PRESIDENT'S COUNCIL ON EQUAL OPPORTUNITY

1. Racial orientation of poll tax - tie in 14th amendment to 15th amendment

Vermont
Mass.

Provided that poll tax abolition would not reduce voters there are less than 1870 now voters -

PRESIDENT'S COUNCIL ON EQUAL OPPORTUNITY

Call Dave F on Harry Ackerman

Proviso

Take present language —

provided that this bill should be in conf.

that city can should make use of latest possible techniques + shall not apply —

PRESIDENT'S COUNCIL ON EQUAL OPPORTUNITY

1. HFL-C10 - stay with abolition - some promise would be possible

2. Ted Kennedy has letter from Paul Freund -

3. Whole Spencer assumes you will need Mansfield for Cloture - Do you? Katzenbach Mansfield). want to keep them on the bill

Suspend - like literacy test - suspend as a device = doesn't get you [14th Amendment]

Dirksen would like to get back into drafting session - lose things gained in Committee session -

MEMORANDUM ON VOTING
RIGHTS BILL

It is apparent that further liason between the House and Senate is necessary on the Voting Rights Bill to clarify the following points:

1. To insure that the House passes the same vehicle as the Senate. (The Senate passed S. 1564, the House Judiciary reported HR 6400.)

2. To determine whether a conference is inevitable.

3. To determine what the composition of Senate conferees will be.

4. To determine to what extent should the House amend the Senate language.

1. House and Senate must pass same vehicle.

It is necessary that both Houses pass the same vehicle. The Senate passed S. 1564 -- the House Judiciary reported yesterday HR 6400. If the House passes HR 6400 (even if it is amended in toto with the Senate language) it must come back to the Senate for a further vote. In fact, we would have to stop it at the desk to prevent it from going to the Senate Judiciary Committee. (The procedure of stopping at the desk takes two days.)

I believe a complicating factor is the House Rules Committee. As best I can determine, the new 21 day rule applies only to bills which come out of House Committees. Thus the Senate bill (S. 1564) which now lies on the Speaker's desk could die in the Rules Committee if referred directly. Of course, the Senate bill could be referred to the House Judiciary and that Committee could report the Senate bill with House amendments. This bill then should be eligible for the coverage of the 21 day rule.

2. Conference or Not.

It is generally conceded that a conference on the bill will generate many problems. In order to avoid a conference, the House could not amend the Senate bill in any severe manner. A poll tax ban would in my opinion be considered severe and would put the bill in conference in the absence of a change in position by the Administration.

If the House adopted its other amendments and did everything to the poll tax language short of a ban, I believe the Senate could accept the House amendments to the Senate bill. However, Sen. Dirksen undoubtedly would like another shot at the center ring since he would be the leading Republican on a conference. Thus the groundwork must be laid now on the possibility of accepting the House amendments to overcome Sen. Dirksen's desire for a conferance.

I believe the issue will be primarily joined on the question of the severity of the change to the poll tax provision. If we could get agreement from Sen. Mansfield and Sen. Hart that if the House amends the Senate bill with less than a poll tax ban then they would both agree to moving to accept the House amendments, we would be in good shape on the Senate side.

Assuming, however, that the House puts in a poll tax ban and we must go to conference and the composition of Senate conferees would be important.

3. Composition of Senate Conferees.

By the Senate Rules, the Senate may insist upon its language, and request a conference and authorize the Chair to appoint the conferees. This motion may be divided. Under Rule XXIV, the Senate may elect its own conferees and such motion is amendable by substituting other conferees. (Sen. pProcedure, p. 212.) This motion is debatable. However, by the usual procedure a conference is requested and the appointment by you of conferees is authorized; the universal practice after authorization has been for you to appoint those members recommended by the manager of the legislation.

Although it is possible to amend the names of the conferees by the procedure outlined above, it would be best to attempt to influence who those conferees will be if we

follow the usual procedure. The rundown on the Judiciary Committee is catastrophic! By the usual selection process, the conferees would be:

Eastland	Dirksen
Ervin	Hruska
Hart	

This lineup would even satisfy the practice to have the conferees in sympathy with the prevailing view in the Senate. Sen. Mansfield should be approached by the White House about appointing different conferees. It could be argued that Sens. Eastland and Ervin certainly might be embarrassed back home by sitting on a conference on voting rights. In truth, however, if the House strikes all after our enacting clause and substitutes their text then the conferees would have great leeway and Sens. Eastland and Ervin could cause a great deal of mischief and even disaster in the conference. I suggest the following conferees on our side (assuming 5 conferees in toto):

Hart
Long (Mo.)
Kennedy (Mass.)

These members are all Judiciary -- all worked actively on the bill in Committee and voted for the bill. It bypasses the first four members of the Judiciary (including Dodd who didn't participate in the hearings or on the floor).

4. House Amendments.

It would simplify matters if the House would accept our bill -- however this is most unlikely in view of House tradition and the public statements of the leadership on the poll tax.

If the bill must go to conference, then it would be an advantage for the House to strengthen the language to improve our bargaining position in conference especially if the Senate conferees are not all enthusiastic.

However, it still would be better if the House amended with line by line amendment rather than a complete substitute so that the scope of the conference would be restricted.

John —

I think the whole idea is spelled out here.

Ed

EDMOND F. ROVNER

ADMINISTRATIVE ASSISTANT TO
JONATHAN BINGHAM, M.C.

23RD DISTRICT
NEW YORK

MEMORANDUM

From: Jonathan B. Bingham

Re: H. R. 6400 Coverage of "Elections" to include Nomination by Convention Amendment to Section 14 (c)(1)

Alternative No. 1

(c) (1) The term "vote" shall include all action necessary to make a vote effective in

(i) any primary, special, or general election, or

(ii) any party convention or meeting open to voters enrolled in the party held for the purpose of nominating or endorsing candidates for election to public office or for the purpose of selecting persons who will participate directly or indirectly in the process of nominating or endorsing candidates for election to public office,

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 office and propositions for which votes are received in an election or with respect to candidates for delegates to party conventions who will, directly or indirectly, participate in nominating or endorsing candidates for public office.

Alternative No. 2

The term "vote" shall include all action necessary to make a vote effective in any election as hereinafter defined, 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.

The term "election" shall include (i) any primary, special, or general election for the purpose of electing candidates for public office or for decision on propositions submitted to the electorate, or (ii) any party convention or meeting open to voters enrolled in the party held for the purpose of nominating or endorsing candidates for election to public office, or for the purpose of selecting persons who will participate, directly or indirectly, in the process of nominating or endorsing candidates for election to public office.

May 4, 1965

Charles D. Ferris, Counsel
Democratic Policy Committee
Room S-118
U. S. Capitol
Washington, D. C.

Dear Charlie:

Enclosed is the proposed redraft for Section 14(c)(1) of the Committee Print for H. R. 6400. The Committee accepted Bingham's proposal. The problem is now to reword it. There are two alternatives: The first is of the same text used in the Committee Bill; the second is really a new way of formulating what is now written in a somewhat labored form.

The purpose of the Bingham proposal, as Celler and the Subcommittee accepted it, is to reach the party nominating convention (such as the procedure which led to the Mississippi fracas in Atlantic City). The Justice Department objected to the specific language Celler has used in 6400 (to cover "public and party office") as being too broad, so we have tried to provide particularity.

Everyone agrees that 6400, as introduced, and all the Senate bills leave a gap in voting protection in so far as parties may use nomination conventions. John Doar admitted the gap, as did Barefoot Sanders. Celler and many others want to close this. Justice suggests that there may be too much redrafting required to deal with this situation but I shudder at the thought that this problem, if left unattended, could plague us next year. Moreover, this would deal with the specific and vital problem faced by MFDP and, if we can find a solution, we can effectively answer those who say that legislation cannot rectify the inequities in the South (a frequent chant heard in some quarters).

Anything you can do to help will be appreciated. Please call and let me know what the prognosis may be.

Sincerely,

EFR:mm
Enclosure

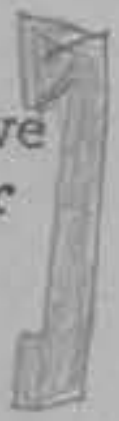
Edward F. Hoover
Administrative Assistant

United States Senate

MEMORANDUM

To: John Stewart

From: David Burke, Legislative
Assistant to Senator
Edward M. Kennedy



FROM: EDWARD M. KENNEDY

FACT SHEET ON SECTION 9 OF THE VOTING RIGHTS BILL

1. What Section 9 Does:

Forbids a state from denying any person the right to vote because of failure to pay a poll tax.

Note: Section 9 does not outlaw the poll tax. It merely says the right to vote cannot be conditioned upon its payment. Many states, including Massachusetts, Connecticut, Rhode Island, Maine and New Hampshire have poll taxes today, but collect them in other ways and at other times than at elections. Only Alabama, Mississippi, Virginia and Texas make payment a precondition of voting. They are the only states to which Section 9 would apply.

Thus, Section 9 is similar to a law forbiding imprisonment for debt. Such a law does not outlaw debts, or foreclose other methods for their payment.

2. Why Section 9 is Needed:

Many Negroes in Alabama, Mississippi, Texas and Virginia cannot afford to pay the poll tax. To the average Negro in Greenville, Mississippi, for example, the poll tax for himself and his wife amounts to a day's pay. If the Voting Rights Bill is passed without Section 9, these Negroes will still not be able to afford to vote.

To Negroes in the South the poll tax has always been the prime symbol of the denial of the right to vote. As was said by the President of the Alabama Constitutional Convention that incorporated the poll tax into the state Constitution:

"These provisions (the pàll tax and other suffrage conditions) are justified in law and morals, because it is said that the Negro is not discriminated against on account of his race, but on account of his intellectual and moral condition....."

3. Congress Has Outlawed, by Statute, the Poll Tax as a Requirement for Voting before:

In 1942 and again in 1950, Congress passed a law providing that no member of the Armed Services should be denied the right to vote in federal elections for failure to pay a poll tax. (50 U.S.C. 6 App. 451 (i) The House of Representatives passed a bill eliminating the poll tax requirement for all voters in federal elections five times between 1937 and 1949. These bills died in the Senate because of filibuster, or nonaction by the Judiciary Committee. The reason Congress finally adopted the approach of a Constitutional Amendment, instead of a statute, in 1962 was not because it did not have the power to act, but because assurances were given that in this way a filibuster could be avoided. Attorney General Katzenbach himself said in 1962: "I believe that Congress has the power under the Constitution to enact legislation abolishing state poll tax laws applied to federal elections."

The only additional power Congress has over federal elections that it does not have over state elections is Article I Section 4 of the Constitution, which says Congbess is to set the time, place and manner for holding federal elections. Imposing a poll tax for voting is neither time, place nor manner. Thus, if Congress has the power for federal elections, it has it for state elections. Moreover, if Congress has the power to lift the literacy test in state elections, as it does in section 4 of the voting rights bill before us, it also has the power to abolish poll taxes.

4. A Poll Tax Requirement for Voting is Unconstitutional under Three Separate Sections of the Constitution:

1. It is unconstitutional under the Fifteenth Amendment, which forbids states from qualifying voters on the basis of race. The tests for unconstitutionality under the Fifteenth Amendment are discriminatory purpose and discriminatory operation. The original purpose of the poll tax requirement in each of the four states which have it today, was to keep Negroes from voting. This finding of fact was made by the Senate Judiciary Committee in 1942 and 1943. It is also shown by many quotations from the constitutional conventions of these states when they adopted these laws, "The poll tax...was designed to take advantage of the obvious weakness of the Negro, to whom the amount was a large sum." (McKinley, "Two New Southern Constitutions". Pol. Sci. Quarterly, Sept. 1903) These taxes today operate to keep Negroes from voting because of the income discrepancy between Negroes and whites in the South. The fact that the whites must also pay the poll tax before voting does not protect the tax from unconstitutionality under the Fifteenth Amendment. The Supreme Court has held, for example, that a literacy test passed and used for discriminatory purposes is unconstitutional even when some whites were disenfranchised by it, as well as many Negroes. La. v U.S. 13 Law. Ed. 709 (decided March 8, 1965)

2. It is unconstitutional under the Due Process Clause of the Fourteenth Amendment, which denies states the right to impose requirements on voting that are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals as general welfare." Euclid v. Amber Realty Co., 277 U.S. 265 (1926). As regards voting, this provision means states are limited to insuring that voters are responsible. Thus, the Supreme Court has held that states can require that voters be 21 years of age, have no criminal record and be residents because these have something to do with responsible voting. Age denotes maturity, residence denotes knowledge of local problems, lack of a criminal record denotes responsible citizenship. But the ability to pay a sum of money has no reasonable relation at all to a peron's qualifications for voting. Even the literacy test, which we are lifting in section 4 of this bill, is more related to voter responsibility than the ability to pay a poll tax.

It the poll tax voting requirement is not considered a qualification ffor voting, it can then only be one other thing: a revenue-raising method, with denial of voting as the sanction for non-payment. But the due process clause of the Fourteenth Amendment forbids states from using such a harsh sanction as denial of a constitutional right when other sanctions such as a fine, are available for nonpayment of a tax. (Shelton v. Tucker, 364 U.S. 479 (1960); Schneider v. State, 308 U.S. 187 (1939).

3. It is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment, which guarantees to all citizens the equal protection of the laws. In the poll tax states, citizens who fail to pay the tax are denied the right to participate, through voting, in the workings of state government. The Supreme Court has already held that unequal weight given votes actually cast is an unconstitutional denial of equal protection. (Reynolds v. Sims, 337 U.S. 533 (1964). Therefore, this Court would certainly hold that a requirement like the poll tax, which results in citizens not voting at all, would be an unconstitutional denial of equal protection, especially in view of its statement in Reynolds v. Sims that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regards to race...(or) economic status."

Both the Fourteenth Amendment (Section 5) and the Fifteenth Amendment (Section 2) gives Congress the power to pass all legislation necessary for their enforcement. So that even if the Supreme Court were to hold that a state poll tax requirement for voting was not unconstitutional in and of itself, absent any action by Congress, these sections of the Constitution clearly give Congress the authority to act to prohibit such a requirement. And this is what the argument is about - whether we have the power, under the Constitution, to act. The Supreme Court has stated, "Whatever legislation tends to..secure to all persons the enjoyment of perfect quality of civil rights...if not prohibited is brought within the domain of Congressional power by the Fourteenth and Fifteenth Amendments". Ex Parte Virginia, 100 U.S. 339, 346 (1880). There are many cases, the most recent being International Shoe v. Cocrehan, 246 La. 244 Cert. den. by Sup Ct. Nov. 9, 1964, in which the Supreme Court has upheld the constitutionality of a state law before Congress acted, but quickly reversed itself after Congress acted, to strike the law down.

This is exactly what we are doing in Section 4, when we lift state literacy tests for states that come under the "triggers". Literacy tests as such have been upheld by the Supreme Court up to now. But none of the supporters of the voting rights bill would argue that if we pass Section 4, the Supreme Court would say we did not have the authority to do so.

Professor Paul Freund, the nation's leading authority on Constitutional law put it this way, in a letter to me endorsing section 9:

> "Examples of this kind of Congressional power under other clauses of the Constitution are familiar. In the field of intergovernmental tax immunity, Congress can grant immunity to federal agencies beyond the point where the Court would have found immunity to exist. Congress can protect interstate commerce from state regulation or taxation beyond the limits theretofore drawn by the Court. A striking example a few years ago was the statute forbidding state income taxes on interstate business in the absence of specified activities within the taxing state; this statute was deliberately designed to overcome a series of recent Supreme Court decisions. See P.L. 86-272, 73 Stat. 555 (1959). The Fourteenth and Fifteenth Amendments contain a "necessary and proper" clause fully as enabling as that applicable to other classes of Congressional power. In a marginal area it is the judgment and findings of Congress, based on a legislative record more adequate than may have been presented in a lawsuit, that will be respected by the Court. Congress has a responsibility under the Fourteenth and Fifteenth Amendments that cannot be avoided by forcing issues of voting rights into the courts without the benefit of Congressional declarations of policy, experience and judgment."

Poll taxes existed in many of our states, before the adoption of the Constitution, and through the first part of the 19th Century - but in no state were they a requirement of voting. Only after the Fifteenth Amendment was adopted to ensure Negro voting, did Southern states made poll taxes a requirement. Section 9 would return poll taxes to the status they were in during our early history, before they were perverted into an instrument of disenfranchisement. It would thus remove the last important barrier of law to voting rights for Negroes.

PROPOSED SECTION 10 OF H. R. 6400

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 most 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 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, shaould declare the requirement of the payment of a poll tax to be constitutiond, 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 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.

JGS/ep/CR/states

COPY

January 19, 1965

Mr. William L. Becker
Assistant to the Governor for
Human Rights
Governor's Office
Sacramento, California 95814

Dear Mr. Becker:

Thank you for your interesting letter. I am pleased to have this report on civil rights matters in the state of California. Once we get our Federal house in somewhat better order, I know we will be actively engaged in relating our activities and decisions in Washington more directly to the activities of State and local governments, and activities of the Federal government in the field.

I agree wholeheartedly with your emphasis on affirmative action in the area of employment opportunities. This is a matter which we intend to pursue most vigorously in the months ahead.

Perhaps you might consider keeping in touch with Mr. John G. Stewart of my staff who works with me closely on civil rights matters. I know it is important that we keep closely informed on these matters, particularly in such principal states as California.

Best wishes.

Sincerely,

Hubert H. Humphrey

State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

EDMUND G. BROWN
GOVERNOR

January 11, 1965

The Honorable Hubert H. Humphrey
Vice President-elect of the U. S.
Washington, D. C.

Dear Mr. Humphrey:

Governor Brown's great concern for civil rights and your responsibility as coordinator of the federal programs in this area lead me to pass on to you the following observations on the existing federal programs. First a few generalizations:

(1) All of us in the "civil rights movement" whether in government or in voluntary organizations, display some rigidity in sticking to old programs and resisting new approaches. This detracts from the development of creativity in our search for solutions to the problems of second-class citizenship.

(2) The attention given the more aggressive demands of Negro-Americans, should not detract from our concern for the Mexican-Americans, the Puerto Ricans and the Indians, all basically <u>regional</u> groups.

(3) Although the major problems are in the South, federal programs and agencies should not be allowed to develop an image of concern for just the South. For example, the U. S. Civil Rights Commission is planning no hearings outside the South, I am told. The North and West are not convinced that some of these agencies are concerned with their non-Southern kind of problem.

A few of the specific program problems which I would like to call to your attention are:

(1) Civil rights organizations do not have a uniformly good opinion of the programs in federal employment. Installations such as the Bay Area shipyards have been very sticky (in the public eye) in reacting to grievances brought to their attention. This image problem exists despite the fact that government in general is demonstrably one of the best areas for minority job opportunities. (See the attached letter.)

(2) Defense-contractor compliance with the Presidential Order has not been as dramatic as was initially hoped. For one thing it needs more "success story" publicity. A big problem is the time required between the filing of a complaint and its receipt for action by a compliance officer.

(3) The nondiscrimination clauses in construction contracts have had very little impact. (We can probably say the same for our parallel program in this State.) It is mostly paper work. But this approach has become one of the marks of a pro-civil rights administration. Demonstrations at construction sites were apparently considered necessary to win compliance.

(4) The program in apprenticeship (which is patterned after our older "California Plan") is probably not going to help much, from what we know so far. There are not enough apprenticeship opportunities in the country (only about 160,000). Formal and uniform selection standards may be so framed as to minimize the number of minority youth who can "make it". Again there is much emphasis on paper work.

In general, I think we must supplement the old-line police approach of our Fair Employment Practice Commission with a more creative emphasis on affirmative action: in recruiting, in training, in developing new entry-level trainee opportunities, in compensatory education, in scattering low-income housing, etc. Perhaps government must subsidize such special programs to get them done on a large enough scale to make a difference.

Please forgive the length of this letter. It is so good to know that someone of your commitment will be looking at all the federal programs in one package. Needless to say, let us know if we can help in any way from here.

Sincerely

William Becker

William L. Becker
Assistant to the Governor
for Human Rights

Attachment

COPY COPY

Louis W. Jones
511 Verano Court
San Mateo, California

December 30, 1964

The Honorable Lyndon B. Johnson
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

The Navy Department is the San Francisco Bay Area's largest employer but thus far gives little evidence that it recognizes a role in problems of Bay Area population growth and diversity, and more particularly in the buildup of "social dynamite" in the central cities.

Other large employers and employers' associations are cooperating in a large-scale effort to meet these problems, but the largest employer, and the one best fitted to set an example, is silent. Twelve county and municipal human relations commissions, set up by ordinance, stand ready to consult with all community organisms exhibiting concern.

The San Francisco Naval Shipyard is adjacent to a tinder box of racial tension and potential violence - the well-known Hunter's Point housing area, which is now the focus of attention of the country's architecture students exploring redevelopment possibilities.

The Secretary of the Navy has spoken to this matter. His directive of 6 March 1963 expects local commanders to establish "effective liaison" with "influential local community organizations" including the NAACP and the Urban League, and to do this through command-community relations committees, with membership to include local leaders from all ethnic groups. The Twelfth Naval District Commandant has also spoken. His directive of 18 July 1963 implements the higher directive and specifies that meetings shall be "not less often than bi-monthly." Directives are of course meaningless without implementary action.

If these command-community relations committees exist the public does not know about them, does not know their membership, nor their areas of concern, whether meetings have been held, or where.

The inertia seems to be at the activity level. The evidence seems to indicate a total lack of information and the experience on the part of commanders as just how to

proceed to establish communication and cooperation with organized community elements. This information and experience does not, however, seem to be lacking in such areas as United Crusade fund drives, Boy Scout activities, public ceremonies, and the like.

Almost two years have elapsed since the date of the Secretary's directive without discernible public impact. The nation cannot risk this foot-dragging.

As a private citizen I ask that you use the full authority of your office to bring about immediate dialogue between Naval activities in the San Francisco Bay Area and the many community elements who are deeply concerned about one of the country's gravest problems.

Very respectfully,

Louis W. Jones

March 31, 1965

MEMORANDUM FOR THE VICE PRESIDENT

From: Joseph L. Rauh, Jr.

Subject: VOTING RIGHTS BILL

(1) The present bill should and can be strengthened.

(2) The Leadership Conference on Civil Rights is proposing the amendments contained in the attached memorandum. There is no legal or policy reason why the House Judiciary Subcommittee should not add these provisions to the bill. The Leadership Conference proposed amendments are less radical a change in the present bill than the additions which we helped write into the Kennedy bill last year (e.g. FEPC).

(3) If, for some reason, the Administration is unwilling to accept all of these amendments, it should at least accept some. The priorities below are mine as personal advice to you.

(4) The bill in its present form is probably unworkable. Unless some of the amendments are accepted, President Johnson may well be asking you, 3 months after the bill goes into effect, why it got off to such a poor start.

(5) The bill in its present form requires the Negro applicant for registration to go to the State registrar first. This subjects the prospective registrant to the delays, the

hardships and the indignity of attempting to satisfy hostile state officials before coming to the Federal registrar. Far worse, he may never get to the Federal registrar. In Mississippi the state officials will simply publish the name of the Negro applicant for registration and the intimidation will start. In other words, the bill, as presently drafted, is an open invitation to harassment to keep Negroes from ever getting to the Federal registrar. Nor does it answer this point to say that the Attorney General can waive this requirement. The object of the bill is to have it work the day it goes into effect, not after sufficient abuse has occurred for the Attorney General to waive this requirement.

(6) Furthermore, to keep the poll tax in Mississippi and Alabama is a terrible blunder. When the first Mississippi applicants come to the Federal registrar for whom they have waited so long, the first thing they'll hear will be "two bucks, please." If the Administration is unwilling to outlaw the poll tax for all 4 states where it presently exists (it is being repealed in Arkansas), at least it should be barred in Mississippi and Alabama where there are federal registrars. Whatever may be the constitutional question in Tennessee and Texas, there can be no doubt that Congress can bar the poll tax where it sets up a

federal system of registration which the poll tax would impede.

(7) Finally, the provisions against intimidation in the present bill are inadequate and should be strengthened along the lines of the amendments proposed by the Leadership Conference or otherwise.

(8) Probably the amendments to broaden coverage are the least important except tactically within the Civil Rights movement. They will not determine the workability of the bill where it is really needed. What will determine that are the amendments proposed in paragraphs (5), (6) and (7) above.

AMENDMENTS PROPOSED BY

LEADERSHIP CONFERENCE ON CIVIL RIGHTS

To H.R. 6400

I

POLL TAX

(i) Leadership Conference testimony March 24, 1965 urged:

"1) The total elimination of the poll tax as a restriction on voting in state and local elections as well as in federal elections."

(ii) Suggested language for proposed amendment:

"On line 6, page 6, delete all of Sec. 5(e) and on line 13, page 11, insert a new section as follows: 'Sec. 12. No state or political subdivision shall deny or deprive any person of the right to register or to vote because of his failure to pay a poll tax or any other tax or payment as a pre-condition of registration or voting.' Renumber Sections 12 and 13."

(iii) This amendment would have the effect of abolishing the poll tax in Mississippi, Alabama, Virginia and Texas (Arkansas has already passed a constitutional amendment authorizing the abolition of the poll tax and an implementing statute is expected promptly).

II

APPLYING DIRECTLY TO FEDERAL EXAMINER

(i) Leadership Conference testimony on March 24, 1965 urged:

> "2) The elimination of the requirement in the bill that a prospective registrant must first go before the state official to attempt to register before going to the Federal registrar or examiner. The prospective registrant ought not to be put to the delays, the hardships, and the indignity of attempting to satisfy hostile state officials before he can come to the Federal Registrar."

(ii) Suggested language for proposed amendment:

> "On line 19, page 4, change the comma after the word 'vote' to a period and delete the remainder of Sec. 5.(a)."

(iii) This amendment would have the effect of permitting an applicant for registration to go directly to the Federal examiner without first having to try out the state authorities.

III

EXPANDED COVERAGE

(i) Leadership Conference testimony on March 24, 1965 urged:

> "3) Extended coverage of the registrar or examiner provisions of the bill, so that persons who have been wrongfully denied the right to vote, regardless of their geographical location, will have the benefits of these provisions of the legislation."

(ii) Suggested language for proposed amendments:

"On line 19, page 3, after the word 'residents' insert '(i)' and on line 20, page 3, after the words 'section 3(a)' insert the following: 'or (ii) of a political subdivision with respect to which the Director of the Census has certified to the Attorney General that the number of persons of any race or color who were registered to vote on November 1, 1964 was less than 25 percent of the number of all persons of such race or color of voting age residing in such subdivision,'"

"On line 15, page 4, insert a new subsection as follows: '(c) Whenever the Attorney General receives complaints in writing from twenty or more residents of a political subdivision not covered by the provisions of section 4 (a), alleging that they have been denied the right to vote under color of law by reason or race or color and he believes such complaints to be meritorious, the Attorney General shall appoint a hearing officer to hold a hearing and determine whether there exists in such political subdivision a pattern or practice of denial of the right to vote on account of race or color. Whenever the Attorney General certifies that a hearing officer has determined that such a pattern or practice does exist in such political subdivision, the Civil Service Commission shall appoint examiners for such subdivision in accordance with section 4(a). The determination of the hearing officer shall be reviewable in a three-judge district court convened in the District of Columbia in an action for declaratory judgment against the United States by the affected political subdivision or by one or more of the twenty residents making the original complaint. The findings of the hearing officer if supported by substantial evidence shall be conclusive. There shall be no stay of any action of the examiners appointed by the Civil Service Commission unless and until the said three-judge district

court shall determine that the findings of the hearing officer are not supported by substantial evidence."

(iii) These amendments would have the effect of broadening the coverage of HR 6400. While leaving intact the excellent automatic provisions of the Administration bill covering Mississippi, Alabama, Louisiana, Georgia, Virginia, South Carolina and 34 counties of North Carolina, they would provide for examiners in other political subdivisions if

(1) less than 25 percent of a racial group were registered on November 1, 1965 and twenty residents complained to the Attorney General that they had been denied the right to vote, or

(2) twenty residents in any subdivision complained to the Attorney General that they had been denied the right to vote and a hearing officer found, after hearing, that there is a pattern or practice of discrimination in such subdivision.

IV

PREVENTING INTIMIDATION

(i) Leadership Conference testimony March 24, 1965 urged:

"4) Further and maximum protection of registrants and voters both those who will be registered under the bill and those already registered, and prospective registrants, from all economic and physical intimidation and coercion. In extending such protection, the Federal Government should use the full range of its powers, criminal, civil and economic, to protect the citizen from the beginning of registration process until his vote has been cast and counted."

(ii) Suggested language for proposed amendments:

"On line 16, page 7 delete the entire Section 7, and substitute the following:

'Sec. 7 No person, whether acting under color of law or otherwise, shall fail or refuse to permit a person to vote whose name appears on a list transmitted in accordance with section 5 (b), or is otherwise qualified to vote, or fail or refuse to count such person's vote, or intimidate, threaten or coerce any person for registering or attempting to register, or assisting one registering or attempting to register, or for voting or attempting to vote under the authority of this Act or otherwise."

"On line 14, page 10, insert a new subsection as follows:

'(g) Whoever shall deprive or attempt to deprive any person of any right secured by section 2 or 3 or who shall violate section 7 shall be subject to a civil penalty in the amount of $500 for each act of deprivation, or violation, or attempt. Such penalty shall be collected on behalf of the affected individual by a civil action, brought by the United States in the district court for the district in which such act, violation, or attempt occurs or in the district in which the person responsible for such act, violation, or attempt is found. In any action brought hereunder involving any person acting under color or law who is in the employment

of any state or political subdivision, said state or political subdivision shall be jointly liable and shall be made a party.'"

"On line 14, page 8, add the following at the end thereof: 'If the life of any person is placed in jeopardy, he shall be fined not more than $20,000 or imprisoned not more than twenty years, or both.'"

"On line 2, page 9, add the following at the end thereof: 'If the life of any person is placed in jeopardy, he shall be fined not more than $20,000 or imprisoned not more than twenty years, or both.'"

"On line 14, page 10, insert a new subsection as follows:*

'(g) Whenever an examiner has been appointed under this Act for any political subdivision, the Attorney General may assign representatives of the Department of Justice, including agents of the Federal Bureau of Investigation and United States Marshals, to observe any registration of voters, the conduct of any election, and the tabulation of votes at any election in such political subdivision. Such representatives shall be entitled to enter and to remain in any registration or voting place, or place where votes are tabulated. No person shall interfere with or refuse to admit to any such registration, or voting or tabulation place any representative of the Department of Justice. Any person who shall violate this provision shall be fined not more than $5,000 or imprisoned not more than five years, or both. In addition, 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 permanent or temporary injunction, restraining order or other order, enjoining violations of this subsection.'"

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* If the earlier suggestion of a civil penalty is adopted as subsection (g), this would, of course, become subsection (h).

(iii) These amendments would have the effect of broadening the prohibition on intimidation to cover all registrants and voters, provide for a $500 civil penalty for victims of acts of intimidation, increase penalties for violations of the Act where life is placed in jeopardy, and provide for F.B.I. agents and U.S. Marshals to observe registration, voting and counting.

* * * * * * *

The above constitute the substantive amendments agreed upon by the Leadership Conference on Civil Rights to strengthen the bill. A number of language and technical suggestions are being made to the Justice Department and we would appreciate an opportunity to discuss these suggestions with Committee counsel.

Office of the Attorney General
Washington, D. C.

April 27, 1965

MEMORANDUM FOR THE VICE PRESIDENT

Attached is a memorandum giving briefly the arguments as to why the present provision on poll tax is difficult to defend constitutionally and in addition raises practical problems. Also, the 60% provision is discussed.

The difficulties with the present provision are genuine, and I think your effort should be to point out that there are genuine difficulties with this particular provision and its language. I do not think we should be opposed to trying to deal with the poll tax as effectively as we can.

We are presently working on an approach which would accomplish everything which the adherents wish to accomplish (if that is Constitutionally possible) and which would provide for a quicker court test. Even the strongest proponents of an anti poll tax section ought to accept a provision of the kind we are working on, and I think it may be possible to sell it to Senator Dirksen because it would explicitly rely upon judicial determination -- which always has some appeal to him.

This proposed "compromise" would do the following:

1. Authorize the Attorney General to institute an action in the District of Columbia for declaratory and injunctive relief against any state or political subdivision to enjoin orsuspend the enforcement of all poll tax payments as a precondition to voting in all elections. He could base the case on either the Fourteenth or Fifteenth Amendments so that a failure on the Fourteenth Amendment would not preclude suspension of the Mississippi or Alabama taxes on the ground that they violate the Fifteenth Amendment. (As the memorandum states, this is one of the difficulties of the present proposal.)

2. The court could promptly enjoin on Fourteenth Amendment grounds or suspend on the Fifteenth Amendment grounds

poll taxes. The action would be heard by three judges with direct appeal to the Supreme Court -- thus enabling us to get a Supreme Court determination hopefully early in 1966 -- rather than wait for the two or three years that would be likely under the present proposal.

3. In the event the Government did not prevail in this action citizens would be permitted to pay poll taxes up to forty-five days before an election.

April 27, 1965

MEMORANDUM

QUESTIONS CONCERNING THE VOTING RIGHTS ACT OF 1965 AS REPORTED BY THE JUDICIARY COMMITTEE

The Poll Tax Bar.

Section 9 of the bill provides:

> No State or political subdivision shall deny or deprive any person of the right to register or to vote because of his failure to pay a poll tax or any other tax or payment as a pre-condition of registration or voting.

As drafted, Section 9 raises a number of difficult constitutional and practical problems:

1) As a nationwide bar, it prohibits the local poll tax in Vermont as well as poll taxes in Mississippi, Alabama, Virginia and Texas. Since there is no evidence of use of the poll tax in Vermont to discriminate against Negroes, Section 9 can be supported by Fourteenth Amendment arguments only, that is, that the poll tax denies equal protection of the laws or due process by discriminating against the poor.

2) Section 9 is a permanent bar. The Fifteenth Amendment supports only a suspension of the poll tax during such period as is necessary to eliminate discrimination and effects of discrimination. In the case of tests or devices where we have substantial evidence of discriminatory use, the bill provides for suspension. It

is difficult to explain why the poll tax is absolutely and forever barred when we have little evidence of its discriminatory use.

3) The flat bar of Section 9 raises other constitutional difficulties:

a) Congress proceeded by way of the Twenty-fourth Amendment to bar the poll tax as a condition to voting in federal elections. The amendment was ratified on February 4, 1964. This suggests that the purpose of barring the poll tax in State and local elections--which presents a more difficult constitutional problem--may also have to be done by constitutional amendment.

b) In 1937 the Supreme Court unanimously held in Breedlove v. Suttles, 302 U. S. 277, that the Georgia poll tax did not offend the equal protection and privileges and immunity clauses of the Fourteenth Amendment. The case can be distinguished as it involved primarily the reasonableness of an exemption for women, men over 60 and minors. Fifteenth Amendment arguments were not presented.

c) History suggests that the Fourteenth and Fifteenth Amendments may not have been intended to bar a poll tax. At the time of their adoption, Nevada had a poll tax; eight States required payment of all assessed taxes as a prerequisite to voting; eight States imposed property qualifications as a prerequisite to voting.

4) Section 9 presents practical problems:

a) The timing of a court test which is certain to come is left to the States and may result in barring thousands or hundreds of thousands of newly registered Negro voters. The time for the test may well be the fall 1966 State elections. The court test will mean

that voters will not be counted for the period required for a determination by the Supreme Court--perhaps a year or two.

b) The Supreme Court has noted jurisdiction in Harper v. Virginia State Board of Elections, a case in which the Virginia poll tax is attacked as violative of the Fourteenth Amendment. This case will be argued and decided within less than one year. Should the Court follow Breedlove and uphold the poll tax, Section 9 of this bill, which relies only on the Fourteenth Amendment, would be virtually a dead letter.

c) If Section 9 were held invalid shortly in advance of coming State and local elections, the bill provides no means for allowing voters who relied on Section 9 to pay their tax and vote. There should be language allowing payment up to 45 days prior to any election in the event the Court should hold the provision invalid.

The Dirksen 60 Percent Escape Hatch.

Prior to the Dirksen amendment, Section 4(a) provided that a State or subdivision which came within the formula of section 4(b) might avoid the suspension of tests and devices and assignment of examiners by bringing a declaratory judgment action in proving that "no such test or device has been used during the five years preceding the filing of the action for the purpose of denying or abridging the right to vote on account of race or color." Senator Dirksen added the following alternative grounds for avoidance of the suspension of tests and devices and assignment of examiners:

"(2)(A) the percentum of persons in such State or subdivision voting in the most recent presidential election exceeded the national average per centum of persons voting in such election or the per centum of such persons registered to vote in a State or subdivision by State or local election official exceeded 60 percentum of persons of voting age meeting residence requirements in such State or subdivision, and (B) that there is no denial or abridgment of the right to vote on account of race or color in such State or subdivision: * * *"

1) The heart of the bill is the suspension of tests and devices and assignment of examiners in the "hard core" States and subdivisions. Depending upon the interpretation of the words "there is no denial or abridgment * * *" in subclause (2)(B), this provision may prematurely release Louisiana, Virginia, South Carolina, 19 of the 43 subdivisions in Virginia, and some of those in North Carolina. Registration and voting statistics put these jurisdictions above or close to the levels required in the escape hatch. Evidence of present discrimination may be difficult to discover. If clause (B) requires such evidence, then a State which has been discriminating would still get out.

2) An incentive for States to correct past discrimination is a good idea. The standard, however, should be that accepted by Senator Dirksen in section 13 which provides that examiners shall be withdrawn where "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 * * *."

The bill should make clear that a momentary pause is discrimination is not sufficient to excuse the State or subdivision. The Dirksen escape hatch does not make this clear.

3) The State or subdivision should have to show that its voting equaled or exceeded the national average in the previous presidential election and that its registration at least equaled the national average or some percentage higher than 60 percent. As drafted, the section makes it permissible to meet either requirement when meeting both should be necessary. High registration, if the voters due to fear stay away from the polls, is not enough. The 60 percent registration figure is well below registration levels in most States.

JLL

VI

M E M O R A N D U M

April 30, 1965

TO: JOHN STEWART

FROM: THE VICE PRESIDENT

Attached are the notes from the Attorney General given to me relating to the poll tax amendment. I thought you might want it.

Law School of Harvard University

Cambridge 38, Mass.

April 21, 1965

Honorable Edward M. Kennedy
United States Senate
Washington, D. C.

Dear Senator:

I greatly appreciate your sending me a copy of your speech on the poll tax. It is a magnificent statement, and if, as I trust, the measure is enacted, I am sure that your cogent and eloquent argument will be highly persuasive in the courts.

You have asked for any suggestions that may come to mind. No doubt your antagonists will emphasize the point that the poll tax has not been struck down under the Fourteenth and Fifteenth Amendments as an arbitrary or pseudo-qualification for voting or as an implicitly discriminatory device. I believe you are on sound ground in arguing that even if the Supreme Court had given more clearance than it has to the poll tax under such constitutional attack, it is nevertheless open to Congress to legislate under the Fourteenth and Fifteenth Amendments to strike down in a marginal area what the Court declined to strike down of its own accord.

Examples of this kind of Congressional power under other clauses of the Constitution are familiar. In the field of intergovernmental tax immunity, Congress can grant immunity to federal agencies beyond the point where the Court would have found immunity to exist. Congress can protect interstate commerce from state regulation or taxation beyond the limits therefore drawn by the Court. A striking example a few years ago was the statute forbidding state income taxes on interstate business in the absence of specified activities within the taxing state; this statute was deliberately designed to overcome a series of recent Supreme Court decisions. See P.L. 86-272, 73 Stat. 555 (1959). The Fourteenth and Fifteenth Amendments contain a "necessary and proper" clause fully as enabling as that applicable

to other classes of Congressional power. In a marginal area it is the judgment and findings of Congress, based on a legislative record more adequate than may have been presented in a lawsuit, that will be respected by the Court. Congress has a responsibility under the Fourteenth and Fifteenth Amendments that cannot be avoided by forcing issues of voting rights into the courts without the benefit of Congressional declarations of policy, experience and judgment.

I hope that these observations may be of some use.

With every good wish,

Sincerely yours,

Paul A. Freund

PAF:AM

April 27, 1965

Memorandum

TO: The Vice President

FROM: John Stewart

Concerning the meeting this afternoon over the poll tax amendment, the following factors seem to be relevant:

1. Democratic leadership should address itself to this basic question: Will the abolition of the poll tax sacrifice Senator Dirkson's support for cloture if cloture is necessary to stop a Southern filibuster?

   To the best of my knowledge this question has not been faced by Senator Mansfield. It is the judgment of the liberal Senators that Senator Dirkson would not be able politically to withold his support for cloture simply on the basis of the poll tax amendment. It is this basic political judgment which has emboldened the civil rights labor forces to stand firm on the amendment abolishing the poll tax.

2. The civil rights labor forces are willing to accept a proviso that would provide for expediting the poll tax section in the Federal courts in order to get a prompt decision and that would specify procedures for collecting the poll tax if the Supreme Court would declare the Congressional action abolishing it unconstitutional.

3. The liberal senators are also fearful that Dirkson really wants to reopen the drafting process as a means of rectifying certain amendments which the liberals carry in the Judiciary Committee, For example, making it unnecessary for a prospective voter to first apply to state registrars. There is some feeling that Dirkson has initiated the present discussions as a means of opening the entire bill for negotiation once again.

This the liberals are determined to avoid.

4. Senator Ted Kennedy now has in his possession a letter from Dr. Paul Fruend of Harvard Law School supporting the constitutionality of the poll tax provision as it now stands. In other words, the debate would remain inconclusive on the constitutionality of the present language.

5. No one seems to know the degree of Presidential involvement in the present situation. In any event, the liberal Senators seem determined to stand fast on their position with the exception of agreeing to the proviso as outlined above. The exploration of some such middle ground position would appear to be worthwhile.

THE VOTING RIGHTS ACT OF 1964

(A summary of the main features of the two versions of the bill:

H.R. 6400 - as approved by the House Judiciary Subcommittee No. 5
S. 1564 - as reported by the Senate Judiciary Committee

compared with the provisions of the original Administration measure and with the amendments proposed by the Leadership Conference on Civil Rights)

PROVISIONS	ORIGINAL H.R. 6400 - S. 1564	H.R. 6400 HOUSE SUBCOMMITTEE DRAFT	S. 1564 SENATE COMMITTEE BILL	AMENDMENTS SUGGESTED BY LCCR
Literacy tests and other tests and devices.	Automatically prohibited in states and subdivisions covered by bill's formula. Prohibition applies to any requirement that a voting applicant: be able to write, read, understand or interpret any matter; demonstrate any educational achievement or knowledge; have good moral character; or have someone "vouch" for him.	In addition-in voting cases brought by Attorney General, the court shall suspend for as long as necessary the use of such tests or devices if it finds they are used to deny or abridge the right to vote because of race or color.	Same as House bill.	
Poll tax	Collection of current tax permitted as prerequisite to voting in state and local elections. Payment allowed at time of registration up to 45 days before election in areas subject to bill's formula.	Prohibits requirement of payment of poll tax or any other tax as a prerequisite to registration or voting anywhere.	Prohibits requirement of payment of poll tax or any other tax or payment as a precondition to registration or voting anywhere.	Elimination of poll tax. Adopted in both House and Senate versions.
"Triggering" formula for prohibition of tests	Automatic where tests are applied and less than 50% of potential voters were registered or did not vote in the November 1964 election, unless state can affirmatively show in three-judge D.C. Court that it did not discriminate and that no final judgment	Retains original formula, but makes it easier to "escape": Ten year period to show non-discrimination reduced to five; court retains jurisdiction for an additional five and Attorney General may move to reopen case.	Changes original formulas by: 1) Excluding aliens and servicemen and their families from count of potential voters, 2) requiring state or subdivision to have a 1960 census	Addition of areas where less than 25% of racial group is registered. Adopted in Senate bill (on initiative of Attorney General). Addition of political subdivision on complaint

[Comm 2/1965]

PROVISIONS	ORIGINAL BILL	HOUSE BILL	SENATE BILL	AMENDMENTS SUGGESTED BY LCCR
"Triggering" formula for prohibition of tests (Contd)	on voting discrimination against it or any subdivision had been entered in the last ten years.	Except where judgment has been entered, tests or devices may continue to be used if state or subdivision can in court show they have not been used for a period of five years to deny or abridge vote because of race or color. This can be done by showing: 1) incidents of such use have been limited in number and promptly and effectively corrected by state or local action; 2) the continuing effect of such incidents has been eliminated; 3) there is no reasonable possibility of recurrence. In such cases the Attorney General is directed to consent to judgment if he has no reason to believe the tests have been used discriminatorily for a period of five years.	population of more than 20% non-white to be covered. . . . Adds to formula states or subdivisions where Director of the Census, on request of Attorney General, finds less than 25% of potential voters of any race or color registered. . . . Uses House Bill court "escape" formula except court judgment finding discrimination is only prima facie evidence. Adds an additional "escape" formula: If state or subdivision can show a vote in most recent presidential election exceeding national average or a total registration exceeding 60% of potential and a court finding of non-discrimination.	of 20 persons, if a pattern or practice of discrimination is found after an administrative hearing.
How "triggered"	Finding by Director of Census and certification by Attorney General (non-reviewable)	Finding by court of discriminatory use of test in case brought by Attorney General would also trigger prohibition for area involved in case. Original trigger retained; subject to "escape" provisions.	Same as House bill, but broader "escape" provisions.	

PROVISIONS	ORIGINAL BILL	HOUSE BILL	SENATE BILL	AMENDMENTS SUGGESTED BY LCCR
Areas affected	Automatic in Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia, and political subdivisions of any other state to which the formula would apply. (Alaska "in", but procedure for getting "out")	Areas affected by court decisions would be added to those of original bill.	Alaska would be excluded. Status of Virginia appears in doubt at this time. Subdivisions outside of states automatically covered would be excluded if non-white population is not above 20%. Areas where less than 25% of non-white are registered could be added at request of Attorney General.	
Termination of prohibition	Same tests as would exclude coverage (through court action).	Same as original bill, but "escape" is made easier, as noted above.	Same as original bill, but "escape" is made easier than House bill, as noted above.	
Enforcement of prohibition	Civil action by Attorney General. Use of examiners would help insure prohibition.	Same as original bill.	Same.	
Formula for appointment of Federal examiners	Automatic in areas covered by literacy test formula above, upon non-reviewable certification by Attorney General that he has received complaints of discriminatory voting denial from 20 residents of a political subdivision and that he believes complaints are meritorious or that in his judgment the appointments are necessary (without complaints) to enforce 15th Amendment.	In addition, court may authorize appointment in voting cases brought by Attorney General by interlocutory or final order. In exercising judgment to appoint without complaints, the Attorney General shall consider whether the ratio of non-white to white registrants is attributable to violations of the 15th Amendment.	Same as House Bill, except: 1) in areas of additional coverage (where less than 25% of racial group is registered) the initiative to apply the formula is with the Attorney General (who must request finding by Director of the Census). 2) Court is given more discretion in authorizing appointments.	

PROVISIONS	ORIGINAL BILL	HOUSE BILL	SENATE BILL	AMENDMENTS SUGGESTED BY LCCR
Who and how appointed	Examiners appointed by U. S. Civil Service Commission.	Use of Federal employees from other agencies specifically authorized.	Same as House Bill plus a provision that examiners, where practicable, be from state where they are functioning.	
Standards applied by examiners	Constitutional state standards, except no literacy test or other test or device may be used - Civil Service Commission to establish rules and prescribe forms to be used, after consultation with Attorney General.	Same as original bill, except literacy tests and other tests or devices may be used by court-authorized examiners unless the court suspends their use.	Same as House bill.	
New standards	No standards or procedures different from those in effect in November, 1964, shall be enforced in states or subdivisions covered by formula unless found non-discriminatory by three-judge court in D. C.	New standards or procedures may be applied if Attorney General does not object within 60 days of submission to him. If he does, court approval is needed. Where courts find discrimination no standards or procedures different from those in effect when case began may be applied, unless Attorney General fails to object, or court hearing case finds them non-discriminatory. Failure of Attorney General to object or court finding will not bar subsequent action to enjoin use of standard or procedure.	Same as House bill.	

PROVISIONS	ORIGINAL BILL	HOUSE BILL	SENATE BILL	AMENDMENTS SUGGESTED BY LCCR
Duration of Federal registration	So long as registrant votes once every three years in which examiner is in office, or is successfully challenged or found not qualified by examiner.	Requirement of voting once every three years deleted.	Same as House bill.	
Time of registration	As determined by rules and regulations issued by Civil Service Commission, up to 45 days before election.	Same.	Same.	
Attempted registration with state officials as prerequisite to Federal registration	Before registration by examiner applicant must try to register with state officials within 90 days. This requirement can be waived by Attorney General.	Same as original bill.	This requirement is not applicable unless specifically applied by the Attorney General. But applicant must state he has been denied registration or vote because of race or color.	Elimination of requirement of applying to state official. Adopted in part in Senate bill.
Challenges of registration.	Heard by hearing examiner. Appeal to Court of Appeals. Challenges must be made within 10 days and be supported by affidavits of two persons on personal knowledge. Any person registered shall be allowed to vote pending appeal.	Challenge provisions of original bill retained. Civil Service Commission given subpoena power for hearing procedure.	Same as House bill.	

PROVISIONS	ORIGINAL BILL	HOUSE BILL	SENATE BILL	AMENDMENTS SUGGESTED BY LCCR
Termination of Federal examiners	Upon certification by Attorney General that all persons registered by examiners have been listed on voting rolls and that there is no cause to believe further discrimination will be permitted.	Same as original bill except: Court-authorized examiners terminated by court order. Political subdivisions given right to petition Attorney General for termination.	Same as House bill.	
Enforcement of right to vote where examiners are appointed	Civil injunction suits by Attorney General in U.S. District Court to enforce right. Suit by U.S. to enjoin certification of election results. Votes must be cast and counted before election is certified. Notice of voting denial must be given within 24 hours of closing of polls. Applies only to persons registered under the Act.	Protection extended to persons registered outside the Act. Notice period extended to 48 hours. In addition, Civil Service Commission, at request of Attorney General, may send observers to observe all aspects of elections.	Protection extended to persons registered outside the Act. Examiners authorized to appoint observers to observe voting and counting of ballots. Specific language authorizing enjoining certification deleted.	Authorize assignment of FBI agents and marshals as observers in registration and voting.
Criminal penalties	Threatening or intimidating registrants, denying right to vote, tampering with ballots or records, conspiring to deny rights, etc., punishable by five year imprisonment, $5,000 fine.	Same penalties as original bill.	Same.	Increase penalties where life is placed in jeopardy.

PROVISIONS	ORIGINAL BILL	HOUSE BILL	SENATE BILL	AMENDMENTS SUGGESTED BY LCCR
Persons protected by civil and criminal penalties	Those seeking to register or vote under the provisions of the bill protected from all persons, whether acting under color of law or otherwise.	Protection extended to those administering provisions of bill and to those aiding or urging persons to vote. The latter, however, as well as those seeking to register and vote under the bill are protected only from persons acting under color of law, not private persons.	Protection extended to those administering provisions of bill, and to all persons seeking to register or vote, whether under bill or otherwise, against all, whether acting under color of law or not.	Extend protection to all seeking to register or vote and those assisting them. Partially adopted in each bill. Provide a civil penalty against those interfering with right to vote, or coercing, etc., in case brought by U. S. for injured party.
Elections covered by bill	Those involving "candidates for public office and propositions for which votes are received."	Any primary, special or general election "with respect to candidates for public or party office and propositions for which votes are received."	Same as House bill with omission of "party."	
Changes in existing law	No change.	Extends voting provision of 1964 Civil Rights Act to state and local, as well as Federal, elections.	No change.	
Legal attack on provisions of bill	Any action against execution or enforce- of Act must be brought in U. S. District Court for D. C.	Same.	Same.	

Prepared by J. Francis Pohlhaus, Counsel
Washington Bureau, NAACP
4/21/65

June 17, 1965

Subject: VOTING RIGHTS BILL

This is in answer to your request for the various alternatives available on the Voting Rights Bill. It is important that the necessary groundwork be accomplished as early as possible.

General Discussion.

Since the House is going to amend the Senate language and include in it an amendment banning the poll tax, the various alternatives available for reconciling the Senate and House versions are as follows:

I. Senate insists upon its language and requests a Conference with the House.

II. Senate accepts the House amendments to the Senate bill.

III. Senate agrees to House amendments with additional Senate amendments.

In order to insure the availability of all three alternatives in the Senate, it will be necessary for the House, after it passes the bill, to refrain from insisting upon its amendments and requesting a conference with the Senate.

I. Conference.

The ordinary course and procedure in the Senate when there is disagreement between the two Houses in a bill of this magnitude is to request a Conference and to iron out the difficulties therein. However, this is not the ordinary case. As I reminded you in my memorandum of June 1, 1965, the composition of conferees could be catastrophic. Appointing the top members of the Judiciary Committee on either a 5 or 7 man Conference would give Senator Dirksen and Senator Hruska control over rewriting the entire bill at least from the Senate side. However, even if we could be successful in omitting as conferees those obviously opposed, there is the additional problem of getting the liberals to serve on the Conference for the following reason.

Since the House is set to adopt a ban on the poll tax, but have in private to you demonstrated a willingness to accept less in a conference, it shall appear as if the Senate conferees are taking the less liberal posture and winning out over the House liberals. The liberal members of the Judiciary Committee do not want to play this role.

However, if we could control the makeup of the conferees on the Senate side and get the consent of the liberals to serve, this method is the best since it affords less mischief when the bill is returned to the floor. At that time the only question is the adoption or rejection of the Conference report.

II. Agreeing to the House Amendments.

It seems unlikely that this alternative is realistic in view of the House's insistence upon putting in a poll tax ban and the polarization in the Senate and the Administration on this issue.

III. Agreeing to the House Amendments to the Senate Bill with Amendments.

If we cannot control the composition of the conferees, the best procedure would be to work out a set of amendments to the House language and offer it on the floor. This in effect would be working out a compromise outside of a Conference. This procedure is entirely within the parliamentary scope of the Senate Rules.

(a) Political Feasibility

As was said above the usual procedure is to go to Conference. However, the reason why we would not be going to Conference would be either because we could not control the composition of the conferees or the liberals would find it embarrassing to serve on the Conference. Thus on the Democratic side, the proponents of the bill should not complain at this procedure but should in effect support it.

On the Republican side, there should not be any difficulty if Senator Dirksen agreed to the procedure in advance. Senator Dirksen would be given the foremost role in working out the Senate amendments (they would in all likelihood be worked out in his back room) and thus he could control the Republican

(b) Advantages.

The main advantage of this informal method would be the active role of the Administration (Justice Department) in assisting in working out the amendments. Although the process may prove tedious, in the end there would be less risk than in a Conference with an unfavorable line-up of conferees.

(c) Disadvantages.

The most considerable risk to this procedure is that the House bill when it is called up is open to further amendment. This would present the opportunity to the opponents of the legislation to offer their amendments all over again. I don't know if there is any sentiment to go through another battle but some might feel obligated to follow the "beat me down" procedure and thus we would be up against the possibility of invoking cloture a second time. This aspect makes this procedure very risky.

(d) House Attitude.

Assuming of course that the House would agree to less than their original language, this procedure should not present a problem to them since it would be the same as a compromise worked out in Conference. The Leadership Conference on Civil Rights advocates this procedure (because of its fear of an unfavorable Conference lineup) and has agreed to exert its efforts in the House to adopt the Senate amendments to the House language.

Conclusion

I recommend that an effort be made to control the composition of conferees. If we could appoint favorable conferees, it is the best and safest route.

However, if this is impossible then I recommend the third alternative (amending the House language) as preferable to going to Conference with an unfavorable lineup.

In any case, I think a decision should be made immediately and discussions held with Senator Mansfield and Senator Dirksen at once.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS

ROY WILKINS, Chairman
ARNOLD ARONSON, Secretary
JOSEPH L. RAUH, JR., Counsel
CLARENCE M. MITCHELL, Legislative Chairman
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Jill
Voting
Leg

TO: Cooperating Organizations

FROM: Arnold Aronson, Secretary

MEMO No. 61
May 6, 1965

URGENT! PLEASE HAVE TOP OFFICERS AND MEMBERS
WIRE ALL SENATORS URGING THEM TO VOTE FOR
KENNEDY-JAVITS AMENDMENT TO BAN THE POLL TAX.
THIS COULD BE MOST IMPORTANT CIVIL RIGHTS
VOTE THIS YEAR ...

The head of your organization may have already received this wire. No matter. We can't repeat it too many times. What can turn out to be the crucial vote on the voting rights bill will be coming up any day now and we must have your help to win it. It is an attempt by a bipartisan group of liberals, led by Senators Edward Kennedy (D., Mass.) and Jacob Javits (R., N.Y.) to prohibit the poll tax in state and local elections. It is being offered as an amendment to the voting bill that Senate Leaders Mike Mansfield (D., Mont.) and Everett M. Dirksen (R., Ill.) introduced last week as a substitute for the bill already reported out by the Senate Judiciary Committee.

A Compromise With Responsibility

The Dirksen-Mansfield substitute, as we observedin a public statement issued last week, has some serious deficiencies, none more glaring than its treatment of the poll tax issue.

Instead of facing the matter of whether or not the Congress has the power, as Conference attorneys and many leading constitutional lawyers believe it does, to prohibit the poll tax by law, the leaders propose to let the courts decide the question. A Congress frequently critical of the Supreme Court for "writing laws" is now being asked, in effect, to let the Court write this one.

Kennedy-Javits Declare National Policy

The Kennedy-Javits amendment deals forthrightly with the issue. It has four features: 1. It would make a finding by Congress that the poll tax abridges the right to vote in violation of the 14th and 15th Amendments; 2. it flatly bans the poll tax in state and local elections; 3. then it provides for a quick court test to determine the constitutionality of the prohibition; 4. if the Supreme Court should (and we believe this is unthinkable) declare the prohibition unconstitutional, newly enrolled voters could continue to vote by paying their tax for the current year.

While this is only one of several amendments we are urging, it can be the critical one. If the Senate accepts the Kennedy-Javits proposal it will be a lot easier to try to improve the bill in other respects, particularly in restoring the Committee's provision that would authorize the Attorney General to send in poll-watchers without having to go to court to do it.

Action On the House Side

The poll-tax prohibition may play a determinative role in the House Judiciary Committee's consideration of its version of the voting rights bill. The ban is already in the bill and our task there is to urge Committee members to keep it. Since the Committee is meeting long and late in order to finish its work, there's not much time for action here, either. Please wire Committee members today (MEMO 58 lists them) urging them to keep the poll tax ban, to strengthen the bill on intimidation, and to fight all attempts by Southern members to weaken the bill.

Since public opinion helps determine what Congress does, and since the press, with only a few exceptions, has been giving only the leadership's view of the voting bill, we again suggest you try for editorials in local newspapers. The recent editorial in the New York Times that we enclose with this MEMO provides an excellent example of the kind of press criticism that can be of great value at this moment.

Meanwhile,

WIRE ALL SENATORS URGING THEM TO VOTE FOR
KENNEDY-JAVITS AMENDMENT TO BAN THE POLL TAX.
THIS COULD BE MOST IMPORTANT CIVIL RIGHTS
VOTE THIS YEAR!

-30-

NOTE TO ALL WASHINGTON REPRESENTATIVES: From now until further notice, the Leadership Conference will meet each Monday afternoon at 3:30 p.m. in the Conference Room at 2027 Massachusetts Ave., N.W.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS
2027 Massachusetts Avenue, N.W.
Washington, D.C.
234-4722

April 30, 1965

DIRKSEN-MANSFIELD VOTING RIGHTS SUBSTITUTE IS A "SHOCKING COMPROMISE" SAYS THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS

The new Dirksen-Mansfield substitute voting rights bill introduced today is a shocking compromise with Congressional responsibility.

On the principal point at issue, how to eliminate the poll tax as a requirement for voting in state and local elections, the leaders of the U. S. Senate have chosen to evade their obligations. The issue is whether Congress has the power, as we believe it does, to prohibit the poll tax by law. Instead of facing the issue, the Senate leaders have chosen to try to push the whole matter off on the courts, possibly embroiling it in trickery and prolonged litigation.

The "compromise" is also deficient in provisions that would keep states from slipping out from under its requirements. Much has been made of the fact that it drops Senator Dirksen's "escape hatch," the provision that would exempt a state from the law if it can prove that more than 60 per cent of its residents of voting age registered. But the new "escape hatch" is not much better. The original Administration proposal required a state to show it had not discriminated in the ten years preceding its entrance into court to "cleanse" itself. This bill eliminates the probationary period, thus making it easier for a state to obtain an exemption.

Without a more careful examination of the bill we cannot discuss all of its features, but at least three others strike us as serious defects:

1. The substitute leaves in the bill a provision that would require a voting applicant to show, before he can be registered by a Federal examiner, that he tried to register with a local official in the preceding 90 days and was turned down.

2. Instead of adopting the provision that would authorize poll watchers for all elections, the compromise would substitute a clumsy court procedure.

3. The anti intimidation sections remain too weak to protect registrants and voters.

Do members of the Senate listen to the President? In his March 15 speech on voting rights to a joint session of Congress, Mr. Johnson warned that "every device of which human ingenuity is capable has been used to deny this right" and that the bill had to protect citizens from tricks. Yet, here are Senate leaders introducing a version of the bill that provides potential loopholes for more trickery and delay.

We in the Leadership Conference resent the fact that legislation of such vital importance to the nation as the Dirksen-Mansfield substitute is drafted without consultation with leaders of the civil rights movement. We are tired of backroom decisions that result in legislation inadequate to the demands of a great national crisis

Three previous attempts to pass effective voting rights legislation have come to very little. We call upon all members of the Senate to repudiate a version of the voting rights bill that may again fail to secure the franchise for millions of citizens. We urge them to pass a measure that will fully guarantee to every American his equal right to vote. We urge them to remember Mr. Johnson's words, that this time, on this issue, there must be no delay... no hesitation... no compromise with our purpose."

The New York Times.

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ADOLPH S. OCHS, *Publisher 1896-1935*
ORVIL E. DEYFOOS, *Publisher 1961-1963*

Sunday, May 2, 1965

Race and the Poll Tax

The Senate this week took a giant step forward and a small step backward in its work on the voting rights bill.

The big accomplishment was the abandonment by Senator Everett Dirksen of his "escape hatch" amendment which would have exempted any state from the coverage of the bill if a court found that 60 per cent of the voting-age population was registered. This would have exempted several states and parts of states in the South which meet this percentage test but where many Negroes are still disenfranchised.

As part of a bipartisan compromise worked out by Mr. Dirksen and Senator Mike Mansfield, the Democratic leader, this "escape hatch" has been replaced by a reasonable provision that a state or county can gain exemption from the law when a Federal court in the District of Columbia finds to its satisfaction that discrimination has ceased. This court would keep jurisdiction for five years.

The small step backward was the insistence by the two leaders on writing into the same compromise bill some timid language on the poll tax issue. The Senate Judiciary Committee had written a straightforward ban on the payment of a poll tax as a prerequisite for voting in state and local elections, and this direct approach is distinctly preferable.

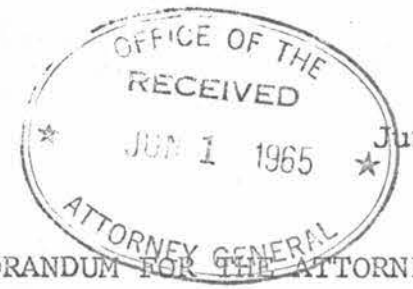
No one contends that the poll tax issue is crucial. Only five states still require payment of poll taxes as a condition of voting; and of these, Arkansas is in the process of repealing this provision. But of the four remaining states—Virginia, Texas, Alabama and Mississippi—the latter two are the worst offenders in denying voting rights to Negroes. In framing a law to strip these states of their discriminatory devices, why should Congress stop short of its goal and leave the iniquitous poll tax intact?

Fears that a poll tax ban might lead to a court upset of the whole law have been effectively rebutted by such distinguished constitutional scholars as Profs. Paul A. Freund and Mark De Wolf Howe of the Harvard Law School. They assert that the courts would actually welcome a Congressional declaration of policy and judgment in this marginal area.

The language regarding the poll tax which the leadership compromise bill now contains would permit a speedy court test, but avoids making any such declaration of policy. Congress, which for so long has shirked many of its responsibilities on civil rights issues and left to the courts the burden of articulating national policy, should face the poll tax problem squarely and provide the courts with clear guidance.

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington



June 1, 1965

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Voting Rights Act of 1965

Attached is a detailed comparison of S. 1564, as passed by the Senate, and H.R. 6400 as reported by the House Judiciary Committee. The major points of variance are the following:

Section 4(a)

1. Section 4(a) of S. 1564 permits a State to "escape" from the suspension of tests and devices if the court, in a declaratory judgment action, determines that the effects of discrimination have been effectively corrected and there is no reasonable cause to believe that any test will be used to deny the right to vote on account of race or color.

The House bill requires a court finding of non-discrimination over the five-year period preceding suit.

2. Under the Senate bill, if a court has held that the right to vote has been denied because of tests or devices, such holding may be used as prima facie evidence in a declaratory judgment action brought within five years of the final judgment in such case.

The House bill prohibits issuance of a declaratory judgment within such five-year period.

Section 4(b)

Section 4(b) of H.R. 6400 provides that the prohibitions of Section 4(a) shall apply in any State

or subdivision which maintained a test on November 1, 1964, and in which less than 50% of the persons were registered or voted in November 1964.

S. 1564 contains an additional "trigger," requiring that at least 20% of the population be non-white. S. 1564 also makes the prohibitions of Section 4(a) applicable in a State or subdivision where less than 25% of the persons of any race or color are registered to vote.

Section 4(e) of S. 1564

Section 4(e) of S. 1564, the Kennedy-Javits "American-flag school" provision, has no counterpart in H.R. 6400. It provides that persons who have completed the sixth grade in a school accredited by the State or other official agency shall be permitted to vote even if they cannot meet English language requirements.

Section 6

S. 1564 provides that examiners shall "to the extent practicable" be residents of the State in which they are to serve. H.R. 6400 omits this provision.

Section 7(a)

H.R. 6400 requires that an applicant to an examiner allege only that he is not otherwise registered to vote. S. 1564 includes this requirement plus such additional allegations, including an allegation that within 90 days preceding his application the applicant has been denied the opportunity to register or vote or has been found not qualified to vote, as the Attorney General may require. Whether to require these additional allegations is left to the Attorney General's discretion.

Section 8 of H.R. 6400; Section 10 of S. 1564

The poll-watching provisions are different. Under H.R. 6400 the Civil Service Commission will appoint the observers. Under S. 1564 they will be appointed by the Attorney General (10(b)) or, if the Attorney General brings an action under 10(a) to require official listing of eligible voters, observers may be appointed by the court.

Subsection 10(a) has no House counterpart.

Section 9 of S. 1564; Section 10 of H.R. 6400

These sections dealing with the poll tax are different. The House bill bars a State or subdivision from requiring payment of the poll tax as a voting prerequisite. The Senate bill directs the Attorney General "forthwith" to institute court actions to bar enforcement of the poll tax where its purpose or effect is to abridge constitutional rights.

Section 11

H.R. 6400 protects persons urging or aiding persons to vote or attempting to vote from intimidation. The Senate bill does not include this protection.

Section 13

S. 1564 gives a subdivision in which 50% of the nonwhite persons are registered a right to sue in the District Court for the District of Columbia for the removal of examiners. The subdivision must show that all persons listed have been placed upon registration rolls and that there is no reasonable cause to believe that persons will be discriminated against in the future. H.R. 6400 leaves removal to the discretion of the Attorney General who is to apply the same two standards.

Section 14(c)(1)

H.R. 6400 defines the term "vote" to include all actions necessary to make a vote effective in the election of candidates for public or party office. The Senate bill covers only public, not party, elections.

Section 14(d)

This section, penalizing the giving of false information, is applicable in S. 1564 only to federal elections. In H.R. 6400 it applies to any "matter within the jurisdiction of an examiner or hearing officer" under the Act.

S. 1564 goes beyond H.R. 6400 to make it a crime to encourage false registration or pay or offer to pay or accept payment for registration or voting in a federal election.

Section 14(e) of S. 1564

This provision authorizes issuance of subpoenas by the District Court of the District of Columbia beyond 100 miles. It has no House counterpart.

Section 15 of H.R. 6400

This amendment of 42 U.S.C. 1971, by removing its restriction to federal elections, has no counterpart in S. 1564.

Section 16 of H.R. 6400

The Tower amendment, providing for a survey of voting discrimination against members of the Armed Forces, has no House counterpart.

Section 16 of H.R. 6400

This has no Senate counterpart. It stipulates that nothing in the Act be construed to deny or adversely

affect the right to vote of anyone registered to vote under the law of any State or subdivision.

Section 18 of S. 1564

This amendment by Senator Fulbright, which has no House counterpart, assures that no examiners will be appointed pursuant to the 25% trigger of Section 4(b)(3) until 30 days prior to the first election in 1966. It accommodates the question of appointment of examiners to the peculiar situation existing in Arkansas as a result of the new registration laws adopted after its abolishment of the poll tax.

John Doar

JOHN DOAR
Assistant Attorney General
Civil Rights Division

COMPARISON OF S. 1564 AS PASSED SENATE AND H.R. 6400,
COMMITTEE PRINT NO. 2

S. 1564, as passed the Senate May 26, 1965.	H. R. 6400, [Committee Print No. 2] May 14, 1965, House Committee on the Judiciary.
Section 2 would prohibit any State or political subdivision from imposing or applying any voting qualification or prerequisite to voting, or standard, practice or procedure to deny or abridge the right of any citizen of the United States to vote on account of race or color.	Same

Section 3. This section of the bill deals generally with legal proceedings brought by the Attorney General to enforce the guarantees of the fifteenth amendment in any State or political subdivision. Subsection 3(a) would require a court having jurisdiction in such proceeding to authorize the Civil Service Commission to appoint examiners (1) if, as part of an interlocutory order, it determines the appointment of examiners is necessary to enforce the guarantees of the fifteenth amendment, or (2) if, as part of any final judgment, it finds that the defendant State or subdivision

Subsection 3(a) of this Committee Print is almost identical to section 3(a) of the Senate passed bill. It specifies that appointment of examiners is not required if the court finds by a preponderance of evidence that the incidents have been few.

has committed violations of the fifteenth amendment justifying equitable relief. The appointment of examiners would not be required where incidents of discrimination (1) have been limited in number and promptly and effectively corrected, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence.

Subsection 3(b) would require a court trying an action brought by the Attorney General to enforce the guarantees of the fifteenth amendment to suspend the use of a test or device whenever it finds that they have been used by a State or political subdivision

Subsection 3(b) of the Committee Print is almost identical. It uses such test or device--instead of tests or devices; for the purpose or with the effect of denying--instead of for purposes of; and does not contain the words definite and limited.

for purposes of denying or abridging the right of any United States citizen to vote on account of race or color. Suspension to be for such definite and limited period as court deems necessary. (Cotton Amendment, underlined.)

Subsection 3(c) would provide that in the event of a judicial finding that a State or political subdivision has violated the fifteenth amendment, the court shall retain jurisdiction for as long as it deems appropriate. In the exercise of its continuing jurisdiction, the Court would be required to order the submission to the Attorney General of any new or modified voting qualification, or prequisite to voting, or voting

Like the Senate-passed bill, subsection 3(c) of the Committee Print would require the court to retain jurisdiction where it finds the occurrence of fifteenth amendment violations. However, the procedure for barring the enforcement of new discriminatory voter laws operates somewhat differently in the House Committee Print. Under the Senate bill, the court would be required to order the State to notify

standard, practice or procedure which is adopted subsequent to the institution or the original suit. The Attorney General would be allowed 60 days (from the date of receipt of the information) to file objections to the enforcement of such new voting qualification, etc. If he files objections, any enforcement of new voter requirement would be prohibited "unless and until" the court finds that it "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.

If the Attorney General files no objection the State may enforce the new requirement without further order of the the Attorney General of any change in the voter requirements in order to permit the filing of timely objections to its enforcement. In the House bill, however, no modification would be enforced "unless and until" the court finds that it does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. A proviso to this latter provision would operate to allow the enforcement of such new law if the Attorney General does not file any objections thereto within 60 days of its submission for his examination. The Attorney General's failure to file timely objections would not operate as a bar to any future

court. However, neither a judicial determination sustaining the new requirement, nor the failure of the Attorney General to file timely objections would operate as a bar to enforcement.

Section 4. Subsection 4(a) would prohibit the use of any "test or device" in any election, State or local as well as Federal, in a State or political subdivision in which the conditions specified in section 4(b) are determined to exist. A State or political subdivision subject to this ban could secure a release therefrom by obtaining a judgment from the United States District Court for the District of Columbia declaring that the effects of denial or abridgment have been effectively corrected and action to enjoin the enforcement of such new voter requirement.

Under subsection 4(a) of the Committee Print, a State or political subdivision that came under the act's automatic coverage formula set forth in section 4(b) could go to the District Court in the District of Columbia and petition for a declaratory judgment freeing it from coverage only by showing that its tests or devices had not been used to discriminate during the past five years. In no event, however, could a State or political subdivision move for an exemption until five years after a Federal court has

there is no reasonable cause to believe that a test or device will be used for the purpose or will have the effect of discrimination in voting. The bill contains a proviso which would deem a final judgment of discrimination directed against the plaintiff State or political subdivision within five years of its declaratory judgment action prima facie evidence of the facts found by the court in the prior action. Nothing in this proviso would alter the legal effect of the earlier judgment under existing law.

entered a final judgment that denials of the right to vote on account of race or color had occurred through its use of "tests or devices."

An action for a declaratory judgment would be heard by a three-judge district court (28 U.S.C. 2284) and any appeal from that court's judgment would lie to the United States Supreme Court. The court in which a declaratory judgment action is filed would retain jurisdiction for five years and would be required to reopen the action on motion of the Attorney General. The Attorney General may consent to the entry of the declaratory judgment freeing the state or political subdivision from coverage by the bill if he determines that no test or device is being used to discriminate. (Underlined changes made by Ervin amendment.)

An action for a declaratory judgment would be heard by a three-judge district court (28 U.S.C. 2284) and any appeal from that court's judgment would lie to the United States Supreme Court. The court in which a declaratory judgment action is filed would retain jurisdiction for five years and would be required to reopen the action on motion of the Attorney General. The Attorney General would be required to consent to the entry of the declaratory judgment freeing the plaintiff state or political subdivision from coverage by the act if he determines that its tests or devices have not been used to discriminate during the past five years.

Subsection 4(b) provides that any State or political subdivision which uses a "test or device" would be covered by the act if (1) the Attorney General determines that it used such "test or device" on November 1, 1964, and (2) the Director of the Census determines (A) that fewer than 50 percent of its voting age residents were registered on November 1, 1964, or voted in the presidential election of November, 1964, and (B) that 20 percent of its voting age population is non-white (using 1960 Census figures as a basis.) Alternatively, a State or political subdivision would be covered by the act if the Director of the Census determines, by a survey requested by the Attorney General, that

Section 4(b) of the Committee Print contains the identical "50% trigger" but not the additional provisions of S. 1564.

fewer than 25 percent of its voting age residents of any race or color are registered to vote. (Tydings amendment eliminated exclusion of aliens and military.)

Determinations of the Director of the Census and certifications of the Attorney General (section 6 and 13) would be deemed final and effective upon publication in the Federal Register.

Subsection 4(c) would define the phrase "test or device" to include any requirement that a person "as a prerequisite for voting or registration for voting," demonstrate (1) literacy, i.e., the ability to read, write, understand, or interpret any matter, (2) level

Determinations of the Director of the Census and certifications of the Attorney General (section 6) would not be reviewable by the courts and would be effective upon publication in the Federal Register.

Identical provision is contained in section 4(c).

of education or knowledge of any particular subject, (3) good moral character, or (4) recommendation of other registered voters or other class of persons.

Subsection 4(d) would exempt any State or political subdivision in which discriminatory denials of the right to vote (1) have been limited in number and promptly and effectively corrected, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence.

Subsection 4(d) contains an almost identical provision. (Slight language variation.)

Subsection 4(e) is the Kennedy-Javits Spanish literacy amendment. It declares that to secure the 14th Amendment

No comparable House provision.

rights of persons educated in American-flag schools in a language other than English the States must not make literacy in English a prerequisite to voting.

Subsection 4(e)(2) provides that no one who has successfully completed 6 grades in a public or accredited private school in any State, District of Columbia, or Puerto Rico in which the predominant language was not English shall be denied the right to vote because of inability to read English. In states having a different grade-level as a presumption of literacy this level will apply.

Section 5. Section 5 of the bill would allow a State or political subdivision covered by the bill to enact or to administer a new voter requirement if it formally submits such new requirement to the Attorney General and the Attorney General does not interpose any objection within 60 days. If the State or political subdivision does not submit the new voter requirement to the Attorney General, or if it is submitted and the Attorney General interposes objections, then the State or political subdivision would not be allowed to enforce the new requirement "unless and until" it obtains a declaratory judgment in the United States District Court for

Section 5 of the Committee Print is virtually identical to Section 5 of Senate bill. The sole substantive difference between these two sections is the omission from the Committee Print of the qualification that a declaratory judgment (one favorable to the State or subdivision) would not operate as a bar to a future action to enjoin the new voter requirement. The first limitation, i.e., the Attorney General's failure to interpose timely objections to new voter laws would not bar future suits to enjoin the enforcement of such laws, is retained in the House bill.

the District of Columbia (sitting as a three-judge court in accordance with 28 U.S.C. 2284) that such requirement does not have the purpose and will not have the effect of denying the right to vote on account of race or color. An appeal from such a judgment would lie to the United States Supreme Court. Neither the Attorney General's failure to interpose timely objections nor a declaratory judgment (favorable to plaintiff State or subdivision) would operate as a bar to a future action to enjoin the new voter requirement.

Section 6. Section 6 of the Senate bill would provide for the appointment of examiners. Examiners

Section 6 of the Committee Print is virtually identical to section 6 of the Senate bill,

would be appointed by the Civil Service Commission when the Attorney General certifies -- (1) that a court has authorized the appointment of examiners pursuant to section 3(a), or (2) that he has received 20 or more meritorious complaints alleging denial of the right to vote under color of law on account of race or color from the residents of a subdivision covered by the bill, or (3) that in his judgment the appointment of examiners in a covered subdivision is necessary to enforce the guarantees of the fifteenth amendment. The Commission would appoint as many examiners as it deems necessary for each subdivision with respect to which except that the first condition for the appointment of examiners, i.e., where a court authorized the appointment pursuant to section 3(a), does not require certification by the Attorney General. In brief, the House bill, in this single instance permits the court to make a direct authorization of appointment to the Civil Service Commission without any action by the Attorney General. In all other respects, sections 6 of the two bills are similar.

certifications have been made. To the extent practicable, the examiners would be residents of the State in which they are appointed to serve. They would examine applicants and prepare and maintain lists of such applicants eligible to vote in Federal, State and local elections. All persons deemed necessary to administer the bill, including examiners authorized by this section, hearing officers authorized by section 8, poll observers authorized by section 10, and all necessary supporting personnel, would be appointed and compensated without regard to any statute administered by the Civil Service Commission. Such persons would be prohibited from engaging in political activity during their period of

service in accordance with the provisions of the Hatch Act. The Civil Service Commission would be authorized to designate suitable persons in the official service of the United States, to serve in any of the enumerated positions. Examiners would be authorized to administer oaths.

Section 7. Subsection 7(a) would provide that examiners appointed pursuant to section 6 are to examine applicants to determine their qualifications for voting at such places as the Civil Service Commission designates. The Commission would be authorized to prescribe the form of application for registration (section 8(b)). The applicant would have to allege that he is not registered to vote

Subsection 7(a) of the Committee Print would require examiners to examine an applicant from a covered subdivision concerning his qualifications to vote. The Civil Service Commission would prescribe the form of the application for registration. The applicant would merely have to allege that he is not otherwise registered to vote.

and make such further allegations as the Attorney General may require, such as that within 90 days of his application he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law.

Section 7(b) would require the examiner to place on the eligible voter list any applicant whom he finds to possess qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States. Instructions with respect to qualifications are to be issued to examiners by the Civil Service Commission (section 8(b)). A challenge

Same, except does not specify that state officials are to place names on official voting list.

to the examiner's list would be made in accordance with section 8(a) and could not be made the basis for a criminal prosecution under section 11. The list of eligible voters would have to be certified and transmitted, at least once a month, to the appropriate local election officials, the Attorney General and the State attorney general. The list maintained by the examiner, and any periodic supplement thereto transmitted pursuant to this section, would be available for public inspection on the last business day of the month and no later than 45 days prior to an election. The appropriate state or local official is required to place the names on the official voting list. (This is not spelled out in the

House bill.) Any person whose name appears on an examiner's list transmitted 45 days prior to an election would be entitled to vote unless and until his name has been removed from the list in accordance with section 7(d).

Subsection 7(c) would require the examiner to give every person whose name appears on a list a certificate evidencing his eligibility to vote. Same

Subsection 7(d) would require the examiner to remove a person's name from the eligible list either as a result of a successful challenge in accordance with procedures prescribed in section 8, or because he has lost his eligibility to vote under a valid State law. Same

Section 8. Section 8 of the Senate bill contains the procedures governing the challenge of persons listed by examiners. Subsection 8(a) would provide that a hearing officer appointed by and responsible to the Civil Service Commission shall hear such challenges. A challenge would have to be filed in the office within the State designated by the Civil Service Commission and would be entertained only if filed within 10 days after the listing of the challenged person is made available for public inspection and if supported by affidavit of at least two persons having personal knowledge of the facts constituting the challenge. In addition,

Subsection 9(a) of the Committee Print is identical to section 8(a) of the Senate bill. (Slight language variation)

there would have to be a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged. The hearing officer's decision, which in this version must be made within 15 days after the challenge, could be appealed to the court of appeals in which the challenged person resides within 15 days after such decision has been served upon the moving party. No hearing officer's decision could be overturned unless clearly erroneous. A challenged person would be allowed to vote pending final action on the challenge.

Subsection 8(b) would provide that the Civil Service Commission shall prescribe regulations concerning the times, places, procedures, and form for application listings, and removals from the eligibility lists. The Commission, after consultation with the Attorney General, would instruct examiners "concerning applicable State law not inconsistent with the Constitution and laws of the United States relative to (1) qualifications required for listing, and (2) loss of eligibility to vote.

Subsection 9(b) differs in a few particulars from companion section in the Senate bill. The Committee Print, in subsection 9(b), does not specify expressly that rules of the Commission shall govern the form of the application as well as the times, places, and procedures for application. The authority to issue regulations governing the form of the application is contained in section 7. The Committee Print also does not expressly state that instructions given examiners relative to qualifications for listing and loss of eligibility means instructions in accordance with valid State laws.

Subsection 8(c) would authorize the Civil Service Commission, upon request of applicant or challenger, to subpoena witnesses and documentary evidence relating to any matter pending before it. In the case of a failure to obey a subpoena, the district court having jurisdiction over the person disobeying the subpoena, could, upon application of the Attorney General, issue an order requiring the person subpoenaed to appear before the Commission or a hearing officer. Failure to obey such an order would be contempt of court.

Subsection 9(c) is virtually identical to subsection 8(c) of the Senate bill except that the Committee Print omits the language upon request of applicant or challenger. The Committee Print also makes clear that a district court in any "territory or possession" shall have jurisdiction to issue orders enforcing subpoenas. The Senate bill refers only to "any district court of the United States or the District Court for the District of Columbia."

Provision comparable to section 8 of the Committee Print is contained in section 10, infra.

Section 9. Section 9 declares that in certain states the right to register or vote is denied because of requirement of a poll tax as a

Section 8 of the Committee Print would authorize the Civil Service Commission, at the Attorney General's request, to assign observers to elections held in any covered subdivision. Observers would observe all aspects of an election and would report to the appropriate examiner and the Attorney General. If examiners were authorized by the court under Section 3(a), the observers would report to the court.

The poll tax provision is in Section 10 of the Committee Print. Subsection 10(a) contains a finding that the poll tax requirement was

precondition of registration or voting, and requires the Attorney General to institute actions for declaratory judgment or injunctive relief against enforcement of such taxes or substitutes therefor enacted after November 1, 1964. (This is Mansfield-Dirksen amendment to their original substitute amendment.)

Subsection (b) provides for a three-judge court with appeal to Supreme Court and expedited hearing.

Subsection (c). While such actions are pending, and thereafter if the court finds poll tax is constitutional, persons in States or subdivisions covered by the "triggers" of 4(b), for which no declaratory judgment has been entered, will not adopted in some areas to deny the right to vote on account of race or color and is thus an unreasonable restriction on the right to vote, in violation of the 14th and 15th Amendments. Subsection 10(b) forbids denial of the right to vote because of failure to pay poll tax.

be denied the right to vote, during the first year they become otherwise eligible, because of failure to pay poll tax, provided they tender the tax for the current year to the examiner at least 45 days before election -- such tax to be forwarded to appropriate state authority.
(These sections were added by Consent agreement May 17, Star Print.)

Section 10(a) provides for suits by the Attorney General to require persons to be listed on the official voting list and allowed to vote, upon receipt of 20 or more signed complaints, at least 20 days before election, that persons listed by examiners have not been placed

Committee Print contains no provision comparable to Section 10(a).

Provision comparable to Section 10(b) is contained in Section 8, supra.

on official voting lists by the local or State officials. Case would be heard by three-judge court if Attorney General requests.

(Section 10 of the Committee Print (poll tax), is comparable to Section 9 of the Senate bill, supra.)

Relief shall include court-appointment of observers and impounding of ballots. Section does not preclude other state or federal remedies.

Section 10(b) (Fong amendment) provides that when examiners are serving in any political subdivision the Attorney General may assign observers at polls and places for tabulating votes.

Section 11. Subsection 11(a) would prohibit persons acting under color of law from failing or refusing to permit to vote or to count the vote of any person who is entitled to vote under this bill.

Section 11(a) and (b) of the Committee Print are substantially similar to 11(a) and (b) of the Senate bill except that by virtue of section 12(a) of the latter all violations are subject to the

Subsection 11(b) would prohibit persons whether acting under color of law or otherwise, from intimidating threatening, or coercing or attempting to intimidate, threaten, or coerce (1) any person from voting or attempting to vote, or (2) any person exercising powers or duties under sections 3(a), 6, 8, 10, or 12(e).

Section 12. Subsection 12(a) would authorize criminal penalties ($5,000 maximum fine or 5 years imprisonment maximum, or both) for qualification "willfully and knowingly". The Committee Print requires the element of willfullness only with respect to a prosecution for failing or refusing to tabulate, count and report any listed person's vote.

The House bill does not limit coverage of 11(a) to persons entitled to vote under this Act, but adds or is otherwise qualified to vote. It also covers urging or aiding any person to vote.

Subsection 12(a) is similar to subsection 12(a) of the Senate bill save that it does not require that the acts be done "wilfully and knowingly."

"wilfully and knowingly" depriving or attempting to deprive any person of any right secured by sections 2, 3, 4, 5, 7, 9, or 10 or for "willfully and knowingly" violating section 11.

Subsection 12(b) would impose similar penalties for any person who either fraudulently destroys, defaces, or mutilates, or alters the marking of a paper ballot or fraudulently alters any voting record in connection with an election conducted in a covered area.

Subsection 12(b) is similar to subsection 12(b) of the Senate bill except that it does not specify that the prohibited activities be "fraudulently" committed.

Subsection 12(c) would impose similar penalties for conspiracies to violate subsection 12(a) and 12(b) and for "willfully and knowingly" interfering with any right secured by sections 2, 3, 4, 5, 7, 9, 10, or 11.

Subsection 12(c) is identical to subsection 12(c) of the Senate bill, except for the omission of "wilfully and knowingly".

Subsection 12(d) would authorize the Attorney General--whenever he was reasonable grounds to believe that any person is about to engage in a practice prohibited by sections 2, 3, 4, 5, 7, 10, 11 or 12(b)--to institute an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, including an order directed to State or local election officials to require them to permit listed persons to vote and to count such votes.

Subsection 12(d) is identical to subsection 12(d) of the Senate bill.

Subsection 12(e) would permit a person on an eligibility list to allege to an examiner within 24 hours after the closing of the polls that he was not allowed to vote in an election. If the examiner believes the allegation to be well founded, he would be required to notify the United States Attorney, who may within 72 hours of the closing of the polls apply to the district court for an order requiring the casting or counting of the vote of such person and its inclusion in the total vote before the election may be deemed final and given effect. The district court would be required to immediately hold a hearing and determine the issues raised by the application. The remedy authorized by this section would not bar other remedies authorized by State or Federal law.

Subsection 12(e) is virtually identical to subsection 12(e) of the Senate revised bill, except:

(1) 48 hour time limit

(2) reports to Attorney General (instead of U.S.A.)

(3) 72 hour limit for applying to court

(4) Court shall issue order temporarily restraining issuance of certificates of election pending hearing on merits.

Section 12(f) would vest jurisdiction over any proceedings arising under this section in the district court without regard to whether an applicant for listing shall have exhausted any administrative remedy or other remedies provided by law.

Subsection 12(f) is identical to subsection 12(f) of the Senate bill.

Section 13 would provide for termination of listing procedures in any political subdivision 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 regard to which the Director of the Census has determined that more than 50% of the nonwhite persons of voting age residing therein are registered to vote (Long-Hart amendment) (1) that all persons listed by the examiner have been placed on the registration rolls, and (2) that there is no longer reasonable cause to believe that persons will be

Section 13 is identical except for the indicated Senate amendments.

denied the right to vote on account of race or color. Where appointment of examiners has been authorized by a court, pursuant to section 3(a), listing by examiners may be terminated by court order. A political subdivision may petition the Attorney General to terminate listings and to request the taking of a census appropriate for making the determination provided for herein. If the Attorney General refuses to request a census the District Court for the District of Columbia shall order the census if it deems the Attorney General's refusal arbitrary or unreasonable. (Long-Hart amendment.)

Section 14. Subsection 14(a) adopts the provisions of the Civil Rights Act of 1957 for jury trials in criminal contempts.

Subsection 14(b) would provide that the District Court for the District of Columbia (and a court of appeals acting under section 8) shall have sole jurisdiction to issue any declaratory judgment (section 4 or 5) or any restraining order or temporary or permanent injunction against the execution or enforcement of the provisions of this bill, or any action of any Federal officer or employee. The right to intervene any action would be limited to the Attorney General and to States, political subdivisions, and other appropriate officials.

Subsection 14(a) is identical to subsection 14(a) of the Senate bill.

In subsection 14(b) of the Committee Print, unlike the Senate revised bill, no mention is made of the Court of Appeals or the Attorney General's, etc., authority to intervene in actions authorized by this bill.

Subsection 14(c)(1) would define the terms vote or voting to include "all action necessary to make a vote effective, 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 and included in the appropriate totals of votes cast with respect to candidates for public office and the propositions for which votes are received in an election."

Subsection 14(c)(1) is practically identical to the corresponding provision in the Senate bill. Only variance is use of the terms vote or voting in Senate bill and the term vote in House bill.

Subsection 14(c)(2) would define the term "political subdivision" to mean any county or parish or any other subdivision which conducts registration for voting.

Same

Subsection 14(d) would provide criminal penalties ($10,000 maximum fine or 5 years maximum imprisonment or both) for knowingly and willfully giving false information to establish eligibility to register or vote or for conspiracy with another for the purpose of encouraging illegal registration or voting or paying or offering to pay or accepting payment for registration or voting. It is limited to federal elections.

Subsection 14(d) like the corresponding provision in the Senate bill deals with the giving of false statements to the examiner, although in slightly different language. It would impose similar criminal penalties for knowingly and willfully falsifying or concealing a material fact, or knowingly making or using any false writing or document. In the House bill the section is limited to matters within the jurisdiction of examiners or hearing officers.

Subsection 14(e), added by Allott amendment, provides that in declaratory judgment actions under Section 4 or 5 subpoenas for witnesses may be served in any judicial district, but requires court's permission, on show-cause application, to issue subpoenas more than 100 miles distant from the District of Columbia.

No comparable provision to 14(e) of Senate bill.

No comparable provision to Section 15 of Committee Print.

Section 15. Section 15 of the Committee Print would delete the word "Federal" from existing law (42 U.S.C. 1971(a) and (b)) which authorizes the Attorney General to seek injunctive relief when there is a violation of the right to vote free of racial discrimination. The effect of this

amendment is to permit the application of the remedial provision of the earlier law -- including the simplified manner of proof of discrimination, the requirement of nondiscriminatory standards and the expeditious handling of voting suits enacted in Title I of the "Civil Rights Act of 1964 (78 Stat. 241) -- to persons seeking to qualify to vote in State as well as Federal elections.

No comparable provision to Section 16 of House Committee Print.

Section 16 provides that "nothing in this act should be construed to deny, impair or otherwise adversely affect the right to vote of any person registered to vote

	under the law of any State or political subdivision."
Section 15 of S. 1564 provides for appropriations.	Section 17. Appropriations.
Section 16 (Tower amendment) requires a joint study by the Attorney General and Secretary of Defense of potential voting discrimination against members of the Armed Forces because of state preconditions to voting. Report and legislative recommendations to be submitted June 30, 1966.	No comparable provision.
Section 17. Severability.	Section 18. Severability.

Section 18 (Fulbright amendment) provides that no examiners be appointed as a result of a determination under the 25% formula (4(b)(3)) until 30 days prior to the first 1966 election, in any State which, between November 1964 and March 1965, has adopted legislation requiring reregistration of all persons wishing to vote in any election. _/

No comparable provision.

_/ Arkansas has recently abolished its poll tax requirement, which has been the sole means of registration, and established a new system for registration. Since it has no "tests or devices" the only formula under which it could be covered would be a Negro registration of less than 25% of the voting age Negro population. Due to problems and litigation about the new registration forms the new registration has not been effected and no voters are yet registered. Thus practically all counties would fall under the 4(b)(3) formula. This section would allow time for completion of the new registration and correct determination of coverage.

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JOSEPH L. RAUH, JR.
JOHN SILARD
DANIEL H. POLLITT
HARRIETT R. TAYLOR

737-7795

May 28, 1965

The Vice President
Executive Office Building
Washington 25, D. C.

Dear Hubert:

I tried to deliver the enclosed memorandum in person yesterday but there was no time on your schedule for this.

The memorandum is the one for which you asked in the meeting with Walter. I think it requires your immediate attention if we are to avoid another poll tax roll call. I am sending a copy of this letter and the memorandum to John Stewart so that he can be informed about the problem.

With respect to the other matter which Walter brought up -- avoiding a blow-up before the extended housing order can be issued -- I am waiting for the names of those you feel should be contacted to avoid this blow-up. From what I gather this is urgent too.

Best regards.

Sincerely yours,

Joseph L. Rauh, Jr.

Enclosure

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HARRIETT R. TAYLOR

737-7795

MEMORANDUM

May 27, 1965

To: The Vice President

From: Joseph L. Rauh, Jr.

Re: VOTING RIGHTS BILL

1. The Senate bill, adopted overwhelmingly yesterday, is a good bill. Most of what the Leadership Conference on Civil Rights suggested as a possible compromise before the poll tax vote has now been put into the Senate bill (although the poll tax "declaration" is substantially weaker than requested).

2. Nevertheless, the House Judiciary Committee bill, which should come before the House late next month, is stronger than the Senate bill in a number of respects, including:

(i) The House bill has a poll tax ban.

(ii) The House bill omits the Senate provision authorizing the Attorney General to require Negroes to go to the State registrar first.

(iii) The House bill requires 5 years of good behavior before a State can get out from under the bill.

(iv) The House bill does not contain the "escape" clause where 50% of Negroes are registered in a county.

(v) The House bill protects civil rights workers "urging or aiding" voters.

(vi) The House bill covers party offices.

(vii) The House bill does not require that examiners, to the extent practicable, be residents of the state.

(viii) The House bill does not exempt areas where there are less than 20 percent Negroes (Virginia).

3. Because the House bill is stronger, Leadership Conference policy must be to try and get it through the House without weakening amendments and then try to get the Senate to adopt the

House amendments.*/ A conference (with Senator Dirksen almost certainly in the driver's seat) must be avoided at all costs.

4. If the Administration should try to put the Senate bill through the House or should support weakening amendments in the House or should fail to use its influence to have the Senate accept the House bill, there would likely be another line-up of liberals on one side and the Administration on the other as in the poll tax roll call.

5. President Johnson can best recapture the leadership of the legislative struggle exhibited in his March 15 speech by announcing at an early date that he favors the House bill without weakening amendments. At this point, the Administration and the civil rights groups will be going in the same legislative direction once again.

6. The only problem from the President's point of view might be criticism of the "shift" on the poll tax. But the President has <u>always</u> opposed the poll tax and he could have the Attorney General say that in view of the statements of such prominent authorities as the deans of both Harvard and Yale Law Schools, Paul Freund, and many others, the Attorney General now

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*/ Hopefully, the House will add the Kennedy-Javits "Puerto Rican" amendment so as to bring the two bills into line on voting rights of Spanish-speaking Americans.

believes it would be best to let the courts decide the question of constitutionality of the poll tax ban. With this issue out of the way, the President could then support the House bill as the stronger law and regain any losses that may have occurred through the unfortunate poll tax roll call.

FOR IMMEDIATE RELEASE AUGUST 5, 1965

Office of the White House Press Secretary

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THE WHITE HOUSE

REPORT TO THE PRESIDENT FROM THE ATTORNEY GENERAL AND THE CHAIRMAN OF THE CIVIL SERVICE COMMISSION ON IMPLEMENTATION OF THE VOTING RIGHTS ACT OF 1965

As you requested, the Department of Justice, the Civil Service Commission and the Bureau of the Census will begin implementation of the Voting Rights Act of 1965 immediately upon its signing into law. We are prepared to move in three directions: (1) To make the determinations which bring the suspension of all literacy tests and devices in the States of Mississippi, Alabama, Louisiana, Georgia, South Carolina, Virginia and Alaska and in certain counties in North Carolina and elsewhere; (2) to place examiners in counties where their appointment is necessary to enforce the guarantees of the Fifteenth Amendment; and (3) to initiate lawsuits in particular states to enjoin the enforcement of the poll tax as a condition of voting.

1. Suspension of Literacy Tests and Devices

Following the signing of the Voting Rights Act, the first step will be for the Attorney General to determine which states and counties, in November 1964, maintained any literacy test or device. Second, the Director of the Census will certify in which of these states or counties less than 50 percent of the persons of voting age were registered or voted in November 1964. The Attorney General and the Director of the Census are prepared to make these determinations immediately, although it may be necessary to take a field census in some counties in North Carolina.

Upon publication of these determinations in the Federal Register, the States of Mississippi, Alabama, Louisiana, Georgia, South Carolina, Virginia and Alaska and certain counties in North Carolina and other states will be prohibited for a period of time from enforcing any literacy test or device as a condition of registration or voting. It will be the responsibility of state, county and local election officials in these jurisdictions to proceed to register citizens who meet residence, age and objective requirements other than literacy tests and devices.

We are prepared to advise immediately the responsible election officials in the states and counties covered of the provisions of the Voting Rights Act and their legal obligations under it. The help, counsel and cooperation of the state governors, of county registrars and clerks and other election officials are essential to fullest application of the new law and the guarantees of equal voting rights which it insures. We are ready to meet personally with any officials who would find such a meeting helpful.

2. Assignment of Examiners

The Voting Rights Act provides that the Civil Service Commission shall appoint examiners to prepare and maintain lists of eligible voters in any county where tests or devices have been suspended and (1) where the Attorney General has received 20 bona fide complaints of denials of the right to vote on account of race or color, or (2) where the Attorney General determines that the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment.

(MORE)

In recent weeks the Department of Justice has been reviewing the record of various counties in guaranteeing the right to vote without regard to race or color as required by the Fifteenth Amendment and the provisions of the Civil Rights Act of 1957. Our purpose has been to identify those counties in which examiners are necessary. As provided in section 6 of the Act, the Attorney General will, in making this determination, consider, among other factors, whether the ratio of non-white persons to white persons registered to vote within the county appears to be reasonably attributable to violations of the Fifteenth Amendment, or whether substantial evidence exists that bona fide efforts are being made there to comply with that Amendment.

At the present time the Attorney General has, of course, made no final decision that the assignment of examiners is necessary in any particular county or counties. However, the Department of Justice and the Civil Service Commission are now able to place examiners promptly in any county so designated. These examiners would be so trained and equipped that they could open offices to receive applicants for voting immediately upon arrival.

(MORE)

To create the capability of early assignment of examiners, the Commission and the Department have made the following preparations:

-- We have prepared regulations, under the Voting Rights Act, to govern the activities and operations of examiners in receiving applications and listing eligible voters and in handling challenges. These regulations will be published next week in the Federal Register.

-- We have made a detailed study of the voting laws of the various states in which the assignment of examiners will be authorized. Application forms conforming to valid state requirements have been prepared and are ready for immediate use.

-- Commencing Wednesday, August 4, the Civil Service Commission has been conducting an orientation session for some 75 of its present employees who will have responsibilities for implementation of the Voting Rights Act. The Commission has determined that any examiners to be assigned will initially be drawn from the roster of its present employees in the affected areas, wherever possible. Supervision of operations in the field will be assigned to the Regional Civil Service Commission offices in Atlanta, Georgia, and Dallas, Texas.

-- The Civil Service Commission has made preparations to obtain space required for the offices of examiners in the field. Initially such offices will be open 6 days each week from 9 a.m. to 5:30 p.m.

-- Notice of the enactment of the Voting Rights Act and its provisions have been prepared and will be posted in United States Post Offices and other appropriate locations.

We anticipate that the following procedure would be followed by examiners in listing individual applicants:

-- A citizen interested in applying for listing as an eligible voter may go to the office of the examiner, obtain an application, and fill it out there. If he needs help, the examiner will assist.

-- Where an applicant cannot read or write, the examiner will examine him and record the pertinent information on the form.

-- Where the applicant meets the requirements, the examiner will give him a certificate of eligibility to vote and will place his name on eligibility lists for the state, county and municipal elections. These lists will be forwarded to the appropriate state and local election officials who are made responsible for placing the names on the regular voting rolls. On the last business day of each month and on the 45th day prior to any election, the names of persons listed during the month or before that 45th day will be made available for public inspection.

-- In states which still require the payment of a poll tax, the examiner will accept payment and give the applicant a receipt.

(MORE)

3. The Poll Tax

The Department of Justice is prepared to initiate civil actions before three-judge federal district courts to enjoin enforcement of state requirements for the payment of the poll tax as a condition of voting. These lawsuits will be ready for prompt filing following the signing of the Act.

In addition, the Department of Justice will file a brief amicus curiae in the United States Supreme Court in the case of Harper v. Virginia State Board of Elections which is to be heard this fall. In this case, the requirement of the State of Virginia for the payment of the poll tax as a pre-condition of voting is being contested on grounds that it constitutes a deprivation of the constitutional rights of citizens.

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Minnesota
Historical Society

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