never as many as 69 people around the Court House during the entire day. The records show that there were only 29 registered on that day, and the Chairman of the County Board of Registration tells me that they trickled in during the afternoon, and were registered as rapidly as possible.

It must be remembered that this was immediately after enactment of the Voter Rights Act and was the first time that our Board had experienced the difficulties involved in registering illiterates. Ordinarily, you can register an applicant who can read and write in a very few minutes, but with these people who never had thought of registering and who are unable to make application for themselves, a great deal of time was consumed with each applicant. With all the patience and help that the three-member Board of Registration could render, those presenting themselves were registered as rapidly as possible.

It's preposterous for anybody to report to Mr. Mitchell or anybody else that a crowd of several hundred people were there and were disappointed and mistreated. It simply isn't true. I remember that at the close of that day the Chairman of the County Board of Registration, Mr. Samuel H. Gantt, reported to me his difficulties in registering illiterates.

As State Senator and speaking for the delegation, I directed Mr. Gantt to announce to the public that beginning on the October registration day, which was on the 4th, we would put on a dozen or more deputy registrars and get word through all the County Officials, preachers, teachers, social workers, and others, that everybody who wanted to register to get ready to come to Barnwell on October 4th, 5th and 6th, the three days on which the Board would be open that month. The October registration was highly publicized over the local radio, information was passed on by all the County officials, and everybody asked to cooperate in having a big registration in October. On the first Monday, or the 4th of October, we had 15 deputy registrars with tables and material provided. They were to be in the main body of the Court House in case of rain, but out in the open in a garden between the Court House and an office building if the day be fair. The day was fair and people were hauled to the Court House in every conceivable vehicle and in every kind of fashion.

On that date, contrary to the false statement by Mr. Mitchell, the record shows that we registered more than 450 people, most of whom were Negroes. Mitchell states that, promptly at five o'clock, I turned up and we closed the registration down with people still standing around clamoring to register. This is completely false. Actually, there were more than 450 people registered and the registration space was clear. There was not a remote person who could have been urged to register who was turned away.

Mr. Mitchell's statement of October 6th was made in the face of these facts which he chose to ignore. He also chose to ignore the fact that our Board of Registration was open and voter registration was in progress at the very hour of his attack upon me. I can only conclude that, as a professional agitator, Mr. Mitchell needed something to agitate about—regardless of the facts.

In South Carolina, as in much of the nation, we have faced radical changes affecting every facet of our life. Despite mounting pressures from all sides, we in South Carolina have maintained respect for law and order and have preserved good race relations. We have conducted our fights in the courts and have complied in good faith with their decisions, no matter how wrong we might personally have felt them to be. By respecting the law ourselves and demanding that respect from others, we in South Carolina have been spared much of the racial strife so evident elsewhere.

These I suspect are conditions not to Mr. Mitchell's liking as we have been able to make the changes forced upon us without outside intervention, either from officials or from anxious volunteers such as Mr. Mitchell himself.

JULY 31, 1969.

Senator SAM J. ERVIN, Jr.,
Chairman, Senate Judiciary Subcommittee on Constitutional Rights, Old Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: We submit this statement of the Industrial Union Department, AFL-CIO, on voting rights act legislation (S. 2456, S. 2507) to the Senate Judiciary Subcommittee on Constitutional Rights and respectfully ask that it be included in the record of the hearings on these bills.

It is unthinkable that Congress, after enacting in the Voting Rights Act of 1965, a law that has assured the right to vote for hundreds of thousands of Americans, would now do anything that might impair that right. The Industrial Union Department, AFL-CIO, therefore, urges all members of Congress to extend the protections of this valuable law for another five years beyond the scheduled expiration date of August 6, 1970. We support S. 2456, the bill that would authorize this extension.

We have examined the amendments to the Voting Rights Act proposed by U.S. Attorney General John Mitchell in S. 2507, and while some of them may be meritorious, they should be considered separately. The immediate concern of this Congress should be to see that nothing is done to undermine or destroy a law which has created conditions that encouraged some 800,000 Americans to become registered voters since 1965.

One of the Attorney General's proposals—that there be a nationwide ban on literacy tests at least until January 1, 1974—could jeopardize voting rights for other minority groups besides the Negro minority whose plight was the immediate reason for the passage of the 1965 law. In advocating this ban, the Attorney General also proposes to strike from this Act Subsections (d) and (e) of Section 4. These are the sections that permit Puerto Ricans with sixth-grade public school educations in Spanish, to register and vote in New York in spite of the literacy test requirements in that state. If the nationwide ban on literacy tests were temporary, as Mr. Mitchell proposes, the expiration of that ban in 1974 would leave unprotected Puerto Ricans and other minority group members who may not be literate in Spanish.

Another proposal in S. 2507 would eliminate the requirement that new election laws passed by the states covered by the Act cannot go into effect without approval by the Attorney General or the District Court of the District of Columbia. Mr. Mitchell argues that this provision is difficult to administer and that jurisdictions will not clear changes in voting laws if they suspect they may be found to be discriminatory. But Mr. Mitchell's proposal will do nothing to improve the situation. Rather, it would worsen it. States might be encouraged to enact discriminatory election laws knowing nothing could be done about them until Justice detected them and proceeded through the courts. The present provision has, at least, an inhibiting effect. Few legislatures can be expected to enact discriminatory election laws if they know these laws can be quickly suspended by Federal action. It shifts the burden of compliance from the states, where it belongs, to the Justice Department, which would have the task of proving discrimination through court suit.

Mr. Mitchell proposes, in general, making the application of the Voting Rights Act national instead of regional. While in theory, this may sound like a fair idea, it presents practical difficulties. Mr. Mitchell on several occasions, both public and private, has complained of the inadequacy of the Justice Department's civil rights enforcement staff. If he deems it too small for its present tasks, what will conditions be like if this same staff has to be stretched to police a nationwide statute?

These are some of the reasons why we feel it is a grave mistake to consider the Attorney General's proposals as an *alternative* to the extension of the Voting Rights Act of 1965. The interests of the country and the Administration will be better served if the suggestion advanced by Rep. Emanuel Celler (D., N.Y.) is adopted. Mr. Celler, chairman of the House Judiciary Committee, proposed to Attorney General Mitchell that the Administration's proposals be considered in a separate bill and that the five year extension be expedited. This is the course of action we endorse.

Millions of Negro Americans have been shaken in their belief that their rights of citizenship can be guaranteed through the legislative process. Extending the Voting Rights Act of 1965 would go far toward restoring that faith.

We therefore urge Congress to approve the extension S. 2456. Other improvements in the Voting Rights Act can wait for consideration at a later time.

Sincerely,

JACOB CLAYMAN,
Administrative Director.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 24, 1969.

HON. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: Since the submission of the Administration's bill to extend the Voting Rights Act of 1965, S. 2507, it has been brought to my attention that, under that bill, persons (most Puerto Ricans) who have completed six grades of school in the United States, its territories or the Commonwealth of Puerto Rico, in a school in which the predominant classroom language is other than English, would have no assurance after January 1, 1974, of being freed from the necessity of taking a literacy test in order to vote.

This result is not required by the purposes and objectives of the Administration bill, S. 2507. On the contrary, one of the purposes of that bill is to eliminate the use of literacy tests as a prerequisite to the right to vote.

Accordingly, we would have no objection to the following amendment amending Sec. 2(c) thereof by striking the words "and (e) and adding the following as subsection (b)" and substituting therefor "and designate present subsection (e) as (b) and add the following as subsection (c)."

I would appreciate your consideration of such an amendment to S. 2507.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

U.S. COMMISSION ON CIVIL RIGHTS—STAFF MEMORANDUM

DEMOGRAPHIC EXPLANATION FOR INCREASED NEGRO VOTER REGISTRATION IN THE SOUTH

Senator Ervin inquired during Commissioner Freeman's testimony at the July 9, 1969 hearing of the Constitutional Rights Subcommittee whether increased black voter registration in the South could be attributable to the number of Negroes who have turned 21 since the passage of the Voting Rights Act, rather than to the Federal examiner program or the prohibition of the use of literacy tests. This memorandum concludes that the data do not support such an hypothesis.

TABLE 1.—VOTER REGISTRATION

	Nonwhite				White			
	1965	1968	Difference	Difference (percent)	1965	1968	Difference	Difference (percent)
Alabama	92,737	273,000	180,263	195	935,695	1,117,000	181,305	19
Georgia	167,663	344,000	176,337	110	1,124,415	1,524,000	399,585	39
Louisiana	164,601	305,000	140,399	85	1,037,184	1,133,000	95,816	10
Mississippi	28,500	251,000	222,500	590	525,000	691,000	166,000	32
North Carolina	258,000	305,000	47,000	18	1,942,000	1,579,000	−363,000	−19
South Carolina	138,544	189,000	30,456	36	677,914	587,000	−90,914	−13
Virginia	144,259	255,000	110,741	77	1,070,168	1,256,000	185,831	17
Total	994,304	1,922,000	927,696	93	7,312,376	7,887,000	574,624	5

As Table 1 shows, increase in black voter registration has been much greater than increase in white in each of the seven Southern States covered in whole or in part by the Voting Rights Act. For the seven States together the increase in black registration has been 93 percent, that in white 5 percent. While the difference in Mississippi has been the most dramatic—590 percent for Negroes

compared to 32 percent for whites—it has been significant in each of the seven States.

If this difference were accounted for by demographic factors, then the ratio of persons turning 21 between 1965 and 1968 to the 1965 voting age population would be much greater for Negroes than for whites. For example, if the black percentage increase in voter registration were 10 times the white, then the rate at which Negroes turned 21—in comparison to their voting age population—should also have been 10 times greater, if this factor is to explain the disparity in voter registration growth rates between races.

The ideal statistics, therefore, to test the demographic theory, would be the 1965 voting age population for whites and Negroes for each of the seven States, and the number of persons of each race in each State turning 21 between 1965 and 1968. Although these statistics are not available, those used in Table 2 are a reasonable substitute. Table 2 gives the 1960 voting age population by race for the seven States. Table 2 also gives, by State and by race, the population between the ages of 15 and 19 for 1960. This is used as the closest substitute for the number of persons turning 21 between 1965 and 1968. Since the same data are used for both Negroes and whites, the distortion caused by these substitutions should be minimal.

TABLE 2.—1960 POPULATION

	Nonwhite			White		
	15 to 19 years	21 years and over	15 to 19, 21 and over, percent	15 to 19 years	21 years and over	15 to 19, 21 and over, percent
Alabama	91,878	482,838	19	189,726	1,349,072	14
Georgia	102,903	559,869	18	231,030	1,669,659	14
Louisiana	92,579	514,220	18	170,513	1,287,259	13
Mississippi	90,199	422,690	19	108,064	745,500	15
North Carolina	113,923	552,154	21	298,583	2,001,656	15
South Carolina	87,765	372,297	24	140,746	894,179	16
Virginia	69,896	436,986	16	254,340	1,867,302	14
Total	649,143	3,341,054	19	1,393,007	9,814,627	14

As Table 2 shows, the ratio of the 15 to 19 age group to the 1960 voting age population is higher for Negroes than for whites for each State. However, in each State the difference is small. The overall totals are 19 percent for the Negroes and 14 percent for the whites. This small difference cannot account for the over 18-fold difference in voter registration increase. Likewise, for each of the seven States the difference can account for only the smallest fraction of the difference in voter registration increase. It is therefore safe to conclude that the use of substitute statistics has not destroyed the validity of the results.

In conclusion, the data presented in Tables 1 and 2 show clearly that a larger number of Negroes than whites, in proportion to their voting age population, turning 21 offers no explanation for the fact that the increase in black voter registration between 1965 and 1968 in the seven Southern States was over 18 times that for whites.

Department of Justice Memorandum on the Constitutional Bases for Proposed Voting Rights Act Amendments of 1969

In general, the States are free to establish qualifications for voting in both State and Federal elections. *Pope* v. *Williams*, 193 U.S. 621 (1904). This principle is qualified, however, by the Fifteenth Amendment, which provides that the right to vote shall not be abridged on account of race, color, or previous condition of servitude, *Guinn* v. *United States*, 238 U.S. 347 (1915), and the Fourteenth Amendment, which provides that the States may not deny to persons within their jurisdiction the equal protection of the laws, *Carrington* v. *Rash*, 380 U.S. 89 (1965); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966).[1]

[1] The principle is also qualified by the Nineteenth Amendment (women's suffrage) and the Twenty-fourth Amendment (no poll tax in Federal elections), but these amendments are not relevant to our discussion.

Both the Fourteenth and the Fifteenth Amendments grant Congress the power to enforce their provisions by "appropriate legislation." These grants of legislative power, *i.e.*, § 5 of the Fourteenth Amendment and § 2 of the Fifteenth Amendment, provide the constitutional bases for the proposed Voting Rights Act Amendments of 1969.

In *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), the Supreme Court upheld, against constitutional attack, certain provisions of the Voting Rights Act of 1965, including the section suspending tests and devices in covered jurisdictions [§ 4(a)], the procedure for review of new voting laws [§ 5], and the provision for administrative designation of federal examiners [§ 6]. To the extent that the proposed amendments continue in effect provisions like those considered in *South Carolina* v. *Katzenbach*, that decision supports the constitutionality of the proposed legislation.

The Supreme Court noted in *South Carolina* v. *Katzenbach*, 383 U.S. at 329, that, in most of the states covered by the 1965 Act, literacy tests had been instituted with the purpose of disfranchising Negroes and had been administered discriminately. The proposed amendments would suspend literacy tests in all states, including states where evidence of intentional abuse in administration of tests is lacking. However, the validity of this proposal is shown by recent decisions of the Supreme Court.

First, in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Court held that the power of Congress under § 5 of the Fourteenth Amendment to enact legislation prohibiting enforcement of a state law is not limited to situations where the state law is unconstitutional.[2] The test as to the power of Congress in such a case is whether the federal statute is "appropriate legislation," that is, legislation "plainly adapted to [the end of implementing the Fourteenth Amendment] . . ." and consistent with the Constitution. 384 U.S. 651.

In *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 326–327, the Court indicated that the same test is applicable to the power of Congress to enforce the Fifteenth Amendment. The proposed nationwide suspension of literacy tests is "appropriate legislation" to implement the guarantees of the Fourteenth and Fifteenth Amendments.

The reasoning of the Supreme Court in *Gaston County* v. *United States*, 37 L.W. 4478 (1969), bears directly upon use of literacy tests by any state or county which formerly restricted Negroes to inferior, de jure segregated schools.[3] And Congress can properly extend the Court's reasoning to states which did not themselves have laws requiring racially segregated schools, for large numbers of Negroes who were educated in the states which had such laws have moved to other parts of the country.

If we accept the conclusion of the Court that it is a denial of the right to vote on account of race to impose a literacy test on Negroes who have been denied an adequate education because of their race, then it should not make any difference whether the government which denies the right to vote is the same government as that which denied the education.[4] The effect upon the individual is the same in either case, and the abolition of literacy tests is intended to remedy a present evil and not to penalize a jurisdiction because of its past sins. At least, Congress could so reason.

---

[2] *Katzenbach* v. *Morgan*, *supra*, involved the constitutionality of section 4(e) of the Voting Rights Act of 1965, which provides that persons who have completed the sixth grade in an American-flag school in which the predominant classroom language was other than English shall not be denied the right to vote because of inability to pass a literacy test in English. The primary purpose and effect of this provision was to enfranchise those residents of New York who were schooled in Puerto Rico and literate in Spanish but unable to pass New York's English literacy test.

[3] In *Gaston County* v. *United States*, 37 L.W. 4478 (1969), a suit under section 4(a) of the Voting Rights Act of 1965, the Court refused to permit the reinstitution of a literacy test on the ground that inasmuch as Negro educational facilities in the county had been inferior in quality to facilities for whites during the period in which the population presently of voting age had attended school, such literacy tests would have the effect of denying the right to vote on account of race or color.

[4] In the *Gaston County* case, the Supreme Court stated that it assumed that most of the adult residents of the county resided here as children, but the Court also stated that: "It would seem a matter of no legal significance that they may have been educated in other counties or States also maintaining segregated and unequal school systems." 37 L.W. at 4480, note 8.

In a prior footnote, the Court pointed out that it had "no occasion to decide whether the Act would permit reinstatement of a literacy test in the face of racially disparate educational or literacy achievements for which a government bore no responsibility." 37 L.W.

But it might be argued that the bill would not be limited to literacy tests which adversely affect Negroes raised in the South but would apply to jurisdictions which do not have significant Negro populations and without any showing that their tests adversely affect Negro voting. However, Congress has a wide choice of means for accomplishing permitted ends, see *Gaston County* v. *United States*, *supra* at 4479–80, and in our highly mobile society Congress would be justified in assuming that the same problem exists or will exist to a measurable extent in all jurisdictions. Certainly, in view of the broad scope which the Court has given to Congress' power to implement the Thirteenth Amendment by removing the "badges and incidents of slavery," *cf. Jones* v. *Mayer Co.*, 392 U.S. 409, 441–44 (1968), the assertion of authority under the Fifteenth Amendment to ban literacy tests generally seems reasonable.

In addition to protecting Fifteenth Amendment rights, the proposed nationwide suspension of literacy tests would serve to implement the Fourteenth Amendment. In *Katzenbach* v. *Morgan*, *supra*, 384 U.S. at 652, the Court reasoned that section 4(e) of the Voting Rights Act of 1965[5] implemented the Equal Protection Clause not only by requiring equality in voting rights but also by extending to the Puerto Rican community the political power necessary to prevent denials of equal protection in other areas. Thus, the Court's reasoning in *Katzenbach* v. *Morgan* has broad implications with respect to Congressional power to prevent limitations of the franchise. The Court recognizes that limitations on the right to vote, however reasonable they may be when viewed in isolation, tend to breed other inequities and that equalizing the franchise is a permissible means of preventing inequities. Similarly, in other cases the Court has pointed to a special status for the right to vote. "[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964); *Kramer* v. *Union Free School District*, 37 L.W. 4530, 4531 (1969).

If Congress determines, as Congress is justified in doing, that literacy tests deny to illiterates fundamental political rights and also work a potential denial of equal protection to those minority groups whose participation in the electoral process is adversely affected, Congress may, in our view, forbid such tests by virtue of its authority to enforce the Fourteenth Amendment.

The proposal to eliminate residency requirements for voting in Presidential elections would nullify laws in about half the States requiring substantial periods of residence as a precondition to voting in Presidential elections. This feature of the proposal is supportable as an exercise of Congress' authority to enforce the Fourteenth Amendment.

Although the Supreme Court has never discussed the precise question in an opinion, it may be conceded for purposes of this discussion that the Fourteenth Amendment does not, standing alone, prohibit residency requirements in Presidential elections. In contrast to Article I, Section 2, and the Seventeenth Amendment, dealing with qualifications of electors of members of the House of Representatives and the Senate, respectively, the Constitution is silent with respect to the power to prescribe qualifications of voters in Presidential elections. Article II, Section 1 merely provides that "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors" for the purpose of choosing the President and Vice President. The existence of the power to prescribe qualifications for voting in Presidential elections, however, has apparently long been assumed. See *McPherson* v. *Blacker*, 146 U.S. 1, 35 (1892). In *Pope* v. *Williams*, 193 U.S. 621 (1904), the Supreme Court sustained a one-year residency requirement as a reasonable classification with respect to voting generally, while expressly reserving the question whether the requirement could validly be applied to Presidential elections. In 1965 the Court summarily affirmed a lower court decision upholding a one-year residency requirement with respect to Presidential elections. *Drueding* v. *Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd per curiam*, 380 U.S. 125 (1965). However, during the last term, the Supreme Court noted probable jurisdiction in a case presenting essentially the same issue. *Hall* v. *Beals*, O.T. 1968, No. 950.

Even assuming that the Fourteenth Amendment does not itself bar lengthy State residence requirements in Presidential elections, it seems clear that Congress may abolish such requirements in the exercise of its power to enforce the

[5] See footnote 2, *supra*.

Fourteenth Amendment. The enforcement section of the Amendment, as a "positive grant of legislative power" (*Morgan* v. *Katzenbach*, *supra*, at 651), authorizes Congress to expand the substantive reach of the Amendment. Judicial review of Congressional action is limited. The statute will be sustained if the court can "perceive a basis upon which Congress might predicate a judgment" that a State enactment "constitutes an invidious discrimination in violation of the Equal Protection Clause." *Id.* at 656.

Residency requirements as a prerequisite to voting are commonly justified as necessary to assure familiarity with issues and candidates, and to prevent fraud. However valid these considerations may be in State and local elections, Congress might reasonably conclude that no substantial State interest is advanced by residency requirements in Presidential elections, or at least that narrower means exist to promote such interests. *Cf. Carrington* v. *Rash*, 380 U.S. 89 (1965).

The primary justification for residency requirements, familiarity with candidates and issues, is inapplicable to Presidential elections because the issues and personalities involved are national. The new resident is as familiar with them as the older resident.

A second justification commonly advanced for residency requirements, prevention of frauds such as double voting, may be a legitimate State concern with respect to Presidential elections, but a lengthy residence requirement is an unnecessarily broad and inefficient means to this end. Criminal sanctions for double voting or requiring surrender of registration certificates from former States of residence may be viewed as equally effective in preventing double voting.

It might also be suggested that residence requirements promote the administration of voter registration procedures, since registration must be closed at some time before elections to allow time for compilation and distribution of lists of voters to the polling places. However, registration deadlines are not, generally speaking, keyed to residence requirements. Most States having lengthy residence requirements allow registration until shortly before the elections. In any case, the legislative proposal takes this administrative problem into account. To be entitled to vote in the Presidential election, the new resident must have resided in the State for at least two months as of the date of the election. If he moved more recently, he may have to vote from his former residence. In either event the election officials have an ample opportunity to devise procedures for establishing his identity and qualifications.

The States would be required to prepare separate ballots for persons only eligible to vote for Presidential electors. However, there is precedent for such separate ballot procedures under the Twenty-fourth Amendment, which outlawed the poll tax as a precondition to voting in federal elections. In any event, the convenience of printing a single ballot is, at best, a "remote administrative benefit" which cannot justify deprivation of the fundamental right to vote. *Carrington* v. *Rash*, *supra*, at 96.

Perhaps the strongest basis for a Congressional judgment that residence requirements in Presidential elections are invidiously discriminatory is the strength of the recent movement to repeal such requirements. In the past decade, repeal has been advocated by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and other knowledgeable organizations. Largely in response to these initiatives, approximately half the States no longer bar new residents from voting in Presidential elections. See S. Rep. No. 1017, 88th Cong., 1st Sess. (1964); 9C *Uniform Laws Annotated* 202 (Supp. 1968).

In light of the foregoing considerations, the proposal to invalidate State residency requirements in Presidential elections is well within the power of Congress to enforce the equal protection of the laws.

DEPT. OF JUSTICE MEMO—SUITS INVOLVING SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

Section 5 was held to be applicable to the laws or rule under challenge in the following cases:

Allen v. *State Board of Elections*, 393 U.S. 544 (1969) (Virginia procedure regarding assistance to illiterate voters), consolidated with *Bunton* v. *Patterson* (Mississippi statute shifting from election to appointment of county official); *Fairley* v. *Patterson* (Mississippi statute providing for at-large election of county officials), and *Whitley* v. *Williams* (Mississippi statute concerning requirements for listing on ballot).

The Mississippi statute involved in *Bunton* v. *Patterson*, *supra*, was also challenged in the following suits:

Ballard v. *Patterson*, Civil No. 1200 W, S.D. Miss (temporary restraining order issued, Apr. 23, 1969); and *Griffin* v. *Patterson*, Civil No. 4148 J, S.D. Miss. (Oct. 5, 1967).

The Mississippi statute involved in *Fairley* v. *Patterson*, *supra*, was also challenged in the following case: *Marsaw* v. *Patterson*, Civil No. 1201 W, S.D. Miss. (temporary restraining order issued, Apr. 23, 1969).

The following suit challenged a Mississippi statute providing for the consolidation of counties: *Mississippi Freedom Democratic Party* v. *Johnson*, Civil No. 4082 J, S.D. Miss. (injunctive relief denied, Apr. 30, 1969).

The following case was decided partly on the basis of section 5: *Hadnott* v. *Amos*, 394 U.S. 358 (1969).

In the following suit, a law extending the terms of incumbent county commissioners was held subject to § 5: *Sellers* v. *Trussell*, 253 F. Supp. 915 (M.D. Ala. 1966).

The Department of Justice has initiated the following suits involving section 5: *United States* v. *Attaway*, S.D. Ga., Civ. Action No. 692 (decided Feb. 11, 1969) (polls desegregated, § 5 relief denied); *United States* v. *Democratic Executive Committee of Barbour County*, 288 F. Supp. 943 (M.D. Ala. 1968) (decided on constitutional grounds); *United States* v. *Crook*, 253 F. Supp. 915 (M.D. Ala. 1966) (consolidated with *Sellers* v. *Trussell*); and *United States* v. *Shannon*, N.D. Miss., Civ. Action No. DC–6928–K (relief granted, May 26, 1969).

The following suits were not based upon section 5, but did involve the validity of laws relating to elections:

Boyd v. *Johnson*, Civil No. DC 668, N.D. Miss., (temporary restraining order against law concerning candidacy for school district trustee, Mar. 2, 1966); *Morris* v. *Fortson*, 261 F. Supp. 538 (N.D. Ga. 1966) (law concerning assistance to illiterate voters held unduly restrictive); *Sims* v. *Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965) (reapportionment of state legislature diluting Negro voting strength held unconstitutional); and *Smith* v. *Paris*, 257 F. Supp. 901 (M.D. Ala. 1966), *aff'd*, 386 F. 2d 979 (C.A. 5, 1967) (injunction against shift from district to countywide election of party executive committee).

STATEMENT OF REV. JOHN MCCARTHY FOR THE DEPARTMENT OF SOCIAL DEVELOPMENT, U.S. CATHOLIC CONFERENCE, TO THE CONSTITUTIONAL RIGHTS SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY ON S. 2456, EXTENSION OF THE VOTING RIGHTS ACT OF 1965, AUGUST 4, 1969

Mr. Chairman and members of the Subcommittee, on behalf of the Department of Social Development of the United States Catholic Conference I wish to express our support for a five year extension of the Voting Rights Act of 1965. The statistics of Negro voter registration in the states affected by this Act testify clearly to the wisdom shown by Congress in passing this legislation four years ago. The continuing increase in the number of elected Negro officials in the South indicates the expanding influence the Act is having on the role of Black Americans in the political process of our nation.

In spite of these remarkable signs of progress, however, current voter registration statistics indicate that throughout the areas covered by the Voting Rights Act Negroes are still being selectively excluded from full participation in the Democratic process, a fact amply documented in the 1968 report of the U.S. Commission on Civil Rights, "Political Participation." Obviously a hundred years of exploitation and intimidation can not be overcome in five short years and it might even be presumptuous to assume that they could be completely overcome in another five years. Inbred fears and prejudices die slowly and the black voters of the South must be given time as well as legal support to free themselves from the repressive structures which have held them down for over a century.

The American people do not want to go backwards. Nevertheless that could be the effect if this Act is not extended. As the testimony of Mr. Clarence Mitchell of the National Association for the Advancement of Colored People clearly documented, the forces which once oversaw the disenfranchisement of Negroes are still ready to enact retrogressive legislation. These elements must not be given

the opportunity to undermine any of the tenous accomplishments of the last four years. The simple extension of the Voting Rights Act as it stands will be the most sure and expeditious way of preventing this from happening.

The experience of this Office in working with minority groups, particularly the Spanish-Speaking, throughout the country has made us sympathetic to the views expressed before your Committee that literacy tests throughout the country should be legislated against. We feel, however, that to debate that issue at this time would only delay beyond its expiration date the passage of legislation extending the Voting Rights Act. We, therefore, support the immediate extension of the present Act as provided by S. 2456 and recommend that subsequent consideration be given to the nationwide application of Voting Rights legislation.

STATEMENT OF BROOKS HAYS, CHAIRMAN, SCOPE, BEFORE THE SENATE JUDICIARY COMMITTEE

The Southern Committee on Political Ethics urges the Congress to extend the key provisions of the Voting Rights Bill of 1965 as they are now written in law. We firmly support H.R. 4249 as reported by the House Judiciary Committee.

In taking this position, we are not questioning the merits of the proposals offered by Attorney General Mitchell. Perhaps at another time they should receive the careful consideration of Congress. At this time, however, we feel that the simple extension of the Voting Rights Bill for another five years is so vital to Southern progress that passage should not be endangered by the injection of new and controversial proposals.

One of the principles upon which SCOPE was founded was "The full participation in the political process by racial minorities, particularly the Negro minority; voter education; dignifying the profession of politics; and establishing a climate for free discussion of public issues."

There can be no question that the Voting Rights Act of 1965 has contributed substantially to the implementation of this principle. Since its passage, some 800,000 Negro voters have been registered in our region and nearly 400 Negro officials have been elected to public office. For the first time, the Negro minority in the South *is* able to participate in the political process in a meaningful way.

We are fearful that this progress will stop unless the Voting Rights Bill is extended. The June 16 report of the Civil Rights Commission details the unfortunate fact that in some areas of the South federal laws and federal observers are necessary to insure fair elections.

It may be, as the Attorney General says, that other areas of the country also need protection of voting rights. We think they should have it, and if necessary special legislation should be enacted. But this should not cloud the fact that the present Voting Rights Bill effectively insures the political rights of hundreds of thousands of Southern Negroes who because of history and tradition have had a very special problem.

We urge the Congress to approve the extension for five years of the key provisions of the Voting Rights Act of 1965.

RESOLUTION ESTABLISHING THE AVAILABILITY OF FREE MAIL PRIVILEGES FOR ABSENTEE APPLICATIONS AND BALLOTS IN NATIONAL ELECTIONS

Whereas the function of the office of the Clerk of a City, Village and Township is to service the community in the broadest area possible, and

Whereas in the field of election services the intent of the American principle of participation in government should be as encompassing as possible, and

Whereas with the travel necessary in the economy of the world today many citizens do not have firm residential roots, and

Whereas, all people should be encouraged to participate in any all elective processes,

Now, therefore, be it resolved, that the International Institute of Municipal Clerks endorse the proposition that all absentee applications and absentee ballots receive free mail privileges available to national governmental functions for the prompt processing of voting material, and

Be it further resolved that a copy of this resolution be forwarded to the proper congressional committee for enactment of legislature, and

Be it further resolved that the International Institute of Municipal Clerks express its appreciation to the City of Dearborn Heights and its Clerk, Robert G. McLachlan for having submitted this resolution.

This resolution to take effect this 21st day of May, 1969.

I hereby certify that this Resolution was unanimously adopted by the International Institute of Municipal clerks at their Conference held in St. Louis, Missouri on Wednesday, May 21, 1969.

JOSEPH T. CARNEY, *President.*
Attest: FRANK DOTSETH, *Executive Director.*

RESOLUTION FOR APPOINTMENT OF A PRESIDENTIAL COMMITTEE TO STUDY IMPLEMENTATION OF FEDERAL LEGISLATION TO AFFORD ALL CITIZENS VOTING RIGHTS REGARDLESS OF LOCAL RESIDENCY REQUIREMENTS DURING NATIONAL ELECTIONS

Whereas the result of relocating within any of the fifty states of our country may, by virtue of local or state residency requirements, deprive a United States citizen of his franchise to cast a vote for the President and Vice-President of our country, and

Whereas many of our states have enacted legislation to implement the voting procedure to protect that inalienable right of our citizens to vote without fear or prejudice, and

Whereas the demands upon our citizens require greater mobility in pursuit of a livelihood thereby jeopardizing the right to cast a vote in the state of their former residence and, lacking residency duration in their newly adopted state, are equally deprived of said right to vote;

Now, therefore, be it resolved that the International Institute of Municipal Clerks entreat our President of these United States to consider the appointment of a committee to study and make recommendations for the purpose of introducing legislation which will enable all citizens of the United States of America to accept and exercise their franchise to vote for the two highest and most important offices in our country, namely; President and Vice-President, on the basis of total residency within the boundaries of the United States of America.

This resolution to take effect this 21st day of May, 1969.

I hereby certify that this Resolution was unanimously adopted by the International Institute of Municipal Clerks at their Conference held in St. Louis, Missouri on Wednesday, May 21, 1969.

JOSEPH T. CARNEY, *President.*
Attest: FRANK DOTSETH, *Executive Director.*

LETTER DATED DECEMBER 22, 1969, ON VOTING RIGHTS HEARINGS TO THE GOVERNORS AND ATTORNEYS GENERAL OF ALABAMA, ALASKA, ARIZONA, CALIFORNIA, CONNECTICUT, DELAWARE, GEORGIA, LOUISIANA, MAINE, MASSACHUSETTS, MISSISSIPPI, NEW HAMPSHIRE, NEW YORK, OREGON, SOUTH CAROLINA, VIRGINIA, WASHINGTON, AND WYOMING (STATES HAVING LITERACY TESTS)

U.S. SENATE,
Washington, D.C., December 22, 1969.

DEAR SIR: The House of Representatives has recently passed the administration's proposal for amending the Voting Rights Act of 1965 and it is now pending in the Senate. Enclosed is a reprint from the Congressional Record announcing hearings by the Subcommittee on Constitutional Rights. The reprint includes a copy of the Voting Rights Act of 1965, the administration's proposal, and the proposal for a simple extension of five years.

A simple extension of the 1965 Act would continue to bar literacy tests and impose other legal liabilities on seven States, all in the South, until 1975. The administration's bill would bar literacy tests for five years in all States. It would also permit the Attorney General to send Federal election examiners and observers into any State or election district when he determines this is required. Finally, this proposal would prescribe uniform residency requirements in all States for voting in Presidential elections.

It would be most helpful to the Subcommittee to have your written views on the various proposals, and we invite you to testify at the hearings if you so desire. The hearings are scheduled for January 27, 28, 29, and February 3, 4, 5, 1970. Additionally, it would assist the Subcommittee if you could supply us with the number of persons who registered and the number who voted in the Presidential election of 1968, by county or election district in your State.

With all kind wishes,

Sincerely yours,

SAM J. ERVIN, JR., *Chairman.*

JANUARY 5, 1970.

HON. SAM J. ERVIN, JR.,
Chairman, Senate Subcommittee on Constitutional Rights,
Senate Building, Washington, D.C.

DEAR SENATOR ERVIN: Thank you for your recent letter enclosing a reprint from the Congressional Record announcing hearings on amendments to the Voting Rights Act of 1965. Unfortunately, the dates scheduled for the hearings coincide with the 1970 Session of the Georgia General Assembly which convenes on January 12, 1970, and I will be unable to attend.

Insofar as my written views on the subject are concerned, it will come as no great shock to you to discover that my office is not overly fond of Section 5 of the Voting Rights Act of 1965. I understand that opponents of the administration's bill fear that removal of Section 5 would lead to immediate enactment of previously prohibited elections laws. However, up to now the States under the Act have not sought to enact those laws which the Act prohibits since the Department of Justice has withheld consent under Section 5 in only 1 case out of 251 submissions. *Allen* v. *State Board of Elections*, 37 LW. 4168, fn. 5. The one instance mentioned in the footnote was a Georgia law which, interestingly enough, the Department of Justic had previously approved. It was after a contrary Federal Court decision on the same issue that the Department withdrew consent. The other two instances mentioned in the footnote also involved Georgia and the footnote explanation is correct. This evidence would indicate that the Section 5 requirement of prior approval vis-a-vis the method outlined in the administration bill is not as vital as some would believe. In my view the possibility of a court challenge to a statute as violative of the Voting Rights Act would be as effective a deterrent as the present method.

You requested information on the number of persons who registered and voted in the Presidential election of 1968, by county or election district in Georgia. Enclosed for your use is the official tabulation by counties of the returns for the general election held on November 5, 1968. Also, enclosed is the official biennial compilation from 1954 to 1968 of the number of registered voters by counties.

We hope this information will be of assistance to you and the Subcommittee.

With best wishes, I am,

Yours sincerely,

ARTHUR K. BOLTON,
Attorney General, State of Georgia.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
Richmond, December 29, 1969.

HON. SAM J. ERVIN, JR.,
Congress of the United States,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR ERVIN: I have your letter of December 29, 1969, with enclosures, advising that hearings on proposals for amending the Voting Rights Act of 1965 are now pending before the Senate and I note that the first hearing is scheduled for January 27.

My term of office expires on January 17, 1970, and I was not a candidate to succeed myself. I am turning your letter of December 27, with enclosures, over to my successor, the Honorable Andrew P. Miller, and I am sure that Mr. Miller

will contact you in the reasonably near future submitting his views on the matter.

It is my own personal opinion that what is fair for the seven States particularly covered by the 1965 Voting Rights Act would be fair for the entire Fifty States. I see no reason why Virginia is not permitted to have a simple literacy test that is administered without discrimination, whereas New York is permitted to have a severe literacy test.

When the 1965 Voting Rights Act was under consideration, by the Congress, there was no proof submitted which attempted to show that the very simple literacy test required by Virginia was being administered in a discriminatory manner, but we were caught, like the other States involved, by the formula in the bill.

I have requested Stanley Hardaway to furnish you with the number of persons who registered and the number who voted in the Presidential election of 1968, by county or election district in our State. If this information is not forthcoming in the reasonably near future, I would suggest that you write to Honorable Stanley Hardaway, Executive Secretary, State Board of Elections, State Finance Building, Richmond, Virginia, direct.

With kindest regards and best wishes, I am

Sincerely yours,

ROBERT Y. BUTTON, *Attorney General.*

STATE OF NEW YORK,
DEPARTMENT OF LAW,
Albany, N.Y., January 29, 1970.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: Attorney General Lefkowitz has requested that I reply to your letter concerning the Voting Rights Act of 1965. As you may know, that portion of New York's Constitution and Election Law which requires literacy in English has been found by the Supreme Court of the United States to be in conflict with the provisions of § 4(e) of the Voting Rights Act to the extent that it requires voters to be literate in the English language (*Morgan* v. *Katzenbach*, 384 U.S. 641). Consequently, since 1966 New York has been operating under the provisions of § 4(e).

The Attorney General appreciates the invitation extended by your letter to testify at the hearings to be held by the Subcommittee on Constitutional Rights, however, he does not desire to accept that invitation.

I am enclosing the information requested in your letter concerning registration and voting figures, by county, in the Presidential election of 1968.

Very truly yours,

(Mrs.) JEAN M. COON,
Assistant Attorney General.

STATE OF CONNECTICUT,
EXECUTIVE CHAMBERS,
Hartford, January 12, 1970.

Hon. SAM J. ERVIN., Jr.,
Chairman, Subcommittee on Constitutional Rights.
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: I appreciate your invitation to submit views on proposed amendments to the Voting Rights Act of 1965 currently under consideration by your Honorable Subcommittee on Constitutional Rights.

Our Secretary of State, whose office administers the election laws in Connecticut, holds the view, with which I agree, that a simple extension of the 1965 Act would be responsive to the needs of Connecticut citizens.

All persons seeking to become voters in Connecticut are given literacy tests, and written records of the tests administered are maintained by local election officials, except for those who have completed at least six grades in an American Flag School where the spoken language is other than English. A sworn statement that six grades have been completed in such a school substitutes for a literacy test.

In response to an inquiry, the Justice Department reports that there never has been a complaint arising out of Connecticut concerning the admission of electors.

Connecticut's residency requirements are liberal. Two statutes pertaining to this matter are of interest.

A voter who moves from Connecticut to another state retains for two years the right to vote for presidential and vice-presidential electors only in the town from which he moved provided he has not become an elector in the state to which he moved.

New residents of municipalities in Connecticut may vote, for presidential and vice-presidential electors only, after 60 days' residence provided they were not electors in some other town in this State immediately prior to their removal to their new place of residence.

Sincerely,

JOHN DEMPSEY,
Governor.

STATE OF MAINE,
DEPARTMENT OF THE ATTORNEY GENERAL.
Augusta, Maine, January 5, 1970.

Hon. SAM J. ERVIN, Jr.,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: This is in reply to your letter of December 22.

I appreciate your courtesy in writing me about the Voting Rights Act of 1965.

I will be unable to testify at the hearings, but I am sending you, at your request, some voting figures which may be helpful to you. I also enclose a copy of a letter written last August by our Deputy Secretary of State to Congressman Hathaway, showing the position of that office on the 1965 Voting Act. I assume the same letter went to Senator Margaret Chase Smith and Congressman Kyros.

Very truly yours,

JAMES S. ERWIN,
Attorney General.

AUGUST 12, 1969.

Hon. WILLIAM D. HATHAWAY,
Representative to Congress,
House Office Building,
Washington, D.C.

DEAR MR. HATHAWAY: A recent Bangor Daily News article bearing a Washington dateline reported that an attempt to append a literacy test ban extension of the 1965 Voting Rights Act to all states was defeated 23-8 in the House Judiciary Commtitee.

It was reported further that there may be strong sentiment in favor of this administration proposal as part of a separate bill. The article stated a Senate Judiciary subcommittee is considering a Senate version of the bill.

As you know, educational qualification is required of a Maine elector. Article II, Section 1, paragraph 2 of the Maine Constitution states that, "no person shall have the right to vote who shall not be able to read the Constitution (of this state) in the English language and write his name".

Fortunately, only a small percentage of our Maine adult population is illiterate. Only .034 of the one million is considered functionally illiterate. Our Election Division statistics show that in 1968, of the 578,630 Maine persons 21 years old or over, 529,137 or 91 percent were registered and eligible to vote. In 1960, the percentage was even higher, 93 percent: therefore; seven to nine percent of our people of voting age have no interest in taking part in the election processes. Only a small percentage of the total is illiterate and could be denied this right should they make application to register. There is no record of the total number of applicants in Maine who were turned down because they failed a literacy test.

This November's special election will see a record number of bond issue questions (13) on our ballots. There are also four constitutional amendment questions.

Each elector must consider these questions carefully before casting his ballot. Certainly, literacy is a necessary qualification to enable an elector to vote in-

telligently on seventeen separate questions, let alone making judgment on candidates during a general election.

To apprise you of these facts, and, to urge all members of the Maine delegation to oppose any measure which would lower the qualifications of our electors are the purposes of this communication.

I trust you can support our position through your vote in Washington.

Very truly yours,

ELDEN H. SHUTE, JR.,
Deputy Secretary of State.

STATE OF ALABAMA,
Montgomery, February 2, 1970.

Hon. SAM ERVIN, JR.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: This office has received your recent letter informing us of the hearings being held on the Voting Rights Act of 1965.

In considering whether to merely extend the 1965 Act or to adopt the Administration's proposal, I would strongly urge that the provisions which are adopted apply equally to every state in the Union.

Though you may already have this information before you, our Secretary of State's office informs us that approximately 1,015,000 votes were cast by Alabamians in the 1968 Presidential election.

Thanking you for informing us about the Subcommittee hearings, and with kindest regards and best wishes, I am,

Sincerely yours,

RICHARD L. HOLMES,
Legal Advisor.

STATE OF OREGON,
DEPARTMENT OF JUSTICE,
Salem, Oreg., January 29, 1970.

Hon. SAM ERVIN, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: This is in reply to your letter of December 22, 1969, concerning the proposed amendments to the Voting Rights Act of 1965.

I have conferred with the Secretary of State who is the Chief Election Officer concerning your letter. Of course, my office is interested in this matter because we serve as legal counsel to the Secretary of State.

We both agree that either extension of the 1965 Act or adoption of the Administration's Bill would not have any practical effect upon Oregon. Article II, section 2 of the Oregon Constitution does provide for the following literacy tests:

"(d) Is able, except for physical disability, to read and write the English language. The means of testing such ability to read and write the English language may be provided by law."

However, the supervisor of the Elections Division of the Secretary of State's office states that in his twelve years of experience, he knows of only two individual cases where the literacy test was imposed. Both of these individuals were citizens of foreign birth with slight knowledge of English. They were deemed to be qualified and were registered to vote.

Oregon's present law does not require any residence requirement for voting for the President or Vice President. Any person who is a resident of this State can qualify to vote for these two offices at anytime prior to the date of the election. The only effect that the Administration's Bill would have is with respect to nonresidents who were previously registered in this State, but would not be qualified to vote in another state. Present law in Oregon does not permit a nonresident to vote. However, as a practical matter, there would be no difficulty to implement this provision in the Administration's Bill.

You also asked questions concerning the number of persons registered and the number who voted in the presidential election of 1968. Oregon's estimated population, including those under the age of 21 is 2,081,640. 971,851 persons were registered to vote in the 1968 general election. Of that total, 819,622 voted for president. I enclose as exhibits A and B, a county-by-county tabulation of the persons registered and the persons who voted in 1968.

You also requested my views regarding which I would prefer: the simple extension of the 1965 Act or the Administration's Bill. I would favor the Administration's Bill. I believe the Voting Rights Act should apply to all states. In this day and age, the literacy test has little validity and can too often become a subterfuge for denying a person the right to vote. Indeed, I think it is questionable whether a person should be disqualified simply because he may be illiterate. Any person who is legally competent should have the right to vote. In Oregon, we use the sample ballot. There is no reason why a person who is illiterate could not be assisted by use of a sample ballot in making choices when he votes.

I also believe that it would be desirable to have a nationally uniform residency requirement with respect to the presidential and vice-presidential election.

If I can be of any further assistance to you, please advise. With best regards, I am

Very truly yours,

LEE JOHNSON, *Attorney General.*

STATE OF CALIFORNIA.
OFFICE OF THE ATTORNEY GENERAL.
DEPARTMENT OF JUSTICE.
San Francisco, January 21, 1970.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: This will acknowledge receipt of your letter of December 22, 1969, in which you forwarded copies of the Congressional Record of Friday, December 19, 1969, which included a copy of the Voting Rights Act of 1965, the administration's proposal, and the proposal for a simple extension of five years.

For your Subcommittee's information, I favor the extension of the Voting Rights Act of 1965 for at least five years since it seems to be working quite well and accomplishing the goal of prohibiting the use of literacy tests as a guise to preventing minority groups from being properly registered and participating in elections.

Unfortunately, the press of urgent other business will preclude me from testifying at the hearings your Subcommittee has scheduled.

In response to your request for information concerning the number of persons who registered and the number of persons who voted in the Presidential election in 1968, by county or election district, I am enclosing the official Statement of Vote compiled by Frank M. Jordan, Secretary of State. You will note on Page 4 there is a list of our 58 counties and the number of persons registered as of November 5, 1969, on Page 5 of this booklet is the number and percentage of persons who voted. You will note that statewide, 85.75 percent of the persons who registered voted at the Presidential election of November 5, 1968.

We hope this information will be of some assistance to your Subcommittee in its deliberations.

Sincerely,

THOMAS C. LYNCH, *Attorney General.*

OFFICE OF THE GOVERNOR,
Salem, Oregon, January 6, 1970.

Senator SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: Thank you for writing to ask my views on the Voting Rights Act Amendments of 1969. I am happy to enclose the information you requested on the number of Oregonians who registered and voted in the presidential election of 1968. The statistics were compiled and published by our Secretary of State. Please note that on enclosure (1)—Voter Registration by County—the population stated for each county is based on 1968 estimates fur-

nished by the Oregon Center for Population Research and Census, and not the 1960 federal decennial census.

It is my understanding that two bills before the Senate propose changes in the Voting Rights Act of 1965. S. 818 would amend section 4(a) to extend from five to ten years the period required for a state or county to demonstrate that literacy tests or other voter qualification devices have not been used in a discriminatory manner against persons on account of their race. In effect, areas subjected to the "trigger" of the 1965 Act would remain subject to the provisions of that Act until 1975. Though I cannot agree with Representative Ford's assertion that the 1965 Act was "punitive," I would prefer that S. 818 include some provision under which a state or county could be released from the burdens of the 1965 Act through a showing of good-faith compliance with the intent of the 15th Amendment.

I am in accord with some provisions of the Administration proposal as embodied in S. 2507. I heartily endorse its mandate that any citizen may vote in a presidential election in the state of his residence, if he has lived there since September 1 preceding such an election, notwithstanding state residency laws to the contrary. In 1961 Oregon enacted legislation that permits any person, who would be a qualified elector except for the six-month general residency requirement, to vote in a presidential election—even if he moved into Oregon the day before the election. A similar requirement throughout the nation would be consistent with my goal of encouraging exercise of the franchise by as many citizens as possible.

The Administration bill also would suspend literacy tests in all states until 1974. Oregon has a requirement that all voters be able, except for physical disability, to read and write. To the best of my knowledge, within recent decades this requirement has not been used in a discriminatory manner in Oregon. However, I doubt that there would be any serious objection to its suspension by federal law.

The Voting Rights Act of 1965 contained in section 4 a "trigger" which made its provisions applicable to any state or county that (a) had a literacy test and (b) in which fewer than 50 percent of voting age residents of the area were registered to vote on November 1, 1964, or actually voted in the 1964 presidential election. If these conditions were satisfied, then literacy tests or other special voter qualification devices were suspended for that state or county; federal voting examiners were authorized to supervise voter registration in that state or county; and any new laws prescribing voter qualifications enacted for that area had to be approved by the Attorney General or the federal courts. The state or county could reinstate suspended voter qualification tests and terminate the examiner process upon showing to a federal court that there had been no discrimination against persons because of their race during the preceding five years. The Administration's bill, S. 2507, would delete these requirements and provide instead that the Attorney General may attack any discriminatory voting law throughout the United States.

In my judgment, the "extension" of the law to the states not covered by the 1965 Act is illusory; there has been little, if any, evidence of voter qualification laws in the other states having been used in a discriminatory manner based upon race. I certainly have no objection to the State of Oregon's being included within the scope of the Act, but I cannot agree that this change represents a meaningful attempt to enhance voting rights throughout the nation.

As Representative McCullough, ranking minority member of the House Judiciary Committee observed, progress in eliminating racial discrimination in voter registration in Southern states has been made under the impact of the 1965 Voting Rights Act, and did not come about voluntarily. Mr. McCullough pointed out that the administration bill would bar only literacy tests until 1974, not other types of potentially discriminatory voter qualifications that might be devised. The Administration's proposal clearly weakens enforcement of the 15th Amendment. This effect was recognized within the past month by a well-known Southern journalist, James Kilpatrick, who argued in his syndicated column that S. 2507 should be enacted so the South will have a chance to prove it can live up to the 15th Amendment on its own, without outside interference.

In conclusion, I recognize the desirability of permitting any of the states that currently are subject to the 1965 Act to be released from its coverage on a showing of good-faith compliance with the 15th Amendment. I am perfectly

willing to have the Voting Rights Act of 1965 extended to the State of Oregon and other states outside the South: but since there has been no widespread pattern of racial discrimination in voter registration in states outside the South I question whether the extension really amounts to anything.

Primarily, I am concerned that the automatic "trigger" provisions of the 1965 Act would be eliminated, and discretion would be vested in the Attorney General as to the enforcement of the amended Act. I fear that some states and counties might be tempted to reimpose racially discriminatory practices in hopes that, for one reason or another, the Attorney General would not take corrective action. Continuing the "trigger" approach of the 1965 Act, in some updated form, would relieve the Attorney General of the fearful responsibility of making an administrative determination as to whether a locality is denying to some of its residents the full spectrum of rights to which they are entitled as citizens of the United States.

Sincerely,

TOM MCCALL, *Governor.*

OFFICE OF THE ATTORNEY GENERAL.
Phoenix, Ariz., January 12, 1970.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: Your letter of December 22, 1969 is gratefully acknowledged. This is a matter in which I would be guided by the views of our two Senators, Senator Paul Fannin and Senator Barry Goldwater. Our state has a unique problem by virtue of a large Indian population. Many of the older Indians were never privileged to attend a formal school, and for this reason there is a fairly high illiteracy rate among them. This is slowly but surely being alleviated.

As a general principle, I think that any federal law should apply in all this nation. That is the theory on which our Supreme Court has based so many of its recent decisions. Enclosed are the figures from the Secretary of State's office duly verified showing the registration figures of the various counties and election districts in the State of Arizona, as well as the number who voted in the Presidential Election of 1968.

Thank you very much for the opportunity to speak on this subject. I have always followed with great interest your comments on all legal questions pending in the Congress, as you have a great grasp of the legal subtleties involved.

Sincerely,

GARY K. NELSON,
The Attorney General.

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT,
Boston, January 20, 1970.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: I appreciate very much your thoughtful invitation for me to testify before your Committee on the proposed amendments to the Voting Rights Act of 1965. Unfortunately, my schedule for the dates on which you are holding these hearings is already completed.

I would hope that the Bill finally presented to the Senate would contain a provision which would permit those people who have been disenfranchised in the Presidential election because of a change in residence would be permitted to vote either by absentee ballot from their former address or at their new places of residence.

I am enclosing a copy of the Election Statistics for the Commonwealth of Massachusetts in 1968 which lists on Page 41 the numbers of registered voters by county. The total vote cast is listed on Page 411 in the lower right hand corner.

I hope this information will be helpful.

Best wishes.

Sincerely,

FRANCIS W. SARGENT.

STATE OF MISSISSIPPI,
EXECUTIVE DEPARTMENT,
Jackson, January 26, 1970.

HON. SAM J. ERVIN, JR.,
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: Neither the Voting Rights Act of 1965 nor the five-year extension of the present law meets with my approval. The entire concept is contrary to good government.

I do not have available the number of persons registered, but I have attached the results of the persons voting in the Presidential election of 1968 by county.

I appreciate your invitation to testify at the hearings of the Subcommittee, but it will be impossible for me to do so. I do believe that any act of this nature should be applied uniformly throughout the United States, and not to assume the appearance of vindictive legislation.

With all good wishes, I am
Sincerely yours,

JOHN BELL WILLIAMS,
Governor.

STATE OF DELAWARE,
STATE DEPARTMENT OF JUSTICE,
February 16, 1970.

HON. SAM J. ERVIN, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: Enclosed please find comments which were rendered by attorneys for the Commissioner of Elections in response to your letter of December 22, 1969.

Very truly yours,

DAVID P. BUCKSON,
Attorney General.

DOVER, DEL., *February 3, 1970.*

Re comments on the letter from Senator Ervin.

HON. BURTON WILLIS,
Commissioner of Elections,
State House, Dover, Del.

DEAR MR. WILLIS: On 22 December 1969, United States Senator Samuel J. Ervin, Jr., Chairman of the Subcommittee on Constitutional Rights, wrote to Attorney General Buckson requesting his thoughts on proposed legislation relative to the Voting Rights Act of 1965, and requesting certain statistical information. Attorney General Buckson forwarded this letter to you under date of 9 January 1970 with the request that Max Terry, Jr. and I review it and give our thoughts. This is our reply.

The voting Rights Act of 1965, 79 Stat. 438, 42 U.S.C. § 1970 et seq. is up for consideration in the Congress. There are two proposals pending before the Senate. Senate Bill 818 would simply extend the application of the VRA65 for another five years, to 1975; it originally having been limited to a period of five years applicability, to 1970. Senate Bill 2507, the "Administrations Bill", would amend VRA65. Per Senator Ervin: "It would also permit the Attorney General to send Federal election examiners and observers into any state or election district when he determines this is required. Finally, this proposal would prescribe uniform residency requirements in all States for voting in Presidential elections."

At present VRA65 is addressed to the basic proposition that "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote *on account of race or color.*" Its present primary concern is with literacy tests and poll taxes. It now applies only to those States or subdivisions "which (1) the Attorney General determines maintained *on November 1, 1964*, any test or device, *and* with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on *November 1, 1964*, or that less than 50 per centum of such persons voted in the Presidential election of November 1964." On the basis of such dual determination, I understand the Act to personally

apply only to several southern states. By the amendment in S. 2507 it would be made to apply to all States, and would also provide a uniform residence standard to apply as a qualification to vote for President and Vice President.

In its present form, the VRA65 does not apply to Delaware, because though we in fact have certain tests or devices relative to literacy, particularly Article V Section 2, of the Delaware Constitution of 1897, we do not use such tests at all, and certainly we do not now use them "to abridge the right of any citizen of the United States to vote on account of race or color," nor had we so used them for the five years before 1965 and probably not so used them for many many years prior thereto. Furthermore, more than 80 per cent of our population over 21 years of age is registered to vote and we regularly see over 80 per cent of the registered voters voting in any particular general election, and such has been our tradition for a long time. Thus, Delaware is simply not one of those States with which the Congress was concerned when it passed VRA65, and as it does not apply to us today a simple extension would not apply.

However, the provisions of S. 2507 would so amend the VRA65 as to make it apply to all States, and the exemption provisions of the Act as presently written would have been stricken. Thus, the fact as of 1964 that we did not use our literacy tests, and certainly not as a discriminatory device to abridge voting rights on account of race or color, would not exempt us from the provisions of the Act as amended. But the fact that the Act, as amended, would still be designed to prevent discriminatory racial exclusion via the device of literacy tests or poll taxes would leave us with little if anything to fear, for we can categorically state that we do not use the tests for such purpose; indeed, do not use them at all, and we have no poll tax.

The question of uniform residency standards as same would be inserted by S. 2507, Section 4(b) is slightly at variance with our present standards as they appear in Article V, Sections 2A and 2B of our Constitution and Title 15, Chapter 44 of our Election Laws. VRA65 as amended by S. 2507 would require us to allow transferees to Delaware to vote for Presidential Electors if they were here in residence as of 1 September prior to the General Election, and otherwise qualified to vote, and it requires that we allow those who terminated their Delaware residence after 31 August to vote here for Presidential Electors if they are not otherwise entitled to vote in the State to which they have removed themselves, and are otherwise qualified to vote.

The basic difference between this proposed Federal requirement and our current law is two-fold. First the Federal provision sets 1 September as the cut-off date whereas our law, 15 Del. C. §1101 sets "at least 3 months" as the cut-off date for new residents transferred from other States. This variance is of little moment and our statute can be readily amended to conform with the 1 September date of the Federal proposal. Secondly, we have no provision to let our former citizens vote here after a post 31 August transfer to another State. Such a provision can be readily incorporated.

It would not seem that the Federal proposals are in any great conflict with the spirit and intent of our present laws.

Finally, we note two provisions calling for studies to be made which have a bearing upon our laws. VRA65, Section 16, calls for a study by the Attorney General and Secretary of Defense to determine if our laws or practices set up pre-conditions to voting which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote; and Section 17(b) of VRA65 as amended by S.2507 would provide for the National Advisory Commission on Voting Rights to undertake a study of the effects upon voting and voter registration of laws restricting or abridging the right to vote, including making residence, economic status or passage of literacy tests and other tests or devices a prerequisite to voting.

Article V, Section 2, of the Delaware Constitution of 1897 and 15 Del. C. § 1701 provide several prequalifications that may come under examination in such a study, to-wit: (a) our aforenoted literacy test, anyone born after, or who becomes a citizen after, January 1900 shall not be permitted to vote unless he is able to read the Delaware Constitution in English and write his name, provided, however, that he shall be exempted from this test if unable to comply because of physical disability; (b) our military residence test, no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State by being stationed in any garrison, barrack or military or naval place or station within this State; and (c) our economic test, no pauper shall enjoy the right of an elector.

Our literacy test is not being used to discriminate on account of race or color. Furthermore, in 1968, we elicited the opinion of the United States Attorney for the District of Delaware as to the effect of the test in light of Section 4(e) of the VRA65. This opinion was rendered 1 August 1968. We follow it. We do not use the English language prerequisite to discriminate against persons covered by Section 4(e) of VRA65. In effect we have virtually abandoned the literacy test in practice, except perhaps for the requirement of being able to write one's name, and thus we have little to be concerned with on this score.

Our military test merely reinforces the normal residency concepts of the common law, physical presence coupled with an intent to reside there indefinitely. Military personnel are physically present but usually do not intend to reside here indefinitey. Our general practice has been to deny them the right to register if they actually live in the barracks on base. If they live off the military reservation, then we let them register. We let them register if they live in Base Housing at Dover Air Force Base. I do not feel we have to be concerned with this point.

The pauper test is almost never invoked. It is virtually a dead letter. It is a well known fact that our voter lists are replete with the names of citizens who are on welfare and other forms of public assistance. Neither political party seems to have any inclination to strike such names or invoke such a test. The only practical way the issue could be expected to arise would be via the device of a mandamus action instituted by some private citizen of rather extreme political views.

Therefore, for all practical purposes, we feel we comply with the full spirit and intent of the Federal law and proposed amendment under S.2507.

Respectfully Submitted.

JOHN BEHEN MAYBEE.
N. MAXSON TERRY, JR.

THE NAVAJO TRIBE,
Window Rock, Ariz., January 23, 1970.

A statement by Raymond Nakai, Chairman of the Navajo Tribal Council, the Navajo Tribe of Indians, prepared for the hearings of the Senate Committee of the Judiciary, the Subcommittee on Constitutional Rights, on S. 2507, and S. 818.

On behalf of the Navajo Tribe of Indians, and the Navajos living in the Arizona portion of the Navajo Nation, I support and endorse S. 2507.

My reasons for this can be simply explained. The State of Arizona has a literacy test, as a prerequisite to registration as an Arizona voter. This test requires a demonstration before the registrar of your ability to read, and requires that you be able to sign your name.

Arizona's literacy test was litigated under the Voting Rights Act of 1965 in the case of *Apache County* v. *United States*, 256 F. Supp. 903 (1966). After proceedings had been instituted, Arizona restricted its literacy test requirements to registration. The District Court found the evidence insufficient to show systematic discrimination against Navajos *in the application of the literacy test*, noted that discrimination was less likely with the registration test, and upheld the literacy tests. The Voting Rights Act of 1965 did not help the Navajo People in Arizona.

Large portions of the Navajo Nation fall within Arizona's boundaries, and within New Mexico's boundaries. New Mexico has no literacy test, and Navajos in New Mexico have been much more active in exercising their franchise, than Navajos in Arizona. At least 6 Navajos have served in the New Mexico State Legislature in recent years, while only one has served in Arizona.

This difference results from a deep apathy and lack of concern among Navajos in Arizona, and the literacy test is the one major cause of this apathy. Whether the literacy test is, or is not, discriminatorily applied is irrelevant. The test itself is the cause of apathy, because Navajos who could not read English, or sign their names, or who were unsure about their command of English, would not risk the embarrassment of being openly rejected, at the polls or in the registrar's office.

The mere extension of the Voting Rights Act of 1965 will not remedy this situation. The apathy of Navajos in Arizona, affecting their exercise of the franchise in both state and federal elections, will exist until the literacy test requirement is ended, or until education and literacy rates improve. In the meantime, the literacy test will continue to discourage older Navajos from voting.

Because S. 2507 provides for the abolition of literacy tests as a requisite to the exercise of the right to vote, I support it, and on behalf of the Navajo People in

Arizona, I oppose S. 818, because a mere extension of the Voting Rights Act of 1965 would, as we already know from the *Apache County* case, do nothing to remedy the situation.

RAYMOND NAKAI,
Chairman, Navajo Tribal Council.

THE AMERICAN JEWISH COMMITTEE,
Washington, D.C., December 22, 1969.

Senator SAM ERVIN, Jr.,
Senate Judiciary Committee, Washington, D.C.

DEAR SENATOR: I think you will be interested in a statement issued by our President, Mr. Philip Hoffman, on the recent action of the House on the Voting Rights Act of 1965.

As Mr. Hoffman stated, it is our hope that the Senate Judiciary Committee will see the wisdom of a straight extension of this historic legislation. Whatever might be the disagreements among Americans about the nature or pace of civil rights developments, all Americans should be of one mind as to the right of every American to participate in the electoral process. The 1965 Act has proved its effectiveness; it must and should be extended for another five years.

Sincerely yours,

HYMAN BOOKBINDER,
Washington Representative.

NEWS FROM THE AMERICAN JEWISH COMMITTEE

NEW YORK, December 15.—The American Jewish Committee today urged the United States Senate to correct the action of the House of Representatives in what it called "its substantial weakening" of the Voting Rights Act of 1965.

The Committee also urged President Nixon to "agree to a simple extension of the 1965 Act, the most meaningful and successful civil rights law now on the statute books."

In an official statement, AJC President Philip E. Hoffman stated that the Bill enacted by the House last Thursday "would without doubt weaken the present program by, among other things, diverting governmental resources away from the South where the problem of ensuring voting rights is most acute."

Mr. Hoffman pointed out that the 1965 Voting Rights Act "has performed well in registering hundreds of thousands of Americans, most of them black, previously denied the most precious right in a democracy, the right to vote."

He stated further that "at a time when faith in the American political system is under attack from so many quarters, it would be particularly shocking for the Congress to take action that could only add to the alienation and skepticism of those Americans still not enjoying full citizenship."

The full statement follows:

The American Jewish Committee calls upon the Senate of the United States to correct the action of the House of Representatives in its substantial weakening of the Voting Rights Act of 1965. We strongly endorse the original proposal for a five-year extension of the 1965 Voting Rights Act which has performed so well in registering hundreds of thousands of Americans, most of them black, previously denied the most precious right in a democracy, the right to vote.

The Bill enacted by the House, while pretending to extend the law's jurisdiction, would without doubt weaken the present program by, among other things, diverting governmental resources away from the South where the problem of ensuring voting rights is most acute.

At a time when faith in the American political system is under attack from so many quarters, it would be particularly shocking for the Congress to take action that could only add to the alienation and skepticism of those Americans still not enjoying full citizenship. Only last week, the Eisenhower Commission on Violence warned us of the need to give every American the sense of participation in his community.

We urge the Senate to reject the House version of the Voting Rights Act, and the House to reconsider its previous action. We also urge the President to agree to a simple extension of the 1965 Act, the most meaningful and successful civil rights law now on the statute books. The United States dare not retreat at this time.

NATIONAL EDUCATION ASSOCIATION,
February 20, 1970.

HON. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: I write in behalf of the National Education Association and its more than one million members in urging your subcommittee to approve legislation extending all of the provisions of the Voting Rights Act for another five years.

In the four years since its enactment, the Voting Rights Act has proven an effective means of vindicating the right to register and vote free from racial discrimination. In 1957, 1960 and 1964, Congress endeavored—with disappointing results—to secure these rights through legislation authorizing case-by-case litigation. Many years of massive effort in the courts by private citizens and the Attorney General of the United States concluded with black registration in the Deep South at a level of less than half that of whites.

In the short period of four years since enactment of the Voting Rights Act, black voter registration in the covered states has doubled. Because of the Voting Rights Act, for the first time in almost a century black citizens in these areas have been enabled to exercise their rights to vote freely and without fear, to have their votes fairly counted, to serve as registration and election officials, and to run for federal, state and local office.

Despite the gains achieved under the Voting Rights Act, its objectives are far from fully achieved. The voting registration of black citizens in the seven covered states is still below, and in most areas substantially below, that of white citizens. Even today, in many of the counties in these states fewer than 35 percent of the eligible blacks are registered. As the 1968 *Political Participation* report of the U.S. Commission on Civil Rights shows, in some localities officials still seek through unlawful means to restrict the voting of black citizens and to defeat black and black-supported candidates.

To the extent that the gains for black citizens achieved under the Voting Rights Act are lost, or the future consolidation of these gains and their extension throughout the covered states forestalled, there will be serious consequences for the quality of education in the South. At this moment educational issues which NEA and its membership believe to be of the greatest importance to the Southern states and the Nation at large hang in the balance. These issues include the extent to which, in the South, school integration will succeed and public education will survive.

How these issues are resolved depends to a large extent upon the cumulative decisions of elected officials and their appointees in the states and localities covered by the Voting Rights Act. These officials include Governors, members of state legislatures, state and local superintendents of education, and city, town and county authorities, including local school boards.

For example, at the state level the Governor has the power to propose legislation affecting education and to appoint officials who will make critical decisions about the schools. In addition, as history has shown since the decision in *Brown* v. *Board of Education*, a Governor—with his easy access to the mass media—can have enormous influence in molding the opinion of the white community in his state on the emotional issue of school desegregation. This power can be exercised, as it recently has been exercised in South Carolina, in a manner which cools passions and heals divisions, or it can be implemented so as to encourage racial conflict. The Governor's choice will hinge in part on the degree and strength of black representation in the electorate.

Similarly, the state legislature—depending on the degree of its responsiveness to its black population—can restrict or enlarge the funding of public education, or facilitate or discourage the formation of private schools designed to circumvent school desegregation. A state legislature unresponsive to its black citizens also may diminish or abolish the influence of black citizens in the educational process by enacting laws making education officials appointive rather than elected, by diluting the votes of black citizens in the election of school board members, or by imposing new qualifications for school board membership designed to exclude blacks.

For example, in *Allen* v. *State Board of Elections*, 393 U.S. 550 (1969), the Supreme Court considered challenges to several Mississippi laws. One authorized

boards of supervisors to adopt an order providing that school board members be elected at large, thus permitting nullification of the ability of voters in a racial minority but constituting the majority in one district to elect the candidate of their choice. 393 U.S. at 823, 833–834. Another required that in eleven specified counties, the county superintendent of education was to be appointed by the board of education—superseding the previous option which these countries had to elect or appoint the superintendent. 393 U.S. at 824. Most of these counties had majority black or substantial black populations (see *Political Participation*, p. 22).

Similarly, a 1966 Mississippi law barred from county boards of education in two counties anyone not a resident freeholder and the owner of real estate valued at $5,000 or more. More than 55 percent of the white, but less than 10 percent of the non-white homes in the two counties were owner-occupied. *Id.* at 46.

As these legislative efforts reflect, vital decisions in the field of education are made at the local level, where it is equally if not more important for black citizens to have a full voice in choosing their elected officials.

School boards, for example, make determinations which affect the level at which the public schools are funded. They decide whether to contribute public school property—such as school plants, buses, furniture, and textbooks—to "private" schools, and whether black educators with long experience will be dismissed or downgraded when the schools are integrated.

The quality and fairness of these decisions—as well as the decisions of other state and local officials with authority to affect the educational process—are importantly influenced by the extent to which black citizens are registered and voting. Unfortunate consequences for public education almost certainly will result unless the gains secured by the Voting Rights Act are maintained and extended to those areas in which progress has lagged.

Others have pointed out the consequences of failure to extend the Voting Rights Act and of reimposing upon black citizens the burdens of subterfuge, litigation and delay. NEA urges that your subcommittee and the Senate approve legislation which will preserve the provisions of the Act for another five years.

In extending the Act, NEA believes that Congress—whether or not it elects to expand the scope of the Act—should retain all of its key provisions. This includes Section 5 of the Act, which prevents any change in voting laws or procedures in a covered state unless in a suit by a covered state or county, the District Court for the District of Columbia has held that such a change does not have the purpose and will not have the effect of denying the right to vote on account of race or color, or unless the state or county has elected to submit the change to the U.S. Attorney General and he has approved.

Section 5 is a vital element in the protective structure established by the Voting Rights Act. It insures that, with discrimination in registration and at the polls thwarted, no state can turn, by changes in legislation or administrative practices, to new methods of disenfranchising blacks.

As the Supreme Court noted in *Allen*, Congress enacted Section 5 "not underestimating the ingenuity of those bent on preventing Negroes from voting . . ." 393 U.S. at 823. The pages of American history abound with the development increasingly subtle and sophisticated techniques to prevent blacks from exercising the franchise, to dilute their votes, or to render their ballots meaningless. See S. Rep. No. 162, Part III, 89th Cong., 1st Sess., Apr. 21, 1965, pp. 3–12; *Political Participation*, pp. 1–8.

Unfortunately, the actions of the State of Mississippi which were contested in *Allen*, as well as other actions of covered states and counties before you since the Voting Rights Act, afford ample reason to anticipate that upon the deletion of Section 5, the covered jurisdictions—now aware that new subterfuges to abridge voting rights will be promptly discovered and struck down—would adopt and enforce new devices for discriminating against blacks and preventing them from fully and meaningfully exercising the franchise. The effect would be to shift back to black citizens the very burdens of litigation and delay which the Voting Rights Act was designed to remove.

NEA thus opposes the Administration proposal, passed by the House of Representatives, to the extent that it would delete Section 5 of the Act.

Sincerely,

GEORGE D. FISCHER, *President.*

TABLE F.—PRISON POPULATION IN NORTH CAROLINA

Statewide figures:
1964: 4,888.
1965: 4,968, estimated.
1966: 5,297.
1967: 5,516.
1968: 4,757.
(Figures for all prisons not available.)
Prison population by county, 1968:
Wake County: 1,757 at two prisons.
Buncombe: 236 at one prison.
Halifax: 459 at one prison.
The overwhelming number of prisons in North Carolina have less than 200 inmates.

NOTE.—Figures for 1964 through 1967 are taken from *National Prisoner Statistics*. Figures for 1968 are taken from the Directory of Correctional Institutions. Table prepared by subcommittee staff.

TABLE G.—NUMBER OF MILITARY PERSONNEL AT BASES IN NORTH CAROLINA AS OF JUNE 30, 1968

Cumberland County:	
Fort Bragg	50,844
Pope Air Force Base	4,019
Total	54,863
Onslow County:	
Camp Lejeune	30,431
New River Marine Corps Airfield	3,125
Total	33,556
Wayne County: Seymour Johnson Air Force Base	5,805
Craven County: Cherry Point Marine Corps Air Station	9,301

Information supplied to subcommittee staff by Department of Defense.

TABLE II.—NONRESIDENT COLLEGE STUDENTS ATTENDING NORTH CAROLINA COLLEGES AND UNIVERSITIES (PRIVATE AND PUBLIC)

1964 statewide total:	
Public	9,344
Private	16,595
Total	25,939
1968 statewide total:	
Public	15,748
Private	21,913
Total	37,661
1964 county totals:	
Durham County	6,242
Guilford County	3,300
Forsyth County	2,461
Mecklinburg County	2,235
Orange County	4,928
Wake County	4,218
Pitt	1,292
Scotland	447
Cumberland	200
Cleveland	244
Edgecomb	211
Franklin	227
Gaston	560
Hurtford	546
Wilson	115
Wayne	13
Vance	102
Union	337
Pasquetank	128
Harnett	426
Robison	133

NOTE.—All the above counties are covered by the 1964 Voting Rights Act except Durham, Forsyth, Mecklinburg, Orange and Wake. Table prepared by subcommittee staff.

Source: North Carolina Board of Higher Education.

[Department of Justice, Washington, D.C.]

CONSTITUTIONAL BASIS FOR RESIDENCY PROVISIONS OF THE "VOTING RIGHTS ACT AMENDMENTS OF 1970"

1. Subsection 2(c) of the proposed "Voting Rights Act Amendments of 1970" [1] would effectively eliminate state residency requirements as a basis for denying the right to vote for President and Vice President.[2] Under the proposed legislation, no person otherwise qualified who has resided in a state or political subdivision since September 1 of the election year could be denied, because of failure to comply with a residency or registration requirement, the right to vote in the presidential election in that state or political subdivision. Any person otherwise qualified who changes his residence after September 1 of the election year (and does not meet the residence requirement of the new state or political subdivision) would be permitted to vote for President and Vice President in the state or political subdivision from which he moved.

Subsection 2(c) of the bill also provides that no person otherwise qualified to vote by absentee ballot in any state or political subdivision in a presidential election may be denied the right to vote in such election because of any requirement of registration that does not include a provision for absentee registration.

2. At the time of the November 1968 election, 42 states and the District of Columbia imposed some residence requirement with respect to presidential elections.[3] The minimum length of residence in the state required varied from 30 days to 2 years. According to a recent Bureau of the Census report, for more than 3 million of the persons who were not registered to vote as of the November 1968 election, the primary reason for not being registered was inability to satisfy residence requirements.[4]

Eight states had no residence requirement with regard to voting for President and Vice President. In 21 of the states which had a residence requirement for presidential elections, the time period was 60 days or shorter. Therefore, in those states and in the 8 which had no residence requirement as to presidential elections, any otherwise qualified person who moved to the state (or within the state) by September 1 of the election year would under the terms of existing state law be eligible to vote for President and Vice President. Thus, the proposed federal statute would not affect application of the residence requirement in such states.[5]

In the other 21 states and in the District of Columbia, the period of residence within the state required for presidential elections exceeded 60 days. Under the proposed legislation, such requirements could not be enforced. For example, a state law requiring one year's residence in the state with respect to all elections could not be used to prohibit an otherwise qualified person, who began residence in the state on or before September 1 of the election year, from voting for President and Vice President in that state.

The same would apply to requirements of residence within the county and/or precinct. Almost all of the states which had lengthy state residence requirements as to presidential elections also imposed county or precinct requirements (or both) with respect to such elections. Fourteen of those states had a county or precinct residence requirement which exceeded 60 days. Thus, where 6 months' residence in the county was required, a person who moved from one county to another within the state in June 1968 would have been barred from voting for President and Vice

---

[1] A bill entitled the "Voting Rights Act Amendments of 1970" was introduced during the first session of the 91st Congress. See H.R. 12805 (introduced on July 9, 1969); S. 2507 (introduced on June 30, 1969).

On December 11, 1970, the House of Representatives adopted (as a substitute amendment to H.R. 4249) the provisions of H.R. 12805. Thus, as passed by the House of Representatives, H.R. 4249 is identical in substance to H.R. 12805 as introduced.

[2] The proposed legislation would have no effect upon residency requirements in regard to voting for members of Congress or for state and local offices.

[3] See the U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 405, Estimates of the Population of Voting Age (Oct. 4, 1968), table A-1.

[4] U.S. Bureau of the Census, Current Population Reports, series P-20, No. 192, Voting and Registration in the Election of November 1968 (Dec. 2, 1969), table 16. The above figure does not include military personnel.

[5] Of course, a person who moved from such a state after September 1 of the election year would, under the proposal, be able to vote in the presidential election in that state, assuming he could not satisfy the residence requirement of his new state.

It should be noted that, as of November 1968, seven states permitted former residents to vote for President and Vice President if such persons were not qualified in the state to which they had moved.

President in November 1968.[6] As noted above the proposed statute would bar application of any residence requirement—state, county or precinct—with respect to persons who moved on or before September 1 of the election year.

3. The constitutional basis for the proposed residency provisions is section 5 of the Fourteenth Amendment.[7] It is important to note, at the outset, that the power of Congress under section 5 to enact legislation prohibiting enforcement of a state law is not limited to situations where the state law is unconstitutional. *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966).[8]

The Constitution itself is silent with respect to the power of the states to prescribe qualifications of voters in presidential elections. In contrast to the provisions regarding voter qualifications for elections for members of Congress,[9] the provision regarding selection of the President (Article II, section 1) merely states that: "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors [that is, members of the electoral college] . . ." for the purpose of choosing the President and Vice President.[10] It has long been assumed, though, that the states have authority to prescribe qualifications for voters in presidential elections. See *McPherson* v. *Blacker*, 146 U.S. 1, 35 (1892).[11]

In *Pope* v. *Williams*, 193 U.S. 621, 633 (1904), the Supreme Court sustained a one-year residency requirement as a reasonable classification with respect to voting generally, but the Court expressly reserved the question whether the requirement could validly be applied to presidential elections. In 1965, the Supreme Court summarily affirmed a lower court decision upholding a one-year residency requirement with respect to presidential elections. *Drueding* v. *Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd per curiam*, 380 U.S. 125 (1965).

More recently, the Supreme Court decided *Hall* v. *Beals*, a case involving an attack on Colorado's six-month residency requirement with regard to voting in the presidential election.[12] 396 U.S. 45 (1969) (per curiam). The majority opinion did not discuss the merits of the constitutional challenge, but ruled that, because the 1968 election had been concluded and because, as of the time of the decision, the plaintiffs satisfied the residency requirement, the case had become moot and should be dismissed.[13]

None of the above cases involved federal legislation implementing the Fourteenth Amendment. As mentioned previously, in exercising its power under section 5 of the Fourteenth Amendment, Congress may prohibit restrictions on the franchise even though the restrictions are not prohibited by the terms of the amendment itself. *Katzenbach* v. *Morgan*, *supra*. See also the dissent of Justice Black in *Harper* v. *State Board of Elections*, 383 U.S. 663, 678–680 (1966).

Section 5 is a "positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." *Katzenbach* v. *Morgan*, *supra*, 384 U.S. at 651.

In assessing legislation intended to enforce the equal protection clause, the test applied by the Court is whether the statute is "appropriate legislation" under the *McCulloch* v. *Maryland* standard, that is "whether . . . [the statute] may be

---

[6] Three of the States with lengthy county (or township) requirements permitted persons to vote in their former place of residence within the state if they failed to meet the county requirement in regard to their new residence.

[7] Section 1 of the Fourteenth Amendment provides in part that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Section 5 provides that: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article [*i.e.*, amendment]."

[8] *Katzenbach* v. *Morgan*, *supra*, involved the constitutionality of section 4(e) of the Voting Rights Act of 1965, 42 U.S.C. 1973b(e) (Supp. IV, 1965 68), which provides that persons who have completed the sixth grade in an American-flag school in which the predominant classroom language was other than English shall not be denied the right to vote because of inability to pass a literacy test in English. The primary purpose and effect of this provision was to enfranchise residents of New York who were schooled in Puerto Rico and literate in Spanish but unable to pass New York's English literacy test.

[9] Under Article I, section 2 and the Seventeenth Amendment, the states are empowered to set the qualifications for voters for members of the House of Representatives and the Senate, respectively.

[10] The procedures to be followed in the electoral college are set forth in the Twelfth Amendment.

[11] In *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968), the Court made clear that the authority of the states to legislate with respect to the selection of presidential electors is subject to the provisions of the Fourteenth Amendment (as well as the Fifteenth and Nineteenth Amendments).

[12] Subsequent to the November 1968 election, the Colorado Legislature reduced the residency requirement for presidential elections from six months to two months.

[13] Two justices dissented, asserting that the case was not moot and that the Colorado statute was in violation of the equal protection clause of the Fourteenth Amendment. *Hall* v. *Beals*, *supra*, 396 U.S. at 50, 51.

In *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), a majority of the Supreme Court held to be unconstitutional statutes imposing upon new residents a one-year waiting period for eligibility for welfare benefits. The Court expressed no view as to other types of waiting periods or residency requirements. 394 U.S. at 638, footnote 21.

regarded as an enactment to enforce the Equal Protection Clause, whether it is 'plainly adapted to that end' and whether it is not prohibited by but is consistent with 'the letter and spirit of the constitution.'" *Katzenbach* v. *Morgan*, 384 U.S. at 651. Clearly, the proposed residency provisions are "appropriate legislation" within the meaning of the standard set forth above.

First, the proposal may properly be regarded as an enactment to implement the equal protection clause. It is firmly established that the equal protection clause itself prohibits certain types of restrictions on the franchise. See, *e.g.*, *Kramer* v. *Union School District*, 395 U.S. 621 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Carrington* v. *Rash*, 380 U.S. 89 (1965). The state laws which would be affected by the proposed legislation operate so as to prevent a large class of citizens from voting for President and Vice President. The purpose of the proposal is to secure for that class the equal protection of the laws, that is, in regard to voting in presidential elections, to place such persons upon equal footing with persons who do not change their residence.

Secondly, the proposed residency provisions are "plainly adapted" to the end of enforcing the equal protection clause. The effect of the proposal would be to enable any otherwise qualified citizen to vote for President and Vice President, regardless of the date when he changes his residence. Here, as with regard to the provision at issue in *Katzenbach* v. *Morgan* (see 384 U.S. at 653), it is well within congressional authority to determine that the rights of individuals who are disfranchised by residency requirements warrant federal intrusion upon any state interests served by those requirements.

The Supreme Court has stressed repeatedly the fundamental importance of the right to vote, the right "preservative of other basic civil and political rights." *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964). See also, *e.g.*, *Kramer* v. *Union School District*, *supra*, 395 U.S. at 626. Certainly, this is true with respect to selection of the President and Vice President.[11] *Burroughs* v. *United States*, 290 U.S. 534, 545 (1934); *Williams* v. *Rhodes*, 393 U.S. 23, 31 (1968).

Residency requirements as a prerequisite to voting are commonly justified as necessary to assure familiarity with issues and candidates and to prevent fraud. Congress could properly conclude that no substantial state interest is advanced by residency requirements in presidential elections or at least that narrower means exist to promote such interests. *Cf. Carrington* v. *Rash*, *supra*.

The primary justification for residency requirements, familiarity with candidates and issues, is largely inapplicable to presidential elections because the issues and personalities involved are national. The new resident is as familiar with them as the older resident.

Similarly, there is no merit in the notion that a state may require a lengthy period of residence on the ground that the presidential election may involve certain parochial interests of the state and, therefore, time is required to impress local viewpoints upon voters. *Cf. Carrington* v. *Rash*, *supra*, 380 U.S. at 94, where the Court stated that: " 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." See *Hall* v. *Beals*, *supra*, 396 U.S. at 53 (dissent of Justice Marshall).

A second justification often advanced for residency requirements, prevention of frauds such as double voting, may be a legitimate state concern with respect to presidential elections. However, a lengthy residence requirement is an unnecessarily broad and inefficient means to this end. Criminal sanctions for double voting or administrative safeguards such as requiring surrender of registration certificates from states of former residence may be viewed as equally effective in preventing abuse.

It might also be suggested that residence requirements promote the administration of voter registration procedures, since registration must be closed at some time before elections to allow time for compilation and distribution of lists of voters to the polling places. However, registration deadlines are not, generally speaking, keyed to residence requirements. Most states having lengthy residence requirements allow registration until shortly before the elections. See, *e.g.*, *Hall*

---

[11] Application of the equal protection clause to voting in presidential elections is not affected by the fact that a state might provide for appointment, rather than election, of presidential electors. *Williams* v. *Rhodes*, *supra*. *Kramer* v. *Union School District*, *supra*, 395 U.S. at 628.

v. *Beals, supra,* 396 U.S. at 56 (dissent of Justice Marshall). In any case, the legislative proposal in question takes this administrative problem into account. To be entitled to vote in the presidential election, the new resident must have resided in the state (or political subdivision) for at least two months as of the date of the election (unless the state provides for a shorter period). If he moved more recently, he may have to vote from his former residence. In either event, the election officials have an ample opportunity to devise procedures for establishing his identity and qualifications.[15]

Finally, the proposed legislation is not prohibited by, but is consistent with the Constitution. The purpose of the legislation is to remedy the existing situation under which several million citizens are prevented, merely because they exercised their right to move from one state to another or to move within their state, from voting for President and Vice President. Considering, on the one hand, the importance to the individual citizens of participating in presidential elections and, on the other, the absence of any substantial justification for lengthy residence requirements with regard to such elections, Congress can properly determine that the proposed statute would be an appropriate means of implementing the Fourteenth Amendment.

CHRONOLOGY OF SUBCOMMITTEE ACTION ON BILLS TO AMEND THE VOTING RIGHTS ACT OF 1965

June 19, 1969.—S. 2456 introduced by Senator Hart.
June 24, 1969.—S. 2456 referred to Subcommittee on Constitutional Rights.
June 30, 1969.—S. 2407 introduced by Senator Dirksen on behalf of Administration.
July 1, 1969.—Senator Ervin announces hearings on Voting Rights bills.
July 9, 10, 11, and 30.—Hearings held. Hearings recessed to await action by House.
December 11, 1969.—H.R. 4249, Administration bill, passes House.
December 16, 1969.—H.R. 4249 referred to Judiciary Committee with instructions to report back by March 1.
December 19, 1969.—Senator Ervin announces hearings to be resumed as soon as possible after Senate returns.
January 27, 1970.—Hearings cancelled because of full committee hearings on Carswell nomination.
January 28, 1970.—Hearings cancelled because of full committee hearings on Carswell nomination.
January 29, 1970.—Hearings cancelled because of full committee hearings on Carswell nomination.
February 3, 1970.—Hearings cancelled because of full committee hearings on Carswell nomination.
February 4, 1970.—Hearings cancelled because of Rules Committee hearings on resolutions.
February 5, 1970.—Hearings cancelled because of full committee hearings on Carswell nomination.
February 12, 1970.—Plans for hearings on February 17 cancelled because of announced Judiciary Committee executive meeting on Carswell nomination (later changed to Feb. 16).
February 18, 19, 24, 25, and 26, 1970.—Hearings held.
February 26, 1970.—Subcommittee executive meetings called.
March 1, 1970.—H.R. 4249 to be reported back from Committee as pending business of Senate.

Prepared by subcommittee staff.

---

[15] The states would be required to prepare separate ballots for persons eligible to vote only for presidential electors. However, there is precedent for such separate ballot procedures under the Twenty-fourth Amendment, which outlawed the poll tax as a precondition to voting in federal elections. In any case, the convenience of printing a single ballot is, at best, a "remote administrative benefit" which cannot justify deprivation of the fundamental right to vote. *Carrington* v. *Rash, supra,* 380 U.S. at 96.

The provision for absentee registration may also necessitate alteration of administrative procedures, but that provision is included in order to make fully effective the provisions protecting the voting franchise of persons who change their residence.

[From 28 Federal Supplement]

United States District Court

District of Columbia

GASTON COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NORTH CAROLINA, GASTONIA, NORTH CAROLINA, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Civ. A. No. 2196-66—August 16, 1968

Action by county for declaratory judgment that it had not used literacy test to discriminate against voters on account of race or color during five-year period immediately preceding suspension of the literacy test as prerequisite to registration to vote. The United States District Court for the District of Columbia, sitting as a three-judge court, J. Skelly Wright, Circuit Judge, held that evidence established that denial to Negroes of equal educational opportunity as matter of law through racial segregation caused the literacy test imposed upon Negroes as precondition to voting to have effect of abridging the right of many Negroes to vote on account of race or color.

Application denied.

1. ELECTIONS

State or subdivision thereof which seeks to terminate suspension of its test or device determining eligibility to vote bears burden of proof, but the burden is not an unreasonable one since evidence that such state or subdivision has engaged in use of tests or device for purpose or with effect of denying or abridging right to vote on account of race or color does not preclude reinstatement of the tests or devices if incidents of such use have been few in number and have been promptly and effectively corrected by state or local action, the continuing effect of such incidents have been eliminated and there is no reasonable probability of recurrence in future. Voting Rights Act of 1965, § 4(a-d), 42 U.S.C.A. § 1973b(a-d).

2. DECLARATORY JUDGMENT

In determining whether state or political subdivision has satisfied its burden of proof in action for declaratory judgment that any test or device used by it to determine eligibility of voters had not been used for purposes of racial discrimination during five-year period immediately preceding suspension of such test or device, district court must not only consider affidavits from voting officials which assert that they have not been guilty of racial discrimination but must consider the evidence introduced and the arguments presented by the United States. Voting Rights Act of 1965, § 4, 42 U.S.C.A. § 1973b.

3. DECLARATORY JUDGMENT

Evidence in county's action for declaratory judgment to reinstate literacy test for voter registration established that denial to Negroes of equal educational opportunity as matter of law through racial segregation caused the literacy test imposed upon Negroes as precondition to voting to have effect of abridging the right of many Negroes to vote on account of race or color. Voting Rights Act of 1965, §§ 1 et seq., 4(a), 42 U.S.C.A. §§ 1973 et seq., 1973b(a).

4. ELECTIONS

Denial of equal educational opportunities to Negroes limits the discretion of a state or political subdivision with respect to its voting standards.

5. ELECTIONS

A state or county may not disenfranchise people for an inability to pass a literacy test, when that ability was denied them as a result of discriminatory state action. Voting Rights Act of 1965, §§ 1 et seq., (4)a, 42 U.S.C.A. §§ 1973 et seq., 1973b(a).

—

Grady B. Stott, Gastonia, N.C., and Wesley E. McDonald, Sr., Washington, D.C., for plaintiff.

Asst. Atty. Gen. (at the time the briefs were filed) John Doar and Monica Gallagher and Frank E. Schwelb, Attys., Dept. of Justice, for defendant.

Before WRIGHT and ROBINSON, Circuit Judges, and GASCH, District Judge.

J. SKELLY WRIGHT, Circuit Judge: Gaston County, North Carolina, brought this action pursuant to Section 4(a) of the Voting Rights Act of 1965. 42 U.S.C. §§ 1973 et seq. (Supp. II 1965-66), seeking a declaratory judgment that, during the past five years, no "test or device" within the meaning of the Act has been used in Gaston County for the purpose or with the effect of denying or abridging the right to register to vote or to vote on account of race or color. Although several other counties and one state covered by the Act have instituted similar actions,[1] this is the first case that has proceeded to trial. Since we are thus presented with a case of first impression as to the application of what has been described as the heart of the Act, we think it desirable, if not necessary, to elaborate in some detail upon our findings, which lead us to conclude that Gaston County is not entitled to the relief requested.

The effect of Section 4(a) of the Voting Rights Act[2] is to suspend the use of tests or devices prescribed by state law as a prerequisite to voting or registering to vote in those states or political subdivisions thereof that are included within Section 4(b)'s coverage formula. Under Section 4(c) the Attorney General designates those states or political subdivisions that on November 1, 1964, employed as a prerequisite to voting a "test or device," which includes "any requirement that a person * * * (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. § 1973b(c). Also under Section 4(b) the Director of the Census certifies any state or political subdivision in which the percentage of persons registered to vote, or who did in fact vote, in the presidential election of November 1964 is less than 50 per cent of the persons of voting age residing in the relevant area. Neither the determination by the Attorney General nor that by the Director of the Census is subject to judicial review. When a state or political subdivision is certified by both the Attorney General and the Director of the Census, it is listed in the Federal Register. Suspension of any test or device in that state or political subdivision is then automatic and immediate.

[1] A state or political subdivision with respect to which the appropriate determinations have been made may wish to terminate the suspension of its test or device. Accordingly, the Act provides that it may bring suit for a declaratory

---

[1] See Wake County, North Carolina v. United States, D.D.C., Civil Action No. 1198-65 (January 23, 1967) (plaintiff's motion for summary judgment granted with consent of Government); Elmore County, Idaho v. United States, D.D.C., Civil Action No. 320-66 (September 22, 1966) (plaintiff's motion for summary judgment granted with consent of Government); State of Alaska v. United States, D.D.C., Civil Action No. 101-66 (August 17, 1966) (plaintiff's motion for summary judgment granted with consent of Government); Apache County v. United States, D.D.C., 256 F.Supp. 903 (1966) (plaintiff's motion for summary judgment granted with consent of Government and motion by Navajo Tribe of Indians and 31 members of Navajo Tribal Council to intervene denied).

[2] Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b, provides in pertinent part as follows:

"(a) Action by state or political subdivision for declaratory judgment of no denial or abridgement * * *.

"To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color * * *.

* * * * * * * *

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

"(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register.

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

"A determination or certification of the Attorney General or of the Director of the Census under this section * * * shall be effective upon publication in the Federal Register."

judgment against the United States in this court,[3] which is directed to be convened as a three-judge court. The requested relief will be granted, thereby permitting the state or subdivision to reinstate its test or device, if the court determines that no such "test or device" has been used anywhere in the territory of that state or subdivision during the five years preceding the filing of the action "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." The state or subdivision bears the burden of proof, but the burden is not an unreasonable one since evidence that a state or political subdivision has engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color does not preclude reinstatement of the tests or devices if "(1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated and (3) there is no reasonable probability of their recurrence in the future" [4] 42 U.S.C. § 1973b(d).

Since the underlying policy and constitutionality of the Voting Rights Act of 1965 in general and Section 4 in particular have been sufficiently explored elsewhere,[5] a detailed account of the Act's legislative history need not be recited here. Suffice it to say that Congress conducted exhaustive hearings which established quite clearly that the evils Congress tried to eliminate by its enactment of the Civil Rights Acts of 1957, 1960 and 1964 continued unabated in 1965, albeit perhaps in different forms. On the basis of these hearings, Congress concluded that the remedies it had previously provided—principally creating causes of action and authorizing standing to sue—were insufficient to rectify the situation and that it was necessary to depart from the use of the judicial process as the primary means of enforcing Fifteenth Amendment rights. Accordingly, Congress made its own findings of fact and from these findings it drew a logical inference—that is, the coexistence of low registration or voting and a test or device implied that the test or device was discriminatory in purpose or effect. Section 4(b)'s provisions defining those areas to be covered by the Act embody this presumption of discrimination.

Suit was filed in the present case on August 18, 1966, and the trail was held on June 21 and 22, 1967. Certain issues were disposed of by a pretrial stipulation of the parties. Thus it is uncontested that Gaston County, North Carolina, is a political subdivision of the State of North Carolina, that it is divided into 43 election precincts, and that in each precinct there is a registrar of voters who is appointed by, and an employee of, the Gaston County Board of Elections, which board is responsible for the administration of the elective processes.[6] Article VI, Section 4, of the Constitution of North Carolina and Section 163-28 of the North Carolina General Statutes provide that "[e]very person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina into the English language"; Section 163-28 further provides that "[i]t shall be the duty of each registrar to administer the provisions of this section." The Attorney General of the United States determined that a test or device within the meaning of Section 4(c) of the Voting Rights Act of 1965 was maintained in Gaston County on November 1, 1964. The Director of the Census determined that fewer than 50 per cent of the persons of voting age residing in Gaston County voted in the presidential election of November 1964. These determinations were published in the Federal Register on March 29, 1966. 31 Fed. Reg. 5080-5081.

It is also agreed that in April 1962 the County Board of Elections, pursuant to North Carolina law, adopted a new system of voter registration, known as a

---

[3] The Act, however, provides that this court shall not issue a declaratory judgment favorable to a state or subdivision thereof "for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after enactment of this [Act], determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such [state or subdivision thereof]." 42 U.S.C. § 1973b(a).

[4] In the event this court renders a judgment favorable to the state or subdivision, it nevertheless retains jurisdiction of the action for a period of five years and must reopen the case upon a motion by the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973b(a).

[5] State of South Carolina v. Katzenbach, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). See also Bickel, The Voting Rights Cases, 1966 Sup. Ct. Rev. 79; Christopher, The Constitutionality of the Voting Rights Act of 1965, 18 Stan. L. Rev. 1 (1965).

[6] Registration is conducted both on the precinct level by the registrar serving in each precinct and countywide at the principal office of the Board of Elections located in the city of Gastonia.

permanent loose-leaf system, which required a general reregistration of all voters in Gaston County. Consequently, all persons now eligible to vote have been registered during or since April 1962, so that although the relevant period for purposes of this suit would ordinarily be five years preceding the filing of the action, or from August 18, 1961, we need only concern ourselves with registration activities since April 1962. Finally, the parties have agreed that from April 1962 to the effective date of the Civil Rights Act of 1964 oral literacy tests were used by the registrars, that such tests were replaced by written tests after that date, and that since March 29, 1966, the date on which Gaston County was listed in Federal Register, literacy tests have not been used in Gaston County.

During the course of the trial, Gaston County presented six witnesses and the depositions of 13 additional witnesses, and introduced into evidence numerous exhibits. The thrust of the accumulated evidence was to show the impartial implementation of the new registration system. Thus there is credible evidence to establish that in April 1962 the number of voting precincts was increased for the convenience of the voters from 35 to 43; that the registration books have been kept open at the principal office of the County Board of Elections from 8:30 A.M. to 5:00 P.M., Monday through Friday [7]; and that registrars have been authorized—indeed encouraged [8]—to be available to register any qualified person at any reasonable hour each day of the week and, in addition, to be at the precinct voting place on designated Saturdays throughout the registration period.[9]

Additional evidence establishes that the adoption of the new system received considerable publicity through the mass media. Newspaper advertisements, radio announcements and placards explained the mechanics of the new system, the need for registration and the names and addresses of registrars for all of the precincts. These efforts, which were utilized with some success in the April 1962 registration campaign, were repeated in 1964 prior to the general election and were in fact enlarged to include letters distributed to the schoolchildren urging their parents to register to vote.

Plaintiff's evidence also established that these publicity efforts were fairly directed to all persons residing in the county, regardless of race or color, and that special conferences were held with Negro leaders for the specific purpose of obtaining their assistance in informing Negro citizens of where and when to register. Indeed, three of the five commissioners (or so-called deputy registrars) appointed during the April 1962 registration campaign to assist in registration were Negroes. Moreover, there is no evidence that any registrar or member of the Board of Elections advised any Negro that he would be refused registration because of his race. It also appears that the Board of Elections did not receive any complaints from any Negro citizen that he had been denied his right to register because of a test or device.

In its post-trial brief, plaintiff contends that, given the above, it has satisfied its burden of proof and is therefore entitled to a declaratory judgment that no test or device has been used for a period of five years preceding the filing of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. Indeed, as plaintiff correctly points out, the Supreme Court, in interpreting the burden placed upon a plaintiff in a Section 4 case, has commented that the state or political subdivision "need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years * * *." State of South Carolina v. Katzenbach, 383 U.S. 301, 332, 86 S.Ct. 803, 820, 15 L.Ed.2d 769 (1966).

[2] But the Supreme Court does not stop there and neither can we. The statement quoted above continues: "and then refute whatever evidence to the contrary may be adduced by the Federal Government." Ibid. Accordingly, we must consider the evidence introduced and the arguments presented by the United States, bearing in mind the critical words of Section 4: "no such test or device has been used * * * for the purpose *or* with the effect of denying or abridging the right to vote on account of race or color." (Emphasis added.)

The United States attempted to establish that the literacy test in Gaston County was used both "for the purpose" *and* "with the effect" of denying or

---

[7] Such books, however, are required by North Carolina law to be closed for a period of 21 days prior to an election.

[8] Registrars are paid a general fee as established by North Carolina law and, in addition, receive a fee for each person they register.

[9] This requirement that the registrars be at the voting precincts on Saturdays was motivated by concern for the convenience of the voters of Gaston County and is wholly independent of and in addition to the requirements of North Carolina law generally.

abridging the right to register to vote on account of race or color. With respect to the former standard—"for the purpose"—the United States submitted the depositions of 29 illiterate or nearly illiterate whites who testified that they were registered to vote without being required to demonstrate their literacy; indeed, 15 of these people testified that they affirmatively told the registrar that they could not read or write. In addition, the United States submitted a notebook of registration forms which indicates that the 29 persons mentioned above were not the only whites who were permitted to register although they were incapable of satisfying the literacy requirements of North Carolina law.

The United States seemingly admits that this waiver of the literacy requirement which resulted in the registration of a few whites, standing alone, does not necessarily establish that the literacy test was used in Gaston County for the purpose of denying or abridging the right to vote on account of race or color. The United States asserts, however, that this policy of waiver was not made public [10] so that Negroes justifiably believed that they would either be required to demonstrate literacy to the satisfaction of the registrar or be embarrassed by being turned away. To support this argument, the United States reminded this court of the purpose for which the literacy test was first adopted in North Carolina and the manner in which it has been applied since its inception.[11] The United States also introduced evidence showing that during the past five years Negro leaders refrained from encouraging illiterate Negroes to attempt to register and that several Negroes who did attempt to register were rejected because of their inability to read or write.

To rebut the Government's evidence and its inferences, Gaston County relies primarily upon the depositions of ten illiterate or nearly illiterate Negroes who were registered despite their admitted inability to comply with North Carolina's literacy requirement. In addition, Gaston County argues that even if the literacy test was used for the purpose of denying or abridging the right to register to vote on account of race or color, incidents of such use have been few in number so as to fall within the exception clause of Section 4(d). Insofar as we are here concerned with that language of the Act which speaks of purposeful discrimination, we must agree that the Gaston County Board of Elections has made commendable efforts to promote registration of all citizens residing in that county, irrespective of race or color. For the reasons hereinafter stated, however, we find it unnecessary to determine whether purposeful discrimination within the meaning of Section 4(a) has been practiced in Gaston County since April 1962.

IV

Before proceeding to a discussion of the evidence adduced by the United States tending the show that the literacy was used in Gaston County "with the effect" of abridging the right to register to vote on account of race or color, we believe it expedient to consider another argument of the United States based on the same evidence which was relied upon to establish purposeful discrimination. We refer now to the Government's contention that termination of the suspension of the literacy test in Gaston County would run afoul of Section 101(a) of the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(A) (Supp. II 1965-66). That section provides that, in determining whether an individual is qualified under state law to vote in any federal election, no person acting under color of law may apply, any standard different from or more stringent than the standards which have been applied under such law to other individuals within the political subdivision who have been found qualified to vote. The United States argues that, according to this section, Gaston County may not deny registration to any person on the ground of illiteracy, irrespective of whether or not there has been racial discrimination, so long as illiterates remain on the registration rolls.

---

[10] Indeed, although the paid advertisements of the Gaston County Board of Elections did not state that the literacy test was being enforced, there was considerable publicity, in the form of editorials and public interests stories, of the fact that election officials were enforcing the literacy requirements of North Carolina law, perhaps for the first time on a nondiscriminatory basis. Whatever this shows in the context of purposeful discrimination, such publicity does have significant ramifications with respect to the "effect" of such tests. See Note 21 infra.

[11] The adoption of the literacy test was discussed in the Raleigh News and Observer, of January 14, 1900, in a story which carried the headline: "White Supremacy Made Permanent." The article explained that whites registered before 1868 would be exempted from the literacy requirement (grandfather clause), but that the test would be applied with respect to Negroes so as to "eliminate the baneful and ruinous influence of irresponsible negro suffrage."

It is true that the chairman of the Gaston County Board of Elections testified that he believed that if the literacy test were reinstated the registrars would be bound by North Carolina law to enforce the letter and spirit of the state's literacy requirement. Moreover, he testified that he did not envision either a general reregistration of voters or a purging of illiterates so that if illiterates are presently registered, they will remain eligible to vote. Since there is evidence that in the past illiterates have been permitted to register, we could simply find that, unless the registration rolls are purged of all illiterates, Gaston County cannot, under Section 101(a) of the Civil Rights Act of 1964, reinstate its literacy test. However, since on the record before us we find that the literacy test has been used in Gaston County during the five years preceding the filing of this action "with the effect" of abridging the right to register to vote on account of race or color, we shall not rest on a theory which would be rendered irrelevant if the Gaston County Board of Elections were to decide to purge its rolls.

Moreover, during the hearings on the Voting Rights Act of 1965 before the Judiciary Committee of the House of Representatives, the Attorney General of the United States testified that suspending literacy tests was a more desirable approach than requiring a complete reregistration of all voters. He explained his position as follows:

> "To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity available to—the white population.
>
> "Such an impact would produce a real constitutional irony—that years of violation of the 14th amendment right of equal protection through equal education would become the excuse for continuing violation of the 15th amendment right to vote." [12]

We believe that this statement goes to the heart of the problem we face today, particularly if reinstatement of the literacy tests were permitted, and requires us to find that, within the intendment of the Act, [13] the literacy test in Gaston County has been used with the effect of abridging the right to register to vote on account of race or color.

V

[3] The Supreme Court of North Carolina described the state statute requiring a demonstration of literacy as a prerequisite to registering to vote in these words:

> "* * * It demands more than the mere ability to write one's own name and to recognize and read a few simple words. * * * The standard or level of performance is the North Carolina Constitution. To be entitled to register as an elector one must be able to read and write any section thereof. Admittedly, the standard is relatively high, even after more than a half century of free public schools and universal education. * * * " Bazemore v. Bertie County Board of Elections, 254 N.C. 398, 119 S.E.2d 637, 641 (1961).

If the standard is relatively high "even after more than a half century of free public schools," it must be much more difficult to attain for a person who has been denied the full benefits of such "universal education."

During the entire period when the persons presently of voting age were of school age, the schools in Gaston County were segregated; indeed, those schools remained totally segregated until 1965, when token integration was begun.[14] And not only were the schools segregated—thereby bringing into play the holding of Brown v. Board of Education, 347 U.S. 483, 495, 74 S.Ct. 686, 692, 98 L.Ed. 873 (1954), that "[s]eparate educational facilities are inherently unequal"—but it appears that the Negro facilities have in fact been of appreciably inferior quality.

---

[12] Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., p. 16 (1965).

[13] Both the Senate and the House of Representatives, in their reports accompanying the bill which eventually became the Voting Rights Act of 1965, speak to this issue and seemingly adopt the position of the Attorney General. Thus the Senate commented:

"* * * [T]he educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected 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." 131 Senate Reports, 89th Cong., 1st Sess., No. 162, Part 3, p. 16 (1965), U.S. Code Cong. & Admin. News 1965, p. 2554.

The House agreed:

"* * * [E]ven fair administration of the tests, following decades of discrimination * * * would simply freeze the present registration disparity created by past violations of the [Constitution.] * * *" 162 House Reports, 89th Cong., 1st Sess., No. 439, p. 15 (1965), U.S. Code Cong. & Admin. News 1965, p. 2447.

[14] The evidence reveals that in Gastonia when, as a result of desegregation, 300 white students were zoned into a school with 300 Negro students, 297 of the white students were transferred out almost immediately.

The United States introduced evidence which indicates the difference between white and Negro education in Gaston County.[15] The evidence is admittedly fragmentary in nature, but the conclusion is inescapable that proportionately less money has been spent on Negro education than on white. For example, the following chart shows the average annual salary for a white and a Negro school teacher for the years indicated: [16]

Year	White	Negro
1908-09	$225.28	$91.17
1918-19[1]	566.90	113.64
1928-29	1,053.04	508.52
1938-39	933.97	681.07
1948-49	2,331.01	2,324.91

[1] North Carolina teachers were not uniformly certified before 1919 but at that time only 40 percent of the white teachers were unable to qualify for the lowest State certificate whereas almost 80 percent of the Negro teachers failed to meet this minimum standard.

Below are the figures for the same years of the value of school property per pupil:

Year	White	Negro
1908-09	$12.97	$3.90
1918-19	58.84	12.74
1928-29	181.03	66.20
1938-39	165.28	74.71
1948-49	278.39	99.60

The value per classroom was also significantly greater for white than for Negro students: [17]

Year	White	Negro
1928-29	$6,021.24	$2,464.65
1938-39	4,346.58	1,967.21
1948-49	7,765.56	2,618.65

Assembling the same figures in a slightly different fashion, the following chart shows the percentage of the total elementary and secondary school budget for the items indicated which was directed to the Negro school population. The figures in Columns (3) and (4), showing what percentage of the money allocated to *all* teachers and school property was allocated for Negro teachers and property, should be compared with the figure in Column (2) which represents the percentage of those persons enrolled in school who are Negro.

[15] See Defendant's Exhibit No. 2, Excerpts from the Report of the Superintendent of Public Instruction of North Carolina, from which are derived all of the statistics which follow.

[16] Although Gaston County would have us direct our attention to its present efforts to equalize opportunities—for education as well as voting—we cannot close our eyes to the fact that the majority of today's voters or potential voters were schoolchildren in 1948, 1938, 1928 and even 1918 and 1908. More specifically, according to the Bureau of the Census, 73% of the Negroes of voting age in 1956 would have been enrolled in school, if at all, prior to 1948-49 and 35% of the Negroes of voting age would have been of school age prior to 1918-19. See Special Censuses of Selected Counties in North Carolina, 1956 and 1955, p. 8 (Bureau of the Census, Series P-28, No. 1412, May 13, 1956). Since the Negroes' education thus dates back in many instances to 50 or more years ago, we deem it proper and appropriate, in analyzing their present ability to satisfy a literacy requirement, to turn back the clock accordingly. We have not presented the relevant data after the 1918-19 school year, since children entering schools in the 1950's were ineligible on account of age to vote during the five years preceding the filing of this action.

[17] The evidence also shows that in the earlier years Negro schoolhouses tended to be constructed of wood whereas white schoolhouses were built of brick, and that in white schools the pupils had desks rather than the benches provided Negro pupils.

[In percent]

Year	Negro pupils	Salaries for Negro teachers	Value of Negro school property
(1)	(2)	(3)	(4)
1908-09	25.5	10.1	9.3
1918-19	21.7	3.9	5.6
1928-29	16.0	7.6	6.5
1938-39	17.2	14.2	8.6
1948-49	16.1	16.4	6.4

A reasonable man might anticipate that this disparity between the expenditures for white and Negro pupils would manifest itself in statistics on the respective educational levels attained by the two groups. Such a man would not be disappointed. In Gaston County, according to the 1960 report of the Bureau of the Census, U.S. Census of Population: 1960, Vol. I, Characteristics of the Population, Part 35, North Carolina, pp. 35-252 and 35-287 (1963), 3.2 percent of the whites over 25 years of age have had no schooling whereas the corresponding figure for Negroes is 6.5 percent, more than double the white figure. The Census figure for four or less years of education are: 17.4 percent of the whites over 25 and 30.1 percent of the Negroes over 25. Indeed, if we look at these statistics from a slightly different angle and use the presumption of literacy embodied in the Civil Rights Act of 1964, that is, a sixth-grade education, we find that 66.4 percent of the adult white have received "advanced" education whereas only 51.7 percent of the adult Negroes have gone beyond the sixth grade level.

[4] These and similar statistics support the contention of the United States that Negroes of voting age in Gaston County were, as children, denied a public education equal to that provided white children. Indeed, the education provided many Negroes hardly reached the literacy level.[15] Consequently, we must conclude that, in addition to denying Negroes equal educational opportunity as a matter of law through racial segregation, Gaston County has also denied Negroes

[15] One of the six witnesses called by Gaston County was Mr. Thebaud Jeffers, principal of the Negro high school in Gastonia. His testimony was in part as follows:

Q. Mr. Jeffers, do you have an opinion as to whether or not the schools in 1932 had sufficient facilities and were equipped to teach a person to read and write well enough to be able to pass that test or to write any portion of the words of the three sentences that you see there?

A. The Negro schools have been basically concerned—I mean in the early years—with teaching reading, writing and arithmetic.

All of our schools, just about—I think all of them would have been able to teach any Negro child to read and to write so that he could read a newspaper, so that he could read any simple material that didn't have any foreign words or words of foreign extraction in them.

This has always been true and I don't think that this was ever an argument anywhere, except that maybe the facilities were different.

But they have been basically able to teach this and this is what they have done.

Q. Yes. It is your opinion then that this test could be just copied or written as was required prior to the time we were placed under the '65 Voting Rights Act?

Is that your opinion that a person could do that or—

A. Yes, I am certain.

Q. The schools were sufficient so they could do that?

A. Yes, sir.

Q. All right, sir.

Gaston County relies on this testimony as proof that the educational facilities, ablet segregated, were of sufficient quality to enable Negroes to pass the literacy test. We do not agree. Not only is the testimony itself unpersuasive, but Mr. Jeffers came to Gaston County in 1932 and his knowledge therefore dates only from that time. In addition, in this area the cold statistics and the testimony of persons actually enrolled in the schools during the past 50 years speak louder than mere contemporary conclusions from interested witnesses.

that same opportunity as a matter of fact. Moreover, since Gaston County has not refuted any of this evidence, State of South Carolina v. Katzenbach, supra,[19] we must agree with the Government's position that any literacy test imposed upon Negroes as a precondition to voting would have the effect of abridging the right of many Negroes to vote on account of race or color.[20] This conclusion requires that Gaston County's application for a declaratory judgment that it has not used a literacy test during the five years preceding the filing of the action

---

[19] As noted above in text, the language of the Supreme Court is quite explicit: "[A]n area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, *and then refute whatever evidence to the contrary* may be adduced by the Federal Government." State of South Carolina v. Katzenbach, supra Note 5, 383 U.S. at 332, 86 S.Ct. at 820. (Emphasis added.) The placing of the burden in a § 4(a) Voting Rights Act case could not be more emphatic—it lies squarely on the certified subdivision.

The concurring opinion is troubled by the fact that "no evidence has been adduced in this case to show that Negro schools in Gaston County were or were not giving their students the very elementary training necessary to pass the Gaston County literacy test"; [t]here is no proof that had Gaston County schools been integrated, more Negro children would have completed the fourth grade"; "[n]or has it been shown how segregated schools were responsible for the fact that more Negroes than whites in Gaston County attended no school at all." But the Government is not to be faulted for the failure, if any, of such evidence. Rather it is for Gaston County to prove that the segregated Negro schools *were* giving their students the very elementary training necessary to pass the literacy test; that more Negro children would *not* have completed the fourth grade if the schools had been integrated; or that segregated schools were *not* responsible for the fact that more Negroes than whites attended no school at all. The concurring opinion suggests that "[a] more logical inference from this data might be that economic necessity, not segregated schools, compelled the Negro child to participate in an income producing activity for his family at an earlier age, at the expense of formal education," but it is for Gaston County to suggest and support such inferences, not for this court. Gaston County would, of course, also have to show that the economic necessity was not itself the result of segregated education of the Negro parents.

Finally, the concurring opinion "agree[s] that a showing of a discrepancy in formal education between the races may in some circumstances indicate a potential discriminatory effect in the use of a literacy test." Although it taxes the United States with not going further and demonstrating that these "potential" effects are "actual" effects, we believe that the Government has satisfied its burden and that Gaston County has failed to prove that these "potential" effects are *not* "actual" effects.

[20] One of the Negro leaders testified that she had handpicked the persons they encouraged to attempt to register:

Q. Which people did you pick to take up there to register?
A. People that I thought could read.
Q. Why did you just pick those?

* * * * * * *

A. Well, during that time you had to read the Constitution of the United States, so it was very embarrassing to have someone up there that couldn't read the Constitution and I knew that they would be turned down * * *.

We noted earlier that the fact that the literacy test was to be enforced received considerable publicity in the months that followed the April 1962 re-registration campaign. See note 10 supra. Consequently, we have such testimony as follows:

Q. Did you learn how to read and write?
A. A little bit; not much.
Q. Did you ever register to vote in Gaston County?
A. No, I never did.
Q. Did you ever try to register to vote?
A. I didn't try.
Q. Why was that?

* * * * * * *

A. After somebody told me I had to be educated. I knowed I couldn't read or write and that's why I didn't register.

[20] We find no dearth of authority for the proposition that denial of equal educational opportunities to Negroes limits the discretion of a state or political subdivision with respect to its voting standards. See the dissenting opinion of Judge Brown, generally approved by the Supreme Court, in United States v. State of Mississippi, S.D.Miss., 229 F.Supp. 925, 930-933 (1964) (three-judge court), reversed, 380 U.S. 128, 85 S.Ct. 808, 13 L.Ed.2d 717 (1965). See also United States v. State of Texas, W.D.Tex., 252 F.Supp. 234, 241, 245 (three-judge court), affirmed per curiam, 384 U.S. 155, 86 S.Ct. 1383, 16 L.Ed.2d 434 (1966). It is significant that in both of these pre-Voting Rights Act cases the Government had to bear the burden of proof, whereas in the instant case the burden rests with Gaston County. When one reads the opinions in these cases with this fact in mind, the conclusion is inescapable that there is ample authority for the approach utilized here. Finally, we find that there is nothing to preclude the result we have reached in Lassiter v. Northampton County Board of Elections, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072 (1959), which upheld the constitutionality of the very literacy test in question here. In *Lassiter* Mr. Justice Douglas, speaking for the Court stated:

"Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. *No such influence is charged here.* * * *" 360 U.S. at 53, 79 S.Ct. at 991. (Emphasis added.)

with the effect of abridging the right to register to vote on account of race or color must be denied.[21]

[5] Justice as well as law dictate this result. It would be incongruous to allow a state or county to disenfranchise people for an inability to pass a literacy test, when that ability was denied them as a result of discriminatory state action.[22] Given the congressional purpose of the Voting Rights Act of 1965, we do not believe it is within our power so to reward years of unconstitutional state action against its Negro citizens. Accordingly, the application of Gaston County for a declaratory judgment is

Denied.

Gasch, District Judge (concurring in the result).

Gaston County is a political subdivision of North Carolina, located in the Southern part of the State. The county seat of Gaston County is the City of Gastonia. As of January 24, 1966, approximately one-third of the County's population—45,429 out of 135,775 persons—lived in Gastonia. The remaining two thirds lived in small towns and rural areas within the county.

A 1966 Special Census showed that 69,252 white persons and 8,407 Negroes of voting age lived within the County. Of these, 63.3 percent of the white persons (43,874) and 52.2 percent of the Negroes (4,388) were registered to vote in November 1964. In the general election of November 1964, only 37,326 people of those registered actually voted, a figure comprising more than 50 percent of the registered voters, but less than 50 percent of the voting age population. Of the registered Negroes, 68.95 percent (3,114) actually voted; of the registered white persons, 80.97 percent actually voted. Therefore, despite the fact that more than 50 percent of Gaston County's voting age population was registered to vote, Gaston County was certified under the Voting Rights Act of 1965. As a result of this certification, all literacy tests in the County were suspended. On August 18, 1966, Gaston County filed this suit in the United States District Court for the District of Columbia.

The majority opinion suggests that the evidence is inconclusive to prove that Gaston County deliberately and purposefully used its literacy test to deny to Negroes their rights to register and vote. I agree. Gaston County's registration practices do not present the kind of clear repressive discrimination against Negroes in the exercise of their franchise that the Act was designed to correct. There is no evidence in Gaston County of large pockets of qualified Negroes who have been discriminated against in their attempts to register and vote. Indeed, there is no evidence of *any* Negro who has been denied registration because of his race. Nor is there evidence of a large discrepancy between percentages of Negroes and whites who were registered to vote. Approximately fifty-two percent of voting age Negroes and sixty-three percent of voting age whites were registered to vote in 1964. There is evidence that some illiterate whites were allowed to register in the County. There is also evidence that some illiterate Negroes were registered. No general pattern or practice was shown.[1] On this record, it would be impossible to find that Gaston County used its literacy test for the purpose of discriminating against Negroes.

I do not concur that there is evidence to sustain the finding of the majority that the test was used with a discriminatory effect.[2] However, I concur in the result the majority reaches because, in my judgment, Gaston County has failed to meet a necessary element of its proof.

---

[21] Plaintiff argues that to deny its application for declaratory judgment solely because the schools in its jurisdiction have been segregated is to attempt to do judicially what Congress chose not to do legislatively. This argument is premised on the following propositions: (1) Congress knew that the educational facilities of the South have been and in many instances remain segregated; (2) Congress would not have provided in § 4(a) that a state or subdivision could terminate the automatic suspension of its test in less than five years unless Congress believed that a state or subdivision would in fact be able to establish to this court's satisfaction that it had not used its test for the purpose or with the effect of denying or abridging the right to vote on account of race or color. There is nothing in the language of the Act or its legislative history to support this argument.

For obvious constitutional reasons, the triggering mechanism of § 4(a) applies equally to all states and subdivisions and to all races. Thus Apache County, Arizona, Elmore County, Idaho, and the State of Alaska were covered by § 4(b), brought suit under § 4(a) to reinstate their tests, and obtained the judgments they sought. See Note 1 supra. Moreover, we do not rely solely on the fact that the schools in Gaston County have been segregated during the period when persons presently of voting age were of school age, but instead have reviewed the evidence adduced by the Government *in this case* and concluded that the Negro schools were of inferior quality in fact as well as in law. Our decision is thus not an "all encompassing rule" which binds every political unit presently certified under the Act despite "the merits of any case [it] might present." Concurring opinion p. 695.

[1] The evidence offered was that 29 illiterate white persons and 11 illiterate Negroes were registered. Eighty-nine percent of those living in the county of voting age were white.

[2] See Part II, infra.

As the majority has pointed out, the Voting Rights Act added a new dimension to voting rights enforcement by presuming discrimination where a literacy test was used and where 50 percent of the voting age population was not registered or did not vote in 1964. In these circumstances, the state or political subdivision was required to rebut this presumption in order to reinstate literacy tests within its borders. The Government was thereby relieved of proving endless individual cases of discrimination in the slow and expensive avenues of court review.

Both the language and the legislative history of the Voting Rights Act of 1965 make it clear that the burden of proof placed on the plaintiff state or political subdivision by the Act involves a showing of nondiscrimination not only in county, state, and national elections, but also in township and municipal elections, and in every other election within the state or political subdivision. Section 4(a) of the Voting Rights Act provides in pertinent part that "no citizen shall be denied the right to vote in any Federal, State, or *local* election because of his failure to comply with any test or device * * * [which has been suspended because of a certification under the Act]." (Emphasis added). The section further states that a county is not eligible for declaratory relief if any court has found within the past five years voter discrimination "anywhere in the territory of such plaintiff." A fair interpretation of the statutory requirement is that all elections, including local elections, must be free of voter discrimination for five years before a literacy test can be reinstated.

In his testimony before the House Judiciary Committee on the Voting Rights bill, former Attorney General Katzenbach emphasized that the bill would apply to every election in the state:

"THE CHAIRMAN. This bill covers Federal, State, and municipal elections. Would it cover an election for a school bond?

"MR. KATZENBACH. Yes; it would, Mr. Chairman. Every election in which registered electors are permitted to vote would be covered by this bill."[3]

The Attorney General further stated that each certified subsection or state is to be treated as a unit. No subdivision or part of an area that has been certified can come out alone; each certified unit must petition this Court for relief as a whole.[4] Thus, for Gaston County successfully to resist the continued suspension of its literacy test it must show that all elections within the County have been untainted by discrimination. A state would be responsible for all elections at every level within the state if it were petitioner; a county, when certified, faces the burden of showing an absence of discrimination in all of the elections within its territorial limits, including municipal elections.

The record contains no proof concerning municipal election practices within Gaston County. Yet the record does indicate that eleven municipalities in Gaston County hold separate municipal elections. These municipalities conduct their own voter registrations with their own municipal registrars, and apply their own literacy tests and other voting qualifications.

Moreover, such proof was not forth-coming from the present plaintiffs. Two successive Chairmen of the Gaston County Board of Elections testified that the County Board of Elections exercised no control over municipal elections within the County. Mr. William Mack Davis (Chairman from 1960 to 1694) testified that while the Gaston County Board of Elections exercised control over all Federal, State, County, and Township elections, it had no control over any municipal elections in the County.[5] Mr Linwood Hollowell, Jr., (Chairman since 1964) confirmed Mr. Davis' testimony:

"Q: Now, Mr. Hollowell, when this suit was brought on behalf of Gaston County I think it has been testified that you have no direct connection with the city registration in the different municipalities in this county.

"A: We have no jurisdiction concerning registration or voting in any municipality in our county.

* * * * * * *

"Q: You don't know whether they comply with the Voting Rights Act, do you?

"A: To the best—I don't know. I just don't know. I just have to be honest with you, I have not checked."[6]

---

[3] Hearings on H.R. 6400, Before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., ser. No. 2 (1965), 21.

[4] Id., at 99.

[5] Transcript, p. 61.

[6] Transcript, pp. 142-44.

Certification of Gaston County under the Voting Rights Act suspended the literacy test for all elections within the County. A judgment for the County in this action would reinstate the literacy test for municipal registrars as well as all others in the County. The County has made no showing that a literacy test has not been used by municipal registrars in Gaston County in a discriminatory fashion. This failure of proof marks a fatal defect in its case. For this reason, I would deny declaratory relief under the Act and accordingly, I concur in the decision of the majority.

II.

The majority denies declaratory relief to Gaston County on the ground that inferior educational opportunities offered to Negroes in Gaston County's segregated schools places them at a material disadvantage to white persons in passing the Gaston County literacy test; therefore, the test has had a discriminatory effect against Negroes in registering and voting. While I accept the majority's assumption that the quality of education received by Negroes in Gaston County in segregated Negro schools was inferior to that received by white persons in white schools, I am not convinced that, *in the context of Gaston County's literacy test*, this evidence justifies an affirmative finding of a discriminatory effect.

The Gaston County literacy test, as amended in accordance with the Civil Rights Act of 1964, consisted of copying one of three sentences in a space provided under the sentence itself. (The test was orally administered before 1964.) The applicant had his choice as to which of the three sentences he wished to copy. To pass the test, he was not required to spell each word correctly or even to write every word in the sentence, as long as he could print or write a reasonable facsimile of the sentence. He was not asked to interpret or explain the sentence to the registrar. And applicants were given as much time as they needed to complete the test. In some instances, this amounted to an hour or more. There is nothing to indicate that the pre-1964 oral test was administered with any more rigidity.

Given the very low level of competency required by the test, it is not at all clear that even the Negro schools in Gaston County did not provide adequate and sufficient training for Negroes to pass the test. It may well be that even though the Negro student received an inferior education, he was at least equipped to pass this simple test.

The point may be made by analogy. Assume two medical students of equal ability attended two different medical schools, one of which is significantly inferior to the other. As a result, one of the students received a much lower quality education than the other. Because of his inferior educational background, the one who graduated from the second-rate school would probably be at a disadvantage if the two were tested on their respective abilities to diagnose rare diseases, or perform a difficult operation. If the test consisted merely of taking a pulse, or reading a thermometer, however, both might do equally well, despite the disparity in educational background. The latter tests are of such an elementary character that both schools would have provided sufficient training to enable their students to pass them.

Similarly, where schools are segregated, it may reasonably be assumed that at any given grade level, Negro students will be less prepared academically than their white counterparts. If Negro and white students are then asked to demonstrate an ability in creative writing, interpretation of language, or higher mathematics, the Negro, who attended inferior schools, would be at a material disadvantage. Where the test consists merely of reading or copying a printed sentence, however, the quality of education each received is less significant in terms of the ability of each to pass it. Both might be prepared to score equally well on the simple test, even though, at the higher levels of achievement, the white student, by reason of his superior education, would be expected to do better.

The point to be made is that no evidence has been adduced in this case to show that Negro schools in Gaston County were or were not giving their students the very elementary training necessary to pass the Gaston County literacy test. Given the low level of achievement called for by the Gaston County test, I think such proof is essential to support the affirmative conclusion which the majority has reached, that the segregated education did in fact have a material impact on the respective abilities of Negroes and whites to pass the test.

To support its finding that there was such an impact, the majority has pointed out that the Gaston County public schools were legally segregated until 1965; and that the annual per-pupil expenditure at the Negro schools was consistently much smaller than that appropriated for the white schools. The majority also

cites census data that proportionally fewer Gaston County Negroes than whites over age 25 attained at least a fourth grade education during the period the schools were racially segregated, and that more than twice as many Negroes as whites in Gaston County received no formal education at all. In my opinion, this evidence is insufficient to support the majority's case. There is no proof that had Gaston County schools been integrated, more Negro children would have completed the fourth grade. Nor has it been shown how segregated schools were responsible for the fact that more Negroes than whites in Gaston County attended no school at all. A more logical inference from this data might be that economic necessity, not segregated schools, compelled the Negro child to participate in an income producing activity for his family at an earlier age, at the expense of formal education.

Footnote 20 emphasizes that the burden of proof is upon the petitioner. It quotes from State of South Carolina v. Katzenbach and in pertinent part emphasizes that petitioner "refute whatever evidence to the contrary may be adduced by the Federal Government."

The critical question then arises: What evidence has the Government adduced that demonstrates that an educational test or device, i.e., copying a single sentence, has the effect of denying or abridging the right to vote? Whatever weight may be accorded the respondent's cold statistics is, in my opinion, dispelled by the testimony of the petitioner's expert witness who expressed the unqualified and unchallenged opinion that the Negro schools prior to integration were sufficient to enable the students to pass the type of test required. There it is important to note that the present test is ability to copy a single sentence. We are not concerned with the prior test which is discussed in Bazemore v. Bertie County Board of Elections, 254 N.C. 398, 119 S.E. 2d 637, 641 (1961). Likewise, we are not concerned with conditions in 1900 and attitudes represented therein.[7]

To summarize this point, I agree that a showing of a discrepancy in formal education between the races may in some circumstances indicate a potential discriminatory effect in the use of a literacy test.[8] But it is *actual effects*, not *potential* effects, that are proscribed by the Act. I do not feel that the evidence justifies a finding that educational disparities in Gaston County, when viewed in the light of the literacy test actually administered there, had an *actual* discriminatory effect on voter registration.[9]

Several consent judgments have been entered under the Voting Rights Act. One such judgment involved Wake County, North Carolina.[10] In the *Wake County*

---

[7] See footnote 11 of the majority opinion.

[8] For example, where the test requires the registrant to explain the meaning of a section of the Constitution an inferior education could render the Negro at a real disadvantage, because of the high level of competency necessary to pass it.

[9] The majority opinion, in footnote 22, cites as support for the proposition that denial of equal educational opportunities to Negroes limits the discretion of a state or political subdivision with respect to its voting standards United States v. State of Texas, 252 F. Supp. 234 (W.D. Tex. 1966), affirmed per curiam, 384 U.S. 155, 86 S. Ct. 1383, 16 L. Ed. 2d 434 (1966). In that case, the court was asked to find a discriminatory effect in the use of a poll tax on the ground that Negroes, deprived of an equal educational opportunity, were less able to succeed financially and therefore less able to pay the tax required to vote. As the majority opinion is essentially a holding that Negroes, deprived of an equal education opportunity in Gaston County, were less able to pass the test required to vote, I consider the two cases similar in theory. The court in the *Texas* case declined to find discrimination on the evidence submitted. The holding of that court precisely expresses my concern over the sufficiency of the evidence in the case at bar:

"The evidence clearly shows, and the United States does not dispute, that as [sic] least during the last twenty years there has not been any attempt to use the poll tax overtly to deprive the Negro of his right to vote. Despite unlimited pretrial discovery, no instances of outright discrimination have been shown or alleged. In fact, the United States has relied primarily on evidence of discrimination in public education and the resulting economic disadvantages to establish that the poll tax is more of a burden upon the Negro than upon the white voter. Although we consider the United States' method of proof a legitimate means for reaching such a conclusion, the facts will not support a finding of racial discrimination. The figures most favorable to the United States' position indicate that of the eligible persons between the ages of 21 and 60, 57.3% of the whites and 45.3% of the Negroes pay their poll tax. It is to be noted that both of these figures, although not commendable in terms of the total electorate, are substantial [sic] and that the difference between them is only 12%. If the disparity had been larger, we might have been more inclined to accept the evidence of a historical background of discrimination and the result of the poll tax sales as sufficient to justify a finding that the poll tax discriminates against Negroes. The disparity, however, is not glaring. Indeed, it is relatively small. The evidence points to other possible reasons for this difference." 252 F. Supp. at 245.

The factual parallel between the *Texas* case and the case at bar is highly significant, particularly regarding the absence of proof of outright discrimination and the similar percentages of Negroes and whites who were registered to vote.

[10] Civil Action No. 1198-66 (January 23, 1967).

case, the Attorney General consented to a judgment that no test or device had been used in the past five years with the purpose *or effect* of denying or abridging the right to vote on account of race or color. Wake and Gaston are neighboring counties. The same State literacy test requirement applies to both. The census table on which the majority relies shows that proportionally fewer Negroes than whites in Wake County had fourth grade educations and that many more Negroes than whites had no schooling at all. These considerations lead this Court to strike down a literacy test in Gaston County, but they were not applied to deny Wake County use of its literacy test. Nor was any mention of segregated schools or discrepancies in Negro and white grade level attainment made in Apache County et al. v. United States,[11] State of Alaska v. United States,[12] or Elmore County, Idaho v. United States,[13] the other consent judgments entered under the Voting Rights Act. The majority opinion seems, then, to impose a different and more difficult burden of proof in the case of Gaston County than the Department of Justice or this Court has applied to any other case under the Voting Rights Act.[14]

I am also concerned that the majority's opinion seems to preclude any showing by any Southern state or political subdivision to reinstate its literacy test before the five-year suspension period has expired. Because the decision of the majority in this case is so broad and so far-reaching, it will have the effect of disqualifying any political unit presently certified under the Act from obtaining a declaratory judgment before five years of suspension of its literacy test have elapsed. These units are not denied declaratory relief on the merits of any case they might present; they are now bound by an all encompassing rule, the soundness of which they had no opportunity to contest, which presents a burden of proof that will be impossible for them to meet.

From the President's Message to the Congress proposing the Voting Rights Act,[15] and the hearings [16] and floor debate [17] in the Congress, it is clear that the Voting Rights Act was primarily directed at the Southern states. In the Act, the Congress allowed a fair opportunity for a certified unit to rebut the presumption that its literacy test was used in a discriminatory manner. Thus, sections 4 and 5 of the Act provide a procedure whereby a State or political subdivision which has been the subject of a certification under the Act, may petition this Court for declaratory relief to reinstate its test before the five-year suspension period has elapsed. Sections 4 and 5 will provide no remedy to a Southern state, however, if, as the majority finds, a segregated school system coupled with census data showing higher literacy and education for whites than for Negroes, is sufficient to preclude recovery under the Act. We can take judicial notice that the segregated school system was the prevailing system throughout the South. If this were what Congress had in mind, it would have stated that no test could be used where literacy was higher among whites than among Negroes. I do not believe that Congress intended that the Act be interpreted in such a way as to render §§ 4 and 5 inapplicable to Southern states or those which had segregated educational systems. To the extent the majority opinion reaches this result, it is not, in my judgment, in accord with the intent of Congress.

For the reasons hereinabove stated, I concur in the result, but not the grounds of decision of the majority.

---

[11] 256 F. Supp. 903 (1966).
[12] Civil Action No. 101-66 (August 17, 1966).
[13] Civil Action No. 330-66 (September 22, 1966).
[14] One other case cited by the majority as support for the proposition that denial of equal educational opportunities may affect permissible voting standards is United States v. State of Mississippi, 229 F. Supp. 925 (S.D. Miss. 1964), reversed, 380 U.S. 128, 85 S. Ct. 808, 13 L. Ed. 2d 717 (1965). In that action for injunctive relief, the United States sought to have registered "any Negro applicant who is over age 21, *able to read*, a resident for the period of time prescribed by state law, and not disqualified by state laws disfranchising the insane and certain convicted criminals." (See 380 U.S. at 135, 85 S. Ct. at 812, emphasis supplied). While that case did not involve the statute under consideration here, the relief sought even in those aggravated circumstances should be considered as part of the context of the case.
[15] 111 Cong. Rec. 4924 (daily ed. March 15, 1965).
[16] See generally, Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., ser. 2, (1965); Hearings on S. 1564 Before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., (1965).
[17] See generally, Cong. Rec., 89th Cong., 1st Sess., (April 13-May 26, 1965) (Senate); Cong. Rec., 89th Cong., 1st Sess., (July 6-July 9, 1965) (House).

STATEMENT OF ARCHIBALD COX, WILLISON PROFESSOR OF LAW, HARVARD LAW SCHOOL

As a teacher and student of constitutional law, I have been asked to testify upon the constitutionality of two provisions of proposed voting rights legislation: the elimination of residence requirements as a condition of voting in Presidential elections and the nationwide abolition of literacy tests. I would like also to urge upon the Committee that Congress has power, under the very same constitutional theory to reduce the age for voting from twenty-one to eighteen years of age.

My chief qualification is study of constitutional law. As Solicitor General of the United States I briefed and argued a number of voting rights cases. I participated in drafting the Voting Rights Act of 1965 and defended its constitutionality as special counsel for Massachusetts in *South Carolina* v. *Katzenbach*, 383 U.S. 301.

My testimony will be confined to the constitutional questions. I would like to state, however, that I favor (1) the extension of the Voting Rights Act of 1965 without change; (2) the elimination of durational residency requirements in Presidential elections; (3) the abolition of all literacy tests; and (4) the reduction of the voting age to eighteen years of age, all by act of Congress without awaiting a constitutional amendment.

1. *Congress has constitutional power under Section 5 of the Fourteenth Amendment to abolish State durational residence requirements for voting in Presidential elections.*

Article II, Section 1 of the Constitution allows a State to determine its own method of choosing members of the Electoral College but that authority, like all other State powers, must be exercised in accordance with the Fourteenth Amendment. *Carrington* v. *Rash*, 380 U.S. 89.

Section 1 of the Fourteenth Amendment provides that no State— "shall deny to any person within its jurisdiction the equal protection of the laws."

The Equal Protection Clause is violated by an State action that works an arbitrary and unreasonable discrimination or an invidious classification. It applies to State restrictions affecting the franchise and electoral process, including voting qualifications. *Gary* v. *Sanders*, 372 U.S. 368; *Reynolds* v. *Sims*, 377 U.S. 533; *Harper* v. *Virginia Board of Elections*, 383 U.S. 1244; *Kramer* v. *Union Free School District*, 395 U.S. 621. For example, the Supreme Court has invalidated State laws denying residents in military services the right to vote, *Carrington* v. *Rash*, *supra*, or excluding from school district elections persons who have neither an interest in real property nor children in the schools, *Kramer* v. *Union Free School District*, *supra*.

It is uncertain whether a State law establishing a 6 months or longer residency requirement for voting in a Presidential election is subject to judicial condemnation as a violation of the Equal Protection Clause even in the absence of congressional action. *Drueding* v. *Devlin*, 380 U.S. 125, affirming 234 F. Supp. 721 (D. Md. 1964), upheld a one year residency requirement, but last November 24 Justices Brennan and Marshall stated that that decision was no longer good law. *Hall* v. *Beals*, 38 U.S. Law Week 4006, 4008. Since the majority dismissed the Hall's suit as moot, no other justices spoke to the issue.

The outcome of such an equal protection challenge depends upon balancing the interests of the putative voters against the interests the residency requirement is said to serve. The interests of the voters are two-fold: participation in the most important aspect of democratic self-government and freedom to move to a new home. Both interests are so fundamental that any classification affecting them or discriminating against their exercise must be scrutinized meticulously *Kramer* v. *Union Free School District*, *supra*; *Shapiro* v *Thompson*, 394 U.S. 618, 634. In support of a six months' or one year's residency requirement, some States have invoked a concern for preventing fraudulent claims of residence for administrative convenience, and for familiarity with local interests affected by the outcome of even a national election. In striking the balance the absence of Congressional action, the federal judiciary—ultimately the Supreme Court—must either find the pertinent facts and evaluate their significance for itself or else defer, at least to some extent, to the findings and evaluation of the legislature.

But the situation is different if Congress has legislated on the subject. The critical difference is that Congress has power under Section 5 of the Fourteenth

Amendment to make the investigation, to find the facts, to make its own evaluation of the opposing interests, and to conclude, looking to the actual state of affairs in the country, that the citizen's interest in participation in the election of his President, as well as in freedom of movement, so greatly outweighs any State interest in the residency requirement as to make the requirement an instance of invidious or arbitrary and capricious classification in violation of the Equal Protection Clause. In this sense, Congress has constitutional power to determine what the Equal Protection Clause requires. It is an appropriate legislative function because it involves the finding and evaluation of facts. When Congress acts, the only question for the judiciary is whether it can perceive a basis upon which Congress *might* view the removal of the classification as necessary to secure equal protection of the laws.

The constitutional principle I am seeking to emphasize was established in *Katzenbach* v. *Morgan*, 384 U.S. 641. A New York statute made literacy in English a prerequisite to voting. The discrimination against Spanish-speaking citizens was claimed to be justified because of the State interest in assuring informed and intelligent use of the franchise as well as in encouraging immigrants to learn English. In the absence of a federal statute the Court might well have sustained the New York law, *Cardona* v. *Power*, 384 U.S. 672. Section 4(a) of the Voting Rights Act of 1965, however, provided that no person should be denied the franchise because of inability to read or write English, who had successfully completed the Sixth Grade in a Puerto Rican school where instruction was in Spanish. The Court sustained the congressional abolition of the English language literacy test, saying—

"* * * Congress might well have questioned, in light of the many exemptions provided, and some evidence suggesting that prejudice played a prominent role in the enactment of the requirement, whether these were actually the interests being served. Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise. Finally, Congress might well have concluded that as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs. Since Congress undertook to legislate so as to preclude the enforcement of the state law, and did so in the context of a general appraisal of literacy requirements for voting, see State of *South Carolina* v. *Katzenbach*, *supra*, to which it brought a specially informed legislative competence, it was Congress' prerogative to weigh these competing considerations. Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth-grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause."

The substance of the holding is that Congress may decide, within broad limits, how the general principle of equal protection applies to actual conditions. In other words, as Justice Harlan pointed out in dissent, Congress can invalidate State legislation upon the ground that it denies equal protection where the Court would uphold, or even has upheld, the constitutionality of the same State statute. 384 U.S. at 667-668.

Under the decision, it is for Congress to determine whether a right so precious and fundamental as a casting a vote for President can be denied to new residents without invidious discrimination merely to serve supposed administrative convenience in registering voters and preventing fraudulent votes. Similarly, it is for Congress to weigh the significance of a longer opportunity to learn (or of continued attachment to) peculiar local interests. Personally, in my opinion, the supposed justifications are trivial but that is not for me to decide. From the standpoint of constitutionality it would be enough that Congress had a rational basis for the conclusion that requiring more than bona fide residence is an invidious classification.

Such a rational basis plainly exists. Accordingly, I have not the least doubt that Section 2(c) of H.R. 4249 is constitutional.

2. *Congress has constitutional power under Section 5 of the Fourteenth Amendment to abolish State literacy requirements for voting in State and federal elections.*

---

*The constitutional justification for subdivision (b)(3) parallels the reasoning above.

The same constitutional principles that sustain the power of Congress to abolish State residency requirements for voting in Presidential elections also sustain its power to abolish all literacy tests in all States for all elections. State voting laws are subject to the Equal Protection Clause of the Fourteenth Amendment. Congress has power, within broad limits, to determine the requirements of equal protection in any given situation, if the judgment depends in any way upon appraisal of factual conditions. If Congress finds that denying a vote to citizens who cannot read and write is so little justified as to be invidious, and therefore forbids the enforcement of contrary State laws, the judicial branch will uphold that statute under *Katzenbach* v. *Morgan* unless there is no rational support for the congressional conclusion.

In *Lassiter* v. *Northampton Election Board*, 360 U.S. 45, the Court upheld a North Carolina literacy test where there was no claim that it had been used as an engine of racial discrimination. The issue turned upon whether denying the franchise to those classified as illiterates was justified by the contribution of the test towards ensuring an intelligent exercise of the right of suffrage. North Carolina found the justification sufficient. The Supreme Court, in the absence of federal legislation, concluded that North Carolina had made an allowable choice.

The *Lassiter* case does not stand in the way of congressional abolition of all literacy tests. Just as Congress was held in *Katzenbach* v. *Morgan* to have power upon its own review of the facts to overturn an English-speaking literacy requirement that might have withstood constitutional attack in the absence of Section 4(e) of the Voting Rights Act, so here Congress has power upon its own review of the facts to overturn the literacy test that withstood constitutional attack in *Lassiter* v. *Northampton Board of Elections*. The critical difference in each instance is that the judicial branch will respect the constitutional function of Congress under Section 5 of the Fourteenth Amendment.

Under *Katzenbach* v. *Morgan*, therefore, it is for Congress to appraise whether a literacy test does in fact produce a more intelligent exercise of the franchise. The increasing reliance upon other media of communications, the opportunities to see and hear the candidates, and the experience of twenty-four States which have no literacy tests strongly suggest that the contribution is trivial. It is also for Congress to weigh the seriousness of exclusion from the processes of self-government and the extent to which the exclusion of those denied an education is really based upon a prejudice against the poor—a classification which is plainly unconstitutional in relation to elections. *Harper* v. *Virginia Board of Elections*, 383 U.S. 663; *Kramer* v. *Union Free School District*, 395 U.S. 621. If the Congress, upon review of such facts, finds that literacy tests have so little justification under modern conditions as to work discrimination that is arbitrary and capricious in relation to the franchise, then Congress has ample power to require their elimination, under Section 5 of the Fourteenth Amendment.

I should emphasize that this power nowise depends upon a finding that literacy tests everywhere result in racial discrimination. The theory here is altogether different from the constitutional theory supporting Section 4 of the Voting Rights Act of 1965. Section 4 of the Voting Rights Act of 1965 was framed under Section 2 of the Fifteenth Amendment upon the theory that literacy tests and like devices had so widely been—and were so likely to be—used as engines of racial discrimination in certain States and counties as to warrant prohibiting their use unless and until the contrary was proved in a judicial proceeding. *South Carolina* v. *Katzenbach*, 383 U.S. 301. See also, *United States* v. *Mississippi*, 380 U.S. 128; *Louisiana* v. *United States*, 380 U.S. 148. The total abolition of literacy tests in all States should be based, as I view the matter, not upon any racial abuse but upon the finding that to separate out those who were denied an education in order to exclude them from voting works an invidious classification in violation of the Equal Protection Clause.

Before leaving the point I should add that I do not understand the basis for abolishing requirements of good moral character in places where such tests have not been engines of racial discrimination.

3. *Congress has the constitutional power under Section 5 of the Fourteenth Amendment to reduce the minimum age for voting from twenty-one to eighteen years.*

In my opinion, the constitutional underpinning for abolishing residency requirements and literacy tests is equally applicable to legislation reducing the voting age to eighteen. States in which the voting age is twenty-one put those who are 18, 19 and 20 in a separate class from those who have reached their

twenty-first birthday. Under the Fourteenth Amendment the question is whether the classification is reasonable or arbitrary and capricious. Undoubtedly, the Supreme Court would sustain such a State rule in the absence of federal legislation. Under Section 5 of the Fourteenth Amendment, however, the Congress has the power to make its own determination.

The supposed justification for denying the franchise to those between eighteen and twenty-one is that they lack the maturity and appreciation of their stake in the community necessary for an intelligent and responsible vote. The Congress would wish to consider whether there is a compelling basis for this belief, bearing in mind the spread and improvement of education, the age at which young people take jobs, pay taxes, marry and have children, the tremendous interest of young people in government and public affairs, and their increased knowledge and sophistication as a result of new forms of mass communications. On this point, surely it is not irrelevant that the educational system draws a major line roughly at eighteen years of age, upon graduation from high school. The Congress would also wish to consider that "[a]ny unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government" (*Kramer* v. *Union Free School District*, *supra*). The exclusion is uniquely bitter when one may be summoned to fight and perhaps to die in defense of a policy he had not even a citizen's indirect voice in making.

If Congress upon reviewing these and related facts should find the classification invidious under contemporary conditions, the Court, if it adhered to Katzenbach v. Morgan, should sustain the legislation.

These views are not newly developed for this occasion. I expressed them in an article published in November 1966 shortly after *Katzenbach* v. *Morgan* was decided (*Constitutional Adjudication and the Promotion of Human Rights*, 80 Harv. L. Rev. 91, 107)—

"Much of President Johnson's desire to expand the electroate by outlawing all literacy tests, reducing the age for voting, and simplifying residence requirements can probably be realized by legislation without a constitutional amendment. If Congress can make a conclusive legislative finding that ability to read and write English as distinguished from Spanish is constitutionally irrelevant to voting, then a finding that all literacy requirements are barriers to equality should be equally conclusive. Congress would seem to have power to make a similar finding about state laws denying the franchise to eighteen, nineteen, and twenty year-olds even though they work, pay taxes, raise families, and are subject to military service. The constitutionality of federal prescription of residence requirements would seem more doubtful because the differentiations made by state laws are more difficult to characterize as invidious."

The doubt expressed in the final sentence is plainly unwarranted when the federal prescription is confined, as in the present bills, to Presidential elections.

Before closing, I must add two notes of caution.

First, I suspect that some constitutional scholars would not share my view that Congres can reduce the voting age without a constitutional amendment. Possibly, my reasoning runs the logic of *Katzenbach* v. *Morgan* into the ground. Possibly, the case will be explained away upon the ground that the discrimination was invidious because it ran against Puerto Ricans. But that is not what the Court held and if a congressional finding that residency and literacy tests work a denial of equal protection would be binding upon the courts, then logically a finding that the present discrimination against 18-21 year olds is invidious should be equally conclusive.

Of course, constitutional decisions do not rest upon logic alone. Our mobility has outmoded residency requirements at least in Presidential elections, as radio and television have outmoded literacy tests. The traditional attitude towards the voting age seems to be more deeply ingrained, and it is not impossible that the Court would adhere to that tradition until changed by constitutional amendment.

Second, these doubts suggest that an act of Congress reducing the voting age might be the subject of serious constitutional litigation. Possibly, enough votes would be involved to cast doubt upon the outcome of a Presidential or major State election. It might be calamitous to have the doubt remain for the full time required for a Supreme Court devision.

I have not had time, since the problem occurred to me, to review the legal precedents bearing upon the difficulty. The Committee will undoubtedly wish to study them. I suggest, however, that any danger can probably be avoided by

including in any legislation reducing the voting age a section declaring that, pending a final ruling by the Supreme Court, the decision of the highest election officials or federal court with jurisdiction in the premises, rendered prior to an election, shall be conclusive with respect to the validity of votes cast in that election.

Of course, this solution would leave open the possibility of different results in different States pending final Supreme Court resolution. That diversity could be avoided by providing that no challenge to a vote in any Presidential election upon grounds that the statute is unconstitutional shall be entertained unless an action against the United States for a declaratory judgment to determine the question of constitutionality shall have been filed in the United States District Court for the District of Columbia within one year after the effective date of the Act. The action should be triable before a three judge court. The decision of that court should be binding unless reversed by the Supreme Court more than three months in advance of the election.

Although candor obliges me to add these words of caution, I repeat that in my opinion congressional reduction of the voting age would be constitutional.

O