Fed Voting Leg Reuther [1965?]

PROPOSED FEDERAL REGISTRATION LAW

1. The time has come to provide statutory authority for federal registration in the hard core resistance areas. While the 1957, 1960, and 1964 laws have brought about substantial increases in Negro registration in a number of states, there has been no improvement in Mississippi and very little in Alabama and Louisiana. In those states, only the federal government actually doing the registration is going to get Negroes on the voting rolls.

2. Although the statute should be limited to these three hard core states, it must apply to all elections -- federal, state, and local -- in those states. A sheriff is as important as a congressman to the people of Selma.

3. States should be covered under the law which (i) have passed legislation since 1957 to make it more difficult to vote and (ii) have twice as high a proportion of whites registered as Negroes. (Only Mississippi, Alabama and Louisiana meet both criteria.)

4. Instead of just registering Negroes in states under the law, the federal registration system should be a wholly new registration for white citizens as well as Negroes. Past discrimination has resulted in the permanent registration of such large numbers of white voters as compared to Negro voters that it will take years of non-discriminatory administration of existing

[1965?]

MEMO TO: Vice President

FROM: Neal Peterson

COPY TO: John Stewart

GOLD COVER PROBLEMS

A summary of meeting with Fred Deming, Under Secretary of Treasury.

1. The problem - While there is an escape hatch in the law as a general proposition, the U.S. is required to back its Federal Reserve notes and deposits to the extent of 25% by gold. Presently there is on deposit 20 billion dollars and notes issued for 35 billion dollars. This freezes 14 billion dollars worth of gold. At the rate the economy is expanding Deming estimates that we need at least ½ billion dollars of gold per year to back our Federal Reserve notes and deposits. Thus even apart from the balance of payments problems something will have to be done, as the normal course of expansion could bring us to the limit within two years.

2. How to attack the problem.

   a. Remove the gold cover entirely. Deming says that almost all economists and big eastern banks would recommend this. As noted in the newspaper articles attached the CED is strongly in favor of this.

b. Lessen the percentage of gold reserves required to back notes and deposits or require backing only for notes and not deposits.

The course Deming recommends and that stated in the economic message is to drop the requirement for deposits. Their reasoning is that regardless of how useless the requirement to back the notes is, some people who don't understand the problem feel uneasy about removing the requirement that our money be backed by some gold. Of course the time will come this will have to be done.

If Deming's recommendation is followed this will release about 5 billion dollars worth of gold. This will postpone a further change from 5 to 10 years.

[1965?]

Statement by Rev. Dr. Martin Luther King, Jr.

Washington, D. C.

FOR IMMEDIATE RELEASE

I came to Washington to discuss the most fundamental question concerning the health of American democracy. My colleagues and I have made clear to the Vice President and the Attorney General our conviction that all citizens must be free to exercise their right and responsibility to vote without delays, harassment, economic intimidation and police brutality.

I indicated that while there had been some progress in several southern states in voter registration during the past few years, in other states, new and crippling legislation has been instituted since 1957 precisely to frustrate Negro registration. At a recent press conference President Johnson stated that another evil is the "slow pace of registration for Negroes." This snail's pace is clearly illustrated by the ugly events in Selma. Were this pace to continue at its present rate it will take another 100 years before all eligible Negro voters are registered.

There are many more Negroes in jail in Selma than there are Negroes registered to vote. This slow pace is not accidental. It is the result of a calculated and well-defined pattern which uses many devices and tactics to maintain white political power in many areas of the South. I emphatically stated that the problem of securing voting rights cannot be cured by patchwork or piecemeal legislation program. We need a basic legislative program to insure procedures for achieving the registration of Negroes in the south without delay or harassment.

I expressed my conviction that the voting sections of the 1957, 1960 and 1964 Civil Rights Acts are inadequate to secure voting rights for Negroes in many key areas of the South.

I told Mr. Humphrey and General Katzenbach how pleased I am that the Department of Justice has under consideration legislation pertaining to voting which implements President Johnson's state of the union declaration, namely, "I propose we eliminate every remaining obstacle in the right and opportunity to vote."

I urged that the administration incorporate the following principles as a basis for what the events in Selma clearly indicate to be immediate and essential — a 1965 civil rights bill securing voting rights for Negroes without delay and harassment.

1. Such new legislation must provide machinery which is virtually automatic to eliminate the interposition of varying standards and crippling discretion on the part of hostile state officials. Only elementary biographical data should be required.

2. It must put an end to the use of literacy tests in those areas where Negroes have been disadvantaged by generations of inferior, segregated education.

3. It must apply to all elections federal, state or even for sheriff, school board, etc.

4. Enforcement of such legislation must be reposed in Federal Registrars appointed by and responsible to the President. They must be empowered to act swiftly and locally to insure the nondiscriminatory use of the simplified federal machinery.

5. Such legislation at the very minimum should be directed at the most oppressive regions as typified by Selma and other hardcore areas in the south.

Beyond this, I have asked the Attorney General to use his existing powers to prevent the most serious impediment to the full exercise of voting and all other constitutional rights. Southern officials know they cannot jail citizens for seeking constitutional rights and consequently they have manufactured claims that Negroes have breached ordinary state criminal regulations. I refer to the practice typified by such local officials as Sheriff James Clark of Selma who have brought about the arrest of more than 3,000 Negroes on such charges as "breach of the peace," "contempt of court," "unlawful assembly," "contributing to the delinquency of minors." So long as such arrests are made and such charges lodged, the path to the registrar's office is blocked.

I have asked the Attorney General to seek an injunction against the prosecution of the more than 3,000 Negro citizens of Selma who otherwise will face years of expensive and frustrating litigation before the exercise of their guaranteed right to vote is vindicated. The experience of the freedom riders in 1961 whose cases are still pending in Mississippi courts should not be repeated.

Moreover, to the extent that existing laws are inadequate or doubtful to accomplish this all-important purpose, I have asked the Vice President and the Attorney General to include in the administration legislative program new procedures which would invest the Attorney General and private citizens the power to avoid the oppression and delays of spurious state court prosecution.

# # #

JGS/ep/Cong. relations: Hartke
Labor & Public Welfare Comm.

COPY

January 23, 1965

The Honorable Vance Hartke
United States Senate
Washington, D. C.

Dear Vance:

I wanted you to know that I received and read personally your letter of January 15 concerning the introduction of the Administration's Higher Education bill.

It did, however, appear for several reasons better that Senator Morse introduce this legislation. I was pleased to see that you are listed as one of the principal co-sponsors.

I know that the President is deeply appreciative of your fine leadership in the area of higher education. He will be counting on you to help bring this vital part of his legislative program through to a successful and early passage.

Please feel free to call on me to help in whatever ways seem appropriate.

Best wishes.

Sincerely,

Hubert H. Humphrey

# United States Senate

COMMITTEE ON COMMERCE

January 15, 1965

The Honorable Hubert H. Humphrey
Vice President Elect
United States Senate
Washington, D. C.

Dear Hubert:

It is my understanding that the Administration bill for Student Assistance in Higher Education will be coming up next week. You are, of course, familiar with my deep interest in this question as expressed in S. 2490 last year and S. 5 now.

In preparing S. 5, it was my desire to draft it as closely as possible in conformity with Administration thinking. Consequently, Mr. Paul Volcker of the Treasury, Dr. Sam Helpern of the Office of Education, and others met with Dr. Cook of my staff less than a week before its introduction for that purpose. At that time not all details of the Administration bill were clear, and while it will follow the lines of S. 5 in the main, there may be some differences.

As you know, I have done a great deal of work in promoting the "package" approach last year before there was such an administration bill. Introduction of S. 2490 was a determining factor in the defeat of the Ribicoff tax credit proposal at a time when it would have been terribly disruptive of the tax program. I have become identified widely with the loan guarantee, work-study, and scholarship "package," and have led in publicizing it and in securing support of many educational organizations and leaders in the field.

For these reasons, I would greatly appreciate the opportunity to follow through on accumulated momentum by the greatest possible leadership in this portion of the education program. I would therefore like to request the privilege of introducing the administration bill next week in order to give it the benefit of my past leadership in this area.

You have previously indicated that you consider me to be the leader of this program which now has specific administration endorsement. I hope this may prove to be true in fact as well as nominally. I will appreciate whatever you can do to assist in making this possible.

Sincerely,

Vance

Vance Hartke
United States Senator

Gar Alperovitz
Legislative Research Director to
Senator Gaylord Nelson

Dave —

Senator Nelson spoke with the Vice President about this — and he asked for an outline and copy for immediate use

Best,
Gar

Room 404, Senate Office Bldg., Wash., D.C.

STATEMENT BY SENATOR GAYLORD NELSON

TO THE

SENATE PUBLIC WORKS COMMITTEE

January 21, 1965

The Committee has before it two proposed amendments, one which would create an Upper Great Lakes Regional Development Authority and one which would simply authorize funding for research and planning needed in other depressed regions of the nation.

I have co-sponsored the Upeer Great Lakes Regional Development amendment because I believe this region of the country is not only much in need, but because its people are organized, its officials are aware of the region's problems, and because basic research and general planning for the development of this area has already been done. In short, the region is ready to go--and I believe we should move now to establish development authority and get on with the work of changing, improving, and generally upgrading the region's economy.

But the Upper Great Lakes region is not the only one which has lagged behind the nation. There are many other regions which are not meeting the problems of a growing, changing America. As the President said in his State of the Union address: We should now establish and "carry out a new program to develop regions of our country now suffering from distress and depression."

The second amendment before you speaks to this general problem. It

recognizes that there are many areas in the country which suffer from regional problems, but which are not 'ready to go' in the sense that all of the preparation has been done for the establishment of a Commission and for immediate action. What these areas need is the kind of work which resulted in the detailed, full-blown legislation now being considered for Appalachia. They need support, guidance, and help in the development of immediate "action plans."

The second amendment would amend the Appalachia legislation simply to authorize immediate planning for no more than six other regions which generally meet the criteria established in the statement of purpose of the Appalachia bill approved by the Senate last year.

The amendment would not establish new Commissions nor authorize major expenditures. It would only provide $10 million for immediate planning which would help other qualified depressed regions to prepare carefully drafted plans and proposals, as was done in the preparation of the Appalachia bill.

No more than $2.5 million could be spent on regional planning in any one area.

The planning would be authorized only if the basic research and public sentiment of the region were sufficiently solid so that a viable action plan for development could be produced in eighteen months.

In addition to the upeer Great Lakes area, the standards in this bill might be met by the Ozarks; the northwestern mountain regions; the upper New England area; the desert high plateau corner of Utah, Colorado, New Mexico, and Arizona, and parts of the Deep South.

I am a co-sponsor of the Appalachia legislation. I believe that now,

at the time we approve action for one depressed area of the country, we should also begin to act for the other needy regions of the nation. There is no reason to wait. I urge that the Committee give favorable consideration to the proposals that an Upper Great Lakes Regional Development Authority be established, and that action planning funds be approved for up to six other regions.

###

89TH CONGRESS
1ST SESSION

# S. 3

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1965
Referred to the Committee on Public Works and ordered to be printed

# AMENDMENTS

Intended to be proposed by Mr. NELSON to S. 3, a bill to provide public works and economic development programs and the planning and coordination needed to assist in the development of the Appalachian region, viz:

On page 1, strike out lines 3 and 4 and insert in lieu thereof the following:

"CHAPTER 1—APPALACHIAN REGIONAL DEVELOPMENT

"SHORT TITLE

"SECTION 1. This chapter may be cited as the 'Appalachian Regional Development Act of 1965', and all references in this chapter to this Act shall be held to refer to this chapter."

At the end of the bill add the following new chapter:

**Amdt. No. 2**

"CHAPTER 2—REGIONAL ACTION PLANNING

"TITLE V—REGIONAL ACTION PLANNING ACT OF 1965

"SHORT TITLE

"SEC. 501. This chapter may be cited as the 'Regional Action Planning Act of 1965'.

"STATEMENT OF PURPOSE

"SEC. 502. The Congress recognizes that many regions of the country, while abundant in natural resources and rich in potential, lag behind the Nation in economic growth so that the people of such regions have not shared properly in the Nation's prosperity. Often a region's uneven past development, with historical reliance on a few basic industries and marginal agriculture, have failed to provide the economic base vital as a prerequisite for vigorous self-sustaining growth. In some cases the uneven distribution of productive Federal expenditures has left regions at a comparative disadvantage. Nonetheless, in many areas of the country the State and local governments and the people of the region understand their problems and have been and are prepared to work purposefully toward their solution. It is the purpose of this chapter to assist such regions in meeting their special problems and promoting their economic development by helping to develop policies and programs for Federal, State, and local efforts essential to an attack upon common problems through a coordinated and concerted regional approach.



"REGIONAL ACTION PLAN ADMINISTRATOR

"SEC. 503. (a) The provisions of this chapter shall be administered by a Regional Action Plan Administrator (hereinafter referred to as the 'Administrator') in the Executive Office of the President. The Administrator shall be appointed by and with the advice and consent of the Senate and shall be compensated at the rate provided for level IV of the Federal Executive Salary Schedule.

"(b) The Administrator may, subject to the civil service and classification laws, appoint and fix the compensation of such officers and employees as may be necessary to carry out the provisions of this chapter.

"DETERMINATION OF REGIONS

"SEC. 504. (a) The Administrator shall designate areas representing two or more contiguous States as a region for Federal-regional action planning pursuant to this chapter upon determining that—

"(1) such region lags substantially behind the rest of the Nation in its economic growth, and its people have not shared properly in the Nation's prosperity;

"(2) such region's uneven past development has failed to provide the economic base that is a vital prerequisite for vigorous, self-sustaining growth;

"(3) State and local governments and the people of the region understand their problems and have been

and are prepared to work purposely toward their solution; and

"(4) regionwide development is feasible, desirable, and urgently needed.

"(b) The Administrator may designate not to exceed six regions pursuant to subsection (a).

"(c) The Administrator shall assign an appropriate department or agency of the Federal Government the responsibility for developing a Federal-regional action plan pursuant to this chapter for each region established pursuant to subsection (a). Such plan shall be developed with the participation of other Federal departments and agencies which in the Administrator's opinion can make a substantial contribution, and with representatives from each State involved.

"(d) The Administrator shall review economic information relating to the various regions of the Nation so as to determine the relative position of such regions, as compared with the rest of the Nation, in terms of unemployment, underemployment, outmigration, rate of economic growth, percentage of the population receiving welfare payments, family income, and such other economic indices he deems relevant to the purpose of this chapter.



"PLANNING ASSISTANCE

"SEC. 505. (a) The Administrator may make grants to any department or agency assigned pursuant to section 504(c) for the development of a Federal-regional action plan which is consistent with the purpose of this chapter and will—

"(1) be completed prior to the date which is one and one-half years after the date of enactment of this Act;

"(2) provide for the development, on a continuing basis, of comprehensive and coordinated plans and programs for the region, including plans for land and other natural resource use and public works, and establish priorities thereunder, with due consideration to other Federal, State, and local planning in the region;

"(3) provide for investigations, research, and studies, including where necessary inventory and analysis of the resources of the region, and in cooperation with Federal, State, and local agencies provide for demonstration projects designed to foster regional productivity and growth;

"(4) provide for the review and study in coopera-

tion with the agency involved of Federal, State, and local public and private programs and, where appropriate, the recommendation of modifications or additions which will increase the effectiveness of such programs and assist in their financing;

"(5) provide assistance in the formulation of necessary and helpful State and local laws and, where appropriate, interstate compacts, and make recommendations for other forms of interstate cooperation;

"(6) provide for the support of existing local development districts and encourage the formation of such districts where needed by providing technical assistance and assistance in the financing of a professional staff and administration;

"(7) provide for the encouragement of private investment in industrial, commercial, and recreational projects;

"(8) provide a forum for consideration of problems of the region and proposed solutions and provide for the establishment and utilization, as appropriate, of citizens and other special advisory councils and public conferences;

"(9) provide for the formulation and recommendation to the Congress of a program of development projects with proposals for Federal participation in their funding; and



"(10) provide that all such activities will be carried out by or through a single agency which will serve as a focal point and coordinating unit for Federal, State, and local programs in the region.

"(b) As a condition to making any grant pursuant to this chapter, the Administrator may require the making of such reports, in such form and containing such information, as he determines necessary to carry out his functions under this chapter. He may also require the keeping of such records and the affording of such access thereto as is necessary to verify such reports.

"(c) No grants pursuant to this chapter shall be made for the development of a plan for any one region in excess of a total of $2,500,000.

"GENERAL AUTHORITY

"SEC. 506. Any department or agency assigned the development of a Federal-regional action plan pursuant to this chapter may for the purpose of such development—

"(1) arrange for the services of personnel from any State or local government or any subdivision or agency thereof, or any intergovernmental agency, and pay for the same; and

"(2) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in carrying out its functions and on such terms as it may deem appropriate, with any department, agency, or instrumentality of the United States or with any State, or any political subdivision, agency, or instrumentality thereof, or with any person, firm, association, or corporation.

"FEDERAL PERSONNEL ASSISTANCE

"SEC. 507. At the request of any department or agency developing a plan pursuant to this chapter, the head of any other department or agency may detail to temporary duty, on a reimbursable basis, with such agency such personnel within his administrative jurisdiction as such agency may need in developing such plan. Such temporary duty shall be without loss of seniority, pay, or other employee status.

"REPORT

"SEC. 508. Not later than six months after the completion of any Federal-regional action plan pursuant to section 505, the department or agency developing such plan shall prepare and submit to the Governor of each State in such region and to the President, for transmittal to the Congress, a report on such plan.

"CONSENT OF STATES

"SEC. 509. Nothing contained in this chapter shall be



interpreted as requiring any State to engage in or accept any program under this chapter without its consent.

"APPROPRIATIONS AUTHORIZED

"SEC. 510. There is authorized to be appropriated not to exceed $10,000,000 to carry out the provisions of this chapter."

Amdt. No. 2

89TH CONGRESS
1ST SESSION

# S. 3

# AMENDMENTS

Intended to be proposed by Mr. NELSON to S. 3, a bill to provide public works and economic development programs and the planning and coordination needed to assist in the development of the Appalachian region.

JANUARY 19, 1965

Referred to the Committee on Public Works and ordered to be printed

Re: Amendment by Senator Nelson
To authorize action planning funds for
Up to six other depressed regions

The purpose of the amendment is to stimulate planning for regional development in no more than six additional depressed areas of the country. To do this, the same basic process which resulted in the Appalachia legislation would be followed. The amendment would not establish any new commissions. Rather, it would merely attempt to create a focal point for federal regional development planning. Its funding (maximum of $10 million) would be minimal compared with Appalachia (more than $1 billion.) The funds would be used to produce specific plans for later action and legislation.

The amendment would:

I. Establish a Federal Action Plan Administrator in the Office of the President.

II. Authorize the Administrator to review economic data to determine which regions meet the general criteria outlined in the statement of purpose of the Appalachia bill. To receive action plan funds, the region must:

- Lag substantially behind the rest of the nation in economic growth.
- Have an uneven past development which has not permitted self-sustaining growth.
- Have demonstrated that local people and governments are prepared for immediate planning and development.
- Have common problems which make a regional solution feasible.

III. Only regions which have begun to prepare for development would receive action plan funds. No region could be designated for action planning unless a plan could be completed in eighteen months.

IV. Once a region is designated as eligible for action planning, the Administrator would allocate funds to one federal agency which, in cooperation with the states involved, would coordinate planning.

V. No more than $2.5 million could be used for the development of a regional action plan in one area.

VI. No more than $10 million could be spent on the total program.

# United States Senate

COMMITTEE ON FOREIGN RELATIONS





January 18, 1965

The Honorable Hubert Humphrey
Vice President-elect
Washington, D. C.

Dear Mr. Vice President-elect:

I am enclosing a copy of a letter I have sent to Vance Hartke, along with a copy of the letter that I received from him, dealing with his request to introduce the higher education bill.

I think that the Administration ought to be advised that Hartke's request, if granted, would not receive a good reaction from within the Education Subcommittee.

Cordially,

Wayne Morse

Wayne Morse

WM:jc
Enclosures

COPY

January 18, 1965

The Honorable Vance Hartke
United States Senate
Washington, D. C.

Dear Vance:

I have just received your letter of January 15, and I hasten to reply to it, because I am sure you will want me to give you my advice with regard to the request which you make in your letter that you be allowed the privilege of introducing the Administration's higher education bill next week.

As Chairman of the Subcommittee on Education and also as a very good friend of yours, I wish to urge you not to press your request because it would create some complications that I do not think it is wise to create. The Administration always calls upon the Senate Committee to introduce its education bills, either with the Chairman of the full Committee or the Chairman of the Subcommittee as the one to introduce a given education bill in behalf of the Administration. Then, the other members of the Committee who care to are listed as co-sponsors, and an opportunity is always given to members of the Senate who are not on the Committee to join as co-sponsors.

I always suggest to Lister Hill that he introduce the bills, but he usually calls upon me to introduce those Administration bills that come before my Subcommittee for hearings. He, in turn, usually introduces the Administration bills that deal with health, education and welfare, such as the medical school facilities bill last year. Thus far this year, Lister has had me introduce the Administration's bill on elementary and secondary education, and either he or I will introduce the bill on higher education. We should be glad to include you or any other Senator as a co-sponsor, as we did in the elementary and secondary school bill.

The President gave instructions some time ago for my Subcommittee to confer with Secretary Celebrezze, Assistant Secretary Wilbur J. Cohen and Commissioner of Education Francis Keppel on the preparation of the Administration's education bills, and we have done that. In fact, a good many of the suggestions of members of my Subcommittee have been woven into all of the Administration's education legislation, including the higher education bill, and they have exercised considerable influence in the development of the Administration's program.

COPY

As you will recall, Vance, the components of S. 2490 originally were introduced in S. 580, the Kennedy omnibus education bill, which I introduced for myself, the members of the Committee and the Senate leadership. Title I of that measure contained the loan guarantee, the student scholarship and the work study programs upon which my Subcommittee held hearings and pressed for action in the first session of the last Congress.

Later, when you introduced a separate bill on the subject matter, you will recall I heartily endorsed it and in complete cooperation with you, arranged for hearings on it. The basic components of the bill and the Title I of S. 580 were ordered reported from the Committee as S. 3140, the only change being the adoption of the Williams amendment.

It has been my recommendation, and it is my hope that the final bill that the Administration will send up today or tomorrow will pick up where we left off in the last session and add to it new programs such as the domestic Fulbright exchange of teachers.

I have already announced that there will be early hearings on the higher education bill as soon as I complete the hearings on the elementary and secondary bill.

Frankly, Vance, if I should favor your request to be allowed to introduce the higher education bill, my action would be completely misunderstood within my Committee, because each member of my Committee has worked long and hard on the Administration's education program, and I am sure that members of the Committee would feel and rightly so that the bill should be introduced by the Committee that not only has done most of the work on it but has been responsible for steering it through the Senate and Conference.

I shall be very glad to have your name listed as a co-sponsor, but I do not think it would be right or appropriate for you rather than the Committee to introduce the bill.

With best wishes,

Sincerely,

Wayne Morse

WM:jc

# United States Senate

COMMITTEE ON COMMERCE

January 15, 1965

The Honorable
Wayne Morse
United States Senate
Washington, D. C.

Dear Wayne:

It is my understanding that the Administration bill for Student Assistance in Higher Education will be coming up next week. You are, of course, familiar with my deep interest in this question as expressed in S. 2490 last year, and S. 5 now.

In preparing S. 5, it was my desire to draft it as closely as possible in conformity with Administration thinking. Consequently, Mr. Paul Volcker of the Treasury, Dr. Sam Helpern of the Office of Education, and others met with Dr. Cook of my staff less than a week before its introduction for that purpose. At that time not all details of the Administration bill were clear, and while it will follow the lines of S. 5 in the main, there may be some differences.

As you know, I have done a great deal of work in promoting the "package" approach last year before there was such an administration bill. Introduction of S. 2490 was a determining factor in the defeat of the Ribicoff tax credit proposal at a time when it would have been terribly disruptive of the tax program. I have become identified widely with the loan guarantee, work-study, and scholarship "package" and have led in publicizing it and in securing support of many educational organizations and leaders in the field.

For these reasons, I would greatly appreciate the opportunity to follow through on accumulated momentum by the greatest possible leadership in this portion of the education program.

I would therefore like to request the privilege of introducing the administration bill next week in order to give it the benefit of my past leadership in this area. I will appreciate whatever you can do to assist in making this possible.

Sincerely,

Vance Hartke

Vance Hartke

JGS/ep/Cong. relations: Labor &
Public Welfare Committee

COPY

January 23, 1965

The Honorable Wayne Morse
United States Senate
Washington, D. C.

Dear Wayne:

Just a note to let you know I received a copy of your letter to Senator Hartke. I gather everything worked out through Senator Hartke's co-sponsorship of the Administration's bill when you introduced it.

Thanks for keeping me advised on this matter.

Best wishes.

Sincerely,

Hubert H. Humphrey

JGS/ep/Cong. relations: Labor &
Public Welfare Committee

COPY

January 23, 1965

The Honorable Wayne Morse
United States Senate
Washington, D. C.

Dear Wayne:

Just a note to let you know I received a copy of your letter to Senator Hartke. I gather everything worked out through Senator Hartke's co-sponsorship of the Administration's bill when you introduced it.

Thanks for keeping me advised on this matter.

Best wishes.

Sincerely,

Hubert H. Humphrey

JGS/ep/misc

COPY

January 29, 1965

The Honorable Claiborne Pell
United States Senate
Washington, D. C.

Dear Claiborne:

I was glad to help. I know you are going to make a truly great member of the Foreign Relations Committee. The nation, the Senate, the party, and Rhode Island will all benefit.

Best wishes.

Sincerely,

Hubert H. Humphrey

CLAIBORNE PELL
RHODE ISLAND

United States Senate

WASHINGTON, D.C.

January 21st, 1965



Dear Mr. Vice President:

Thank you for your nice letter on my assignment to the Foreign Relations Committee. I know you know how awfully glad I am to be on it.

And, more important still, thank you immeasurably for your role in helping me towards assignment to this Committee. I am awfully appreciative.

Ever sincerely,

Claiborne Pell

The Honorable
Hubert H. Humphrey
Vice President of the United States
Washington, D. C.

[Jan? 1965]

# A COMMENT ON THE PROPOSED BILL TO ESTABLISH A FEDERAL VOTING, REGISTRATION AND ELECTIONS COMMISSION

The proposed bill establishes a six member, bi-partisan, Presidentially appointed Federal Voting, Registration and Elections Commission. As a result of the fact that discrimination on account of race exists in spite of the successive voting rights provisions of the Civil Rights Acts of 1957, 1960 and 1964, it has become apparent that some decisive and effective action must be taken by the Congress to remedy this situation.

The facts brought out in the current situation in Selma, Alabama, and the fact that Negro registration in the State of greatest discrimination on account of race, Mississippi, has not moved up from 5.5% despite the voting provisions of the three prior acts, serve to illustrate this need. Though considerable powers were given in the Civil Rights Act of 1960 through the authorization of the courts to use voting referees, such powers have been slightly used and little more than useless, resulting in litigation on almost voter-by-voter bases. It is elementary, but worth repeating, that the right to vote in State elections must be an essential feature of any proposed legislation, since this right is crucial to fair administration of justice, represented by the local sheriff and policemen, and economic improvement, such as being able to benefit from the many-faceted war on poverty. For these reasons this proposed bill is offered.

The Commission, either on its own motion or on appeal from an aggrieved person, is empowered to make a jurisdictional determination as to whether a "pattern or practice of denial or abridgement of the right to vote on account of race or color" exists in a state or a sub-division thereof; after this determination is made, the Commission is then authorized to take a variety of actions which are almost certain to secure the right to vote regardless of race or color. Once having made this determination, the requirements of the 15th Amendment are met and any appropriate action may be taken. This approach seems clearly Constitutional to several legal authorities, including Professors Paul Freund and Mark Howe of the Harvard Law School faculty.

Perhaps the two most important actions that the Commission is empowered to take upon a determination of a pattern or practice under Section 2 are:

1) the establishment of a system of Federal Registrars to register persons to vote in all elections (Sec. 3(c)).

2) requirement of the use of registration to vote application forms which are completely non-discriminatory and from which may be excluded the literacy test, Constitutional interpretation test and other discriminatory devices. (Secs. 3(d), 6(c)).

An additional feature of the proposed bill is, upon a determination of a pattern or practice being made as to an area, the automatic establishment of a fourth grade education as fulfilling all literacy, educational, knowledge or intelligence requirements and of permitting the fulfillment of any voting requirement up to thirty days preceding the date of the election. On the advice of Professors Freund and Howe and other legal authorities, Section 5 abolishes the Poll tax for voting in State elections.

Enforcement provisions are, of course, in the light of past experience, the crucial part of any Civil Rights voting legislation. The proposed bill has several enforcement provisions (Sec. 7). The first fixes a flat $300 penalty upon both the offending official and upon the unit of government of which he is a part for each separate vote that is not accepted or counted when cast by a person registered by a Federal Registrar under Subsection 3(c). This is a rather proceeding and is strictly limited to a particular type of discrimination. The second sets up an administrative system for correcting "discriminatory election practices". In effect, such discriminatory election practices are defined as a refusal to obey or interference with, authorized actions of the Commission. The cease and desist order procedure, coupled with enforcement of the Court of Appeals, is used to bring about compliance. Third, the Commission can void an election in which it finds that discriminatory election practices have resulted in a substantial denial of the right to vote on account of race or color and may declare the office vacant and order a new election. Finally, the Commission may request from the President any further assistance which may be necessary to enforce the provisions of the bill.

Appeals are, in one form or another, allowed from all actions by the Commission. The $300 penalty and the voiding of an election are directly appealable actions, though they are effective pending appeal unless the court issues a stay. The determination of a discriminatory election practice and the issuance of a cease and desist order are reviewable upon the Commission's seeking enforcement in a Court of Appeals. The findings of the Commission as to questions of fact are conclusive when supported by substantial evidence. The Commission is given subpoena power. The Administrative Procedure Act applies to all rule-making functions of the Commission, but does not apply to other Commission actions.

* * *

89th Congress

1st Session

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

January __, 1965

Mr._____introduced the following bill; which was referred to the Committee on the Judiciary.

---

To further secure the right to vote, free from discrimination on account of race or color, through the establishment of a Federal Voting, Registration and Elections Commission.

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

The Congress hereby finds: 1. that large numbers of citizens of the United States are still denied the right to vote on account of their race or color; 2. that many state and local registration and election officials are responsible for such denials; 3. that such denials are also accomplished through violence, threats of violence, economic reprisals and other forms of intimidation; 4. that in many areas of the United States the literacy test, interpretation test and other such devices serve no legitimate function and are used only as a means of denying citizens of the United States the right to vote on account of their race or color; 5. that the Poll Tax is today almost exclusively used to deny the right to vote on account of race or color and has no appreciable value in any way as a source of revenue, and 6. that the delays incident in granting the right to vote to all citizens of the United States regardless of their race or color under existing legislation have been excessive and unreasonable.

FEDERAL VOTING, REGISTRATION AND ELECTIONS COMMISSION

Sec. 1. There is hereby established a Federal Voting, Registration and Elections Commission which will consist of six members appointed by the President, not more than three of whom shall be of the same political party. All appointments shall be made with the advice and consent of the Senate. The President shall designate the Chairman of the Commission.

Sec. 2. The Commission, on application of any aggrieved person, or on its own motion, shall determine those States, Districts, Counties, Municipalities or other areas in which there exists a pattern or practice of denial or abridgement of the right to vote on account of race or color.

Sec. 3. Whenever the Commission makes a determination of a pattern or practice of denial or abridgement of the right to vote on account of race or color under Section 2, then it shall and is hereby empowered to take appropriate action to correct such denials or abridgements. "Appropriate action" may include:

(a) Establishment of a system of officials to conduct and make return of the election or elections in the affected area;

(b) Appointment of supervisors of elections to oversee elections conducted by State or Local officials. Such supervisors shall have full powers to guarantee the right to vote at the polls regardless of race or color, including the powers of U. S. Marshals to arrest and to bear firearms;

(c) Establishment of a system of Federal registrars empowered to register persons to vote in all elections, unless otherwise restricted by the Commission;

(d) ~~Preparing and using, or~~ Requiring ~~to be~~ the use of used, such registration and voting application forms as are consistent with the purpose of this Act and with the valid qualifications for registration and voting under State law;

(e) Establishment of a system of voter education and information centers designed to encourage registration and voting;

(f) Preparing and publishing and distributing necessary materials;

(g) Providing for ~~itinerant~~ Federal registrars who secure registration on a community-by-community and house-by-house basis;

(h) Utilization of the provisions of Section 1971 of Title 42 of the U. S. Code;

(i)Establishment, suspension or otherwise modifying registration deadlines and other such time limitations as is necessary to carry out the purposes of this Act.

Sec. 4. Whenever a determination is made by the Commission under Section 2 that a pattern or practice of denial or abridgement of the right to vote on account of race or color exists in an affected area, without further action by the Commission:

(a) an applicant seeking to register to vote who has completed four grades of education in a public school or in a private accredited school shall have fulfilled all literacy, education, knowledge or intelligence requirements, and

(b) fulfillment of any requirements to vote in all elections shall be allowed at any time up to thirty days preceeding the date of the election.

Sec. 5. The requirement for payment of the Poll Tax as a prerequisite to vote in any election is hereby abolished.

Sec. 6. Definitions.

(a) "Affected area" means the State or a political subdivision or subdivisions thereof.

(b) "Election" means all elections including those for Federal, State or Local office and including primary elections or any other voting process at which candidates or officials are chosen. "Election" shall also include any election at which a proposition or issue is to be decided.

(c) "Valid qualifications for registration and voting under State Law" shall not include any requirement prerequisite to voting which the Commission finds the purpose or effect to be that of furthering in any way a pattern or practice found pursuant to Section 2.

Sec. 7. Enforcement.

(a) Any officer refusing in any way or neglecting to accept and count a vote cast by a person registered pursuant to subsection 3(c) of this act shall be liable after a hearing for a penalty of $300 for each separate vote not counted, which shall be forthwith assessed by the Commission and given to the U. S. Marshall for collection. The City, County, State or other unit of government of which the official is a part shall be assessed a like penalty.

(b) It shall be a discriminatory election practice for any person to:

1. interfere with ~~or~~ impede the effectuation of or disobey any order of the Commission, or to

2. violate any rule or regulation adopted by the Commission in accordance with Section 13.

(c) Upon complaint of any aggrieved person or upon its own motion, the Commission shall determine the existence of a discriminatory election practice. ~~From~~ Upon such determination the Commission shall issue a cease and desist order or take such affirmative action as will effectuate the policy of this Act. The Commission may make the cease and desist order apply to all future activity of any person committing discriminatory election practices. The Commission may apply at any time to the Court of Appeals of the Circuit where the ~~unfair~~ discriminatory election practice occurred for the enforcement of such order or action and for appropriate temporary relief or restraining orders.

(d) The Commission may declare void any election in which it finds that discriminatory election practices have resulted in a substantial denial of the right to vote on account of race or color, may declare the office vacant and may order a new election.

(e) The Commission shall request the President for such further assistance as it deems necessary for enforcement of the provisions of this Act.

Sec. 8. Appeals.

Action of the Commission pursuant to Section 2 and subsections 7(a), 7(c) or 7(d) shall be subject to appeal within 60 days to the Court of Appeals for the Circuit in which the proceeding arose. Unless stayed by an order of the Court or a panel thereof, the action of the Commission shall remain in full force and effect pending appeal. The findings of the Commission as to questions of fact, if supported by substantial evidence, shall be conclusive.

Sec. 9. Testimony of Witnesses and Production of Documents.

The Commission shall have the power to compel at any designated place the attendance and testimony of witnesses and the production of papers and documents relevant to its powers and duties through the use of the subpoena. Upon refusal to obey a subpoena, the Commission may apply for its enforcement to the Court of Appeals of the Circuit in which the inquiry is being held. The Court shall forthwith order full compliance with the subpoena and shall cite a refusal to do so as a contempt.

Sec. 10. It is hereby declared to be the policy of the United States that wherever a pattern or practice of denial of the right to vote on account of race or color exists in any area, all reasonable doubts shall be forthwith resolved in favor of registration and voting rather than in favor of non-registration and non-voting.

Sec. 11. The Commission shall appoint an executive director and such officers and other personnel as performance of its duties requires.

Sec. 12. The Commissioners shall receive an annual salary of $25,000; the Executive Director, $22,500.

Sec. 13. The Commission shall have authority from time to time to make, amend or recind in the manner prescribed in the Administrative Procedure Act any rules and regulations which may be necessary to carry out the provisions of this act.

Sec. 14. The Administrative Procedure Act shall not be construed to apply to proceedings under this act except as provided in Section 11.

* * *

MEMORANDUM

February 8, 1965

JLO

Civil Rights
House of Rep

TO: JOHN STEWART

FROM: Ronald Stinnett

RE: Minutes of DSG Civil Rights Committee meeting

Attached are the minutes of the DSG Civil Rights Committee which is very active. I will send these to you from time to time as they hold their meetings. Simply for your information.

DSG

DEMOCRATIC STUDY GROUP, U. S. HOUSE OF REPRESENTATIVES

347-9861
CA 4-3121
Ext. 4868
5858

Room 504 - HOUSE OFFICE BUILDING - WASHINGTON 25, D. C.

February 4, 1965

TO: MEMBERS, DSG CIVIL RIGHTS STEERING COMMITTEE

FROM: Rep. Charles C. Diggs, Jr., Chairman

SUBJECT: Report on Committee Organization Meeting

The initial meeting of the DSG Civil Rights Steering Committee was held at 3 p.m., Wednesday, Feb. 3rd, in Room B-300 Rayburn Bldg., pursuant to the Jan. 29th meeting notice. A quorum being present, the following business was discussed:

1. The Chairman gave information concerning the forthcoming trip to Selma, Alabama, by a group of Members of the House. Rep. Conyers provided details on the arrangements.

2. The hearing of the Civil Rights Commission in Jackson, Mississippi, on Feb. 10th was discussed. Several Members indicated their intention to attend.

3. The Chairman outlined the scope of duties of the Committee in (1) keeping in close contact with Executive branch officials responsible for administering and enforcing provisions of the 1964 Civil Rights Act; (2) maintaining liaison with Civil Rights Leadership Conference groups on such matters; (3) exploring need of additional legislation to implement the 1964 Act.

4. The Civil Rights Commission meeting of Executive branch officials on the implementation of Title VI (Nondiscrimination in Federally-assisted Programs) was discussed.

5. Two draft bills were distributed for information dealing with establishment of a Federal Commission on Voting, Registration and Elections and a bill to enforce the second section of the 14th Amendment.

6. Rep. Scheuer discussed the C.R.C. fund request to Commerce to permit the Census Bureau to carry out the registration and voting statistics authority provided in Title VIII of the 1964 Civil Rights Act in a number of Southern States. The $7.5 million request is contained in the budget requests to be handled by the Rooney Subcommittee of House Appropriations.

7. Rep. Bolling pointed out the need for coordination on any new legislative approach in the civil rights area between Republicans, civil rights, religious, and labor groups, the Administration, and Executive Department officials.

8. After a discussion of the role of the Committee in the 89th Congress, it was decided that two subcommittees be created:

   Subcommittee on Implementation of 1964 Act
   Subcommittee on New Legislation

It was decided to poll each Member of the DSG Civil Rights Steering Committee as to his preference of subcommittee on which to serve.

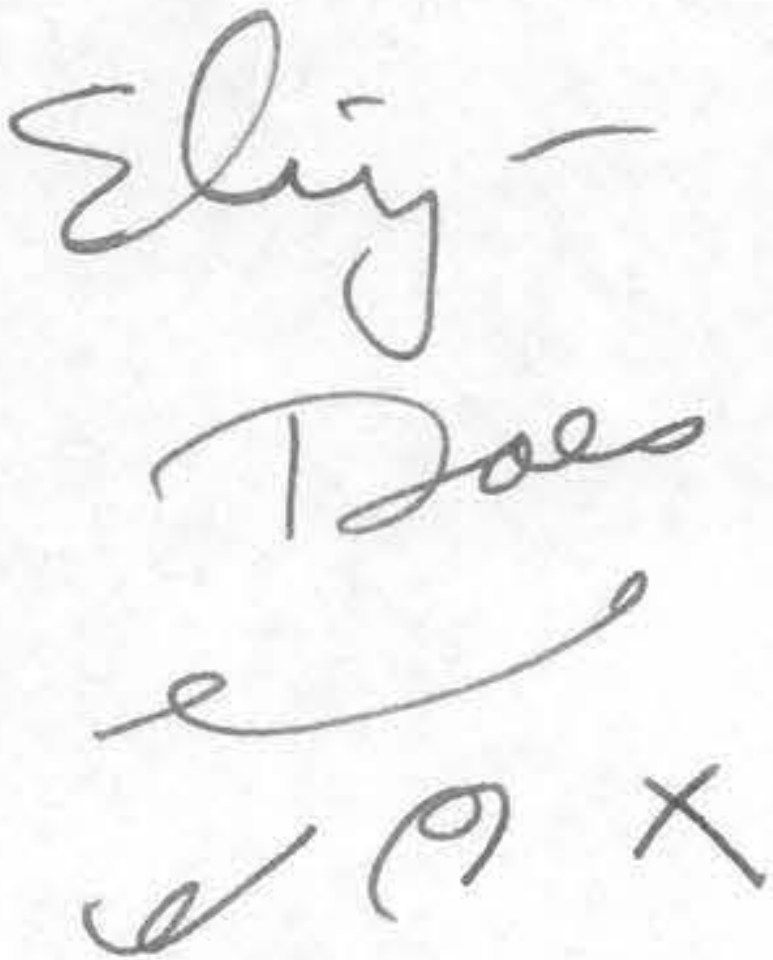
(please return the attached form indicating your choice of subcommittee to Bill Phillips, Room 504, Cannon House Office Building.)

9. The meeting was adjourned at 4:30 p.m.

# United States Senate

---

## MEMORANDUM



February 3, 1965

Memo to Ron Stinnett

From John Stewart

We will be receiving on a regular basis the attached memorandum from the Treasury Department. After you have read it, would you please forward it to Neal Peterson, who should then return it to me.

You will note that it is confidential in nature.

MEMORANDUM

February 1, 1965

TO: Mr. Claude J. Desautels
The White House - 204 West Wing

FROM: Joseph M. Bowman
Assistant to the Secretary

SUBJECT: Legislative Report

H.R. 3818, S. 797 - Gold Cover

The Administration's proposal was delivered to the Speaker of the House and the President of the Senate on January 28. Copies of the bill were delivered at the same time to Chairman Patman and Robertson of the House and Senate Banking and Currency Committees, who introduced the Administration's bill in the House and Senate on the same day.

The Secretary will testify this morning before the House Banking and Currency Committee on this legislation. Chairman Martin of the Federal Reserve Board is scheduled to testify this afternoon. Hearings should continue through Tuesday with private witnesses testifying then. Chairman Patman had advised his Committee's Chief Counsel that he does not intend to attach to the legislation any amendments dealing with the Federal Reserve, but that he intends only to insert a few sentences in the record dealing with the need for a "liberal monetary policy."

Secretary Dillon will testify tomorrow, February 2, before the Senate Banking and Currency Committee. Chairman Robertson has scheduled hearings for February 2, 3, 4, and 9, 10, 11.

In meetings with Senator Dirksen and Congressman Widnall on January 25, the Secretary discussed this legislation. Both Dirksen and Widnall stated that they realized that something had to be done about gold cover. Senator Dirksen said that he had been talking with Senator Bennett who agreed with him that the Republicans should not make a Party fight out of this matter. Dirksen is scheduled to be the first witness before the Senate Banking and Currency Committee tomorrow. He will be a friendly witness.

CONFIDENTIAL

On January 26, the Secretary talked with House Minority Leader Ford who stated that he realized that something had to be done about gold cover; that he would rely on the advice of Widnall and the other Republican Members of the Banking and Currency Committee; and that he did not expect a Party fight on the issue. Senator Dirksen and Congressmen Widnall and Ford seemed to have a cooperative attitude, although there is a possibility that the Republicans' motion to recommit would be in a form similar to the Javits bill, mentioned in a subsequent paragraph.

During the past week we have been in contact with Members of the House Banking and Currency Committee or their Administrative Assistants for the purpose of sounding out any possible problem area. The Democrats contacted, with the exception of Compton White, indicated a willingness to go along with the Administration's proposal. White was noncommittal. Some expressed the opinion that they were perfectly willing to go all the way and remove the gold backing even from the Currency. The following is a list of these members which have been contacted thus far. In each case where the AA was seen an asterisk will appear after the name of the Congressman. The remaining members of the Committee not listed will be contacted today or tomorrow.

| Democrats | | Republicans |
|---|---|---|
| Multer | Weltner | Fino |
| Reuss | Grabowski* | Brock* |
| Ashley | Gettys* | Talcott |
| Moorhead | Cabell | Clawson |
| Stephens | McGrath | Johnson |
| St. Germain | Hansen | |
| Gonzalez | Annunzio | |

A possible problem is that the Administration's proposal is in competition with two others, namely, Senator Douglas' (S.743), which would completely eliminate the gold requirement both from the reserves and the currency, and Senator Javits' (S.814), which would reduce on a percentage basis the gold cover on both of these items. Mr. Multer and Mr. Reuss have also introduced H.R. 625 and H.R. 2084, respectively. Both bills provide for elimination of the cover on both deposits and currency. Mr. Multer's and Senator Douglas' proposals would be much more difficult to get through Congress. Senator Javits' proposal, if adopted, would require us to come back much sooner, and more often, in the future for further reduction, in the same manner that we presently do on debt limit legislation.

H.R. 45 - Inter-American Development Bank

Hearings before the House Banking and Currency Committee are scheduled for February 3, 4, and 5. Senate Foreign Relations Committee hearings are set for February 5.

The Secretary will testify Wednesday, February 3, before the House Banking and Currency Committee, and on Friday, February 5, before the Senate Foreign Relations Committee, on this legislation. We have begun contacting members of the House Banking and Currency Committee on this measure, and will keep you advised of our progress.

Excise Taxes

In the Budget Message transmitted by the President on January 25, the amount of the proposed excise tax cut was stated as $1.75 billion. The specific items which will be included in this amount were not identified. It is anticipated that they will not be identified until our request for legislation is forwarded.

Silver and Coinage Legislation

No change from last week's report.

Increase in International Monetary Fund Quota

It is expected that the report of the Executive Directors of the Fund will be completed by February 20. We hope to have our NAC report ready at about the same time and further hope to forward our request for legislation about two weeks after that date. We will keep you advised of any change in this proposed schedule.

Graduated Withholding

No change from last week's report.

Fowler Task Force and Interest Equalization Tax

Treasury's recommendation concerning extension of the IET will soon be forwarded to the President, although the exact date of this action is not presently known.

Foundations

Treasury's report on foundations is scheduled for transmittal early this week to Chairman Mills of the House Ways and Means Committee and to Chairman Byrd of the Senate Finance Committee. It is intended that this report be published as soon as the GPO completes its printing.

Amendment to the Federal Firearms Act

No change from last week's report.

Nomination of Treasury Official

The nomination of Mr. Frederick Deming as Under Secretary for Monetary Affairs was approved by the Senate on January 26, and he was sworn in on January 29.

Debt Ceiling

No action is expected with regard to this legislation until late in May, which is the customary time for the House Ways and Means Committee to consider this matter.

Budget

Secretary Dillon and Budget Director Kermit Gordon appeared before a closed session of the House Appropriations Committee on January 28, to testify on the 1966 budget. The hearing was apparently a satisfactory one.

Economic Report

The Secretary has been invited to testify before the Joint Economic Committee on Monday morning, February 8.

Treasury Appropriation Bill

Hearings on the Treasury Department appropriation are tentatively scheduled to begin on February 15. Secretary Dillon expects to appear before the Subcommittee on Treasury - Post Office of the House Appropriations Committee on that date.

COPY

MEMORANDUM

Bill Legislation

February 27, 1965

TO: THE VICE PRESIDENT

cc: John Stewart
Bill Connell

FROM: Ronald Stinnett

RE: Progress of legislation

SENATE:

With the passage of 2 administration bills this week, the Inter-American Development Bank bill and the river basin planning bill which authorized Federal grants of $5 million a year in matching funds to States for State project planning over a 10-year period, the Senate has acted on a total of 11 bills of the President's program.

The other 9 bills were:

1. Aid to Appalachia
2. Bighorn Canyon Park
3. Coffee Agreement implementation
4. Stockpile Management & Disposal
5. VA Distressed Homeowners Relief
6. Water Pollution Control
7. Presidential Inability
8. Agricultural Supplemental
9. Gold Cover

Committee Activity:

Appropriations -- already holding hearings on Interior, Defense, and Agriculture. Labor and HEW hearings start on March 3, this Wednesday. Treasury and Post Office start hearings on March 16.

Armed Services -- Military procurement hearings already under way; to continue for another 3 or 4 weeks.

Banking -- Balance of payments hearings to start a week from Monday, March 8.

Commerce -- hearings begin on Tuesday on rail transportation service in the Northeast -- to last through

this Thursday, March 4. From March 8 through the 10th, committee considers whether subsidies are needed for helicopter service. On March 17 and 18th, hearings will be on a bill relating to foreign markets for U.S. products. From March 22nd through the 30th, the Commerce committee will study cigarette labeling and advertising.

District of Columbia -- a week from Monday, March 8, hearings begin on the President's home rule bill.

Foreign Relations -- working on amendments to the Foreign Agents Registration Act; almost ready to be reported. On Tuesday, March 2, committee will consider a long list of of ambassadorial nominations. On Wednesday, March 3, the committee hopes to report an amendment to the Arms Control and Disarmament Act authorizing increased appropriations over the next 4-yr. period.

Interior -- hopes to report this Tuesday S. 426-428 and S. 645 relating to the Outer Continental Shelf. They also hope to report. at the same time, S 435, Kaniksu National Forest in Idaho. On this Tuesday and Wednesday, hearings will be held on S. 22, a bill improving the Water Research Act -- will be reported in a week.

Joint Atomic Energy Committee -- working on its authorization bill.

Antimonopoly Subcommittee of Judiciary -- completed hearings this week on S. 950, a bill clarifying status of professional team sports under antitrust laws. Will take action early.

Immigration Subcommittee of Judiciary -- continuing hearings on President's request to revise immigration laws. On March 3, this Wednesday, hearings will be held on President's request to increase patent fees.

Veterans' Affairs Subcommittee of Labor -- continuing hearings on Cold War GI bill. Manpower hearings on President's proposal for a liberalization of the present program have been concluded, and subcommittee plans an executive markup session this Tuesday, March 2.

Health Subcommittee -- approved Thursday of last week, Feb. 25, two of President's health bills -- S. 510 and S. 512. Full committee expected to act this coming week and report next week beginning March 8.

Labor -- subcommittee hearings on President's recommendations on arts and humanities continue this week.

Public Works -- completed hearings on water pollution control at Federal installations.

Rules -- complete hearings this Monday, March 1, on Senate Concurrent Resolution 2 establishing a Joint Committee on the Organization of Congress. Committee pland to report Senate Resolution 6 and Senate Resolution 8, relating to rule XXII, by March 9 -- but it will not be taken up at that time.

HOUSE:

The House has passed just 8 bills in the President's program:

1. Agricultural Supplemental
2. Gold Cover
3. Disarmament Act Authorization
4. Inter-American Development Bank

All next week will be consumed by the Appalachia bill. The count in the House has not crystallized -- too many undecideds are in the present count. This could mean that we are going to have to work hard on the bill over there. The Republicans are trying to put in a substitute bill which would take care of other regional areas -- the problem we avoided in the Senate. This may appeal to some members over there.

Without going into detail on the committee activity on the House side in this memo, suffice it to say that a great deal of activity has been carried on, and the President's program is being moved rapidly there. The next three or four weeks on the House side will see some of the President's major bills taken up -- education, medicare, and the like. A more detailed outline of House activity will be given you this week.

JLC-Voting Rights C R

# *Administration Will Propose New Measure To Protect the Voting Rights of Negroes*

2-8-65

By JAMES HARWOOD
*Staff Reporter of* THE WALL STREET JOURNAL

WASHINGTON—Somewhat to its own surprise, the Johnson Administration is getting set to propose another civil rights law.

Only about seven months after last year's sweeping statute was enacted, policy-makers are being stirred to fresh action by the racial turmoil in Alabama and by increasingly bitter demands from civil rights groups. Within a few weeks, President Johnson is expected to unfold his 1965 proposals.

Alongside the 1964 provisions covering jobs, schools, public accommodations and other things, the new plans may seem limited; they'll concentrate on razing remaining barriers to Negro voting. But this issue alone is plenty hot enough to inflame civil rights advocates; demonstrations in behalf of a voter registration drive have brought arrests of hundreds of Negroes in Alabama in the past few weeks. Civil rights leaders contend Southern officials' continuing resistance to Negro registration efforts can't be overcome by laws now on the books.

Presidential Press Secretary George Reedy provided official confirmation over the weekend that the President will seek new rights legislation. He said Mr. Johnson will make a "strong recommendation" on the subject of voting rights in a message to Congress. Negro leader Martin Luther King, Jr., released from jail at Selma, Ala., Friday, is due to confer here with Attorney General-designate Katzenbach on the matter today.

**Closer Federal Supervision**

As the civil-rights groups want, the Administration proposal will provide much closer Federal supervision of the registration process. The heart of the plan is certain to be a requirement that a network of Administration-appointed Federal registrars be set up to assume the job of reviewing voting applicants in trouble spots; such officials would take over in counties, say, where less than 15% of the apparently eligible Negro voters have been allowed to register. This would bring the Government full-force into about 150 Dixie counties, notably in Alabama and Mississippi.

The most that can be done now is for individual Federal courts to order enrollment of groups of qualified Negro voters, who have applied and been turned down, through specially designated temporary referees. This power has been sparingly used, and civil-rights advocates complain they can't count on Southern white judges to make more use of it.

Since voting-rights legislation arouses less opposition than other civil rights measures, the new Administration proposal is expected to clear Congress without serious trouble. But Southerners could make a show of resistance, all the same. The mere hint of a new proposal this year is already throwing a scare into the Administration's Congressional supporters, who fear any civil rights bill now might foul up legislative machinery that looks so nicely greased for easy approval of their projects.

Other complications loom, too. Though the Administration proposal is currently conceived of mainly as a voting bill, efforts are afoot to broaden it into something more like the measure passed last year. "The broader the bill looks, the tougher it will be to pass," one Administration strategist notes.

Already civil rights groups are demanding provisions making local governments pay money damages when police fail to protect civil rights workers. "We need this as a deterrent to violence," one lobbyist asserts. "When we can pinch their pocketbooks, the towns will start providing protection."

**A Radical Departure**

The liability idea is a radical departure from traditional concepts of government responsibility, and Administration acceptance is unlikely. But its disapproval wouldn't necessarily kill the idea. Working through key Congressional liberals last year, civil rights groups were able to pass a number of amendments including highly controversial fair employment provisions, which the White House originally turned down.

Other expansionary pressure comes from Administration agencies plugging various pet projects. For instance, the Community Relations Service headed by former Florida Gov. Leroy Collins is urging the bill's drafters to ask Congress for a grant-in-aid program to help colleges train townspeople to serve on local biracial committees; these would supplement Federal efforts to mediate community racial disputes.

The certainty of some kind of 1965 proposal is a sharp shift from the prospect just a few weeks ago; almost everyone inside and outside the Administration assumed that the 1964 legislation would suffice for the time being. They pointed to the lapses that intervened between a mild 1957 act, a slightly stronger 1960 measure and the sweeping 1964 law.

But the pressure from civil rights advocates has altered the normal timetable. Whether planned that way or not, the commotion in Alabama is apparently helping persuade Mr. Johnson of the need for additional legislation soon. Furthermore, the civil rights groups have an argument designed to appeal to his acute political sensibilities: They talk of the need to enroll thousands of new Negro voters who in 1966 would support Southern Democratic candidates friendly to the White House. Among these candidates might be the re-election foe of South Carolina's Sen. Thurmond, the segregationist Democrat who turned Republican last fall.

**A Constitutional Amendment?**

Administration aides say many details must be worked out before they have a finished proposal. There's still considerable disagreement over whether to shoot for legislation embodying the Federal registrar idea or a constitutional amendment, or both. Those advocating an amendment aren't confident of the constitutionality of legislation amounting to an abrupt Federal take-over of local voting machinery.

Some who favor an amendment stress that 48 state legislatures are in session this year and are available to ratify the amendment. But opponents emphasize the legislatures may be called on first to handle an amendment dealing with Presidential disability. This side argues that asking the states for two sweeping constitutional changes in one year would be bad strategy.

Administration planners are uncertain, too, exactly how the Government should manage its closer supervision of registration. One frequent suggestion is that the "Federal registrars" be picked from among local postmasters. But some rights groups are balking. "Postmasters are too much at the whim of political patronage from Southerners," says one civil rights leader. "We couldn't count on them when the heat's on."

The new measure could also branch out into voting areas not directly concerned with Southern racial problems. The Justice Department, among others, wants a full-fledged effort to set up Federal standards that would bring some uniformity to the present hodgepodge of state voter-eligibility rules, notably requirements that now bar millions of Americans from voting; this might benefit Northern whites as much as Southern Negroes.

Partly for fear a leak might kill any plan's chances for Presidential backing, the Justice Department is unusually close-mouthed about just what reform it has in mind. Said to be under consideration, however, is a constitutional amendment that would let anyone vote for President and Vice President however short a time he had lived at his latest residence, if he met eligibility requirements where he lived before. Such an amendment might also ban laws requiring a voter to reside in a state at least six months before voting in a state election and in a county, city or town at least 30 days before voting in a local election. It could also call for liberalization of absentee voting requirements.

The department's proposal, it's understood, grows out of a study President Kennedy ordered in 1963 into the reasons for low voter turnouts. The study turned up widespread differences in state registration procedures and residence requirements.

"Many election laws and administrative practices are unreasonable, unfair and outmoded," the report concluded. "They obstruct the path to the ballot box, disfranchising millions who want to vote. An unexpected business trip or a broken ankle can deprive a citizen of his right to vote. He may lose his vote by moving across the street. And he may discover that because he failed to vote two years ago he cannot vote now."

President Johnson himself, of course, will have the final say on whatever civil rights legislation goes to Capitol Hill this year. His advisers say they still aren't clear what he has in mind, except that he plans to push a measure.

About the only guidance they claim to have received is a couple of foggy sentences in last month's State of the Union message; he spoke of a need to break down "obstacles" and "barriers" to the right to vote. At that time, indications were that he was thinking mainly of easing residence requirements and of renewing a past proposal for doing away with "unreasonable" literacy tests. But now, it appears, something bigger and more controversial may be forthcoming.

John Stewart

HMc

February 15, 1965

MEMORANDUM

FOR : The Attorney General

FROM: The Vice President

Voting

My soundings on the Capital here tell me that unless we move rather quickly on voting legislation, we are going to have a plethora of bills and a good deal of sounding off, particularly from some Republicans. Therefore, I urge action as soon as possible.

cc: John Stewart

The veterans' facility spends about $1,250,000 for supplies and operating costs. The majority of the purchases are made locally.

Most of the veterans receive small social security benefits or pensions and spend their money with Bath merchants. Friends and relatives coming to see the veterans bring more money to Bath.

Veterans' Administration officials in Washington have stated that the closing of various facilities, hospitals, and offices throughout the country will result in savings of $23 million.

This has been questioned by Assemblyman Charles D. Henderson, of Hornell, who also has criticized the manner in which the closing order was issued without advance notice, hearings, or specific information.

Seventy-nine percent of the Bath facility budget is for the payroll to give custodial and hospital care to the veterans. No matter where they are transferred they will require adequate care.

Before the United States wipes out 600 jobs, placing a village in economic jeopardy, and uprooting 1,000 veteran patients and residents, New York's Senators and Congressmen should insist on full and open review of the Veterans' Administration directive that all veterans must be out of the facility by June 30.

## Inviting More Legislation

EXTENSION OF REMARKS
OF
## HON. ABRAHAM J. MULTER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
*Tuesday, February 16, 1965*

Mr. MULTER. Mr. Speaker, the distinguished columnist, Mr. Roscoe Drummond, describes in the following column from the New York Herald Tribune of February 12, 1965, exactly what is going to happen in certain areas of our country which are harassing citizens attempting to register to vote.

What these sections of the country do not seem to realize is that, as Mr. Drummond so aptly puts it:

The question is no longer whether this right—

Meaning the right to vote—

is going to be attained by all citizens—but how soon.

The article follows:

VOTE BAR BOOMERANG: ALABAMANS RISK NEW U.S. ACTION

(By Roscoe Drummond)

WASHINGTON.—The last-ditch opponents of Negro voting rights are not only fighting a losing battle; they are doing the most to bring about the very thing they say they don't want: further extension of Federal power to enforce the civil rights law.

The States do not have the constitutional right to apply these qualifications one way to white citizens and another way to Negro citizens.

This is what they are doing in Selma, Ala., and in some other areas. In doing so, it is the advocates of States' rights who are inviting further loss of States' rights.

Neither the President nor Congress is eager to have the Federal Government take control of the registration of citizens who are being denied their rights. This is what is going to happen if, as in Selma, Negroes who want to vote are taken to jail instead of the registrar's office.

I am not one who wants to see Congress rush into further extension of Federal power before the resources of the Civil Rights Act are fully tested and found wanting. But the demand for new legislation will be irresistible—and rightly so—if illegal devices keep on being used by public officials to frustrate the law.

It is well to remind ourselves how precise the Constitution is on this point.

The Constitution, while empowering the States to make the laws on voting qualifications, provides that "no State * * * may deny to any person * * * the equal protection of the laws."

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

It directs that "Congress shall have power to enforce this article by appropriate legislation."

If there is one part of the Civil Rights Act more unassailable than any other—indeed totally unassailable—it is protection for the right to vote. Three times during the past 8 years, Congress has passed "appropriate legislation" to enforce "equal protection" for the right to vote.

Further "appropriate legislation" will be forthcoming if local authorities make the mistake of continuing to employ anti-voting devices.

The question is no longer whether this right is going to be attained by all citizens—but how soon.

It is clear that the country, the Congress, and the courts are determined to secure this right to all eligible Negro citizens faithfully and steadily.

In the case of public school desegregation, some sought to discredit the ruling on the ground that it was "Supreme Court law," not congressional law. Even that false argument cannot be brought to support denying the right to vote.

This is a constitutional right for all Americans wherever they live in the United States. It is explicit and unarguable. It is the duty of the courts and of Congress to protect this right.

Every time local authorities try to misuse State power to deny a citizen his vote, they are inviting Congress to authorize Federal registrars to go anywhere they are needed to protect this right.

Attorney General Nicholas Katzenbach has wisely stated that "eperience under the new civil rights law is too limited" to say whether additional legislation is needed. If it continues to be unlawfully defied, the act will unquestionably be strengthened.

THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

LEGISLATIVE REFERENCE SERVICE

File
Voting
Leg

February 26, 1965

To: Honorable Philip A. Hart
Attention: Mr. William Welsh

From: American Law Division

Subject: Some circumstances under which Congress might, by statute, prohibit the use of a literacy test or other test of knowledge as a State qualification for voting.

There can be no question about the fact that in the exercise of its power to establish qualifications for voting a State may use a literacy test or other test of knowledge. Guinn v. United States, 238 U.S. 347 (1915); Lassiter v. Northampton Election Board, 360 U.S. 45 (1959). In both Guinn and Lassiter to be qualified a voter must have been able to read and write any section of the Constitution. Of this kind of test, the court in Guinn stated (at page 366):

> No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed its validity is admitted.

The Court in Lassiter cited with approval this statement from Guinn, observed that while the right of suffrage is established and guaranteed by the Constitution, States may impose standards which are not discriminatory and which do not contravene any lawful restriction that Congress has imposed, then went on to say: (at page 51-52)

> We do not suggest that any standards which a State desires to adopt may be required of voters. But there is a wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (Davis v. Beason, 133 U.S. 333, 345-47) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. [Noting, World Illiteracy at Mid-Century, Unesco (1957)]. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise.

It is equally clear that some literacy or knowledge tests are so discriminatory on their face that they are unconstitutional. In Davis v. Schnell, 81 F. Supp. 872 (D.C.S.D. Ala. 1949), affirmed 336 U.S. 933 (1949) and cited with approval in Lassiter (supra at page 53) the

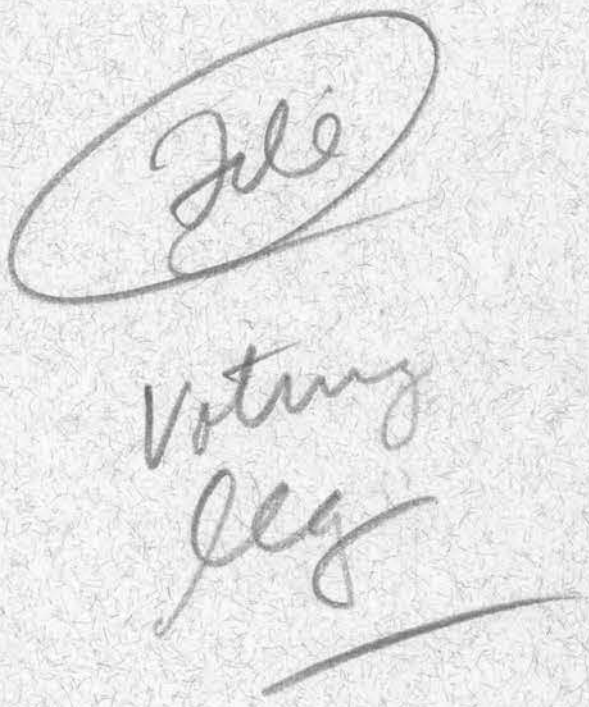
court held unconstitutional the Boswell amendment to the Alabama Constitution which required that voters be able to "understand and explain any article of the constitution of the United States in the English language." The words "understand and explain" give the registrar an arbitrary power to accept or reject any applicant for registration or as the court said in Davis (81 F. Supp. 872, 878, quoting Yick Wo v. Hopkins 118 U.S. 356, 266 the words "actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent...." The words "read and write" considered in Guinn and Lassiter are objective and a requirement that an applicant read and write would not be unconstitutional on its face, if it were considered alone. We underline "if it were considered alone" because the holdings in Guinn and Lassiter go no farther than that.

In the Guinn case the validity of the literacy test alone was admitted by the United States. In Lassiter, the court observed that "Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show." 360 U.S. 45, 51. In a State which offers equal educational

opportunities to all without regard to race or color literacy and illiteracy are unquestionably neutral and Congress would have no power, under the Fifteenth Amendment or any other provision of the Constitution to prohibit such State from using a literacy test so long as it were administered without discrimination. There are some States, however, in which Negroes or members of other races have not been offered equal educational opportunities. In such States, by reason of unconstitutional State discrimination against him, the Negro voting applicant approaches any voting test which requires education or knowledge, whether it be reading or writing or understanding, on an unequal footing vis-a-vis the white voting applicant no matter how impartially the test be administered. For Congress to prohibit the use of any literacy or educational test in a State or even a portion of a State which during the lifetime of any of its citizens of voting age has denied them equal opportunity with white applicants to acquire the knowledge necessary to pass the test would not be at all inconsistent with the holdings in Guinn or Lassiter. The combination of requiring literacy tests and providing unequal educational opportunities for Negroes would seem to be a violation of the Fifteenth Amendment which Congress is empowered to prohibit by law.

Vincent A. Doyle
Legislative Attorney

# CIVIL RIGHTS—SUPREME COURT HEARS CHALLENGES TO SOUTHERN VOTER REGISTRATION SYSTEMS



*Reprinted from*
UNIVERSITY OF PENNSYLVANIA LAW REVIEW
Philadelphia, Pa., U. S. A.
VOLUME 113, No. 4, FEBRUARY, 1965

# CASE NOTE

## CIVIL RIGHTS—Supreme Court Hears Challenges to Southern Voter Registration Systems

The Supreme Court has noted probable jurisdiction in two critical actions [1] brought by the United States under the Civil Rights Act of 1960 [2] in an endeavor to halt two states' continued resistance to court attempts to enforce the fifteenth amendment.[3] In *United States v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963), a three-judge district court held [4] unconstitutional the Louisiana provisions which require a prospective voter to interpret reasonably a section of the state or federal constitution if so requested by the parish registrar.[5] The holding of invalidity was rested on the

---

[1] Louisiana v. United States, 377 U.S. 987 (1964) (No. 1073, 1963 Term; renumbered No. 67, 1964 Term); United States v. Mississippi, 377 U.S. 988 (1964) (No. 1097, 1963 Term; renumbered No. 73, 1964 Term). The paucity of positive results from the voter registration drive in Mississippi during the summer of 1964 increases the importance of these actions. See N.Y. Times, Aug. 20, 1964, p. 13, col. 1. The extent of Southern white opposition and one of the major problems with enforcing the right to vote through county-by-county legal actions are illustrated by federal District Judge Cox's sentiments. At a hearing in which he refused to issue an injunction to speed up the registration in Canton, Mississippi, this jurist stated that he was interested in eliminating discrimination but not in whether "the registrar is going to give a registration test to a bunch of niggers on a voter drive." Watters, *Negro Registration in the South*, The New Republic, April 4, 1964, pp. 15, 17. See also N.Y. Times, Oct. 26, 1964, p. 20, col. 3. See generally Key, Southern Politics in State and Nation 509-28, 555-77, 644-63 (1949); Hersey, *A Life for a Vote*, Saturday Evening Post, Sept. 26, 1964, p. 34.

[2] Civil Rights Act of 1960, § 601, 74 Stat. 90, 42 U.S.C. § 1971 (Supp. V, 1964) [hereinafter this section of the *United States Code*, and the subsections thereof, are referred to in the text simply as section and subsection].

[3] "Every device of disenfranchisement which the judiciary has destroyed, with few exceptions, has been replaced by a new scheme designed by the southern states to perpetuate the myth of 'white supremacy.'" Note, *Negro Disenfranchisement—A Challenge to the Constitution*, 47 Colum. L. Rev. 76 (1947). *Compare* Guinn v. United States, 238 U.S. 347 (1915) (invalidating Oklahoma "grandfather clause"), *with* Lane v. Wilson, 307 U.S. 268, 270-71 (1939) (invalidating Oklahoma statute "obviously directed towards the consequences of the decision in Guinn v. United States . . ."). *Compare* Smith v. Allwright, 321 U.S. 649 (1944), *with* Davis v. Schnell, 81 F. Supp. 872, 878 (S.D. Ala. 1949), *aff'd mem.*, 336 U.S. 933 (1949) (invalidating a literacy test "used with a view of meeting the decision of the Supreme Court of the United States in Smith v. Allwright . . ."). For a review of this ping-pong match between the Court and the South, see Cushman, *The Texas "White Primary" Case—Smith v. Allwright (1944)*, 30 Cornell L.Q. 66 (1944).

[4] Circuit Judge Wisdom wrote the opinion, in which District Judge Christenberry joined. District Judge West dissented.

[5] La. Const. art. 8, § 1(d); La. Rev. Stat. § 18:35 (1950). Several registrars have read these provisions to mean that the applicant need not actually interpret the

provisions' purpose [6] and the excessive discretion allowed the registrars.[7] The court further enjoined the state from using its new objective citizenship test [8] in the twenty-one parishes in which the interpretation test had been employed until a complete reregistration of all the voters took place or the interpretation test lost its discriminatory effect on the parish.[9]

In *United States v. Mississippi*, 229 F. Supp. 925 (S.D. Miss. 1964), the Government sought, *inter alia*, a holding that several of the state provisions dealing with voter registration,[10] including a required constitutional interpretation test, had the same constitutional infirmities as had been found in *Louisiana*. Its petition requested adequate equitable protection against the continuation of this state program of prohibiting Negro en-

---

constitutions, but only be able to do so. Although the state board of registration once maintained that an applicant must demonstrate his ability, it no longer does so. The majority in *Louisiana* found that some registrars had applied the test only to Negroes, some had chosen more difficult clauses for Negroes, and others had refused to accept reasonable interpretations from Negroes. 225 F. Supp. at 382-83.

[6] The court's opinion presents a historical survey of the franchise in Louisiana, relying mainly on commentators on southern history. The convention that adopted the interpretation test was closed. Remarks by public officials and public opinion as reported in the state's newspapers indicate that the convention's purpose was to replace the "grandfather clause" invalidated by Guinn v. United States, 238 U.S. 347 (1915). Following passage in 1921 the test was not employed since the only significant election, the Democratic primary, excluded Negroes. When the Supreme Court prohibited "white primaries," Smith v. Allwright, 321 U.S. 649 (1944), and the efforts of Negro organizations intensified, the Louisiana legislature established a joint committee to "maintain segregation of the races in all phases of our life in accordance with the customs, traditions, and laws of our State." La. H. Con. Res. 27 (1954), quoted in 225 F. Supp. at 378. The chairman and the counsel of this legislative committee incorporated a private group to promote the activities of the committee. The group and these men distributed literature and met with the registrars. They worked with the registrars in purging nearly all registered Negroes from the lists for not taking the interpretation test, but left Caucasians who had similarly not taken the test registered. The registrars then began using the interpretation test to keep the list clean of Negroes. 225 F. Supp. at 363-80.

[7] 225 F. Supp. at 391: "When a State constitution gives raw power to a registrar to grant, or to withhold registration as he sees fit, the constitution violates both the due process and the equal protection clauses of the Fourteenth Amendment."

[8] Contemporaneously with the Government's institution of the instant action, Louisiana first passed a statute, LA. REV. STAT. ANN. § 18:191 (Supp. 1963), and then a constitutional provision, LA. CONST. art. 8, § 18, empowering the board of registrars to prepare an objective test to determine whether a prospective voter understood the duties and obligations of citizenship. A test consisting of multiple choice questions was prepared.

[9] The court retained jurisdiction for "the purpose of allowing the United States to prove and the State to disprove that the interpretation test was used in any of the forty-three parishes not named in the Court's decree, *and for other purposes*." 225 F. Supp. at 398.

[10] The Government challenged constitutional provisions establishing a reading, writing, and interpretation test, MISS. CONST. art. 12, § 244, and an undefined standard of "good moral character" to be determined by the registrar, MISS. CONST. art. 12, § 241-A, and statutes allowing disqualification by registrar for faulty completion of application forms, MISS. CODE ANN. § 3213 (Supp. 1962), and other registration provisions. This Note will deal specifically with the validity of the interpretation test, although the analysis can be applied to the other provisions.

franchisement.[11] The three-judge court held,[12] *inter alia*: (1) the court lacked jurisdiction because the United States was unauthorized to bring the suit; (2) the state was not a proper party; and (3) all the provisions under attack were valid.[13] The action was dismissed for failure to state a claim upon which relief could be granted.

## JURISDICTION

Subsection (d) of 42 *United States Code* section 1971[14] gives the federal courts jurisdiction in all actions brought under that section. Section 1971(c) provides:

> (c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.[15]

---

[11] The court was requested to issue injunctions against enforcing the challenged provisions, engaging in any act that would deny the vote on the basis of race or color, and using any test that bears a direct relationship to the quality of education afforded applicants. The Government also requested that the court find a pattern and practice of racial discrimination under 42 U.S.C. § 1971(e) (Supp. IV, 1963), and that all Negro applicants who are residents, over 21 years of age, not convicted of a crime, and who can read be allowed to register. Jurisdictional Statement for Appellant, p. 6, United States v. Mississippi, 377 U.S. 988 (1964) (No. 1097, 1963 Term; renumbered No. 73, 1964 Term) (noting probable jurisdiction).

[12] The late Circuit Judge Cameron wrote the opinion of the court. District Judge Cox concurred, accepting Cameron's opinion in full. Circuit Judge Brown dissented. Circuit Judge Wisdom was originally designated but relieved himself and was replaced by Circuit Judge Cameron. Brief for Appellant, p. 9 n.3, *id.*

[13] The court found that the provisions were valid on their face and had "transparent and completely unambiguous" meanings. It therefore refused to go "delving into supposed legislative intent, history and purpose." 229 F. Supp. at 948.

[14] Civil Rights Act of 1957, § 131(d), 71 Stat. 637, 42 U.S.C. § 1971(d) (1958).

[15] Civil Rights Act of 1957, § 131(c), 71 Stat. 637, as amended, 42 U.S.C. § 1971(c) (Supp. V, 1964). The constitutionality of this subsection was upheld in United States v. Raines, 362 U.S. 17 (1960). *Louisiana*, 225 F. Supp. at 356-57, and the dissent in *Mississippi*, 229 F. Supp. at 976, asserted that the Government could bring these actions under the Constitution without statutory authorization. Judge Wisdom in *Louisiana* quoted *In Re* Debs, 158 U.S. 564, 584 (1894): "'The obligation which [United States] is under to promote the interests of all and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it standing in court.'" The breadth of this doctrine is unsettled. In the cases cited by Judge Brown in *Mississippi*, the Government as a political entity had been fraudulently misled, United States v. Bell Tel. Co., 128 U.S. 315 (1888); United States v. San Jacinto Tin Co., 125 U.S. 273 (1888), or its order had been disregarded, Sanitary Dist. v. United States, 266 U.S. 405 (1925). Although the rights defended in the instant cases are those of private individuals, it may be argued that the Government has standing because its interest in the very process by which it is constituted is analogous to its interest in the above cases, or because the controversy has given rise to such a nationwide conflict that it has become a Government responsibility. It is unnecessary and unwise to make such constitutional determinations in the present cases, since there is a statutory grant of authority.

Subsection (a) reads:

> (a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.[16]

The *Mississippi* court stated that the Government had not alleged that some person was discriminating against "otherwise qualified" Negroes, since it explicitly claimed that it was alleging not discriminatory action, but rather the invalidity of state standards. The court asserted that it therefore lacked jurisdiction because the action did not come within the statute.[17] However, the Government alleged that there were Negroes who had been denied the franchise on account of their race.[18] In its allegations the Government was merely attempting to make clear that it was attacking the constitutionality of the provisions rather than accepting their validity and attacking the application. Such a narrow reading of the complaint by the court contravenes the *Federal Rules of Civil Procedure*.[19]

The court's opinion also suggests that the section does not authorize attacks upon the constitutionality of any state constitution or statute. This suggestion ignores holdings to the contrary by the Supreme Court.[20]

---

[16] Force Act of 1870, § 1, REV. STAT. § 2004 (1875), as amended, 42 U.S.C. § 1971(a) (1958).

[17] 229 F. Supp. at 943-45.

[18] See *id.* at 942-43 (by implication). "The Complaint . . . alleges racial discrimination to be the clear purpose and inevitable effect of the challenged provisions, and that through use by Mississippi registrars the purpose and effect are actually achieved." Brief for Plaintiff, p. 9.

[19] FED. R. CIV. P. 8(f). "[T]he simple guide of Rule 8(f) [is] that 'all pleadings shall be so construed as to do substantial justice' . . . . The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Conley v. Gibson, 355 U.S. 41, 48 (1957).

[20] See Guinn v. United States, 238 U.S. 347 (1915); Meyers v. Anderson, 238 U.S. 368 (1915). These cases imply that the subsection is coextensive with the fifteenth amendment. This interpretation is also suggested by subsection (a)'s legislative history. See CONG. GLOBE, 41st Cong., 2d Sess. 3485, 3571 (1870). The legislative history of subsection (c) also suggests that it was intended to enable the Government to bring actions to invalidate statutes. See H.R. REP. No. 291, 85th Cong., 1st Sess. 13 (1957); *Hearings on S. 83 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 85th Cong., 1st Sess. 191 (1957); *Hearings on H.R. 6127 Before the House Committee on Rules*, 85th Cong., 1st Sess. 130 (1957). To hold as in *Mississippi* is to require a person discriminated against to satisfy unconstitutional as well as constitutional laws in order to be "otherwise qualified." This seems absurd, *cf.* Neal v. Delaware, 103 U.S. 370 (1880), and ignores the last clause of the subsection.

JOINDER OF THE STATE

The *Mississippi* decision also held that the state was not properly a party to the action.[21] Subsection (c) authorizes bringing actions against the state as well as its officers:

> Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.[22]

*Mississippi* held that this subsection made it possible to make the state a defendant only when the registrar was unavailable. This holding disregards the explicit statutory language granting authorization for two distinct situations: (1) where no registrars are available, the action must be brought against the state or not at all; (2) in other cases the state may be joined at the behest of the Government.

The court suggested an alternative ground based on *United States v. Atkins*,[23] decided by the Court of Appeals for the Fifth Circuit. That opinion said, in a footnote, that a general injunction forbidding discrimination need only be issued against those officials responsible for the administration of the law in the particular parish, explaining that the state should not be enjoined unnecessarily.[24] In relying on this footnote, the *Mississippi* court erred in two ways. First, the state was joined in the suit in *Atkins* and was dismissed as defendant only after trial, when the court found it unnecessary for complete relief. Second, the courts have interpreted section 3 of the Civil Rights Act of 1866[25] as commanding the courts to construe jurisdictional grants in the most effective way for the protection of federal rights:

> [I]t comprehends those facilities . . . which will permit the full effectual enforcement of the policy sought to be achieved by the statutes.
>
> . . . . Thus § 1988 declares a simple, direct, abbreviated test: what is needed in the particular case under scrutiny to make the civil rights statute fully effective?[26]

---

[21] 229 F.Supp. at 941.

[22] Civil Rights Act of 1960, § 601(b), 74 Stat. 90, 42 U.S.C. 1971(c) (Supp. V, 1964).

[23] 323 F.2d 733 (5th Cir. 1963).

[24] *Id.* at 740 n.8.

[25] REV. STAT. § 722 (1875), 42 U.S.C. § 1988 (1958).

[26] Brazier v. Cherry, 293 F.2d 401, 408-09 (5th Cir. 1961); *accord*, Lefton v. City of Hattiesburg, 333 F.2d 280, 284 (5th Cir. 1964); *cf.* Pritchard v. Smith, 289 F.2d 153, 157 (8th Cir. 1961).

In the present case the alleged constitutional problem is not, as in *Atkins,* only the enforcement of particular standards by local registrars. The whole registration system, administered by the governor, legislature, and board of election commissioners as well as the local registrars, is under attack. The policy of discrimination effected pursuant to the constitutional and statutory provisions is statewide in effect. Thus the simplest and most effective remedy is against the state. Moreover, the alternative is separate actions in each county against the registrar, in which the state would be the actual defendant. That procedure would inconvenience the state as much as the Government and therefore serve only to delay elimination of the discrimination.

Although not deciding the issue, the *Mississippi* court said that the statute might be unconstitutional if read as permitting the action to be brought against the state itself.[27] It said that it felt obliged to interpret the statute narrowly in order to avoid this constitutional issue. The court suggested that the fourteenth and fifteenth amendments do not authorize legislation providing for actions to be brought against the state itself. In support of this interpretation, it quoted from past cases such language as the following:

> The state itself is an ideal person, intangible, invisible, and immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that, it is a lawless usurpation. . . . That which, therefore, is unlawful because made so by the supreme law, the constitution of the United States, is not the word or deed of the state, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name.[28]

While acknowledging that these cases held only that, despite the eleventh amendment, individuals may sue state officers for violations of the fourteenth and fifteenth amendments, which restrict only "state" action, the court gave credence to the argument that the same reasoning makes the fourteenth and fifteenth amendments completely inapplicable to state entities.

Although the language quoted seems to provide substantial support for the court's position, such language was not necessary to the resolution of the issue in the cases in which it was articulated. There is no reason why the amendments should not be read to apply to both the state *and* officers acting under color of its laws. Moreover, even if creation of this fiction of the state as an idealism incapable of acting unconstitutionally may have

[27] 229 F. Supp. at 933-41.

[28] Poindexter v. Greenhow, 114 U.S. 270, 290 (1885), quoted in 229 F. Supp. at 934-35. The court also quoted from *Ex parte* Virginia, 100 U.S. 339, 347 (1879), and cited United States v. Raines, 362 U.S. 17, 25 (1960); Cooper v. Aaron, 358 U.S. 1, 16-17 (1958); and *Ex parte* Young, 209 U.S. 123 (1908), in support of its conclusion. 229 F. Supp. at 934-35.



been useful in order to enable individual suits against state officials under the fourteenth and fifteenth amendments to clear the hurdle of the eleventh, it is inapplicable when the federal government, unhampered by the eleventh amendment or residual state sovereign immunity,[29] brings the suit.[30]

## The Merits

The fifteenth amendment prohibits a state from denying or abridging "the right of citizens of the United States to vote . . . on account of race, color, or previous condition of servitude." The courts are the only bastion for the protection of the rights of a group which has been denied the vote and has thus lost its voice in the political process. They should therefore be wary when scrutinizing provisions which allegedly result in withholding the franchise from any group, especially one that had no voice in the enacting legislature.[31]

The Supreme Court has held that evidence that only Caucasians have served on juries in a particular county for several years, despite the presence there of Negroes, constitutes prima facie proof that there has been systematic exclusion based on race.[32] To rebut such proof, the state must demonstrate that the lack of Negro jurors was based on legitimate criteria. Likewise, the Government's uncontroverted showing that registration provisions have excluded only Negroes from the polls[33] should be prima facie proof that there was a violation of the fifteenth amendment.[34]

This proof, however, would not indicate whether the violation lay in the constitution and statutes themselves or simply in their application. In the present cases the Government alleged that the discrimination by the

[29] See, *e.g.,* United States v. California, 332 U.S. 19 (1947); United States v. Texas, 143 U.S. 621, 646 (1892).

[30] See 229 F. Supp. at 979, where Judge Brown in dissent described the majority's reasoning as the "Eleventh Amendment dialectic."

[31] See United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938); Lewis, Gideon's Trumpet 210-13 (1964).

[32] Arnold v. North Carolina, 376 U.S. 773 (1964) (per curiam); Reece v. Georgia, 350 U.S. 85, 88 (1955); Hernandez v. Texas, 347 U.S. 475 (1954). These decisions are particularly significant since the qualifications for jury eligibility are often the same as those for voter registration. See, *e.g.,* Eubanks v. Louisiana, 356 U.S. 584, 586 (1958).

[33] *Louisiana,* 225 F. Supp. at 381-85, 385 n.81, 386 n.82. This was based on "a great mass" of evidence introduced into the record by the Government. In *Mississippi* the Government alleged that the registration provisions attacked had a like effect and that it had similar evidence of a purposeful discrimination. The allegation was reinforced with documented, voluminous answers to interrogatories. Brief for Appellant, pp. 3, 16-17, 20-23, United States v. Mississippi, 377 U.S. 988 (1964) (No. 1097, 1963 Term; renumbered No. 73, 1964 Term) (noting probable jurisdiction).

[34] It may be argued that evidence showing that only Negroes were excluded by an objective registration standard, such as requirement of a high-school diploma, should not be prima facie proof of discrimination. However, it seems that whenever such a discriminatory effect is evidenced, the state should have to show that this effect was not both foreseen and the very purpose of the standard's enactment. *Cf.* McGowan v. Maryland, 366 U.S. 420 (1961). Perhaps the burden upon the state may vary with the particular standard attacked. Special heed should be paid when the objective standard is based on facts which can be or are determined by state regulation, such as control of who gets a high-school diploma.

registrars was in compliance with the mandate of the provisions. It presented evidence that the exclusion of Negroes was statewide.[35] Building upon the presumption from this evidence that the registrars discriminated in performing their functions under the statute, the Government should succeed in attacking the statute upon proving that: (1) the provisions' language describes such broad discretion that it can be read to embrace the discriminatory applications; and (2) the social settings in which the words operate make such a reading the most likely one. Then, unless the states could show that the purposes of the provisions are inconsistent with application based on race, the provisions should be held invalid.

The states claimed that the provisions establish voter qualifications without regard to race. Louisiana presented no evidence of the provisions' validity other than their language.[36] The words of the state interpretation tests do not set any qualification standard. Two operational features in the provisions indicate that they do not really establish a required level of competence: (1) the local registrars who are to judge the applicants' qualifications need not have any knowledge of constitutional law; (2) the registrars are left free to choose constitutional articles greatly varying in difficulty for different applicants. Thus the actual requirements fluctuate with the varying capabilities of the registrars and the different burdens they wish to impose on different applicants. Rather than setting standards, these provisions grant the task of drawing the qualification line to each registrar. Thus the provisions can be read as consistent with discriminatory application.

The Government argues that, given the political tradition in which the registrars operate, the control the majority political power has over their selection,[37] and the segregated society in which they must live [38] and from which they are selected, a grant of power to discriminate along racial lines is not only a possible reading of the provisions' mandate, but a probable one. In view of the provisions' language and effect and in order to protect constitutional rights adequately, the courts should treat the evidence supporting this argument as prima facie proof that these discretion-granting provisions are invalid. Since the legislation's mandate is manifested only in part by its language and application,[39] it is still open for the state to rebut this proof of invalidity by showing that the socio-political context at the time of enactment indicates that discrimination is contrary to the provisions' mandate.[40] To counter any such showing of purpose, the Government proffered evidence that the state has had a historical policy of denying the vote to Negroes [41] and that legislative debates, newspaper articles, and official actions indicate that the provisions were enacted to shield white political supremacy from post-World War II Negro organizational attack and from the effects of court-integrated political primaries and schools.[42]

In *Gomillion v. Lightfoot*,[43] the Supreme Court was confronted with another line claimed by the plaintiffs to be drawn for the sole purpose of excluding Negroes.[44] Alabama had passed a statute which changed the Tuskegee city limits from a "square to an uncouth twenty-eight sided figure" [45] which wove among the houses so as to exclude only Negroes and thus deny them a vote in municipal elections. Alabama had claimed that the words of the statute indicated that it was simply a districting line, which was within the state's political power to draw. The Court, shouldering its responsibility to guard against "sophisticated as well as simple-minded modes of discrimination," [46] directed the trial court to look further than the statute's language and hear evidence with regard to the statute's purpose. If the state could not prove a purpose other than discrimination

---

[35] See *Louisiana*, 225 F. Supp. at 385 n.81; *Mississippi*, 229 F. Supp. at 932.

[36] The defendants did not file a brief in *Louisiana*, thus apparently relying on the words of the provisions. The opinion in *Mississippi* suggests that the defendants' claim was that the state can establish voter qualifications, and that the plain words of these provisions indicate that they are nondiscriminatory tests of a candidate. 229 F. Supp. at 945-48. The court also incorporated the opinion in Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958), in which it was held that to require a candidate to understand the form and genius of the government was reasonable. *Id.* at 183.

[37] In Louisiana the registrar in all but one parish is appointed by the governing body of the parish, LA. REV. STAT. § 18:1 (1950), for a term of good behavior, LA. REV. STAT. § 18:3 (1950), and he must be a qualified voter, LA. REV. STAT. § 18:2 (1950). In Mississippi registrars are appointed by the state board of election commissioners, which is composed of the governor, secretary of state, and attorney general, MISS. CODE ANN. § 3204 (1956), for four year terms. The board also appoints the county election commissioners, who can review the registrars' decisions de novo. MISS. CODE ANN. § 3205 (1956).

[38] "[I]f any test of understanding were applied at all to any substantial number of citizens of status, the registrars would be hanged to the nearest lamp post and no grand jury could be found that would return a true bill." KEY, SOUTHERN POLITICS IN STATE AND NATION 577 (1949).



[39] As observed by Mr. Justice Frankfurter:

> Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy . . . is evinced in the language of the statute, as read in the light of other external manifestations of purpose. . . .
>
> . . . .
>
> Often the purpose or policy that controls is not directly displayed in the particular enactment. Statutes cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes, or in the known temper of legislative opinion.

Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 538-39 (1947).

[40] *Cf.* McGowan v. Maryland, 366 U.S. 420, 466-67 (1961) (Frankfurter, J., concurring) (holding that fact that state closing laws fell on Sunday was not due to an unconstitutional purpose to establish a religion); Hall v. St. Helena Parish School Bd., 197 F. Supp. 649 (E.D. La.), *aff'd mem.*, 368 U.S. 515 (1961) (invalidation of a local-option school closing law because of a racially discriminatory purpose); Davis v. Schnell, 81 F. Supp. 872 (S.D. Ala.), *aff'd mem.*, 336 U.S. 933 (1949) (alternatively holding that the purpose of a voter registration interpretation test violated the fifteenth amendment).

[41] *Louisiana*, 225 F. Supp. at 363-81; *Mississippi*, 229 F. Supp. at 985-93.

[42] *Louisiana*, 225 F. Supp. at 363-81; Brief for Appellant, pp. 10-20, United States v. Mississippi, 377 U.S. 988 (1964) (No. 1097, 1963 Term; renumbered No. 73, 1964 Term) (noting probable jurisdiction).

[43] 364 U.S. 339 (1960).

[44] *Cf.* Davis v. Schnell, 336 U.S. 933 (1949); Lane v. Wilson, 307 U.S. 268 (1939); Guinn v. United States, 238 U.S. 347 (1915).

[45] 364 U.S. at 340.

[46] Lane v. Wilson, 307 U.S. 268, 275 (1939).

for this deliberate fluctuation in the line, the statute was to be held invalid.[47] The Supreme Court should issue a similar order to the Mississippi district court[48] and should affirm the invalidation of the Louisiana voter registration line, which the district court found was deliberately designed by the legislature to fluctuate so as to deny the right to vote on account of race.

The interpretation tests contain another constitutional infirmity. Granting a legitimate purpose, these provisions delegate to the registrars too vast a discretion in determining who can vote. The combination of the denotative imprecision of "reasonable" with the ambiguity of constitutional phrases gives the registrars such a broad discretion that it allows them to make determinations on the basis of caprice or impermissible discrimination.

Although degrees of discretion are necessary for a government to be flexible enough to cope with the problems of a complex society,[49] the due-process guarantee of the fourteenth amendment requires an even-handed rule of law and not arbitrary regulation based on whim.[50] To accommodate the requirement of order through government with preservation of individual liberty, due process will vary with particular situations and regulations according to the dictates of fairness.[51] A thorough analysis of the

[47] Upon remand the district court found the districting statute unconstitutional. TAPER, GOMILLION VERSUS LIGHTFOOT 116 (1962). The same district court held that the county registrar had been discriminating against Negroes and ordered those qualified to be registered and other measures designed to eliminate discrimination. *Ibid.* As a result of these two court orders, Tuskegee has elected to the city council its first two Negroes since Reconstruction days. Philadelphia Bulletin, Sept. 16, 1964, p. 3, col. 7 (4 star ed.).

[48] Discrimination against Negroes, on the Government's theory, has not resulted from discriminatory administration of valid laws. It has happened because it was meant to happen. To eradicate this evil, the attack need not be made piece by piece. It may be made by a frontal assault on the whole structure. What the Government is saying is that Mississippi knows that this was the purpose, and now all it wants is for the Court to see what "all others can see and understand," since there "is no reason why courts should pretend to be more ignorant or unobserving than the rest of mankind."

*Mississippi*, 229 F. Supp. at 998 (Brown, J., dissenting). (Brackets omitted.)

[49] " 'Delegation of power to administration is,' however, 'the dynamo of the modern social service state.' It has made possible the vast, pervasive growth of administrative process, which few would now, and no one could, abolish." BICKEL, THE LEAST DANGEROUS BRANCH 161 (1962).

[50] See Staub v. City of Baxley, 355 U.S. 313, 322 (1958); Saia v. New York, 334 U.S. 558, 561 (1948); Yick Wo v. Hopkins, 118 U.S. 356, 369-73 (1886). It is unclear whether the ordinance in *Yick Wo* was invalid under the due process clause. See *id.* at 373. The weightier authority reads the opinion as *holding* only that the administration of the ordinance violated the equal protection clause. Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 50 (1959); BICKEL, THE LEAST DANGEROUS BRANCH 217 (1962); Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 113 (1960), in SELECTED ESSAYS ON CONSTITUTIONAL LAW—1936-1962, at 560, 597 (Association of American Law Schools ed. 1963) [hereinafter cited as SELECTED ESSAYS]. Yet in past decisions the Court has stated that *Yick Wo* held the ordinance itself invalid. Home Tel. & Tel. Co. v. Los Angeles, 227 U.S. 278, 291 (1912); Atchison, T. & S.F.R.R. v. Matthews, 174 U.S. 96, 105 (1899); Williams v. Mississippi, 170 U.S. 213, 224 (1898).

[51] Thornhill v. Alabama, 310 U.S. 88, 96 (1940); Schneider v. State, 308 U.S. 147, 161 (1939); see Haynes v. Washington, 373 U.S. 503, 515-16 (1963); Culombe v. Connecticut, 367 U.S. 568 (1961); Kingsley Books, Inc. v. Brown, 354 U.S. 436, 441-42 (1957).



Supreme Court decisions where statutes have been challenged as granting too much discretion through vague language has indicated that:

> [T]he ultimate response of the Court will depend upon the nature of the individual freedom menaced, the probability of its violation, the potential deterrent effect of the risks of irregularity and violation upon its exercise, and the practical power of the Court itself to supervise the scheme's administration. . . . Finally, into the process of weighing these considerations there enters . . . the principle of necessity.[52]

Today's Court has most often articulated the limitations on administrative discretion in cases dealing with the individual freedom of expression.[53] Since the Court has also recognized the vote as the fundamental force of a democratic government,[54] the right to vote free from discrimination requires at least as much protection as freedom of expression.[55]

There is a high probability of discrimination under the veil of this statutory authorization. The denial of the vote to Negroes is a most effective means of securing white political supremacy. In a setting which for several decades has evidenced official discrimination, there are strong reasons for inferring a high probability that an official given discretionary power will racially discriminate sub silentio. The Court has already suggested that a greater risk lies in administrative discretion than in the

[52] Amsterdam, *supra* note 50, at 94-95, SELECTED ESSAYS 581-82. (Footnotes omitted.) Put in somewhat less analytical terms: "It follows that in deciding upon the admissibility of flexible or indefinite terms, regard must be had to the circumstances under which, the persons by whom, and the sense of responsibility with which, the law will be applied, and to the consequences which an error will entail." Freund, *The Use of Indefinite Terms in Statutes*, 30 YALE L.J. 437, 438 (1921). Professor Alexander Bickel sees the problem in terms of legislative responsibility:

> A vague statute delegates to administrators . . . the authority of *ad hoc* decision, which is in its nature difficult if not impossible to hold to account . . . . In addition, such a statute delegates authority away from those who are personally accountable, at least for the totality of their performance, to those who are not, at least not directly. In both aspects, it short-circuits the lines of responsibility that make the political process meaningful.

BICKEL, THE LEAST DANGEROUS BRANCH 151 (1962). He later reaches criteria similar to Amsterdam's: "When should the Court recall the legislature to its own policy-making function? Obviously, the answer must lie in the importance of the decision left to the administrator or other official. And this is a judgment that will naturally be affected by the proximity of the area of delegated discretion to a constitutional issue." *Id.* at 161.

[53] See, *e.g.*, Staub v. City of Baxley, 355 U.S. 313, 321-25 (1958).

[54] See Reynolds v. Sims, 377 U.S. 533 (1964); Wesberry v. Sanders, 376 U.S. 1 (1964); Baker v. Carr, 369 U.S. 186 (1962); Gomillion v. Lightfoot, 364 U.S. 339 (1960); Terry v. Adams, 345 U.S. 461 (1953); Lane v. Wilson, 307 U.S. 268 (1939). "Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless [the franchise] . . . is regarded as a *fundamental political right*, because *preservative of all rights*." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) (dictum). (Emphasis added.)

[55] See United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938); BICKEL, THE LEAST DANGEROUS BRANCH 210-11 (1962); EMERSON & HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 137-38 (1958); LEWIS, GIDEON'S TRUMPET 210-13 (1964).

potential for courtroom foul play.[56] There are stronger grounds for this distrust of administrative discretion when the determination of who can vote rests with an official whose very office depends on who votes.

The vague registration standard is likely to have the effect of deterring many Negroes from trying to register. Due to the registrar's ability to change the acceptable interpretation at his discretion, the Negro desiring to vote has no clear goal towards which to strive.[57] A candidate who wishes to educate himself does not know what to learn in order to be able to give a "reasonable" interpretation.[58] The applicant's difficulty is heightened when, upon failing, he is not told where he erred.[59] Furthermore, the Negro realizes that there are strong social and economic pressures against his trying to register.[60] In order to attempt to register, therefore, he must run a substantial risk without the least assurance that he can satisfy the registrar.[61]

Judicial control of the exercise of such a discretionary standard is practically ineffectual.[62] Probing the registrar's mind is generally more difficult than reviewing court determinations, where the adversary system is operative and records are kept. Although the Court may look more favorably on administrative discretion when the state courts have demonstrated a willingness to curb the official's power and have supplied guiding standards,[63] no such state court control is evident here. Furthermore, the

56 Amsterdam, *supra* note 50, at 94 & n.142, SELECTED ESSAYS 581 & n.142.

57 For one registrar "FRDUM FOOF SPETGH" was an acceptable interpretation of article 1, § 3 of the Louisiana constitution, whereas for another "to search you would have to get an authorized authority to read a warrant" was unacceptable as an interpretation of the fourth amendment to the Constitution of the United States. *Louisiana*, 229 F. Supp. at 384.

58 *Cf.* United States v. Duke, 332 F.2d 759, 763-66 (5th Cir. 1964).

59 Registrars are not to disclose reasons for finding an applicant unqualified (except when "not of good moral character"). MISS. CODE ANN. § 3212.5 (Supp. 1963). For general discussion of practices in Louisiana see 225 F. Supp. at 383-85. For instances where it was felt necessary for the elimination of discrimination to order the registrars to disclose reasons for failure see United States v. Fox, 334 F.2d 449, 451 (5th Cir. 1964); United States v. Clement, 231 F. Supp. 913, 918 (W.D. La. 1964); United States v. Crawford, 229 F. Supp. 898, 903 (W.D. La. 1964).

60 Marshall, *Federal Protection of Negro Voting Rights*, 27 LAW & CONTEMP. PROB. 455 (1962). For a case of official physical intimidation in Mississippi see United States v. Wood, 229 F.2d 772 (5th Cir. 1961), *cert. denied*, 369 U.S. 850 (1962). For one of economic intimidation in Louisiana see United States v. Deal, described in Marshall, *supra* at 459. See generally Hersey, *A Life for a Vote*, Saturday Evening Post, Sept. 26, 1964, p. 34.

61 Assistant Attorney General Burke Marshall has reported: "We were once puzzled by counties in which, although fear was not a factor, few Negroes applied to register. We know now that the bulk of a Negro community considers attempting to register to be an idle gesture after a few of their teachers and ministers have been rejected as unqualified." Marshall, *supra* note 60, at 455-56 n.7.

62 As Mr. Justice Frankfurter said of a similarly vague standard held to be invalid: "[T]he available judicial review is in effect rendered inoperative. On the basis of such a portmanteau word as 'sacrilegious,' the judiciary has no standards with which to judge the validity of administrative action which necessarily involves, at least in large measure, subjective determinations. Thus, the administrative first step becomes the last step." Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 532 (1952) (concurring opinion).

63 Poulos v. New Hampshire, 345 U.S. 395 (1953). *Compare* Cox v. New Hampshire, 312 U.S. 569 (1941), *with* Cantwell v. Connecticut, 310 U.S. 296 (1940).



gathering of evidence of discriminatory administration is handicapped by Caucasian hostility and Negro fear.[64]

Nor is this discretion necessary.[65] If the purpose is to assure an electorate aware of constitutional principles or one with a certain level of intelligence, it can be accomplished through the administration of predetermined questions with predetermined answers. Thus the registrar's task would be ministerial[66] and the probability of constitutional violation minimized.

Examination of the relevant factors indicates that in the setting of Louisiana and Mississippi society, the discretion allowed the registrars violates the due process guarantee of the fourteenth amendment.

## RELIEF

The prejudicial effect of a discriminatory registration statute is not eradicated by a simple declaration of unconstitutionality. Application of the statute will have denied Negroes the opportunity to register under the less demanding standards concurrently employed for Caucasians. To extirpate such discrimination, the court must provide for the registration of all eligible Negroes under standards identical to those met by Caucasians. In subsections (c)[67] and (e)[68] Congress has granted the court certain powers to deal with discrimination in voter registration. Subsection (c) authorizes the court to entertain an action for "preventive relief" against discriminatory practices and to issue "a permanent or temporary injunction, restraining order, or other order." Subsection (e), enacted three years later, grants the court specific power to effect a detailed affirmative remedy. Upon a finding of discrimination, the court is to make,[69] on the Attorney General's request, a further finding whether the discrimination was pursuant

64 Assistant Attorney General Marshall has also pointed out that one of the problems his office has encountered is that most often, due to a lack of communication between Caucasian and Negro communities, especially in rural areas, the Negroes are unaware they are being discriminated against and just assume they are not as qualified as the registered Caucasians. Marshall, *supra* note 60, at 465.

65 *Cf.* McLaughlin v. Florida, 85 Sup. Ct. 283, 290-91 (1964) (opinions of the Court and Harlan, J., concurring); Shelton v. Tucker, 364 U.S. 479, 488 & nn.8 & 9 (1960).

66 See Cantwell v. Connecticut, 310 U.S. 296, 306 (1940).

67 Civil Rights Act of 1957, § 131(c), 71 Stat. 637, 42 U.S.C. § 1971(c) (1958).

68 Civil Rights Act of 1960, § 601(a), 74 Stat. 90, 42 U.S.C. § 1971(e) (Supp. V, 1964).

69 Despite the apparently mandatory language of the statute, which provides that upon request the court "shall . . . make a finding," some courts have held that subsection (e) does not make a finding on pattern compulsory, thus arrogating to themselves discretion to render the subsection inoperative in a particular case. United States v. Ramsey, 331 F.2d 824, *rev'd on other grounds on rehearing*, 331 F.2d 838 (5th Cir. 1964); United States v. Raines, 203 F. Supp. 147 (M.D. Ga. 1961). *But see* United States v. Ramsey, *supra* at 835-36 (Rives, J., dissenting) (legislative history conclusively shows Congress intended finding on pattern to be mandatory when requested). Section 101(d) of the Civil Rights Act of 1964, 78 Stat. 241, 42 U.S.C.A. § 1971(h) (1964), limits the discretionary power of the single judge on pattern-finding by permitting the Attorney General to call for a three-judge court to make the finding.

to a "pattern or practice." [70] If such a pattern or practice is found, the court, with the aid of federal voting referees [71] if it wishes, may declare qualified to vote any person within the affected area who proves that "(1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law." "Qualified under State law" is defined as "qualified according to the laws, customs, or usages of the State," and the subsection specifies that the phrase should not be taken to imply standards more stringent than those actually employed by the registrar in enrolling persons not subjected to racial discrimination.

It is possible to argue that the scope of subsection (e) is limited. When the Government contends that a certain state registration statute should not be applied to Negroes, it places itself in an apparently inconsistent position if it also seeks relief under subsection (e), as it may seem to be requesting the court to declare Negroes qualified to vote under the very standards it is alleging are inapplicable to them.[72] The inconsistency is not an actual one. There are two possible situations. For one, Caucasians may have been enrolled without regard to the requirements of the particular statute. Since this statute has not been applied to those placed on the voting lists without racial discrimination, it cannot be considered part of the customary registration standard. Subsection (e) therefore applies, because it recognizes that a person can be qualified under the "customs or usages" of a state without being qualified under the "laws" thereof.[73] Thus, even when the court invalidates the statute,[74] the customary standard is unaffected, and enrollments may be ordered thereunder. Subsection (e) is equally applicable in the second situation where the statutory test has been applied to all groups, albeit in such a manner as to discriminate against one. A declaration of unconstitutionality effectively removes this statute from the field so that a person may demonstrate his qualification to vote under state law by meeting the tests of the remaining registration statutes which will include, at the very least, an age requirement.[75]

The scope of subsection (c) has been challenged by the assertion that Congress, in authorizing "preventive relief," meant to limit the courts to negative injunctions.[76] That mandatory injunctions may also be issued under the subsection is revealed by its legislative history and by a recent decision.[77] The Senate debates indicate an appreciation that the subsection authorizes the court to issue mandatory decrees.[78] Such specific decrees as a temporary restraining order requiring a registrar to enroll Negroes discriminatorily denied the opportunity to register,[79] an order compelling a registrar "to report back to the court at fixed intervals" on his efforts to comply with a remedial decree,[80] an order to post and otherwise publish notices concerning new registration procedures,[81] and an order to replace on the voting rolls a Negro illegally removed therefrom [82] were recognized as falling within the scope of the subsection. The House report accompanying the Civil Rights Act of 1957 announced the bill's purpose as being "to permit the Federal Government to seek from the civil courts preventive *or other necessary relief* in civil-rights cases." [83] More-

[70] It may reasonably be contended that a pattern or practice is automatically established when a statute is held unconstitutional.

[71] See generally 72 YALE L.J. 770 (1963).

[72] *Cf.* Giles v. Harris, 189 U.S. 475, 486 (1903) (Holmes, J.).

[73] *Cf.* Monroe v. Pape, 365 U.S. 167, 176-78 (1961) (action under § 1 of the Ku Klux Act, REV. STAT. § 1979 (1875), 42 U.S.C. § 1983 (1958), which makes a similar distinction among "statute, ordinance, regulation, custom [and] . . . usage"); *id.* at 258-59 (Frankfurter, J., dissenting). Compare the approach of Mr. Justice Frankfurter where no such distinction was available:

> It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy . . . are often tougher and truer law than the dead words of the written text.

Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 369 (1940) (fourteenth amendment).

[74] To provide relief in the immediate situation, the court need not reach the issue of the statute's constitutionality. Since the alleged discrimination consists of applying the statutory standard to Negroes only, the court could provide a remedy which merely enjoined the state from applying that standard to Negroes who were of registration age when the statute was in use. Such relief, however, would leave the state free to apply this standard to all future applicants, and thus to discriminate further against Negroes, necessitating the filing and litigating of a separate and time-consuming suit to test the validity of the statute. This could only result in the further deferment of full rights for the Negro.

[75] *Cf.* Guinn v. United States, 238 U.S. 347, 363 (1915):

> [A]s the command of the Amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminatory clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out. . . . A familiar illustration of this doctrine resulted from the effect of the adoption of the Amendment on state constitutions in which at the time of the adoption of the Amendment the right of suffrage was conferred on all white male citizens, since by the inherent power of the Amendment the word white disappeared and therefore all male citizens without discrimination on account of race, color or previous condition of servitude came under the generic grant of suffrage made by the State.

[76] Alabama v. United States, 304 F.2d 583, 597-600 (5th Cir.) (Cameron, J., dissenting), *aff'd mem.*, 371 U.S. 37 (1962).

[77] Compare Sherman Act § 4, 26 Stat. 209 (1890), as amended, 15 U.S.C. § 4 (1958): "The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act . . . ." Mandatory decrees have often been granted under this section. See, *e.g.*, Standard Oil Co. v. United States 221 U.S. 1 (1911) (divestiture).

[78] *E.g.*, 103 CONG. REC. 12460 (1957) (remarks of Senator Morse): "So much has been said of injunction that it has been all but overlooked that the proposed provisions would enable the issuance of mandatory decrees after full trial on the merits."

[79] *Id.* at 12696 (remarks of Senator Long).

[80] *Id.* at 12805 (remarks of Senator Morse).

[81] *Ibid.*

[82] *Id.* at 12844 (1957) (remarks of Senator Case).

[83] H.R. REP. No. 291, 85th Cong., 1st Sess. 1 (1957). (Emphasis added.)

over, in *Alabama v. United States*,[84] the Supreme Court affirmed—without discussion—the Fifth Circuit's holding that subsection (c) authorized the court to order the registration of certain named Negroes found to have been denied registration discriminatorily.[85]

The traditional [86] equity powers of the federal courts form an important backdrop for subsection (c). Courts of equity may provide remedies adapted to the peculiar circumstances of each case arising under the equity jurisdiction.[87] In fashioning its decree a court of equity may grant either prohibitory [88] or mandatory [89] relief, and, when the situation requires an extraordinary remedy to protect the jeopardized right, the court may tailor one to meet the needs of the case.[90] An early case, *Giles v. Harris*,[91] held that without specific congressional authorization the court could not employ these powers to compel the registration of certain Negroes discriminatorily denied registration:

> The traditional limits of proceedings in equity have not embraced a remedy for political wrongs. . . . Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States.[92]

The continuing vitality of *Giles* has been put in serious doubt by the Supreme Court's refusal to apply its reasoning in the area of reapportionment.[93] It might be argued, however, that the decision as to *who* shall vote is more basic than the determination of the *weight* to be given the

[84] 371 U.S. 37, *affirming mem.* 304 F.2d 583 (5th Cir. 1962).

[85] It might possibly be objected that, although subsection (c) was originally a broad grant of powers to the court, subsection (e) limited that grant, under the canon *expressio unius est exclusio alterius*, by authorizing one specific affirmative remedy. Whatever other merit such a claim might have, it ignores the specific disclaimer contained in subsection (e), which announces that "this subsection shall in no way be construed as a limitation upon the existing powers of the court." Civil Rights Act of 1960, § 601(a), 74 Stat. 91, 42 U.S.C. § 1971(e) (Supp. V, 1964).

[86] See Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 164-65 (1939); Atlas Life Ins. Co. v. W. I. Southern, Inc., 306 U.S. 563, 568 (1939).

[87] See, *e.g.*, Brown v. Board of Education, 349 U.S. 294, 300 (1955); Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944) (dictum); Alabama v. United States, 304 F.2d 583, 591 (5th Cir.), *aff'd mem.*, 371 U.S. 37 (1962); United States v. Raines, 203 F. Supp. 147, 151 (M.D. Ga. 1961) (dictum).

[88] McCLINTOCK, EQUITY § 15 (2d ed. 1948); see, *e.g.*, United States v. Atkins, 323 F.2d 733, 745 (5th Cir. 1963).

[89] McCLINTOCK, EQUITY § 15 (2d ed. 1948); see, *e.g.*, Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288 (1960) (restitution of lost wages ordered); Porter v. Warner Holding Co., 328 U.S. 395 (1946) (restitution of excess rents ordered). Such affirmative relief is not a recent innovation. See Vane v. Lord Barnard, 2 Vern. 738, 23 Eng. Rep. 1082 (Ch. 1716) (order to repair vandalized castle at defendant's expense).

[90] McCLINTOCK, EQUITY § 42 (2d ed. 1948); see, *e.g.*, Ilyin v. Avon Publications, Inc., 144 F. Supp. 368, 374-75 (S.D.N.Y. 1956).

[91] 189 U.S. 475 (1903).

[92] *Id.* at 486, 488.

[93] See Baker v. Carr, 369 U.S. 186, 208-37 (1962); *cf.* Gomillion v. Lightfoot, 364 U.S. 339, 347-48 (1960).



ballot of an admittedly qualified voter, and that the *Giles* rationale is therefore still applicable to voting rights cases.[94] Even if this argument is accepted, relief is not precluded in the present cases, as, in awarding the same type of relief denied in *Giles*, the Fifth Circuit indicated in the *Alabama* case [95] that the *Giles* requirement of congressional authorization had been met by the enactment of subsection (c). In addition to the *Alabama* decision,[96] the Senate debates on the subsection indicate that it was designed to confer upon the federal courts equitable jurisdiction in the field of voting rights.[97] Senator Carroll, for example, was careful to point out:

> It ought to be perfectly clear what is the legislative intent of those who are proponents of the bill. . . . What we are talking about is a function of a court of equity, and whether the Attorney General will be given the power to move into that court, and whether the court in the exercise of its equitable jurisdiction can protect the constitutional right to vote prior to a criminal violation.[98]

Viewed in this light, subsection (c) appears to be an authorization for the court to devise adequate equitable remedies "to assist in the enforcement of the right to vote," one of the stated purposes of the Civil Rights Act of 1957.[99]

In devising a remedy for deprivation of voting rights, the court must keep the interests of the state in view. States possess broad discretionary powers to fix nondiscriminatory standards for registration.[100] Moreover, these powers have been depicted by the Supreme Court as ones "without . . . which . . . the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground." [101] In formulating its remedy the court should therefore balance such considerations against the necessity for effective protection of invaded constitutional rights. Such a balancing shows mechanical invocation of the subsection (e) remedy to be

[94] See *id.* at 346.

[95] Alabama v. United States, 304 F.2d 583, 592 (5th Cir.), *aff'd mem.*, 371 U.S. 37 (1962).

[96] *Id.* at 590: "In prescribing a suit to be brought by the sovereign for equitable relief, the statute contemplates that the full and elastic resources of the traditional court of equity will be available to vindicate the fundamental constitutional rights sought to be secured by the statute."

[97] See 103 CONG. REC. 12843 (1957) (remarks of Senator Case); *cf. id.* at 12148-49 (remarks of Senator Clark).

[98] *Id.* at 13295.

[99] H.R. REP. No. 291, 85th Cong., 1st Sess. 1 (1957).

[100] It has long since been settled that "the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." Pope v. Williams, 193 U.S. 621, 632 (1904); *accord, e.g.*, Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 51 (1959); Camacho v. Rogers, 199 F. Supp. 155, 158 (S.D.N.Y. 1961).

[101] Guinn v. United States, 238 U.S. 347, 362 (1915) (dictum) (grandfather clause of Oklahoma constitution declared unconstitutional).

quite inappropriate, as that course necessarily deprives the state of its power to make the actual selection of its electorate. Where less extreme but equally effective methods are available, they should be given precedence by the court.[102]

Where the court is obliged to invalidate a state registration statute, or to enjoin the state from applying such to Negroes, it must award relief which will both adequately and moderately meet any possible state response threatening further discrimination. After the statute is declared unconstitutional, the state has two alternatives. It may either take no action or move to fill the void by enacting a new registration statute. If it adopts the former course, the court may more easily safeguard the right to vote. Judicial excision of the discriminatory statute does not leave the state without statutory standards under which to conduct registration.[103] At the very least, an age requirement will remain. Since such a standard does not suffer the constitutional infirmities of the invalidated statute, the court's major function is to enjoin the state from changing the availability of registration by such tactics as closing registration centers.[104] Negroes previously denied registration under the former statutory test will then be enabled to register under standards no more stringent than those applied to their Caucasian counterparts.

The court must also provide for the possibility that the state will enact a new registration statute. Unless some precaution is taken, the state could easily evade the invalidation of the previous statute by passing an equally objectionable one.[105] The court should therefore retain jurisdiction so that the constitutionality of any new standard can be tested without delay or possible prejudice to future applicants.[106] Moreover, even if a new statute

[102] See United States v. Ramsey, 331 F.2d 824, 829 (5th Cir. 1964); United States v. Raines, 203 F. Supp. 147, 151 (M.D. Ga. 1961). The courts have been most reluctant to appoint federal voting referees under subsection (e). See, *e.g.*, United States v. Manning, 206 F. Supp. 623 (W.D. La. 1962); United States v. Association of Citizens Councils, 196 F. Supp. 908, 912 (W.D. La. 1961); United States v. Alabama, 192 F. Supp. 677, 683 (M.D. Ala. 1961), *aff'd*, 304 F.2d 583 (5th Cir.), *aff'd mem.*, 371 U.S. 37 (1962).

[103] *But see* United States v. Palmer, 230 F. Supp. 716 (E.D. La. 1964) (*Louisiana* decree held to leave state without a registration standard).

[104] The decree might also order the state to (1) keep its registration centers open for stated periods every day; (2) keep a full staff (number stated) at work during those periods; (3) process a certain number of applications per hour; (4) obtain all information needed for the registration records at the time any test is taken; (5) notify all applicants within a week whether they passed or failed, giving specific reasons for any failures; and (6) enter the names of all who pass the test on the registration rolls without requiring their return to the registration center. See United States v. Mississippi, No. 21212, 5th Cir., Dec. 28, 1964; Alabama v. United States, 304 F.2d 583, 584-85 (5th Cir.), *aff'd mem.*, 371 U.S. 37 (1962). To prevent harassment the court should also enjoin the state from requiring any proof of age other than a birth certificate or other objective proof. Should any problems of discrimination nevertheless arise, they might be met by the approach discussed in the text accompanying notes 112-13 *infra*.

[105] See, *e.g.*, Lane v. Wilson, 307 U.S. 268 (1939) (Oklahoma prescribed a limited registration period for those who had not voted in general election of 1914 after Court invalidated grandfather clause).

[106] See, *e.g.*, Reynolds v. Sims, 377 U.S. 533, 586-87 (1964) (reapportionment); Brown v. Board of Education, 349 U.S. 294, 300-01 (1955) (school segregation); Ross v. Dyer, 312 F.2d 191, 192, 194 (5th Cir. 1962) (school segregation); Moss v. Burkhart, 220 F. Supp. 149, 153-55 (W.D. Okla. 1963) (reapportionment).



is found to meet constitutional requirements, the court should enjoin the state from applying it to any person, Caucasian or Negro, who was of registration age when the invalidated statute was still on the books, unless the state conducts a total reregistration of its electorate.[107] Were this not done, Negroes who were discriminatorily denied or deterred from seeking[108] registration would be subjected to a test which enrolled Caucasians of the same age did not have to meet, thus entrenching the past discrimination.[109] Because the previous statute was unconstitutional, the courts should afford the same protection to unenrolled Caucasians of the same age group. Finally, the court should order the state to administer its registration tests on a standard form and to retain all completed forms for a specified period.[110] Without such an order, the new test would be plagued by the same discretion the court has already found impermissible, as a registrar would be in a position to enroll whomever he chose. He could contend that a Negro had failed or that a Caucasian had passed, and there would be no way to verify his statement. A completely constitutional standard is no remedy if a registrar retains the power to render it meaningless.[111] The state's interests are fully protected by the remedy just described, for the state retains full power thereunder, subject only to the customary constitutional restrictions, to both set and apply registration standards within its borders.

The relief outlined above is devised to meet the problems posed by an unconstitutional registration statute. If discrimination continues after the creation of a valid standard, however, the court is faced with still other problems. The nature of the standard being unobjectionable, the discrimination can only occur in the application of that standard. Where more than a minimal number of state registrars are shown to have discriminated in their application of the registration standard, strong evidence has been adduced that the statewide pattern of racial discrimination already found by the court has not ceased. In such a situation the heart of the problem is not the particular state official who administers the registration

[107] United States v. Duke, 332 F.2d 759, 769-70 (5th Cir. 1964).

[108] See notes 57-61 *supra* & accompanying text.

[109] See Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 49-50 (1959):

> Appellant argues that that is not the end of the problem presented by the grandfather clause. There is a provision in the General Statutes for permament registration in some counties. Appellant points out that although the cut-off date in the grandfather clause was December 1, 1908, those who registered before then might still be voting. If they were allowed to vote without taking a literacy test and if appellant were denied the right to vote unless she passed it, members of the white race would receive preferential privileges of the ballot contrary to the command of the Fifteenth Amendment.

This question was not decided in *Lassiter* because it was not incorporated in the issues framed for state litigation. See *Louisiana*, 225 F. Supp. at 393.

[110] Section 301 of the Civil Rights Act of 1960, 74 Stat. 88, 42 U.S.C. § 1974 (Supp. V, 1964), already requires the retention of all such records in *federal* election registration.

[111] Under the same reasoning the court should enjoin registrars from aiding applicants in answering. Such injunction could best be enforced by periodic, unannounced checks of registration centers by court-appointed agents.

standard in a discriminatory fashion, but rather the control of the state over the registration process. So long as the state is free to select the officials who will administer the test, the probabilities are high that the registrars thus installed will discriminate against Negroes. The necessity for adequate relief requires that the court deprive the state of such power. One solution would be for the court to appoint federal registrars to administer the state standard and to declare qualified to vote any person who meets all the requirements thereof.[112] Such an official could also enroll any individual found to have satisfied the requirements previously and purge all those enrolled despite unsatisfactory qualifications.[113] The federal registrar should continue to administer the standard until the state could prove that its policy of racial discrimination had been abandoned. Such a showing could be made by objective means, the state proving, *inter alia*, that it had desegregated its schools and complied with specified civil rights legislation.[114] The subsection (e) remedy would be insufficient in this situation, as it would put Negroes to the inconvenience of seeking registration twice—once from the state and once from the court. Moreover, a Negro who went to the federal voting referee or the court would be subjected to the psychological pressure of knowing that the community would soon find out about his action and quite possibly retaliate against him. If a federal registrar were employed for all applicants, Negroes would not be thus singled out and would be less deterred from seeking registration.

It might be objected that the peculiar state interest in regulating its franchise should discourage the court from employing the federal registrar remedy. Utilization of this remedy would encroach upon an area of state interest, but the relative weight of this loss, when balanced against the national interest in safeguarding the right to vote and the individual's interest in exercising his constitutional rights, would appear to be small. Since, however, the remedy does interfere with state administration of its internal affairs, it should be reverted to only after the state has demonstrated that the creation of a valid standard will not preclude it from discriminating against Negroes. Once this situation has become apparent, the court will have strong justification for taking the application of the standard from the state. Until that time the court should focus upon the standard itself, so that the state may have the opportunity to cleanse its own Augean stables.

---

112 These should not be confused with the federal voting referees of subsection (e), as the nature of the relief described in the text accompanying note 113 *infra* is not explicitly authorized by that subsection. The recommended relief could be afforded under subsection (c)'s grant of equity powers.

113 This could be made possible by having the registrars examine the applications of all those enrolled under state administration of the test. If a critical number of tests had been altered in such a manner as to make the actual answers unintelligible, a complete reregistration would be necessitated.

114 The exact standards comprising a showing that the policy of discrimination had ceased should be left for the court to formulate in each case, so as to adapt the measure to the particular situation presented. See, *e.g.*, Brown v. Board of Education, 349 U.S. 294, 300-01 (1955).

JLL - Voting leg. [Feb. 1965]

CONGRESSMAN JOSEPH Y. RESNICK

INTRODUCTION SPEECH FOR VOTING RIGHTS BILL OF 1965

Mr. Speaker, I am sure that most of us here today stand together with the vast majority of the American people who believed that the Civil Rights Act of 1964 had finally guaranteed the right to vote to all of our citizens regardless of race or color. Unfortunately, this belief has been painfully shattered by recent events in Selma, Alabama, and neighboring areas. The cold fact that sufficient authority does not exist in the laws of the United States to prevent discrimination at the ballot box must come as a shock to the Members of this body who labored so long and diligently last winter. Four days ago I was in Selma. I was immediately struck by the fact that the Dallas County Board of Registration and all other city and county officials stated time after time that they were obeying the Alabama laws pertaining to registration and voting and did not consider themselves guilty of any wrongdoing. They did not understand, nor could they explain why only 2% of the eligible Negroes were registered, while 70% of eligible whites had qualified to vote. A number of Selma residents, particularly white businessmen, told me that unless there were truly effective Federal legislation, it would be impossible for the Negro to attain his voting rights at any time in the near future.

I believe that we must enact a law as quickly as possible that will, without question, conclusively abolish voting discrimination. Our duty as Members of the Congress of the United States compels us to do no less. At this point, decisive action is required. We, (as Members of Congress) must face the fact that existing legislation just isn't working. The situation in Selma must jar us from our complacency concerning voting rights. Most of us believed that the passage of the historic Civil Rights Act of 1964 would end violence and demonstrations and move this type of controversy into the courts.

Why then are we faced with the spectacle of young children crowded into jails, men and women being beaten and subject to

wholesale arrests, teachers losing their hard-won jobs and skilled craftsmen subject to all sorts of economic reprisals when they attempt to exercise their supposed inalienable right to vote?

There are several reasons. First, the seven year history of judicial enforcement of the Civil Rights Acts of 1957, 1960 and 1964 has shown a pronounced tendency on the part of the Federal Courts in the South to proceed very, very slowly. Secondly, the voting referees procedure established by the 1960 Act and somewhat strengthened by the 1964 Act necessitates drawn out litigation that postpones final relief, and usually establishes in each suit only the rights of individuals or small groups. Third, the Federal Judiciary in the South has shown an extreme reluctance to appoint any voting referees. In fact, the number of referees actually appointed is probably less than the number of the fingers on one hand - and this, despite the glaring abuses that exist in Dallas County and other counties throughout the South. And fourth, even if a referee should be appointed, he is obliged under the existing procedure to apply state laws which in many areas as in Alabama, are highly discriminatory and precisely designed to prevent Negroes from voting.

Dallas County, Alabama, dramatically exemplifies the ineffectiveness of existing legislation. As early as 1961, soon after the passage of the 1960 Civil Rights Act, the Justic Department filed suit against the Board of Registrars of Dallas County. Four years and five more Federal suits later effective relief is yet to be forthcoming, and the first voting referee is yet to be appointed. The extraordinary concentration of the legal resources of the Justice Department has been to no avail. Last week a Federal District Court issued its most recent order. That order tolerates a situation in which the Board of Registration is open only two days each month It does order the Board to process at least 100 applications each of

of those two days; but at that rate it would take close to seven years merely to process the applications of the 15,000 qualified Negro citizens of Dallas County.

Viewing the clear and almost total failure of the Civil Rights Acts of 1957, 1960 and 1964 to secure the right to vote without regard to race, and sensing the great and immediate need for remedial legislation, I am today introducing a bill which would establish a Federal Voting, Registration and Elections Commission. The new commission would consist of six members, three from each political party, appointed by the President and confirmed by the Senate. The Commission would act upon receipt of complaints or upon its own motion regarding discriminatory registration or voting procedures. It would hold hearings and, if complaints were substantiated, it would act to quickly and effectively secure the right to vote.

One of the key provisions gives the commission the power to appoint Federal Registrars for all elections - state or local - who would be authorized to register qualified voters without complex literacy tests, poll taxes or any other restrictive procedures.

Regretfully, in my limited time I can not explain this bill in detail. I ask the unanimous consent to introduce into the Record, along with the text of the bill, an overall analysis of the bill, and an operational chart. I would like to add that Professors Mark deWolfe Howe, Paul Freund and Louis Jaffe of the Harvard Law School faculty were asked for their views on the constitutionality of this proposed legislation. I ask unanimous consent that their reply be printed in the Record.

Let there be no mistake about what I am asking. I urgently request the distinguished Committee on the Judiciary to hold immediate hearings not only on this bill but also on the many other constructive proposals which have been introduced in the Congress

by my esteemed colleagues.

Too long has the Southern Negro borne unaided the intolerable burden of braving dangers and risking his life in his attempt to register to vote. The time has long since passed when the Congress should have provided him its effective assistance.

We must end the spectacle of elected white officials using the letter of their law to violate and undermine the spirit of the 15th Amendment to the Constitution of the United States.

Thank you Mr. Speaker. I yield the balance of my time to the gentleman from

* * *

89th Congress

1st Session

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

February 8, 1965

Mr. Resnick introduced the following bill; which was referred to the Committee on the Judiciary.

---

To further secure the right to vote, free from discrimination on account of race or color, through the establishment of a Federal Voting, Registration and Elections Commission:

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

The Congress hereby finds: 1. that large numbers of citizens of the United States are denied the right to vote on account of their race or color, 2. that many state and local registration and election officials are responsible for such denials; 3. that such denials are sometimes accomplished through violence, threats of violence, economic reprisals, and other forms of intimidation; 4. that in many areas of the United States the literacy test, interpretation test and other such devices are frequently abused so as to deny qualified citizens the right to vote on account of race or color; 5. that the Poll Tax as a condition of suffrage is today almost exclusively used to deny the right to vote on account of race or color; and 6. that the delays incident to granting the right to vote to qualified citizens of the United States regardless of their race or color under existing legislation have been excessive and unreasonable.

Sec. 1. Definition.

"Election" means any election, including an election for Federal, State or local office; a primary election or any other voting process at which officials or candidates for public office are chosen; and any vote which decides a proposition or issue of public law.

Sec. 2. The right to vote in any election shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

Sec. 3. There is hereby established a Federal Voting, Registration and Elections Commission which shall consist of six members appointed by the President, with the advice and consent of the Senate. Not more than three of the members shall be of the same political party. The President shall designate the Chairman of the Commission.

Sec. 4. The Commission, on application of any aggrieved person, or on its own motion, shall determine, after a hearing on the record, whether there exists a pattern or practice of denial or abridgement of the right to vote on account of race or color in any state or political subdividion thereof.

Sec. 5. Whenever a determination is made by the Commission under Section 4 that a pattern or practice of denial or abridgement of the right to vote on account of race or color exists in an area, without further action by the Commission any applicant seeking to register to vote:

(a) shall, by completion of six grades of education in a public school or in a private accredited school, be deemed to have fulfilled all literacy, education, knowledge, or intelligence requirements, and

(b) shall be allowed to satisfy any registration or voting requirements at any time until thirty days before an election.

Sec. 6. Whenever the Commission makes a determination of a pattern or practice of denial or abridgement of the right to vote on account of race or color under Section 4, it is empowered to take appropriate action to correct such denials or abridgements. "Appropriate action" may include:

(a) Establishment of a system of officials to conduct and make return of elections in the area;

(b) Appointment of supervisors to oversee elections conducted by State or local officials. The Commisssion may confer upon the supervisors such powers as it deems necessary to guarantee the right to vote, including the powers of United States Marshals to arrest and to bear firearms;

(c) Establishment of a system of Federal registrars empowered to

register persons to vote in all elections. Such registrars may secure registration on a house-to-house basis.

(d) Requiring the use of such registration and voting application forms as are consistent with the policies of this Act and which incorporate the valid qualifications for registration and voting under State law. "Valid qualifications for registration and voting under State Law" shall not include any requirement the purpose or effect of which the Commission finds is to further in any way the pattern or practice found pursuant to Section 4.

(e) Establishment of a system of voter education and information centers designed to facilitate registration and voting;

(f) Preparation, publication, and distribution of materials;

(g) Establishment, suspension or modification of registration deadlines or periods, or of other such time limitations.

Sec. 7. If the Commission finds after a hearing on the record, that any official of any State or political subdivision thereof has refused, or has aided another such official in refusing, in any way to accept or count a ballot cast by a person registered pursuant to Section 6 of this Act, the Commission shall assess a civil penalty of $300 for each separate ballot not counted upon both (a) the official, and (b) the State or political subdivision thereof of which he is an official. These civil penalties shall be collected by United States Marshals.

Sec. 8.

(a) It shall be a discriminatory election practice for any person to:

1. commit in an official capacity any act which furthers the pattern or practice found pursuant to Section 4;

2. interfere with or impede the effectuation of any order or action of the Commission;

3. violate any rule or regulation adopted by the Commission under Section 14.

(b) Upon complaint of any aggrieved person or upon its own motion, the Commission shall determine, after a hearing on the merits, whether any

person has committed a discriminatory election practice. Upon such determination the Commission may issue a cease and desist order or order such affirmative action as will effectuate the policies of this Act. Such cease and desist orders may apply to all future discriminatory election practices. The Commission may apply at any time to the Court of Appeals of the Circuit within which the discriminatory election practice occurred for the enforcement of such order and for appropriate temporary relief or restraining orders.

(c) If the Commission finds that discriminatory election practices have resulted in a substantial denial of the right to vote on account of race or color in any election, the Commission may declare the election void, and may order and conduct a new election. This subsection shall not apply to elections for Presidential and Vice-Presidential Electors, United States Senators, and United States Representatives.

(d) The Commission may request such further assistance from the President as it deems necessary for enforcement of this Act.

Sec. 9. Appeals.

Any aggrieved person may appeal any determination, order, or action of the Commission pursuant to Sections 4, 7, 8(b), or 8 (c) within sixty days to the Court of Appeals for the Circuit in which the proceeding arose. Unless stayed by an order of the Court or a panel thereof, a determination, order, or action of the Commission pursuant to sections 4, 7, or 8(c) shall remain in full force and effect pending appeal. In any appeal under this section, or upon application by the Commission for enforcement of its order pursuant to section 8 (b), the findings of the Commission as to questions of fact, if supported by substantial evidence, shall be conclusive.

Sec. 10. Testimony of Witnesses and Production of Documents.

The Commission shall have the power to compel at any designated place the attendance and testimony of witnesses and the production of papers and documents relevant to its powers and duties through the use of the subpoena. Upon refusal to obey a subpoena, the Commission may apply

for its enforcement to the Court of Appeals of the Circuit in which the inquiry is being held. The Court shall forthwith order full compliance with the subpoena and shall cite a refusal to do so as a contempt.

Sec. 11. This Act shall be liberally construed so as to secure and protect the right to vote.

Sec. 12. The Commission shall appoint an executive director and such officers and other personnel as performance of its duties requires.

Sec. 13. The Commissioners shall receive an annual salary of $25,000; the Executive Director, $22,500.

Sec. 14. The Commission shall have authority to make, amend, or rescind rules and regulations, procedural or substantive, for the enforcement of the provisions and policies of this Act.

Sec. 15. The Administrative Procedure Act shall apply to proceedings under this Act, provided that, whenever a single Commissioner has presided at a hearing, the Commission may, upon the basis of consultation with that Commissioner, decide the matter.

Sec. 16. Nothing in this Act shall be construed to repeal or supersede the provisions of 42 U.S.C. 1971.

LAW SCHOOL OF HARVARD UNIVERSITY

CAMBRIDGE 38, MASS.

6 February 1965

Hon. Joseph Y. Resnick
House of Representatives
United States Congress
Washington, D.C.

Dear Congressman Resnick:

I understand that on Monday next you will introduce in the Congress a Bill "To further secure the right to vote, free from discrimination on account of race or color, through the establishment of a Federal Voting, Registration and Elections Commission". I have studied the draft of the Bill with considerable care. It seems clear to me that its provisions are constitutional.

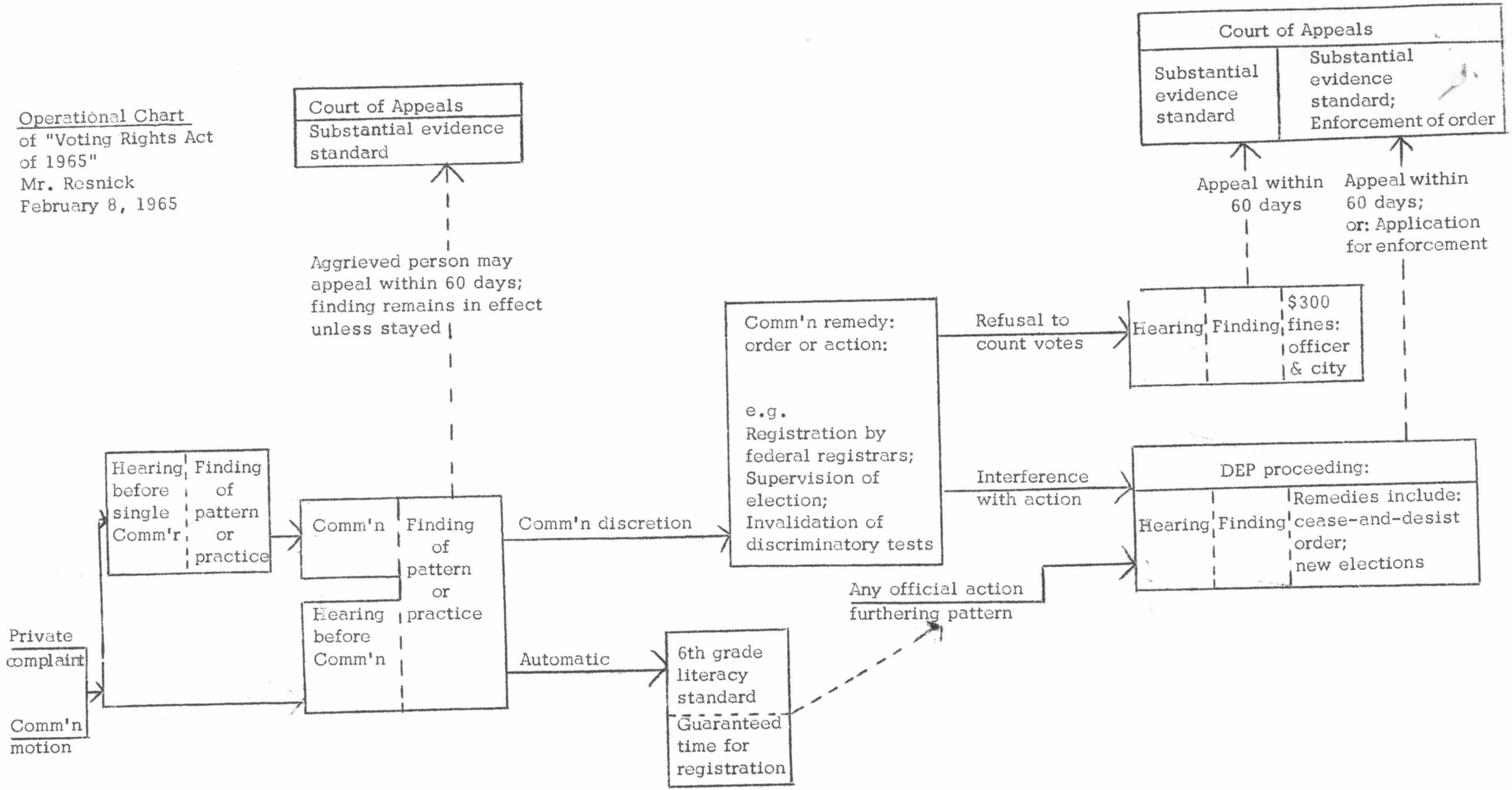
I might add that my colleagues, Professors Paul A. Fruend and Louis L. Jaffe have also given close attention to the latest draft of the Bill. They have authorized me to say that they too believe it to be constitutional.

Very sincerely yours,

(SIG.) MARK DeW. HOWE

Mark DeW. Howe
Professor of Law

Operational Chart
of "Voting Rights Act
of 1965"
Mr. Rosnick
February 8, 1965



February 9, 1965

Memorandum to the Vice President

From John Stewart

I want to bring you up to date on the discussions which have been going forward among Senator Hart, Clarence Mitchell, Joe Rauh and attorneys of the Legislative Reference Service concerning new legislation to prevent racial discrimination in voting.

They have almost worked out draft legislation. By Wednesday they will have a bill which could be introduced or could be sent to the Department of Justice for informal comment and reaction. I have been attempting to keep them from any premature public statement until the Administration's course in this regard is more clearly defined.

The legislation has been drafted to apply primarily to the States of Mississippi, Louisiana, and Alabama. In these States, the old laws of permanent registration would be abolished and Federal enrollment officers would be appointed by the President to conduct registration of all citizens of the State applying the provisions of existing State law as to qualifications. The Bureau of the Census would supply these Federal enrollment officers. I have not had an opportunity to study the bill carefully but I wanted you to know of the general developments within the Leadership Conference toward the preparation of new voting legislation.

THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

CR - Voting legislation

LEGISLATIVE REFERENCE SERVICE

February 3, 1965

To: Honorable Philip A. Hart

From: American Law Division

Subject: Legislation to Prevent Racial Discrimination in Voting.

At the meeting in your office on February 2, we discussed a proposal for eliminating racial discrimination in voting which differs quite significantly from the Hennings, Javits, and Humphrey proposals and from your own earlier bill as well. It seemed to be the consensus of the meeting that none of these measures would eliminate the effect of past discrimination which, in at least three States, has resulted in permanent registration of such large numbers of white voters as compared to Negro voters that it would take years of nondiscriminatory administration of existing laws to correct the situation.

It is well within the power of Congress to require States which have discriminated against Negro voters to establish new voting lists by having all citizens qualify

under existing nondiscriminatory laws. This would wipe out the old lists of permanent registrants which are so imbalanced in favor of white voters.

The States in which the law is to operate could be described in whatever terms would reach them, e.g. States which have enacted since 1957 legislation to make it more difficult to qualify to vote; States in which the Negroes registered constitute less than 15% of the Negroes of voting age. The descriptive terms used would be based upon information furnished by another of the conferees.

The States would be given a year in which to carry out the provisions of the law on their own initiative with Federal financial assistance.

If at the end of a year, the President or any agency he designated, found that the law had not been obeyed, he would designate Federal officers to conduct a registration of all citizens of the State applying the provisions of existing State law as to qualifications. The Bureau of the Census might be the logical place to find Federal registration officers.

The States would be prohibited, in general terms, from enacting into law any voting qualifications which would discriminate against the Negroes in that State, as a class.

Vincent A. Doyle
Legislative Attorney

DSG DEMOCRATIC STUDY GROUP, U. S. HOUSE OF REPRESENTATIVES

347-9861
CA 4-3121
Ext. 4868
5858

Room 504 - HOUSE OFFICE BUILDING - WASHINGTON 25, D. C.

February 22, 1965

MEMBERS OF CONGRESS INVITED TO MEET WITH VICE PRESIDENT HUMPHREY AND ATTORNEY GENERAL KATZENBACH ON CIVIL RIGHTS MATTERS

Date: February 24, 1965, at 4 p.m., Room 176, Executive Office Bldg.

---

Hon. Charles C. Diggs Jr., Chairman, Democratic Study Group Civil Rights Steering Committee
Hon. Emanuel Celler, Chairman, House Committee on the Judiciary
Hon. Emilio Q. Daddario
Hon. Jeffery Cohelan
Hon. James C. Corman
Hon. John Brademas
Hon. Richard Bolling
Hon. Donald M. Fraser
Hon. Edith Green
Hon. Peter W. Rodino Jr.
Hon. Roman C. Pucinski
Hon. William Fitts Ryan
Hon. William S. Moorhead
Hon. Robert W. Kastenmeier
Hon. James Roosevelt
Hon. Morris K. Udall
Hon. Frank Thompson
Hon. Charles A. Vanik
Hon. James H. Scheuer
Hon. Jonathan B. Bingham
Hon. John J. Conyers Jr.
Hon. Joseph Y. Resnick
Hon. Augustus F. Hawkins
Hon. Patsy T. Mink
Hon. John O. Dow
Hon. Ken W. Dyal
Hon. Don Edwards
Hon. Robert N. C. Nix
Hon. Adam C. Powell
Hon. Weston Vivian
Hon. Charles McC. Mathias Jr. (Republican Member in Selma Visit Group)
Hon. Ogden R. Reid " " " " " "
Hon. F. Bradford Morse " " " " " "

DSG DEMOCRATIC STUDY GROUP, U. S. HOUSE OF REPRESENTATIVES

347-9861
CA 4-3121
Ext. 4868
5858

Room 504 - HOUSE OFFICE BUILDING - WASHINGTON 25, D. C.

February 22, 1965

Mr. Lee C. White
Associate Special Counsel
to the President
The White House
Washington, D.C.

Dear Mr. White:

At the request of Rep. Charles C. Diggs Jr., Chairman of the Democratic Study Group Civil Rights Steering Committee, I am enclosing the list of Members of Congress invited to confer with the Vice President, the Attorney General and yourself on Wednesday, February 24, regarding civil rights questions.

Sincerely,

William G. Phillips

Staff Director

John St
FYI

February 15, 1965

Memorandum

To: The Vice President

From: John Stewart

I am passing along to you a memorandum from Senator Hart. In essence, it expresses the same thoughts that I included in my earlier memorandum on the meeting between the Attorney General and a group of Senatorial supporters of civil rights.

It is my general feeling that the Administration is going to find it impossible to put together a good bill in time to prevent Republicans from putting in their own bills. So perhaps we ought just to let them put them in, and we ought to proceed on drafting legislation and not be rushed into anything foolish or premature. I don't think we ought to get in the business of trying to put bills in just because the Republicans might be doing something along that line.

Katzenbach + I have Agreed that a message on Voting Rights would come Soon + then a bill!

PHILIP A. HART
MICHIGAN

COMMITTEES:
COMMERCE
JUDICIARY

# United States Senate

WASHINGTON, D.C.



February 12, 1965

TO: The Vice President

FROM: Senator Philip A. Hart P.A.H.

At the request of a bipartisan group of Senators, the Attorney General met with us Thursday morning, February 11, to discuss the Selma situation and possible voting legislation. Present were Senators Douglas, Case, Hart, R. Kennedy, E. Kennedy, Javits, and staff from the offices of Senators Allott, Fong, Scott, and Clark.

Following a review of the recent events in Selma and a discussion of Judge Thomas' most recent court order, the discussion turned to the question of further legislation, and the timing and intention of the Administration with regard to sending a proposal to the Congress.

Important points developed in this discussion included:

1. Realization that achieving any sizeable number of Negro registrations in Alabama and Mississippi will mean no education or literacy tests.

2. The Senators expressed strong reservations about sending to Congress both a constitutional amendment on literacy tests and a bill covering other provisions. They told the Attorney General that a constitutional amendment approach could only confuse and delay any effective action.

3. There was general concern that an early message from the Administration be forthcoming, otherwise the pressure for introduction of bills on the Senate side would mean legislation would be introduced. Senator Javits indicated that the Republican members would meet Wednesday, February 17, and would hope when they met that the Attorney General would be able to give them some indication on possible timing. The Republicans clearly are pressing for early Administration action.

4. There was agreement that the group wanted to work with the Administration in any voting legislation effort, and felt the best situation would be to have all efforts focused on a good Administration proposal.

At the close of the meeting I summarized some of the points that the group thought should be considered in drafting legislation, and we offered to help in any way we could in meetings on the drafting. These points included:

1. Legislation should be as automatic as possible, with provision for minimum court review possible.

2. Should be limited to hard core areas and/or states where it can be clearly demonstrated that since 1957 no significant progress has been made, or further barriers have been placed in the way of registration.

3. Should cover all state and federal elections--election of sheriffs is just as important in this situation as election of the President.

4. Consideration should be given to complete new registration of both whites and Negroes in these areas to prevent continued long period of imbalance. Could be routine registration by personnel of the Bureau of the Census of all eligible voters in district.

5. Eliminate literacy and educational tests based on a congressional finding that when applied in these regions where there has been historic discrimination and inequality of educational opportunity they are not valid and in and of themselves discriminate. Otherwise use state qualifications for registration.

6. President has discretion, if compliance is demonstrated after legislation is enacted, to hold up application of act for limited periods if he determines there is progress.

CABLE: "UAW DETROIT"

Solidarity House
8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE 926-5000

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

WALTER P. REUTHER.....PRESIDENT
LEONARD WOODCOCK..VICE-PRESIDENT
EMIL MAZEY .....SECRETARY-TREASURER
PAT GREATHOUSE.....VICE-PRESIDENT



February 8, 1965

The Honorable Hubert H. Humphrey
Vice President of the United States
Washington, D. C.

Dear Mr. Vice President:

Thought you would be interested in seeing the enclosed statement issued by Walter and released on Sunday on the Selma, Alabama, situation.

Sincerely yours,

Roy L. Reuther

Roy L. Reuther, Director
Citizenship-Legislative Department

rlr:wh
oeiu42aflcio
enc.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

NEWS from UAW

8000 East Jefferson Avenue, Detroit, Michigan 48214 Public Relations Department, Joseph Walsh, Director Telephone: Area Code 313, 926-5291

**For Release:** Sunday papers, Feb. 7, 1965

REUTHER CONDEMNS SELMA

ARRESTS; URGES U.S. PROTECT

RIGHT TO REGISTER, VOTE

The following statement was issued today by UAW President Walter P. Reuther:

"The arrest of Rev. Martin Luther King and thousands of residents of Selma, Ala., for seeking to exercise the constitutional right to register to vote is an affront to every citizen in this nation who values our common democratic heritage. It constitutes a direct and calculated challenge both to the Civil Rights Act and to the authority of the Federal government.

"In seven states, the right to vote--the abridgement of which is clearly forbidden by the 15th Amendment to the Constitution of the United States--is still denied to many citizens solely because of their race.

"The UAW urges steps be taken immediately by the Federal government to protect the constitutional rights of all Americans.

"We urge that immediate action in Congress be taken to authorize the appointment of Federal Voter Registrars in all areas where discriminatory practices in voter registration exist.

"We believe Federal Registrars should be directed to register all citizens both white and Negro who meet the normal age and residence requirements of citizenship.

"We support the recommendations of the President's Commission on Registration and Voting Participation which call for 21 major reforms in our election and registration laws and procedures, including abolition of literacy tests as a requisite for voting. The unfairness and maladministration of literacy tests pervert the democratic process. They are a hypocritical excuse to practice racial discrimination by depriving Negro Americans of the right to vote.

(more)

"Another recommendation of the President's commission urges that voter registration should be easily accessible to all citizens. It calls for door-to-door registration with deputy registrars. It urges states to study the Canadian voter registration system where teams of two persons in each precinct go door-to-door and compile a list of registered voters.

"Highlighting the need for some remedial action to insure all qualified American citizens the right to vote, the 1963 Report of the United States Commission on Civil Rights stated:

> 'The Commission now believes that the only effective method of guaranteeing the vote for all Americans is the enactment by Congress of some form of uniform voter qualification standards. The Commission further believes that the right to vote must, in many instances, be safeguarded and assured by the Federal government. Adequate legislation must include both standards and implementation.'

"Our election machinery should and must guarantee the right to vote to every qualified American everywhere in the nation. Anything less can fatally sap the strength of our democracy. Anything less, as at Selma, Ala., puts democracy behind bars.

"Martin Luther King has once again challenged the American conscience. Let us answer by moving to correct the ills that he and the school children of Selma have called to our attention."

# # #

oeiu42/ac

# Department of Justice

Stewart
FYI

STATEMENT

BY

ACTING ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

BEFORE THE

IMMIGRATION SUBCOMMITTEE OF THE

SENATE JUDICIARY COMMITTEE

ON

S. 500, AN ACT TO AMEND THE IMMIGRATION AND NATIONALITY ACT

WEDNESDAY, FEBRUARY 10, 1965

I am pleased to testify on behalf of S. 500, introduced by Senator Hart and 32 other Senators of both parties. This bill is the Administration's immigration proposal, which President Johnson submitted January 13, 1965 in a special message.

The President urged the Congress to accord priority to this bill and I come today to stress the Administration's view that there are few areas of legislative responsibility in which prompt action is more urgently needed.

There is urgency first of all in terms of simple humanity. Under present law, we are forcing families to be separated -- indeed, in some cases, forcing mothers to choose between America and their children.

There is urgency in terms of our self-interest at home. Under present law we are depriving ourselves of brilliant, accomplished, and skilled residents of foreign countries who want to bring their talents here. As President Johnson observed in his Immigration Message, "This is neither good government nor good sense."

And there is urgency in terms of our self-interest abroad. In the present ideological conflict between freedom and fear, we proclaim to the world that our central precept is that all are born equal -- and free thereafter to demonstrate their individual talents to the best of their ability. Yet under present law, we choose among immigrants not on the basis of what they can contribute to our social and economic strength, but on the basis of where they -- or, even, in some cases, their ancestors -- happened to be born.

This bill is not designed to increase or accelerate the number of newcomers permitted to come to America. Indeed, this measure provides for an increase of only a small fraction in permissible immigration. The central purpose of this measure, rather is to help us choose among potential Americans according to standards that are fairer to them and more beneficial to us -- better, in short, for everyone involved. To do this, we must eliminate the cause of the present warped standards -- the national origins quota system. It is for these reasons that I come before you today to express as emphatically as possible my belief that this measure should be enacted, that it should be enacted speedily, and that it should be enacted with the fullest support.

Let me now outline the provisions of this measure against the background of existing law and its effects.

## I. THE PRESENT SYSTEM

The present system embodies a 40-year-old method of limiting immigration from outside the Western Hemisphere. A maximum for such immigration is set; it now totals 158,361. This total is divided into quotas assigned to different countries according to the supposed national origins of the American population in 1920.

Within the quota for a given country, immigrant visas are allocated according to a scale of preferences. The first fifty percent of the quota is set aside for those whose specialized skills are "urgently needed" in the United States. The next thirty percent is set aside for parents and unmarried adult children of American citizens. The remaining twenty percent is set aside for the spouses or unmarried children of permanent United States residents. A final preference is available to other close relatives of citizens, from any remaining quota vacancies. Only those vacancies as might then remain are available for others.

In general, the present system favors immigration from Northern Europe and discriminates heavily against immigration from southern and eastern Europe and Asiatic countries. Three countries alone receive seventy percent of the total annual quota of 158,361.

Such a system ought to be intolerable on principle alone. I do not know how any American could fail to be offended by a system which presumes that some people are inferior to others solely because of their birthplace. There is no democratic -- indeed, no rational -- basis for such discrimination. The harm it does to the United States and to its citizens is incalculable.

These evils of the national origins system in principle are compounded by its cruelties in practice, cruelties so needless that they alone provide abundant reason for changing this system. I spoke at the outset about three particularly damaging results of the national origins system. Let me describe them a little more fully now.

1. The first of these results is the separation of families which the national origins system repeatedly forces or prolongs. In theory, the present system of preferences is designed to give priorities to family ties. But in innumerable cases, these priorities cannot apply. It is only possible to give preferences when there are immigrant visas available to be apportioned in the first place. Many countries have quotas so small that even preference visas are not available for years.

Meanwhile, it has not been possible to achieve even the discreditable original aim of the national origins system -- to preserve the ethnic

balance of our population as it existed in 1920. Some large-quota countries consistently fall far short of using all their annual quota allotments. The present law does not permit these quota numbers to be reassigned to countries where they are sorely needed. As a result, fully one-third of the total authorized quota numbers are wasted each year.

Consequently, an American citizen with a mother in Greece must wait at least five years -- and often longer -- to secure a visa which would allow her to join him here. An American citizen with a brother or sister or married child in Italy cannot obtain a visa without a wait of many years.

Yet immigrants from favored countries, who have no family ties and no particular skills to offer to our country, can enter without difficulty and without delay. One employment service lists the following times necessary to bring domestics to the United States from various countries: from the United Kingdom and Ireland, four to six weeks; for Sweden, Belgium and Germany, eight to twelve weeks.

In other words, an American citizen may have to wait five years to bring his mother to this country. But he can bring in another woman, a total stranger, to be his maid, in weeks.

The pressures built up by such disparities results in occasional special corrective legislation. But the passage, from time to time, of special, short-term bills seems to me only to underscore the inequity and unworkability of the present system.

2. A second damaging result of the present national origins system is that it deprives us of persons whose skills can be of inestimable benefit to the United States. Again, the present preference system is designed to benefit such persons. But again, the priorities apply only to existing vacancies in quotas. When quotas are full or over-subscribed, priorities can do no more than reduce the waiting time. In a number of countries, even after such a reduction, skilled applicants still must wait several years.

There are innumerable cases in which this system damages the United States. Let me cite only one recent example.

This case concerns a brilliant surgeon from India who was trained here for many years and is now engaged in important research in heart surgery. His services are now urgently sought by an American hospital. Although he has, as a result, secured first preference status, the tiny Indian quota of 100 is so heavily oversubscribed that it will be several years before he can be granted admission to the United States.

Furthermore, the present procedure for granting preference to persons of exceptional ability often discourages them from seeking admission to this country because they must have prior assurances of employment and their services must be needed urgently. These are quite difficult standards to satisfy. Often, American employers are unwilling to make job offers prior to a personal interview -- and this, of course, is impossible for persons without visas.

Yet from a practical point of view, such skilled persons are the type of immigrants who would contribute most to the growth and development of our economy and culture. They should be encouraged to come here.

3. The national origins system harms the United States in still another way: it creates an image of hypocrisy which can be exploited by those who seek to discredit our professions of democracy.

There is the case of a young man in Colombia, who is eligible to come here freely on a non-quota basis because he is from an independent Western Hemisphere country. His wife is also a native and citizen of Colombia. But she is the daughter of a Chinese father.

The law decrees that an alien whose ancestry is at least one-half attributable to a country in the "Asia-Pacific Triangle" cannot immigrate under the quota for the country of his birth or citizenship. He must come, instead, under the quota for his ancestors' country.

As a result, this young woman must be considered half-Chinese and thus admissible only under the quota for Chinese persons of 105. This does not mean she cannot come to the United States. It only means that if her husband chose to come ahead to the United States, he would have to wait for his wife. How long he would have to wait would depend on whether or not he became a citizen. If he did not, his wife's turn on the Chinese persons quota would not come until the year 2,048. If he did become a citizen, however, he would have a shorter wait. He and his wife could be reunited in a mere five years.

I wonder what our friends in Colombia, or in the scores of other countries in which similar situations exist, can say in our defense against those who accuse the United States of discrimination, bigotry, and hypocrisy?

The three factors I have just described are the major objections to the present national origins system of choosing among potential Americans. There are, however, other provisions of present law which cause cruelty and hardship.

There is the case of the young man, of Italian descent, who met and married an Italian girl while he was on duty with the United States Navy in the Mediterranean. They had a daughter, who is an American citizen because her father is. The Navy now has transferred the young father to a new assignment in the United States and he has consequently made plans to take his family with him. But he cannot do so.

Several years ago, because of a nervous breakdown, his wife was hospitalized and then discharged after she recovered. The present law, however takes no notice of medical advances in treating mental disturbances and makes any mental disability -- whether present or past -- the mandatory basis for permanent exclusion from the United States.

Consider the alternatives faced by this young serviceman. He could leave his wife and child in Italy, or he could leave the Navy and give up living in America in order to live with his family abroad. What kind of Solomon do we ask him to be?

Similarly, the present law is oblivious to the needs of mentally retarded children, or to the fact that epilepsy is now controllable or curable. The result is the kind of choice faced by an Italian family with five children. They waited their turn on the quota for many years. Their turn finally came up recently and they began making plans to join relatives in the United States. The father has a good job awaiting him and now, after years of poverty in Italy, the family could look forward to a better life.

Unfortunately, one of their five children, a bright 10-year-old, is afflicted with epilepsy. As a result, she is permanently ineligible for admission and no administrative relief is possible. The family's choice: on the one hand, give up the promise of opportunity in America, or, on the other hand, come here and leave the little girl behind.

This is not a choice any of us would want to make. It is not a choice the United States of America should force any human being to make. I say this because there is no sensible reason to inflict this kind of choice. It is because of such cruelties that every Administration since President Truman's has strenuously urged the revision of present law. It is because of such cruelties that the measure we consider today was drafted and submitted to Congress. It is because of such cruelties that this measure should be enacted speedily into law.

## II. HOW THE SYSTEM WOULD BE CHANGED

Except for technical changes, this bill is essentially the same proposal on which hearings were held during the 88th Congress (S. 1932 and H. R. 7700). Its purpose is not to increase immigration already

authorized by Congress, but to eliminate the national origins quota system as our method of choosing among potential immigrants. In its place, this measure would establish a system which is clear, simple and fair.

We would retain a limit on total quota immigration. Within that limit, the United States would declare to those who seek admission to this country that, "We don't care about the place or circumstances of your birth -- what we care about is what you can contribute."

This measure would abolish the national origins system and replace it with a system for choosing among potential immigrants based on a standard understood the world over--first-come, first-served.

To assure an orderly and fair transition to this new system, the bill provides for the gradual elimination of the quota system over a five-year period. Each year, the annual quota of every country would be reduced by twenty percent. The numbers thus made available, plus quota numbers which are now being wasted would be assigned to a quota reserve pool for distribution under the new system. After the five-year transition period, all numbers now distributed by national origins quotas would be distributed according to the new system.

Under this system, immigrants would be chosen -- within health and security safeguards -- exclusively on the basis of personal talents and family relationships, not on ancestry or residence. In other words, we would retain essentially our present preference system, but free it from the constricting effect of the national origins system.

The bill also seeks to provide some immediate relief for minimum quota areas by raising their annual quotas from 100 to 200. The resulting increase -- of less than 8,000 -- is the only change proposed in the present ceiling on authorized quota immigration, bringing the total from about 158,000 to about 166,000.

Actual immigration would increase by a larger amount, however, since the bill provides for the use of the approximately 55,000 quota vacancies now wasted in countries which do not fill their quotas. But let me stress that Congress already has authorized these 55,000 spaces to be filled; the increase in authorized immigration would be less than 8,000.

To insure that no single country receives a disproportionate share of the total immigration authorized in any year, the bill would limit the immigration from any one country to ten percent of the total. Since the total authorized would be about 166,000 per year, authorized immigration from any country could not exceed 16,600. This limitation, however, would not apply if it would result in a decrease of more than

twenty percent per year in a given country's quota during the first five years of the bill's operation.

Without this ten percent limitation, all of our immigration would be taken up for several years by two or three countries that now have extremely long waiting lists. All immigration from the rest of the world would be shut off -- a result that we could not permit as a matter of foreign relations, and that in any event would not be fair. I believe the bill's solution to this problem is eminently reasonable and equitable.

This bill seeks, in addition, to insure that transition to the new system will not impose hardship on our close allies by abruptly curtailing their immigration. It would authorize the President, after consultation with a joint Congressional-Executive Immigration Board, to reserve up to thirty percent of the new pool for the purpose of restoring cuts in present quotas. This authority could be exercised only where undue hardship would otherwise result from the transition and where the reservation is in the national security interests of the United States -- but no country could receive more quota numbers than it does now.

The bill also provides similar authority to reserve up to ten percent of the reserve for refugees fleeing from catastrophe or oppression.

The percentages authorized for these reservations constitute the sole substantive difference between this measure and that introduced in the last Congress. Studies made after this legislation was originally proposed showed that the reservations for national security interests could be lowered from fifty percent to thirty percent and those for refugees could be lowered from twenty percent to ten percent. These changes have been made.

In addition, the bill would:

(1) Eliminate the discriminatory "Asia-Pacific Triangle" provisions of existing law;

(2) Give non-quota status to parents of citizens, and fourth preference to parents of resident aliens;

(3) Give non-quota status to citizens of newly-independent Jamaica and Trinidad and Tobago, providing them with the same status as all other independent Western Hemisphere nations;

(4) Eliminate the requirement that highly trained or skilled first-preference immigrants secure employment here before immigrating;

(5) Give fourth preference to workers with lesser skills who could meet a specific labor shortage;

(6) Grant admission under proper safeguards to persons, afflicted with mental health problems, who are close relatives of American citizens or resident aliens;

(7) Authorize the Secretary of State to require registration of quota immigrant visa applicants and to regulate the time of payment of visa fees;

(8) Establish the seven-member Immigration Board to advise and assist the President on all facets of immigration policy, including the reservation and allocation of quota numbers and the admission of skilled workers and others whose services are needed by reason of labor shortages, and

(9) Eliminate technical restrictions that have hampered the effective use of the existing Fair-Share Refugee Law.

## III. PROTECTIONS PROVIDED BY THE PROPOSED SYSTEM

I have already noted that this bill would retain all the other present security and health safeguards of present law. There is an additional area of necessary protection -- the area of unemployment and foreign competition for the jobs of Americans.

I know that Secretary Wirtz will detail his views on this subject extensively when he appears before the committee, but particularly in view of the concern which has already been expressed concerning the effect of immigration on unemployment, I would like to discuss the subject briefly.

Historically, employment has been a major consideration in any discussion of immigration policy. When we were a younger and more open country, we wanted, needed, and welcomed the mind and muscle of millions of immigrants. Professor Oscar Handlin, the immigration historian, has observed that:

> "The story of immigration is a tale of wonderful success, the compounded biography of thousands of humble people who through their own efforts brought themselves across great distances to plant their roots and to thrive in alien soil. Its only parallel is the story of the United States, which began in the huddled settlements at the edge of the wilderness and pulled itself upward to immense material and spiritual power."

However applicable such observations are to the past, we nonetheless now live in different circumstances. Our Great Plains are peopled; our great industries are manned. Today our concern is not seeking men to man machines, but seeking jobs for men displaced by machines. Thus it is appropriate and responsible for us to give close attention to the potential effect of this bill on domestic employment.

In response to such concern, let me state our conclusion that the overall effect of this bill on employment would, first of all, be negligible, and second, that such effect as might be felt would not be harmful, but beneficial.

The actual net increase in total immigration under this bill would be about 60,000. Of this total, all would be consumers but only about a third would be workers. The rest would be wives, children, and elderly parents. Since the ratio of consumers to workers is somewhat higher than our present ratio, the net effect would be to create rather than absorb jobs.

Those immigrants who would seek employment is estimated at a maximum of 24,000. Our present labor force, however, is 77 million. Statistically or practically, we are talking about an infinitesimal amount; 24,000 is about three one-hundredths of one percent of 77 million.

And finally, a good part of even these 24,000 additional workers would not even be competitors for jobs held or needed by Americans. More than a fifth would come here precisely because they possess the kinds of skills and talents that are in short supply here and are especially advantageous to our country.

Even beyond these considerations, there are two statutory safeguards, each of which can result in the exclusion of foreign workers. One is the Department of Labor's responsibility to protect American workers from the entry of immigrants whose employment would adversely affect the domestic labor market. The second safeguard, administered by the consular service of the Department of State, excludes aliens who are likely to become public charges -- that is those without support who might readily contribute to unemployment. It is our belief that these safeguards are abundantly adequate to protect American workers.

## IV. CONCLUSION

We have, in the Department of Justice, given this measure the most careful study. The plain lesson of our study is that our present system of choosing among potential Americans should not endure. In such a system

of selection, personal pedigree is an intolerable standard; inhumane rigidity is an intolerable method; and national self-deprivation is an absurd sacrifice.

It is these factors, not immigrants, which are most alien to America. Such standards must be changed, and that is the purpose of the measure before us. We can, without injury or cost, bring justice to our immigration policy. I urge the committee and the Congress to do so with speed.

[Feb? 1965]

## COMMENT ON PROPOSED BILL TO ENFORCE THE SECOND SECTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION

The proposed bill to enforce the Second Section of the 14th Amendment (which section reduces the basis of representation of those States which in any way abridge the right to vote of their inhabitants other than for minority or conviction of crime) needs explanation in several respects.

First, the bill achieves its purpose directly by amending the existing apportionment statute, Section 2a of Title 2 of the United States Code. These provisions are self-operative and no commission or separate agency is necessary to implement them.

Second, the billclearly states a definite date for enforcement of Section Two - the opening of the 2nd Session of the 89th Congress in January, 1966. The elections to which this inforcement is keyed are those elections - Federal and State - which immediately preceded this date. Clause (A) thereby fixes the somewhat vague Constitutional language concerning which elections are to be used for standards; such an approach has the great virtue of allowing a State at any time prior to the enforcement date both to modify its election laws to conform to the requirements of Section Two and to hold elections pursuant to those laws. However, since the holding of all new elections may be impracticable, the State is also allowed the option of affirmatively showing that all its citizens can freely vote as of the enforcement date.

Third, the provisions will automatically apply in 1972 and every ten years thereafter.

Fourth, it should be noted that a number of Northern States with literacy tests or similar requirements will be effected by the Second Section of the 14th Amendment, such as many of the New England States, New York and the West Coast states. (See the Report of the President's Commission on Registration and Voting Participation, p. 65.)

Fifth, the States are specifically allowed to require of prospective voters at a time not greater than 30 days preceding the election the minimum information necessary to comply with the basic qualifications allowed by the Second Section of the 14th Amendment.

Sixth, and most importantly, clauses (C) and (D) place the burden upon the State to show the facts necessary for effective enforcement of the Second Section of the 14th Amendment. This result is achieved through (a) requiring a demonstration by the State that either a person did not apply to vote, or, if he did apply, that he refused to give the minimum requested information and (b) clearly stating the intent of the framers of the Second Section that the simple existence of such things as literacy tests and poll taxes were abridgements of the right to vote of a citizen regardless of whether or not the citizen could or would meet such requirements, (unless, of course, he had actually qualified to vote). This latter provision is absolutely essential, since (a) problems of proof would otherwise be insurmountable, and, far more importantly, (b) the effectiveness of the penalty of reduction of basis of representation would be cut back to a minimum and additional legislation would undoubtedly be necessary before the ink was dry on a law not containing such a provision.

It is suggested that this proposed bill may not alone be effective to secure the right to vote but should serve as a complement to a strong bill for the establishment of a Federal Voting, Registration and Elections Commission with powers (a) to create a system of Federal Registrars and (b) to eliminate in places of pervasive voting discrimination on account of race or color voter qualifications which further that discrimination.

* * *

89th Congress
1st Session

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

February __, 1965

Mr. _____ introduced the following bill, which was referred to the Committee on the Judiciary.

---

A B I L L

Providing for the enforcement of the Second Section of the 14th Amendment to the Constitution of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Subsection (a) of Section 22 of the Act entitled "An Act to provide for apportionment of Representatives in Congress", approved June 18, 1929, as amended (2 U.S.C. 2a), is amended (1) by inserting "(1)" immediately after "(a)", and (2) by adding at the end thereof the following:

"(2) On or within one week thereafter of the second regular session of the 89th Congress and thereafter at the times required by paragraph (1), the President shall transmit to the Congress a statement showing the whole number of persons in each state, excluding Indians not taxed, as ascertained under the census of the population conducted under Section 141 (2) of Title XIII, and as modified by the application of Section 2 of the 14th Amendment to the Constitution. Such statement shall give the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one member.

"(3) In applying the Second Section of the 14th Amendment to the Constitution to determine the basis of representation in the House of Representatives the President shall:

(A) count those inhabitants of a State 21 years of age, citizens of the United States, not having participated in rebellion or other major crimes, who were fully qualified to vote in all of the immediately preceding several elections held for the choice of electors for the President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of the State and the Members of the Legislature thereof, or who are presently fully qualified to vote at all such elections,

(B) not construe clause (A) to prohibit State or local authorities from requiring as a voting qualification the information necessary to complete a simple form, which shall be received at any time up to thirty days preceding any election, requesting only the name, age, address, residence, and record of major crimes, if any, of an applicant to vote in any election,

(C) in addition to clause (A), count those persons whom the State or local authorities can demonstrate, based upon substantial evidence, either (i) did not make application to vote as may be required pursuant to clause (B) or (ii) having made application to vote pursuant to clause (B), refused to make known in any way the information which may be required pursuant to clause (B), and

D) notwithstanding clause (C), not count those persons whose right to vote in any election specified in clause (A) depended upon or at the present time depends upon their meeting any qualification or requirement other than those permitted under Section Two of the 14th Amendment to the Constitution and clause (B) of this paragraph, including any test of literacy, knowledge, understanding or achievement, or any other test, and any Poll Tax or other tax regardless of whether or not such person might have been able or willing to fulfill such qualification or requirements.

(E) utilize the compilations made pursuant to Title VIII of the Civil Rights Act of 1964 to the extent that they are useful and appropriate.

Section 2. The first sentence of subsection (b) of Section 2a of Title II of the United States Codes is amended by adding "(2)" after "(a)".

Section 3. There are hereby authorized to be appropriated such sums as are necessary for the implementation of this Act.

Section 4. If any provision of this Act of the application thereof to any person of circumstance is held invalid, the remainder of this Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

* * * * * * *

Feb. 27, 1965

Jill Voting leg



TO: ALL PARTICIPATING GROUPS IN THE AMERICAN CIVIL RIGHTS MOVEMENT

FROM: JAMES FARMER, CONGRESS ON RACIAL EQUALITY
JAMES FORMAN, STUDENT NONVIOLENT COORDINATING COMMITTEE
DR. MARTIN LUTHER KING, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE
LAWRENCE GUYOT, MISSISSIPPI FREEDOM DEMOCRATIC PARTY

SUBJECT: VOTING LEGISLATION

The enclosed statement of position on Voting Legislation has been discussed among us and is an accurate reflection of the position of those Civil Rights organizations represented by us, which are also the organizations most actively working on voter registration in the South.

At this time, we see it as the duty and responsibility of the Civil Rights Movement to militate against any manoever that would dissipate our energies by the tokenism of still another fraudulently ineffectual piece of legislation.

We call upon all branches of the American Civil Rights movement and the American people to join with us in the struggle for effective voting rights legislation so that the national disgrace of voteless citizens may be finally laid to rest.

February 27, 1965

# MISSISSIPPI FREEDOM DEMOCRATIC PARTY

P. O. BOX 1329
JACKSON, MISSISSIPPI - 39203
Telephone: (601) 352 - 9788

Washington Office:
1353 'U' STREET, N. W.
WASHINGTON, D. C. - 20009
Telephone: (202) 332 - 7732

TO: ALL PARTICIPATING GROUPS IN THE AMERICAN CIVIL RIGHTS MOVEMENT.

FROM: EXECUTIVE COMMITTEE, MISSISSIPPI FREEDOM DEMOCRATIC PARTY.

SUBJECT: VOTING LEGISLATION IN THE 89TH CONGRESS.

On three separate occasions in the seven years immediately past the Civil Rights Movement has come to Washington -- to the President and the Congress seeking federal legislation that would open the processes of political participation to all citizens of our great Democracy.

On all of these occasions, in 1957, 1960 and 1964, the legislation coming from Congress has proved ineffectual and inadequate so far as securing for all citizens their constitutional right to the ballot. We in Mississippi are particularly afflicted by a cumulative pattern of local and state action resulting in the deprivation of all but 6% of the state's Negro citizens of the vote. Conditions of Negro disenfranchisement in our sister states of the deep South differ from Mississippi only in degree.

In this new year and this Congress there is a possibility of the Civil Rights Movement realizing new and effective legislation which will finally open the democratic processes to all Americans. There is appearing in the Nation and in Congress a groundswell of opinion which may be channelled to action which will lay to rest the national disgrace of citizens without votes.

2/ VOTING LEGISLATION

It is the Civil Rights Movement that has produced this climate -- the persistent and courageous work of the Student Nonviolent Coordinating Committee and the Congress of Racial Equality which have for the past four years carried the message of "One Man, One Vote" into the dangerous feudal areas of the South.

The dramatic demonstrations for the ballot now being waged by the Negro people of Alabama with the inspiration and guidance of Dr. Martin Luther King are also serving to direct the public consciousness to the issue of voting.

The Challenges to the seating of the illegally "elected" congressmen from Mississippi which have been brought by the voteless Negroes of Mississippi and are currently pending before the Congress has given the South a rude awakening to the possible consequences of further voting discrimination and created the political climate for the passage and enforcement of effective voting laws. We agree with Mr. Joseph L. Rauh, Jr., of the ADA that the threat posed by these challenges "can be the single most important vehicle to insure voting rights in Mississippi", and indeed, the South.

At this time, we see it as the duty and responsibility of the Civil Rights Movement to militate against any manoeuver that would dissipate this pressure by the tokenism of still another fraudulently ineffectual piece of legislation.

3/ VOTING LEGISLATION

We must begin thought about, and work toward, the kind of effective legislation that will enfranchise all citizens. On no account must we again allow ourselves to be diverted into settling our support around any legislation that is clearly and visibly so limited in concept and remedy as to ensure that we shall have to be back in Washington next year seeking further relief.

As you know, two legislative proposals are currently pending in Committee, the one introduced by Rep. John Lindsay (R-N.Y.) and the other by Rep. Joseph Resnick (D-N.Y.). It is incumbent upon us to familiarize ourselves with the contents of these bills. A brief exposition of these proposals follows:

The Republican legislation in effect completely revises extant voting rights laws which place the responsibility to monitor voting practices in the hands of Federal District Courts. It places a limitation of forty days on the court's finding of a pattern or practice of discrimination, after a complaint by 50 persons claiming to have been discriminated against. If the court does not act within 40 days of this complaint, the President is directed to appoint federal registrars. If the court does find a pattern or practice it is directed to appoint federal registrars. Any refusal of local authorities to permit persons registered by the federal registrars to participate in elections automatically results in the Court's voiding of that election. The panel of registrars are to be appointed by the President. Other provisions empower the registrar to implement a maximum literacy standard of the 6th grade and to abolish the use of the poll tax.

4/ VOTING LEGISLATION

The Resnick bill sets up a six man presidentially appointed commission with expedited procedures for determining the existence of a pattern of practice. Once this is established the Commission is empowered to use the full power of the 15th amendment, including appointing federal registrars, prescribing registration forms to be used, suspending literacy tests or any regulation producing further discrimination, to conduct or supervise elections, void elections and if necessary appoint armed federal elections officials.

We understand that there is a complementary Republican bill to be introduced shortly which will invoke the second section of the 14th Amendment to write the concept of "One Man, One Vote" into national legislation by setting up as the only voting qualifications the considerations of age, residence, insanity and conviction for felony.

Further, we understand that the Administration plans to support its own voting rights legislation in this session of Congress. Reportedly this bill has not yet been drafted but in whatever form it takes it will probably be this legislation that will be enacted, with or without the advice and consent of the Civil Rights Movement.

Still, there is much scope for our influencing the range and content of this legislation as it is conceivable but not probable that the Administration will propose legislation in this area that does not have the endorsement and support of the Civil Rights Movement. Whether or not it will reflect

our needs is a different question. We must not allow ourselves to be once more seduced into support of any legislation that fails to do this.

There are strong indications that the Administration's thinking is in terms of legislation that will affect only the "hard-core" areas of the country, and that a formula either has been, or is to be derived that will limit the bill's application to areas in which certain arbitrary percentages of the Negro population is disenfranchised.

For an example it has been suggested that this hard-core legislation may only apply to areas where Negro registration is less than 15%. In other words it would only operate in areas where more than 85% of the adult Negroes are not registered. What would this mean? The inference of such an act would be that the Administration and the Congress takes no responsibility in cases where 84%, 83%, or even 75% of the Negroes in any given area are kept from voting. (Is it only where Negro political denial is almost total that our government will take responsibility?) What would such legislation mean to those counties in the South where Negroes by dint of great sacrifice, determination and courage have managed to get token numbers on the voters rolls. Are these people to be denied federal assistance because of their own efforts?

We appeal to all factions of the Civil Rights Movement to take a principled and practical stand against any legislative proposal based on quotas. We cannot decently and involve ourselves in any percentage and numbers games

6/ VOTING LEGISLATION

with the voting rights of our fellow citizens. Even if this percentage were set at 50% it would constitute a mandate to southern racists to register a half of the eligible Negroes and so remove their registration procedures from the possibility of federal scrutiny. It would still constitute national acquiescence in the South's treatment of Negroes as though they were ½ citizens.

WE DEMAND AND SUPPORT LEGISLATION WHICH ESTABLISHES NO ARBITRARY PERMISSIBLE PERCENTAGES FOR DISENFRANCHISEMENT AND LEGISLATION WHICH PLACES THE INITIATIVE FOR RELIEF INTO THE HANDS OF THE PEOPLE WHOSE RIGHTS ARE BEING ABUSED. THIS LEGISLATION MUST UTILIZE ALL CONSTITUTIONAL PROVISIONS AND GUARANTEES TO ENSURE THE REALIZATION OF THE PRINCIPLE OF "ONE MAN, ONE VOTE" NATIONALLY.

This means that we must think in terms of legislation which will say that federal registration will occur in any community, county or state where the people who are not free to register request it, and where there is a prima facie evidence of voter intimidation, obstruction and subversion of the right to vote.

This is the only kind of legislation that will ultimately be effective, it is what is needed, and it is the only kind of legislation that the Civil Rights Movement should ultimately support. Any lesser bill proposed by anyone will pass or flounder without our support and the resources and energies of the Movement can better and more creatively be utilized in preparing the political situation that will produce meaningful legislation.

7/ VOTING LEGISLATION

It will be a mistake at this time to limit our goals to token half-measures because of "pragmatic" considerations, especially before we are assured that realistically effective legislation is not possible. And if it should prove to be that narrow regional considerations do in fact render the Congress incapable or unwilling to enfranchise all Americans, the Movement's position should not be one of accomodation to undemocratic political tendencies on the part of Congress.

If this be the unfortunate truth, then maybe our role would best be to inform the people that the "political realities" are such that the American people can expect their Congress to pass and implement no legislation that will make democracy a reality here, and by so doing confront the Congress with a nation aroused by its unwillingness or inability to establish full democracy throughout the Country.

JACKSON, MISSISSIPPI

February 21, 1965

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.'"

---

* 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.

Department of Justice

Voting
leg

STATEMENT

BY

ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

BEFORE THE

SENATE COMMITTEE ON THE JUDICIARY

ON

S. 1564, A BILL TO ENFORCE THE FIFTEENTH AMENDMENT

TO THE CONSTITUTION OF THE UNITED STATES

TUESDAY, MARCH 23, 1965

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE,

I am pleased to appear here today to testify in favor of S. 1564, "The Voting Rights Act of 1965." This bill represents an attempt to effectuate the most central and basic right of our political system.

Any society composed both of freemen and those who are not free cannot be a true democracy. Thus with the passage of the Thirteenth Amendment, ending slavery, this Country took a giant step toward this great goal.

But until all the members of our society are afforded an effective opportunity to participate in its political processes--that is, to cast a ballot freely--the promise of democracy remains unfulfilled.

Beginning in 1956 Congress attempted to meet this problem. Since that year three Presidents have asked Congress for additional legislation to guarantee the constitutional right to vote without discrimination on account of race or color.

Three times in the last decade--in 1956, in 1960 and in 1964--those who oppose stronger federal legislation concerning the electoral process have asked Congress to be patient; and Congress has been patient. Three times since 1956 they have said that local officials, subject to judicial direction, will solve the voting problem. And each time Congress has left the problem largely to the courts and the local officials. Three times since 1956 they have told us that this prescription would provide the entire cure--this prescription aided by time--and Congress has followed that advice.

But while the legislative process of the Congress should be deliberate, while comprehensive laws should be enacted only after all the facts are in, and while reasonable alternatives to broader federal control of elections should, of course, be attempted first, there comes a time when the facts are all in, the alternatives have been tried and found wanting, and time has run out. We stand at that point today.

As President Johnson so simply and eloquently said in his message to the Congress last week:

> "Many of the issues of civil rights are complex and difficult. But about this there can be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty to ensure that right."

Nearly one hundred years ago the ratification of the Fifteenth Amendment promised Negro Americans an equal right to vote and authorized Congress to enact legislation to carry out the promise. In the words of the late Mr. Justice Frankfurter, speaking for the Court in Lane v. Wilson, 307 U.S. 268, 275 (1939), the framers intended the Amendment to "reach . . . contrivances by a state to thwart equality in the enjoyment of the right to vote . . . regardless of race or color." The Amendment thus "nullifies sophisticated as well as simple-minded modes of discrimination", and "hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race, although the abstract right to vote may remain unrestricted as to race."

The Amendment has in fact eliminated such "simple-minded" devices as the grandfather clause and the white primary, which were struck down in 1915 and 1944. But to date, the Amendment has not been nearly as successful against more "sophisticated" techniques for disenfranchising Negroes. While, in theory, the Amendment devitalizes these techniques, in fact, they flourish. It is now apparent that its promise is yet to be redeemed, and that Congress must meet the obligation, expressly conferred by the Amendment, to enforce its provisions. The purpose of the Voting Rights Act of 1965 is to meet that obligation.

## I. EXISTING VIOLATIONS OF THE FIFTEENTH AMENDMENT

Current voter registration statistics demonstrate that comprehensive implementing legislation is essential to make the Fifteenth Amendment work.

In Alabama, the number of Negroes registered to vote has increased by only 5.2 percent between 1958 and 1964--to a total of 19.4 percent of those eligible. This compares with 69.2 percent of the eligible whites.

In Mississippi, the number of Negroes registered to vote has increased even more slowly. In 1955, about 4.3 percent of the eligible Negroes were registered; today, the approximate figure is 6.4 percent. Meanwhile, in areas for which we have statistics, 80.5 percent of eligible whites are registered.

In Louisiana, Negro registration has scarcely increased at all. In 1956, 31.7 percent of the eligible Negroes were registered. As of January 1, 1965, the figure was 31.8 percent. The current white percentage is 80.2 percent.

The discouraging situation these statistics reflect exists despite the best efforts of four Attorneys General under three Presidents, Republican and Democratic. It exists largely because the judicial process, upon which all existing remedies depend, is institutionally inadequate to deal with practices so deeply rooted in the social and political structure.

I will not burden this Committee again with numerous examples of the use of tests and similar devices which measure only the race of an applicant for registration, not his literacy or anything else.

And I need not describe at length how much time it takes to obtain judicial relief against discrimination, relief which so often proves inadequate. Even after the Department of Justice obtains a judicial decree, a recalcitrant registrar's ability to invent ways to evade the court's command is all too frequently more than equal to the court's capacity to police the state registration process.

By way of example of the delays and difficulties we encounter, let me describe our experience in Dallas County, Alabama, its neighboring counties, and Clarke County in Mississippi.

## II. CASE HISTORIES

The Negroes of Dallas County, Alabama, of which Selma is the seat, have been the victims of pervasive and unrelenting voter discrimination since at least 1954. Dallas County has a voting-age population of approximately 29,500, of whom 14,500 are white persons and 15,000 are Negroes. In 1961, 9,195 of the whites--64 percent of the voting-age total--and 156 Negroes--1 percent of the total--were registered to vote in Dallas County. An investigation by the Department of Justice substantiated the discriminatory practices that these statistics, without more, made obvious.

As a consequence, the first voter discrimination case of the Kennedy-Johnson Administration was brought against the Dallas County Board of Registrars on April 13, 1961. When the case finally came to trial 13 months later, we proved discrimination by prior registrars. It was shown, for example, that exactly 14 Negroes had been registered between 1954 and 1960. For whites, registration had been a simple corollary of citizenship. But the court found that the board of registrars then in office was not discriminating and refused to issue an injunction against discrimination.

We appealed. On September 30, 1963, two and one half years after the suit was originally filed, the court of appeals reversed the district court and ordered it to enter an injunction against discriminatory practices. The Department of Justice also had urged the court of appeals to hold that Negro applicants must be judged by standards no different than the lenient ones that had been applied to white applicants during the long period of discrimination--so that the effects of past discrimination would be dissipated.

Our experience has shown that such relief is essential to any meaningful improvement in Negro voter registration in areas where there has been systematic and persistent discrimination. The Court of Appeals for the Fifth Circuit has adopted this view in recent cases, but declined to order this relief in the first Dallas County case. Thus, after two and one half years, the first round of litigation against discrimination in Selma ended substantially in failure.

Two months later, Department personnel inspected and photographed voter registration records at the Dallas County Courthouse. These records showed that the same registrars whom the district court had earlier given a clean bill of health were engaging in blatant discrimination. With a top-heavy majority of whites already registered, standards for applicants of both races had been raised. The percentage of rejections both for white and Negro applicants for registration had more than doubled since the trial in May 1962.

The impact, of course, was greatest on the Negroes, of whom only a handful were registered. Eighty-nine percent of the Negro applications had been rejected between May 1962 and November 1963.

Of the 445 Negro applications rejected, 175 had been filed by Negroes with at least 12 years of education, including 21 with 16 years and one with a master's degree.

In addition to discriminatory grading practices, the registrars also were using one of their most effective indirect methods--delay. Under Alabama law, the registrars meet and process applications on a limited number of days each year. Processing of applications was slowed to a snail's pace. In October 1963, when most of the applicants were Negroes, the average number of persons allowed to fill out forms each registration day was about one-fourth the average in previous years, when most of the applicants were white.

For Negroes to register in Dallas County was thus extremely difficult. In February 1964, it became virtually impossible. Then, all Alabama County Boards of Registrars, including the Dallas County Board in Selma, began using a new application form which included a complicated literacy and knowledge-of-government test.

Since registration is permanent in Alabama, the great majority of white voters in Selma and Dallas County, already registered under easier

standards, did not have to pass the test. But the great majority of voting-age Negroes, unregistered, now faced a still higher obstacle to voting.

Under the new test, the applicant had to demonstrate his ability to spell and understand by writing individual words from the dictation of the registrar. Applicants in Selma were required to spell such difficult and technical words as "emolument", "capitation", "impeachment", "apportionment", and "despotism". The Dallas County registrars also added a refinement not required by the terms of the State-prescribed form. Applicants were required to give a satisfactory interpretation of one of the excerpts of the Constitution printed on the form.

We decided to go back to court. In March 1964, we filed a motion in the original Dallas County case initiating a second full-scale attempt to end discriminatory practices in the registration process in that county.

In September 1964, pending trial of this second proceeding, Alabama registrars, including those in Dallas County, began using another, still more difficult test.

In October 1964, our reopened case came on for trial. We proved that between May 1962, the date of the first trial, and August 1964, 795 Negroes had applied for registration but that only 93 were accepted. During the same period, 1,232 white persons applied for registration, of whom 945 were registered. Thus, less than 12 percent of the Negro applicants but more than 75 percent of the white applicants were accepted.

On February 4, 1965--nearly four years after we first brought suit--the district court entered a second decree. This time, the court substantially accepted our contentions and the relief requested by the Department was granted. The court enjoined use of the complicated literacy and knowledge-of-government tests and entered orders designed to deal with the serious problem of delay.

We hope this most recent decree will be effective, but the Negroes of Dallas County have good reason to be skeptical. After four years of litigation, only 383 Negroes are registered to vote in Dallas County today. The Selma-to-Montgomery march demonstrates that, understandably, the Negroes are tired of waiting.

The story of Selma illustrates a good deal more than discrimination by voting registrars and delays of litigation. It also illustrates another obstacle, sometimes more subtle, certainly more damaging. I am talking about fear.

The Department has filed a series of suits against intimidation of Negro registration applicants by Sheriff James Clark, by his deputies, and by the Dallas County White Citizens Council. These cases involved intimidation, physical violence and baseless arrests and prosecutions. Our appeals against adverse decisions in the first two such cases will be argued tomorrow in the court of appeals.

The story of the areas adjacent to Selma is very similar. East of Selma, in Lowndes County, only one Negro is registered--and he was put

on the rolls only last week. Fifteen other Negro applicants were recently rejected.

South of Selma, in Wilcox County, there were no Negroes registered to vote until a few weeks ago, when a token number were registered. Twenty-nine Negroes applied for registration in 1963. All were rejected. The Department filed a lawsuit on July 19, 1963. On March 31, 1964, the district court entered its decision, finding that the Negro applicants had been rejected "mainly due to their failure to obtain the signature of a qualified voter in Wilcox County to vouch for them. . . ." Unfortunately, the court went on to rule that the voucher requirement was neither "discriminatory nor oppressive as to the Negro applicants"--this in a county where no Negroes were registered. Our appeal was argued last Friday.

Our experiences in Mississippi parallel those in Alabama. On July 6, 1961, the Department filed a complaint seeking an injunction against discriminatory registration practices by the registrar of Clarke County, Mississippi. At that time 76 percent of eligible whites were registered, but not one Negro out of a voting-age population of 2,998 persons.

A year and a half later, on December 26, 1962, the trial began. It was a quick trial and was concluded two days later. The Government's evidence showed that several highly-qualified Negroes, including a school principal, had been denied registration, while illiterate and semi-literate whites had been registered. Negro applicants were sent home to "think" over their applications. White applicants merely had to "sign the book" for themselves and their spouses without any test whatsoever.

On February 5, 1963, the district court rendered judgment for the Government, finding discrimination against Negroes and massive irregularities in the registration of white persons. An injunction was granted. However, the court found that discrimination had not occurred pursuant to a "pattern or practice", a finding which precluded the use of the voting referee provisions of the 1960 Civil Rights Act. The court also refused to require the registration of Negroes whose qualifications were equal to those of whites who had been registered.

The effectiveness of the relief the district court granted can be illustrated by the fact that by August 4, 1964, the percentage of Negroes registered had risen from zero percent of the voting-age population to 2.2 percent--that is, in about three years, 64 Negroes were registered.

Following the Government's appeal, the court of appeals rendered its opinion on February 20, 1964, a year after the district court decision. While the court of appeals modified the judgment below in minor respects, it expressly approved the denial of equalization relief. On petition for rehearing, however, the Court of Appeals modified its prior determination to the extent of holding that the trial court's refusal to find a "pattern or practice" of discrimination was "clearly erroneous" and in the light of that holding remanded the case to the district court.

On December 1, 1964, three and one half years from the start of this action, the district court amended its order, not to find that there had been a pattern or practice of discrimination, but to withdraw its previous ruling on the point and to make no finding at all. The judge again denied equalization relief. The second appeal in this case has followed, nearly four years after the suit was brought.

All of the cases I have discussed thus far have been aimed at discrimination in voting on the county level. The Department has also brought suits designed to bar use of illegal tests and devices statewide. To date, these suits have produced mixed results.

On August 28, 1962, the Department filed a lawsuit against the State of Mississippi, its State Board of Elections, and six county registrars, broadly challenging the validity of a bundle of the State's voter registration laws, including the interpretation test. Nineteen months later, a three-judge district court, one judge dissenting, dismissed the complaint in its entirety. Two weeks ago this decision was reversed in its entirety by the Supreme Court, which remarked that the basis for the lower court's decision on one crucial point was "difficult to take seriously." However, thirty-one months after filing the complaint no trial on the merits has yet been held, and it is difficult to predict how much more time will pass before relief is obtained.

The situation in Louisiana is also discouraging. The Supreme Court recently affirmed the decision of the three-judge federal district court in United States v. Louisiana which held that Louisiana's "constitutional interpretation" test is invalid and, in addition, enjoined the use of Louisiana's recently adopted "citizenship test" in 21 parishes where discrimination has been practiced. But other techniques of discrimination remain available, and much of the force of this decree may be largely dissipated if State and parish officials decide to conduct a reregistration.

One example of the techniques still employed in Louisiana cropped up in East and West Feliciana Parishes. These registrars were among those enjoined in United States v. Louisiana from using certain state-prescribed tests. Contending that they would be subject to prosecution by the state for not applying Louisiana law, a manifestly untenable position under the supremacy clause of the federal constitution, they responded with their ultimate weapon by closing up shop altogether. We asked a single district judge, who had been a dissenting member of the panel which enjoined use of the tests, to order the registrars to resume registration. This judge agreed with the registrars. We appealed immediately and obtained a temporary injunction pending appeal. But meanwhile the rolls had been frozen for over six months.

These examples--and they are but a few of a very large number of similar instances--compel the judgment that existing law is inadequate. Litigation on a case by case basis simply cannot do the job. Preparation of a case is extraordinarily time consuming because the relevant data--for example, the race of individuals who have actually registered--is frequently most difficult to obtain. Many cases have to be appealed. In almost any other field, once the basic law is enacted by Congress and its constitutionality is upheld, those subject to it, accept it. In this field, however, the battle must be fought again and again in county after county. And even in those jurisdictions where judgment is finally won, local officials intent upon evading the spirit of the law are adept at devising new discriminatory techniques not covered by the letter of the judgment.

In sum, the old means of grappling with the denial of Fifteenth Amendment rights have failed. We must try a new approach and new techniques.

S. 1564 is the Administration's answer to the call for new methods. In the place of fruitless legal maneuvering, the bill offers a workable administrative solution and will hasten the day when the basic right of our democracy, the right to vote, is secure against practices of discrimination and inequality.

## III. THE PROPOSED VOTING RIGHTS ACT OF 1965

This bill applies to every kind of election, federal, state and local, including primaries. It is designed to deal with the two principal means of frustrating the Fifteenth Amendment: the use of onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes, and the discriminatory administration of these and other kinds of registration requirements.

The bill accomplishes its objectives first, by outlawing the use of these tests under certain circumstances, and second, by providing for registration by federal officials where necessary to ensure the fair administration of the registration system.

The tests and devices with which the bill deals include the usual literacy, understanding and interpretation tests that are easily susceptible to manipulation, as well as a variety of other repressive schemes. Experience demonstrates that the coincidence of such schemes and low electoral registration or participation is usually the result of racial discrimination in the administration of the election process. Hence, Section 3(a) of the bill provides for a determination by the Attorney General whether any state, or subdivision thereof separately considered, has on November 1, 1964 maintained a test or device as a qualification to vote.

In addition, the Director of the Census determines whether, in the states or subdivisions where the Attorney General ascertains that tests or devices have been used, less than 50 percent of the residents of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the Presidential election of November 1964.

The bill provides that whenever positive determinations have been made by the Attorney General and the Director of the Census as to a state, as a whole, or separately as to any subdivision not located in such a state, no person shall be denied the right to vote in any election in such state or separate subdivision because of his failure to comply with a test or device. Inclusion of a separate subdivision of a state which is not totally subject to section 3(a) does not, of course, bring the whole state within the section.

I shall present at the end of my discussion of the bill the information we have as to the areas to be affected by determinations under section 3(a).

The prohibition against tests may be ended in an affected area after it has been free of racial discrimination in the election process for ten years, as found, upon its petition, by a three-judge court in the District of Columbia. This finding will also terminate the examiner procedure provided for in the bill.

However, the Court may not make such a finding as to any State or subdivision for ten years after the entry of a final judgment, whether entered before or after passage of the bill, determining that denials of the right to vote by reason of race or color have occurred anywhere within such state or subdivision.

Because it is now beyond question that recalcitrance and intransigence on the part of State and local officials can defeat the operation of the most unequivocal civil rights legislation, the bill, in Section 4, provides for the appointment of examiners by the Civil Service Commission to carry out registration functions in a political subdivision in which the tests have been suspended pursuant to Section 3(a).

The suspension of tests would not automatically result in the appointment of examiners. For that to happen the Attorney General must certify to the Civil Service Commission under Section 4(a) either (1) that he has received 20 or more meritorious complaints from the residents of a subdivision affected by the determinations referred to in Section 3(a) alleging denial of the right to vote on account of race or color, or (2) that in his judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment in such a political subdivision. Of course, one (but not the only) situation that would fall within Section 4(a)(2) would be the continued use of tests and devices by a local registrar after Section 3(a) takes effect.

It can be readily seen that the bill places a premium on compliance with Section 3(a) and the adoption by state registrars of fair procedures. All that state registration officials need do to avoid the appointment of examiners is to comply with Section 3(a) and not discriminate against Negroes.

After the certification by the Attorney General, the Commission is required to appoint as many examiners as necessary to examine applicants in such area concerning their qualifications to vote. Any person found qualified to vote is to be placed on a list of eligible voters for transmittal to the appropriate local election officials.

Any person whose name appears on the list must be allowed to vote in any subsequent election until such officials are notified that he has been removed from the list as the result of a successful challenge, a failure to vote for three consecutive years, or some other legal ground for loss of eligibility to vote.

The bill provides a procedure for the challenge of persons listed by the examiners, including a hearing by an independent hearing officer and judicial review. A challenged person would be allowed to vote pending final action on the challenge.

The times, places and procedures for application and listing, and for removal from the eligibility list, are to be prescribed by the Civil Service Commission. The Commission, after consultation with the Attorney General, will instruct examiners as to the qualifications applicants must possess. The principal qualifications will be age, citizenship, and residence, and obviously will not include those suspended by the operation of Section 3.

If the State imposes a poll tax as a qualification for voting, the federal examiner is to accept payment and remit it to the appropriate State official. State requirements for payment of cumulative poll taxes for previous years would not be recognized.

Civil injunctive remedies and criminal penalties are specified for violation of various provisions of the bill. Among these provisions is one requiring that no person, whether a state official or otherwise, shall fail or refuse to permit a person whose name appears on the examiner's list to vote, or refuse to count his ballot, or "intimidate, threaten or coerce," a person for voting or attempting to vote under the Act.

An individual who violates this or other prohibitions of the bill may be fined up to $5,000 or imprisoned up to five years, or both.

It should be noted also that a person harmed by such acts of intimidation by state officials may also sue for damages under 42 U.S.C. 1983, a statute which was enacted in 1871. That statute provides for private civil suits against state officers who subject persons to deprivation of any rights, privileges and immunities secured by the Constitution and laws of the United States Private individuals who act in concert with State officers could also be sued for damages under that statute, Baldwin v. Morgan, 251 F. 2d 780 (C.A. 5, 1958).

In our view, Section 7 of the bill, which prohibits intimidation of persons voting or attempting to vote under the bill represents a substantial improvement over 42 U. S. C. 1971(b), which now prohibits voting intimidation. Under Section 7 no subjective "purpose" need be shown, in either civil or criminal proceedings, in order to prove intimidation under the proposed bill. Rather, defendants would be deemed to intend the natural consequences of their acts. This variance from the language of Section 1971(b) is intended to avoid the imposition on the government of the very onerous burden of proof of "purpose" which some district courts have--wrongly, I believe--required under the present law.

The bill provides that a person on an eligibility list may allege to an examiner within 24 hours after closing of the polls in an election that he was not permitted to vote, or that his vote was not counted. The examiner, if he believes the allegation well founded, would notify the United States Attorney, who may apply to the District Court for an order enjoining certification of the results of the election.

The Court would be required to issue such an order pending a hearing. If it finds the charge to be true, the Court would provide for the casting or counting of ballots and require their inclusion in the total vote before any candidate may be deemed elected.

The examiner procedure would be terminated in any subdivision whenever the Attorney General notifies the Civil Service Commission that all persons listed have been placed on the subdivision's registration rolls and that there is no longer reasonable cause to believe that persons will be denied the right to vote in such subdivision on account of race or color.

The bill also contains a provision dealing with the problem of attempts by states within its scope to change present voting qualifications. No state or subdivision for which determinations have been made under Section 3(a) will be able to enforce any law imposing qualifications or procedures for voting different from those in force on November 1, 1964, until it obtains a declaratory judgment in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the Fifteenth Amendment.

I turn now to the information we have regarding the impact of Section 3(a). Tests and devices would -- according to our best present information--be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia and Alaska, 34 counties in North Carolina, and one county in Arizona, one in Maine, and one in Idaho. Elsewhere, the tests and devices would remain valid, and similarly the registration

system would remain exclusively in the control of state officials.

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

The latter suggestion applies as well to North Carolina, where 34 counties are reached by Section 3(a) and where, indeed, in at least one instance a federal court has acted to correct registration practices which impeded Negro registration.

In view of the premise for Section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the Fifteenth Amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in violations of the Fifteenth Amendment--the states and counties affected by the formula in which it may be doubted that racial discrimination has been practiced--need only demonstrate in court that they have not practiced discrimination within the ten immediately preceding years in order to lift the ban of Section 3(a) from their registration systems.

That is, Section 3(a) in reality reaches on a long-term basis only those areas where racial discrimination in voting in fact exists.

## IV. THE CONSTITUTIONALITY OF THE BILL

I have shown why this legislation is necessary and have explained how it would work. It remains to explain why we think it is constitutional.

Far from impinging on constitutional rights--in purpose and effect, the bill implements the explicit command of the Fifteenth Amendment that "the right * * * to vote shall not be denied or abridged * * * by any State on account of race [or] color." The means chosen to achieve that end are appropriate, indeed, necessary. Nothing more is required.

Let me pursue the matter a little. This is not a case where the Congress would be invoking some "inherent", but unexpressed, power. The Constitution itself expressly says in section 2 of the fifteenth article of amendment: "The Congress shall have power to enforce this article by appropriate legislation."

Here, then, we draw on one of the powers expressly delegated by the people and by the states to the national legislature. In this instance, it is the power to eradicate color discrimination affecting the right to vote. Accordingly, as Chief Justice Marshall said in Gibbons v. Ogden, 9 Wheat 1, 196, with respect to another express power--the power to regulate interstate commerce-- "[t]his power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."

That was the constitutional rule in 1824 when those words were first spoken by Chief Justice Marshall. It remains the constitutional rule today; those same words were repeated by Mr. Justice Clark for a unanimous Court just recently in sustaining the public accommodation provisions of the Civil Rights Act of 1964. See Atlanta Motel v. United States, 379 U.S. 241, 255.

This is not a case where the subject matter has been exclusively reserved to another branch of government -- to the Executive or the courts. The Fifteenth Amendment leaves no doubt about the propriety of legislative action. And, of course, both immediately after the passage of the Fifteenth Amendment, and more recently, the Congress has acted to implement the right. See the very comprehensive Act of May 31, 1870, 16 Stat. 140, and the voting provisions of the Civil Rights Acts of 1957, 1960 and 1964.

Some of the early laws were voided as too broad and others were later repealed. But the Supreme Court has never voided a statute limited to enforcement of the Fifteenth Amendment's prohibition against discrimination in voting. On the contrary, in the old cases of United States v. Reese, 92 U.S. 214, 218, and James v. Bowman, 190 U.S. 127, 138-139, the Supreme Court, while invalidating certain statutory provisions, expressly pointed to the power of Congress to protect the right to:

> "*** exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

And with respect to congressional elections, shortly after the adoption of the Fifteenth Amendment, the Court sustained a system of federal supervisors for registration and voting not dissimilar to the system proposed here. See Ex Parte Siebold, 100 U.S. 371; United States v. Gale, 109 U.S. 65. Constitutional assaults on the more recent legislation have been uniformly rejected. See United States v. Raines, 362 U.S. 17(1957 Act); United States v. Thomas, 362 U.S. 58 (same); Hannah v. Larche,

363 U. S. 420 (Civil Rights Commission rules under 1957 Act); Alabama v. United States, 371 U. S. 37 (1960 Act); United States v. Mississippi, No. 73, this Term, decided March 8, 1965 (same); Louisiana v. United States, No. 67, this Term, decided March 8, 1965 (same).

This legislation has only one aim-- to effectuate at long last the promise of the Fifteenth Amendment -- that there shall be no discrimination on account of race or color with respect to the right to vote. That is the only purpose of the proposed bill. It is, therefore, truly legislation "designed to enforce" the amendment. To meet the test of constitutionality, it remains only to demonstrate that the means suggested are appropriate.

The relevant constitutional rule, again, was established once and for all by Chief Justice Marshall. Speaking for the Court in McCullough v. Maryland, 4 Wheat. 316,421, he said:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

The same rule applies to the powers conferred by the Amendments to the Constitution. In the case of Ex Parte Virginia, 100 U. S. 339, 345-346, speaking of the Thirteenth and Fourteenth Amendments, the Court said:

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

See also, Everard's Breweries v. Day, 265 U. S. 545, 558-559, applying the same standard to the enforcement section of the Prohibition (Eighteenth) Amendment.

That is really the end of the matter. The means chosen are certainly not "prohibited" by the Constitution, (as I shall show in a moment) and they are -- as I have already outlined -- "appropriate" and "plainly adapted" to the end of eliminating racial discrimination in voting. It does not matter, constitutionally, that the same result might be achieved in some other way. That has been settled since the beginning and was

expressly re-affirmed very recently in the cases upholding the Civil Rights Act of 1964. See Atlanta Motel v. United States, 379 U.S. 241, 261.

All workable legislation tends to set up categories -- inevitably so. I have explained the premise for the classification made and, with some possible exceptions, as I have said, the facts support the hypothesis. But the exceptional case is provided for in Section 3(c) of the bill which I have already discussed. Given a valid factual premise -- as we have here -- it is for Congress to set the boundaries. That is essentially a legislative function which the courts do not and cannot quibble about. Cf. Boynton v. Virginia, 364 U.S. 454; Currin v. Wallace, 306 U.S. 1; United States v. Darby, 312 U.S. 100, 121. See, also, Purity Extract Co. v. Lynch, 226 U.S. 192.

The President submits the present proposal only because he deems it imperative to deal in this way with the invidious discrimination that persists despite determined efforts to eradicate the evil by other means. It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far-reaching solutions.

The Constitution, however, does not even require this much forbearance. When there is clear legislative power to act, the remedy chosen need not be absolutely necessary; it is enough if it be "appropriate." And I am certain that you all recall that the Supreme Court -- in sustaining the finding of the 88th Congress that racial discrimination by a local restaurant serving a substantial amount of out-of-state food adversely affects interstate commerce -- made it clear that so long as there is a "rational basis" for the Congressional finding, the finding itself need not be formally embodied in the statute. Katzenbach v. McClung, 379 U.S. 294, 303-305.

I turn now to the contention often heard that, whatever the power of Congress under the enforcement clause of the Fifteenth Amendment in other respects, it can never be used to infringe on the right of the states to fix qualifications for voting, at least for non-federal elections. The short answer to this argument was given most emphatically by the late Mr. Justice Frankfurter, speaking for the Court in Gomillion v. Lightfoot, 364 U.S. 339, 347, a Fifteenth Amendment case:

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

The constitutional rule is clear: So long as state laws or practices erecting voting qualifications for non-federal elections do not run afoul of the Fourteenth or Fifteenth Amendments, they stand undisturbed. But when State power is abused--as it plainly is in the areas affected by the present bill-there is no magic in the words "voting qualification."

The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the Fifteenth Amendment. Guinn v. United States, 238 U.S. 347; Myers v. Anderson, 238 U.S. 368. Nor are only the most obvious devices reached. As the Court said in Lane v. Wilson, 307 U.S. 268, 275; "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination."

Nor do literacy tests and similar requirements enjoy special immunity. To be sure, in Lassiter v. Northampton Election Board, 360 U.S. 45, the Court found no fault with a literacy requirement, as such, but it added: "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." Id., 53. See, also, Gray v. Sanders, 372 U.S. 368, 379.

Indeed, as the opinion in Lassiter noted, the Court had earlier affirmed a decision annulling Alabama's literacy test on the ground that it was "merely a device to make racial discrimination easy." 360 U.S. at 53. See Davis v. Schnell, 336 U.S. 933, affirming 81 F. Supp. 872. And, only the other day, the Supreme Court voided one of Louisiana's literacy tests. Louisiana v. United States, No. 67, this Term, decided March 8, 1965. See, also, United States v. Mississippi, supra.

Thus, it is clear that the Constitution will not allow racially discriminatory voting practices to stand. But it is even clearer, as we have seen, that the Constitution invites Congress to do more than stand by and watch the courts invalidate state practices. It invites Congress to take a positive role by outlawing the use of any practices utilized to deny rights under the Fifteenth Amendment.

This bill accepts that invitation.

I understand that it has been suggested that, whether or not the bill is constitutional, a better remedy for existing discrimination would be to guarantee the fair administration of literacy tests rather than to abolish them. I do not think this is so.

The majority of the states -- at least thirty -- find it possible to conduct their elections without any literacy test whatever. There is no evidence that these states have governments inferior to the states which impose -- or purport to impose -- such a requirement.

Whether there is really a valid basis for the use of literacy tests is, therefore, questionable. But it is not for this reason that the proposed legislation would abolish them in certain places.

Rather, we seek to abolish these tests because they have been used in those places as a device to discriminate against Negroes.

Highly literate Negroes have been refused the right to vote while totally illiterate whites have voted freely In short, in these areas, passing a literacy test is a matter of color, not intellectual capability.

It is not this bill -- it is not the federal government -- which undertakes to eliminate literacy as a requirement for voting in such states or counties. It is the states or counties themselves which have done so, and done so repeatedly, by registering illiterate or barely literate white persons.

The aim of this bill is to insure that the areas which have done so apply the same standard to all persons equally, to Negroes now just as to whites in the past.

It might be suggested that this kind of discrimination could be ended in a different way -- by wiping the registration books clean and requiring all voters, white or Negro, to register anew under a uniformly applied literacy test.

For two reasons such an approach would not solve, but would compound our present problems.

To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes -- Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited "separate but equal" doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunities were pathetically inferior for thousands of Negroes who want to vote today.

The impact of a general re-registration would produce a real irony. Years of violation of the 14th Amendment right of equal protection through equal education would become the excuse for continuing violation of the 15th Amendment right to vote.

The second argument against such a re-registration "solution" is even more basic -- and even more ironic. Even the fair administration of a new literacy test in the relevant areas would, inevitably, disenfranchise not only many Negroes, but also thousands of illiterate whites who

have voted throughout their adult lives.

Our concern today is to enlarge representative government, to solicit the consent of all the governed. Surely we cannot even purport to act on that concern if, in so doing, we reduce the ballot and correspondingly diminish democracy.

## V. CONCLUSION

S. 1564 would effectuate our commitment to the ideals of effective democracy expressed by the President when he addressed Congress last week.

Numerous members of the Senate and House of Representatives have worked hard to produce this bill and it is most encouraging to know that 66 Senators from 37 states have joined in sponsoring it.

This dedication of the President and Members of Congress reflects the nation's firm belief that racial discrimination and democracy are incompatible. The Voting Rights Act of 1965 must therefore be enacted.

I urge that it be enacted promptly.

# Department of Justice

Fill Voting Leg

STATEMENT

BY

ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

before the

HOUSE JUDICIARY COMMITTEE

on the proposed

## VOTING RIGHTS ACT OF 1965

Thursday, March 18, 1965

In our system of government, there is no right more central and no right more precious than the right to vote.

From our early history, the free and secret ballot has been the foundation of America. This Congress stands as imposing evidence of that truth. And, if we have needed reminding, Presidents in every generation have repeated that truth.

--In a message to the 36th Congress, in 1860, President Buchanan observed that: "The ballot box is the surest arbiter of disputes among freemen."

--In a message to the 51st Congress, in 1890, President Benjamin Harrison said: "If any intelligent and loyal company of American citizens were required to catalogue the essential human conditions of national life, I do not doubt that with absolute unanimity they would begin with 'free and honest elections.'"

--In a message to the 66th Congress, in 1919, President Wilson said: "The instrument of all reform in America is the ballot."

--In a message to the 88th Congress, just two years ago, President Kennedy said: "The right to vote in a free American election is the most powerful and precious right in the world -- and it must not be denied on the grounds of race or color. It is a potent key to achieving other rights of citizenship."

--And yet, just three days ago, it remained necessary for President Johnson, in an eloquent message to this Congress, to say:

"Many of the issues of civil rights are complex and difficult. But about this there can be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty to ensure that right."

The President called on the Congress and on the American people to meet that duty with the fullest power of heart, mind, and law. I appear before you today to support that commitment and to tell you in detail why this Administration believes the proposed Voting Rights Act of 1965 to be sound, effective and essential.

## I. DENIALS OF THE PAST

The promise of a new life for Negro Americans was first expressed in the 13th, 14th and 15th Amendments to the Constitution. The promise of freedom for the slaves was kept; the promises of equal protection and the right to vote without racial discrimination are yet, a century later, still empty.

Soon after the adoption of the Civil War amendments, Congress did indeed enact a number of implementing laws. Promptly after the ratification of the 15th Amendment, the Enforcement Act of May 31, 1870, was passed, declaring the right of all citizens to vote without racial discrimination. Under the 1870 law, officials were required to give all citizens the same, equal opportunity to perform any act prerequisite to voting. Violation and interference were made criminal offenses.

In 1871, another law was passed to protect Negro voting rights. It made it a crime to prevent anyone from voting by threats or intimidation, and established a system of federal supervisors of elections.

But these protections were neither adequately enforced, nor of long duration. Attempts to strengthen the legislation, occasioned by rising Negro disenfranchisement in the South, were unsuccessful. Congressional debates reflect the fear of disturbing the status quo of white supremacy. In 1894, most of the legislation dealing with the right to vote was repealed.

Meanwhile, some states had been busy enacting legislation to disenfranchise the Negro. They adopted a variety of devices, with no effort to disguise their real purpose--disenfranchisement of the Negro.

Whites unable to meet the new requirements were protected by the so-called "grandfather clause" -- which could not possibly have applied to a Negro newly freed from slavery.

The Supreme Court struck down the grandfather clause in 1915, but discrimination and disenfranchisement continued. The Negro's theoretical right to vote was successfully thwarted by intimidation and fear of reprisal. The white primary long served to disenfranchise Negroes. until declared unconstitutional in 1944. During this long period America almost forgot -- and certainly ignored -- its commitment to voting equality.

Beginning with President Truman's 1948 recommendation to Congress, based on the report of his Committee on Civil Rights, bills to protect the right to vote were introduced in successive Congresses.

Still, action did not come until the Civil Rights Act of 1957. That Act authorizes the Attorney General to bring suits to correct discrimination in state and federal elections, as well as intimidation of potential voters.

The Civil Rights Act of 1960 sought to make such law suits easier. It amended the 1957 Act to permit the Attorney General to inspect registration records and to permit Negroes rejected by state registration officials to apply to a federal court or a voting referee.

The Civil Rights Act of 1964 sought to make voting rights suits faster. It amended the 1960 Act to expedite cases, to facilitate proof of discrimination, and to require non-discriminatory standards.

What has been the effect of these statutes? It is easy to measure. In Alabama, the number of Negroes registered to vote has increased by 5.2 percent between 1958 and 1964--to a total of 19.4 percent of those eligible. This compares with 69.2 percent of the eligible whites.

In Mississippi, the number of Negroes registered to vote has increased at an even slower rate. In 1954, about 4.4 percent of the eligible Negroes were registered; today, we estimate the figure at about 6.4 percent. Meanwhile, in areas for which we have statistics, the comparable figure for whites is that 80.5 percent of those eligible are registered.

And in Louisiana, Negro registration has not increased at all, or if at all, imperceptibly. In 1956, 31.7 percent of the eligible Negroes were registered. As of January 1, 1965, the figure was 31.8 percent. The white percentage, meanwhile, is 80.2 percent.

The lesson is plain. The three present statutes have had only minimal effect. They have been too slow.

Thus, we have come to Congress three times in the past eight years to ask for legislation to fulfill the promise our country made in the 15th Amendment 95 years ago, the promise of the ballot.

Three times since 1956, the Congress has responded. Three times, it has adopted the alternative of litigation, of seeking solutions in our judicial system. But three times since 1956, we have seen that alternative tarnished by evasion, obstruction, delay and disrespect.

The alternative, in short, has already been tried and found wanting "The time of justice," the President said on Monday "has now come."

## II. DENIALS OF THE PRESENT

The discouraging figures I have cited do not represent lack of will by any administration in administering the voting rights laws. These laws have been administered by four Attorneys General serving under three Presidents and representing both parties.

Nor do these figures represent any lack of energy, ability, or dedication by the lawyers of the Civil Rights Division of the Department of Justice. I believe I have never, whether in government, in private practice, or in the academic world, seen any attorneys work so hard, so well and, often, under such difficult circumstances.

What these Negro voting figures do represent is the inadequacy of the judicial process to deal effectively and expeditiously with a problem so deep-seated and so complex.

My predecessors have, for a decade, given this committee example after example of how the registration process has been perverted to test not literacy, not ability, not understanding--but race. Like them, I could, today, give you numerous examples of such perversions.

I could cite numerous examples of the almost incredible amount of time our attorneys must devote to each of the 71 voting rights cases filed under the Civil Rights Acts of 1957, 1960 and 1964. It has become routine to spend as much as 6,000 man hours alone only in analyzing the voting records in a single county -- to say nothing of preparation for trial and the almost inevitable appeal.

I could cite numerous examples of how delay and evasion have made it necessary for us to gauge judicial relief not in terms of months, but in terms of years. For the fact is that those who are determined to resist are able -- even after apparent defeat in the courts -- to devise whole new methods of discrimination. And often that means beginning the whole weary process all over again.

In short, I could cite example after example, but let me, at random, pick just one: Selma, Alabama.

## III. THE RIGHT TO VOTE IN DALLAS COUNTY, ALABAMA

The story of Negro voting rights in Dallas County, Alabama, of which Selma is the seat, could -- until February 4 -- be told in three words: intimidation, discouragement, and delay.

There has been blatant discrimination against Negroes seeking to vote in Dallas County at least since 1952. How blatant is evident from simple statistics.

--In 1961, Dallas County had a voting age population of 29,515, of whom, 14,400 were white persons and 15,115 were Negroes. The number of whites registered to vote totaled 9,195--64 percent of the voting age total. The number of Negroes totaled 156--1.03 percent of the total.

--Between 1954 and 1961, the number of Negroes registered had mushroomed; exactly 18 were registered in those seven years.

If effective and prompt remedies were necessary in any county, they were necessary in Dallas County. And as a result, the first voting case filed in the Kennedy-Johnson administration was brought against Dallas County on April 13, 1961.

The case finally came to trial 13 months later. In an additional six months came the District Court decision. The court decided that prior registrars had, in fact, discriminated against Negro applicants. But, the court concluded, the current board of registrars was not then discriminating and, therefore, refused to issue an injunction against discrimination by the registrars. We appealed.

On September 30, 1963, two-and-a-half years after the suit was originally filed, the Court of Appeals for the Fifth Circuit reversed the district court and ordered it to enter an injunction against discrimination.

Nevertheless, the Department also had urged the Court of Appeals to direct the registrars to judge Negro applicants by the same standards that had been applied to white applicants during the long period of discrimination--until the effects of past discrimination had been dissipated. The Court of Appeals recognized that this type of relief might be needed in some cases, but did not order it in this case.

Our experience has shown that such relief is essential to any meaningful improvement in Negro voter registration in areas where there have been previous patterns of discrimination. Thus, after two-and-a-half years, the first round of litigation against discrimination in Selma ended, substantially in failure.

Two months later, Department personnel inspected and photographed voter registration records at the Dallas County Courthouse. These records showed that the registrars were engaged in obvious discrimination. With a top-heavy majority of whites already registered, the registrars had raised standards for applicants of both races. The percentage of rejections for both white and Negro applicants for registration had more than doubled since the original trial in May 1962.

The impact, of course, was greatest on the Negroes, of whom hardly any were registered. Eighty-nine percent of the Negro applicants had been rejected between May 1962 and November 1963.

Of the 445 Negro applications rejected, 175 had been filed by Negroes with at least 12 years of education, including 21 with 16 years and one with a master's degree.

In addition to directly discriminatory practices, the registrars also were using one of their most effective indirect methods--delay. For example, on eleven of the fourteen registration days in October, 1963, 60 or more persons waited in line to register, but the average number of persons allowed to fill out forms was 36. In previous years--when the applicants were predominantly white--up to 148 applications had been processed in a single day.

For Negroes to register in Dallas County was thus extremely difficult. In February, 1964, it became virtually impossible. Then, all Alabama County Boards of Registrars, including the Dallas County Board in Selma, began using a new application form. This form included a complicated literacy and knowledge-of-government test.

Since registration is permanent in Alabama, the great majority of white voters in Selma and Dallas County, already registered under previous, easier standards, did not have to pass the test. But the great majority of voting-age Negroes, unregistered, now faced still another, still higher obstacle to voting.

Under the new test, the applicant had to demonstrate his ability to spell and understand by writing individual words from the dictation of the registrar. Applicants in Selma were required to spell such difficult and technical words as "emolument," "capitation," "impeachment," "apportionment" and "despotism." The Dallas County registrars also added a refinement not required by the terms of the state-prescribed form. Applicants were required to give a satisfactory interpretation of one of the excerpts of the Constitution printed on the form.

As the result, we decided to go back to court. In March, 1964, we filed a motion in federal court initiating a second full-scale law suit against discriminatory practices in the registration process in Dallas County.

It should be noted that in September, 1964, pending trial of this second law suit, Alabama registrars, including those in Dallas County, began using a second, still-more difficult test.

In October, 1964, our reopened Dallas County case came on for trial. We proved that between May 1962, the date of the first trial, and August 1964, 795 Negroes had applied for registration but that only 93 were accepted. During the same period, 1,232 white persons applied for registration, of whom 945 were registered. Thus, less that 12 percent of the Negro applicants but more than 75 percent of the white applicants were accepted.

Finally, on February 4, 1965--nearly four years after we first brought suit--the district court entered its judgment. This time, the court substantially accepted our contentions and the relief requested by the Department was granted. Specifically, the court enjoined use of the complicated literacy and knowledge-of-government tests and entered orders designed to deal with the serious problem of delay.

Whether this most recent decree will be effective only time will tell. We hope and expect it will be. But the Negroes of Dallas County have good reason to be skeptical. After four years of litigation, only 383 Negroes are registered to vote in Dallas County today. The recent events in Selma are indeed demonstrations--demonstrations of the fact that, understandably, the Negroes of Dallas County are tired of waiting.

The story of Selma illustrates a good deal more than voting discrimination and litigating delay. It also illustrates another obstacle, sometimes more subtle, certainly more damaging. I am talking about fear.

The Department thus has filed four separate suits against intimidation of Negro registration applicants by Sheriff James Clark and other local officials.

The first of these filed alleged that the defendants had intimidated Negroes from attempting to register by physical violence baseless arrests and prosecutions of Negro registration workers.

We introduced proof that Sheriff Clark had deputies present at every civil rights mass meeting in Dallas County. They took notes and license tag numbers. They harassed, arrested, and assaulted young voter registration workers. The district court found, however, that the Government had "failed in its proof" and denied injunctive relief. This decision is presently pending on appeal.

We filed a second intimidation suit in November, 1963. This suit alleged that the local grand jury sought to interfere with the operation of the Civil Rights Division of the Department of Justice--and thus intimidated potential Negro voters who looked to the Department for assistance and action.

The Department of Justice introduced substantial proof in support of these allegations at the hearing, but the district court rejected this evidence and found that the grand jury had acted in good faith. This decision is also pending on appeal.

Our third Dallas County intimidation suit, also filed in November, 1963, illustrates still a different level of harassment and fear. The defendants in this case, now awaiting trial, are the Dallas County Citizens' Council and its officers.

The suit alleges that they have adopted and sought to execute a program to frustrate court voting orders and to intimidate Negroes so they will not attend voter registration rallies.

We filed a startlingly overt example of this bigoted program together with our complaint. It was a full-page advertisement in the Selma Times-Journal on June 9, 1963, sponsored by the Citizens' Council. It was headed: "Ask Yourself this Important Question: What have I personally done to Maintain Segregation"? And the text said, in part "Is it worth four dollars to you to prevent sit-ins, mob marches and wholesale Negro voter registration efforts in Selma?"

The fourth intimidation suit again was against Sheriff Clark and other local officials. It arose from events relating to voter registration and desegregation of places of public accommodation in Selma last summer. The case was tried before a three-judge district court in December, 1964, and has not yet been decided.

At the trial, the Department introduced proof showing that the defendants had prosecuted, convicted and punished Negroes discriminatorily and had issued and enforced injunctions preventing Negroes from organizing and discussing their grievances. Proof was also introduced to show that the defendants used unreasonable force against Negroes who exercised their rights and had failed to provide Negroes with ordinary police protection.

Let me be quick to point out that such intimindation is hardly limited to Dallas County; on this aspect as in others, Selma is merely a symbol. In Rankin County, Mississippi, three young Negro registration applicants were beaten in the registrar's office by the sheriff and his deputy. In our consequent suit, we were unable to secure relief even on appeal. The court ruled that the assault was not the result of bigotry, but of the deputy sheriff's vexation over crowded conditions in the registration office.

In Wilcox County, Alabama, a Negro insurance agent became the first of his race to apply for registration in several years. Within weeks, 28 different land owners ordered him to stay off their property when he came to collect insurance premiums. To keep his job, the man had to accept a transfer and live away from his family, in a different county.

Again, we had to appeal. Today, two years later, the appeal is still pending.

There has been case after case of similar intimidation--beatings, arrests, lost jobs, lost credit, and other forms of pressure against Negroes who attempt to take the revolutionary step of registering to vote. And, despite our most vigorous efforts in the courts, there has been case after case of slow or ineffective relief.

We can draw only one conclusion from such instances. We can draw only one conclusion from the story of Selma. The 15th Amendment expressl commanded that the right to vote should not be denied or abridged because of race. It was ratified 95 years ago. Yet, we are still forced to vindicate that right anew, in suit after suit, in county after county.

What is necessary--what is essential--is a new approach, an approach which goes beyond the tortuous, often-ineffective pace of litigation. What is required is a systematic, automatic method to deal with discriminatory tests, with discriminatory testers, and with discriminatory threats.

The bill President Johnson has now sent to Congress, the bill about which he spoke so eloquently to you Monday, presents us with such a method It would not only, like past statutes, demonstrate our good intentions. It would allow us to translate those intentions into ballots.

## IV. THE PROPOSED VOTING RIGHTS ACT OF 1965

This bill applies to every kind of election, federal, state, and local, including primaries. It is designed to deal with the two principal means of frustrating the Fifteenth Amendment: the use of onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes, and the discriminatory administration of these and other kinds of registration requirements.

The bill accomplishes its objectives first, by outlawing the use of these tests under certain circumstances, and second, by providing for registration by federal officials where necessary to ensure the fair administration of the registration system.

The tests and devices with which the bill deals include the usual literacy, understanding and interpretation tests that are easily susceptible to manipulation, as well as a variety of other repressive schemes. Experience demonstrates that the coincidence of such schemes and low electoral registration or participation is usually the result of racial discrimination in the administration of the election process. Hence, Section 3(a) of the bill provides for a determination by the Attorney General whether any state, or a county separately considered, has on November 1, 1964 maintained a test or device as a qualification to vote.

In addition, the Director of the Census determines whether, in the states or counties where the Attorney General ascertains that tests or devices have been used, less than 50 percent of the residents of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the Presidential election of November 1964.

The bill provides that whenever positive determinations have been made by the Attorney General and the Director of the Census as to a state, or separately as to any county not located in such a state, no person shall be denied the right to vote in any election in such jurisdiction because of his failure to comply with a test or device. I shall present at the end of my discussion of the bill the information we have as to the areas to be affected by these determinations.

The prohibition against tests may be ended in an affected area after it has been free of racial discrimination in the election process for ten years, as found, upon its petition, by a three-judge court in the District of Columbia. This finding will also terminate the examiner procedure provided for in the bill.

However, the Court may not make such a finding as to any State or separate county for ten years after the entry of a final judgment, whether entered before or after passage of the bill, determining that denials of the

right to vote by reason of race or color have occurred anywhere within such jurisdiction.

Because it is now beyond question that recalcitrance and intransigence on the part of State and local officials can defeat the operation of the most unequivocal civil rights legislation, the bill, in Section 4, provides that the Attorney General may cause the appointment of examiners by the Civil Service Commission to carry out registration functions in any county where tests have been suspended by determinations of the Attorney General and the Director of the Census.

This result follows when the Attorney General certifies either that he has received meritorious complaints in writing from twenty or more residents of the county alleging denial of the right to vote by reason of race or color, or that, in his judgment, the appointment of registrars is necessary to enforce the guarantees of the Fifteenth Amendment.

After the certification by the Attorney General, the Commission is required to appoint as many examiners as necessary to examine applicants in such county concerning their qualifications to vote. Any person found qualified to vote is to be placed on a list of eligible voters for transmittal to the appropriate local election officials.

Any person whose name appears on the list must be allowed to vote in any subsequent election until such officials are notified that he has been removed from the list as the result of a successful challenge, a failure to vote for three consecutive years, or some other legal ground for loss of eligibility to vote.

The bill provides a procedure for the challenge of persons listed by the examiners, including a hearing by an independent hearing officer and judicial review. A challenged person would be allowed to vote pending final action on the challenge.

The times, places and procedures for application and listing, and for removal from the eligibility list, are to be prescribed by the Civil Service Commission. The Commission, after consultation with the Attorney General, will instruct examiners as to the qualifications applicants must possess. The principal qualifications will be age citizenship and residence, and obviously will not include those suspended by the operation of Section 3.

If the State imposes a poll tax as a qualification for voting, the federal examiner is to accept payment and remit it to the appropriate State official. State requirements for payment of cumulative poll taxes for previous years would not be recognized.

Civil injunctive remedies and criminal penalties are specified for violation of various provisions of the bill. Among these provisions is one requiring that no person, whether a state official or otherwise, shall fail or refuse to permit a person whose name appears on the examiner's list to vote, or refuse to count his ballot, or "intimidate, threaten or coerce," a person for voting or attempting to vote under the Act.

An individual who violates this or other prohibitions of the bill may be fined up to $5,000 or imprisoned up to five years, or both.

It should be noted also that a person harmed by such acts of intimidation by state officials may also sue for damages under 42 U.S.C. 1983, a statute which was enacted in 1871. That statute provides for private civil suits against state officers who subject persons to the deprivations of any rights, privileges and immunities secured by the Constitution and laws of the United States. Private individuals who act in concert with State officers could also be sued for damages under that statute, Baldwin v. Morgan, 251 F. 2d 780 (C.A. 5, 1958).

The litigated cases amply demonstrate the inadequacies of present statutes prohibiting voter intimidation. Under present law, voter intimidation is only punishable as a misdemeanor, unless a conspiracy is involved. But perhaps the most serious inadequacy results from the practice of some district courts to require the Government to carry a very onerous burden of proof of "purpose." Since many types of intimidation, particularly economic intimidation, involve subtle forms of pressure, this treatment of the purpose requirement has rendered the statute largely ineffective.

In our view, Section 7 of the bill, which prohibits intimidation of persons voting or attempting to vote under the bill represents a substantial improvement over 42 U.S.C. 1971(b). Violation of this section would be a felony and could result in the imposition of severe penalties which should prove a substantial deterrent to intimidation.

And under the language of Section 7, no subjective "purpose" need be shown, in either civil or criminal proceedings, in order to prove intimidation under the proposed bill. Rather, defendants would be deemed to intend the natural consequences of their acts. This represents a deliberate and, in my judgment, constructive departure from the language and construction of 42 U.S.C. 1971(b).

The bill provides that a person on an eligibility list may allege to an examiner within 24 hours after closing of the polls in an election that he was not permitted to vote, or that his vote was not counted. The examiner, if he believes the allegation well founded, would notify the United States Attorney, who may apply to the District Court for an order enjoining certification of the results of the election.

The Court would be required to issue such an order pending a hearing. If it finds the charge to be true, the Court would provide for the casting or counting of ballots and require their inclusion in the total vote before any candidate may be deemed elected.

The examiner procedure would be terminated in any county whenever the Attorney General notifies the Civil Service Commission that all persons listed have been placed on the county's registration rolls and that there is no longer reasonable cause to believe that persons will be denied the right to vote in such county on account of race or color.

The bill also contains a provision dealing with the problem of attempts by states within its scope to change present voting qualifications. No state or county for which determinations have been made under Section 3(a) will be able to enforce any law imposing qualifications or procedures for voting different from those in force on November 1, 1964, until it obtains a declaratory judgment in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the Fifteenth Amendment.

I turn now to the information we have regarding the impact of Section 3(a). Tests and devices would--according to our best present information--be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia and Alaska, 34 counties in North Carolina, and one county in Arizona. Elsewhere, the tests and devices would remain valid, and similarly, the registration system would remain exclusively in the control of state officials.

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

The latter suggestion applies as well to North Carolina, where 34 counties are reached by Section 3(a) and where, indeed, in at least one instance a federal court has acted to correct registration practices which impeded Negro registration.

In view of the premise for Section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the Fifteenth Amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in such violations--the states and counties affected by the formula in which it may be doubted that racial discrimination has been practiced--need only demonstrate in court that they are guiltless in order to lift the ban of Section 3(a) from their registration systems.

That is, Section 3(a) in reality reaches on a long-term basis only those areas where racial discrimination in voting in fact exists.

## V. THE CONSTITUTIONALITY OF THE BILL

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

Far from impinging on constitutional rights--in purpose and effect, it implements the explicit command of the Fifteenth Amendment that "the right * * * to vote shall not be denied or abridged * * * by any State on account of race [or] color." The means chosen to achieve that end are appropriate, indeed, necessary. Nothing more is required.

Let me pursue the matter a little. This is not a case where the Congress would be invoking some "inherent", but unexpressed, power. The Constitution inself expressly says, with respect to the fifteenth article of amendment: "The Congress shall have power to enforce this article by appropriate legislation." Amend, XV, §2.

Here, then, we draw on one of the powers expressly delegated by the people and by the states to the national legislature. In this instance, it is the power to eradicate color discrimination affecting the right to vote. Accordingly, as Chief Justice Marshall said in Gibbons v. Ogden, 9 Wheat 1, 196, with respect to another express power--the power to regulate interstate commerce--"[t]his power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."

That was the constitutional rule in 1824 when those words were first spoken by Chief Justice Marshall. It remains the constitutional rule today; those same words were repeated by Mr. Justice Clark for a unanimous Court just recently in sustaining the public accommodation provisions of the Civil Rights Act of 1964. See Atlanta Motel v. United States, 379 U.S. 241, 255.

This is not a case where the subject matter was exclusively reserved to another branch of government -- to the Executive or to the courts. The Fifteenth Amendment left no doubt about the propriety of legislative action. And, of course, both immediately after the passage of the Fifteenth Amendment, and more recently, the Congress has acted to implement the right. See the very comprehensive Act of May 31, 1870, 16 Stat. 140, and the voting provisions of the Civil Rights Acts of 1957, 1960 and 1964.

Some of the early laws were voided as too broad and others were later repealed. But the Supreme Court has never voided a statute limited to enforcement of the Fifteenth Amendment's prohibition against discrimination in voting. On the contrary, in the old cases of United States v. Reese,

92 U.S. 214, 218, and James v. Bowman, 190 U.S. 127, 138-139, the Supreme Court, while invalidating certain statutory provisions, expressly pointed to the power of Congress to protect the right to:

> "*** exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

And with respect to congressional elections, shortly after the adoption of the Fifteenth Amendment, the Court sustained a system of federal supervisors for registration and voting not dissimilar to the system proposed here. See Ex Parte Siebold, 100 U.S. 371; United States v. Gale, 109 U.S. 65. Constitutional assaults on the more recent legislation have been uniformly rejected. See United States v. Raines, 362 U.S. 17 (1957 Act); United States v. Thomas, 362 U.S. 58 (same); Hannah v. Larche, 363 U.S. 420 (Civil Rights Commission rules under 1957 Act); Alabama v. United States, 371 U.S. 37 (1960 Act); United States v. Mississippi, No. 73, this Term, decided March 8, 1965 (same); Louisiana v. United States, No. 67, this Term, decided March 8, 1965 (same).

This legislation has only one aim -- to effectuate at long last the promise of the Fifteenth Amendment -- that there shall be no discrimination on account of race or color with respect to the right to vote. That is the only purpose of the proposed bill. It is, therefore, truly legislation "designed to enforce" the amendment within the meaning of Section 2. To meet the test of constitutionality, it remains only to demonstrate that the means suggested are appropriate.

The relevant constitutional rule, again, was estabIsihed once and for all by Chief Justice Marshall. Speaking for the Court in McCullough v. Maryland, 4 Wheat. 316, 421, he said:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

The same rule applies to the powers conferred by the Amendments to the Constitution. In the case of Ex Parte Virginia, 100 U.S. 339, 345-346, speaking of the Fourteenth, Fifteenth and Sixteenth Amendments, the Court said:

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

See also, Everard's Breweries v. Day, 265 U.S. 545, 558-559, applying the same standard to the enforcement section of the Prohibition (Eighteenth) Amendment.

That is really the end of the matter. The means chosen are certainly not "prohibited" by the Constitution, (as I shall show in a moment) and they are -- as I have already outlined -- "appropriate" and "plainly adapted" to the end of eliminating, in large part, racial discrimination in voting. It does not matter, constitutionally, that the same result might be achieved in some other way. That has been settled since the beginning and was expressly re-affirmed very recently in the cases upholding the Civil Rights Act of 1964. See Atlanta Motel v. United States, 379 U.S. 241, 261.

All workable legislation tends to set up categories -- inevitably so. I have explained the premise for the classification made and, with some possible exceptions, as I have said, the facts support the hypothesis. But the exceptional case is provided for in Section 3(c) of the bill which I have already discussed. Given a valid factual premise -- as we have here -- it is for Congress to set the boundaries. That is essentially a legislative function which the courts do not and cannot quibble about. Cf. Boynton v. Virginia, 364 U.S. 454; Currin v. Wallace, 306 U.S. 1; United States v. Darby, 312 U.S. 100, 121. See, also, Purity Extract Co. v. Lynch, 226 U.S. 192.

The President submits the present proposal only because he deems it imperative to deal in this way with the invidious discrimination that persists despite determined efforts to eradicate the evil by other means. It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far-reaching solutions.

The Constitution, however, does not even require this much forbearance. When there is clear legislative power to act, the remedy chosen need not be absolutely necessary; it is enough if it be "appropriate." And I am certain that you all recall that the Supreme Court -- in sustaining the finding of the 88th Congress that racial discrimination by a local restaurant serving a substantial amount of out-of-state food adversely affects interstate commerce -- made it clear that so long as there is a "rational basis" for the Congressional finding, the finding itself need not be formally embodied in the statute. Katzenbach v. McClung, 379 U.S. 294, 303-305.

I turn now to the contention often heard that, whatever the power of Congress under the enforcement clause of the Fifteenth Amendment in other respects, it can never be used to infringe on the right of the states to fix qualifications for voting, at least for non-federal elections. The short answer to this argument was given most emphatically by the late Mr. Justice Frankfurter, speaking for the Court in Gomillion v. Lightfoot, 364 U.S. 339 , 347, a Fifteenth Amendment case:

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

The constitutional rule is clear: So long as state laws or practices erecting voting qualifications for non-federal elections do not run afoul of the Fourteenth or Fifteenth Amendments, they stand undisturbed. But when State power is abused--as it plainly is in the areas affected by the present bill-there is no magic in the words "voting qualification."

The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the Fifteenth Amendment. Guinn v. United States, 238 U.S. 347; Myers v. Anderson, 238 U.S. 368. Nor are only the most obvious devices reached. As the Court said in Lane v. Wilson, 307 U.S. 268, 275; "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination."

Nor do literacy tests and similar requirements enjoy special immunity. To be sure, in Lassiter v. Northampton Election Board, 360 U.S. 45, the Court found no fault with a literacy requirement, as such, but it added: "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." Id., at 53. See, also, Gray v. Sanders, 372 U.S. 368, 379.

Indeed, as the opinion in Lassiter noted, the Court had earlier affirmed a decision annulling Alabama's literacy test on the ground that it was "merely a device to make racial discrimination easy." 360 U.S. at 53. See Davis v. Schnell, 336 U.S. 933, affirming 81 F. Supp. 872. And, only the other day, the Supreme Court voided one of Louisiana's literacy tests. Louisiana v. United States, No. 67, this Term, decided March 8, 1965. See, also, United States v. Mississippi, supra.

Thus, it is clear that the Constitution will not allow racially discriminatory voting practices to stand. But it is even clearer, as we have seen, that the Constitution invites Congress not merely to stand by and watch the courts invalidate state practices but to take a positive role by outlawing the use of any practices utilized to deny rights under the Fifteenth Amendment.

This bill accepts that invitation.

One may, I suppose, grant the constitutionality of the remedy proposed in this bill, but, nevertheless, oppose it on the ground that it places the ballot in the hands of the illiterate. On this theory, the remedy for existing discrimination would be to guarantee the fair administration of literacy tests rather than to abolish them. I suggest that this alternative is unrealistic.

In fact, the majority of the states--at least thirty--find it possible to conduct their elections without any literacy test whatever. There is no evidence that the quality of government in these states falls below that of those states which impose--or purport to impose--such a requirement.

Whether there is really a valid basis for the use of literacy tests is, therefore, subject to legitimate question. But it is not for this reason that the proposed legislation seeks to abolish them in certain places.

Rather, we seek to abolish these tests because they have been used in those places as a device to discriminate against Negroes.

Highly literate Negroes have been refused the right to vote. Totally illiterate whites have been allowed to vote. In short, in these areas the literacy test is demonstrably unrelated to intellectual capability. It is directly related only to one factor: color.

It is not this bill--it is not the federal government--which undertakes to eliminate literacy as a requirement for voting in such states or counties. It is the states or counties themselves which have done so, and done so repeatedly, by registering illiterate or barely literate white persons.

The aim of this bill is, rather, to insure that the areas which have done so apply the same standard to all persons equally, to Negroes now just as to whites in the past.

It might be suggested that this kind of discrimination could be ended in a different way--by wiping the registration books clean and requiring all voters, white or Negro, to register anew under a uniformly applied literacy test.

For two reasons such an approach would not solve, but would compound our present problems.

To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes--Negroes who have for decades been systematically denied educational opportunity available to the white population.

Such an impact would produce a real Constitutional irony--that years of violation of the 14th Amendment right of equal protection through equal education would become the excuse for continuning violation of the 15th Amendment right to vote.

The result would be something chillingly close to the mechanism once confidently described by the late Senator Theodore Bilbo of Mississippi:

> "The poll tax won't keep 'em from voting. What keeps 'em from voting is Section 244 of the constitution of 1890, that Senator George wrote. It says that a man to register must be able to read and explain the constitution when read to him . . . And then Senator George wrote a constitution that damn few white men and no niggers at all can explain . . ." (See Collier's Magazine, July 6, 1946; Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946, p. 205).

The second argument against such a re-registration "solution" is even more basic--and even more ironic. Even the fair administration of a new literacy test in the relevant areas would, inevitably, disenfranchise not only many Negroes, but also thousands of illiterate whites who have voted throughout their adult lives.

Our concern today is to enlarge representative government. It is to solicit the consent of all the governed. It is to increase the number of citizens who can vote. What kind of consummate irony would it be for us to act on that concern--and in so doing to reduce the ballot, to diminish democracy?

It would not only be ironic; it would be intolerable.

## VI. CONCLUSION

I have come before you to describe the proposed Voting Rights Act of 1965, the need for this Act, and some of the questions raised about it, and to do so in considerable detail. I will be happy to respond to your questions as fully as possible. I am prepared certainly, to remain here this morning, this afternoon, this evening, tomorrow, and every day that the committee feels my presence would be helpful. This legislation must be enacted.

However detailed by presentation may be and however extensive your consideration may be, there remains, nevertheless, a single, uncomplicated and underlying truth: This legislation is not only necessary, but it is necessary now.

Democracy delayed is democracy denied.

OFFICE OF
THE ATTORNEY GENERAL

March 25, 1965

Sorry for the delay in getting this material to you.

Barbara Miles

A BILL

To enforce the Fifteenth Amendment to the Constitution of the United States

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

SEC. 2. No voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color.

SEC. 3. (a) No person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which (2) the Director of the Census determines that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percent of such persons voted in the presidential election of November 1964.

(b) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character,

or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(c) Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the petitioner nor any person acting under color of law has engaged during the ten years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this Act shall after judgment be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

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

SEC. 4. (a) Whenever the Attorney General certifies (1) that he has received complaints in writing from twenty or more residents of a political subdivision with respect to which determinations have been made under section 3(a) alleging that they have been denied the right to vote under color of law by reason of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment the appointment of examiners is otherwise necessary to enforce the guarantees of the Fifteenth Amendment, the Civil Service Commission shall appoint as many examiners in such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in federal, State, and local elections. Such appointments shall be made without regard to the Civil Service laws and the Classification Act of 1949, as amended, and may be terminated by the Commission at any time. Examiners shall be subject to the provisions of Section 9 of the Act of August 2, 1939, as amended (the Hatch Act). An examiner shall have the power to administer oaths.

(b) A determination or certification of the Attorney General or of the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register.

SEC. 5. (a) The examiners for each political subdivision shall examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote, and that, within

ninety days preceding his application, he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law: Provided, That the requirement of the latter allegation may be waived by the Attorney General.

(b) Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 6(b) shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 6(a) and shall not be the basis for a prosecution under any provision of this Act. The list shall be available for public inspection and the examiner shall certify and transmit such list, and any supplements as appropriate, each month to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State. Any person whose name appears on such a list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least 45 days prior to such election.

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

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) he has been successfully challenged in accordance with the procedure prescribed in section 6(a), or (2) he has been determined by an examiner (i) not to have voted at least once during three consecutive years while listed, or (ii) to have otherwise lost his eligibility to vote.

(e) No person 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, 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 to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 6. (a) Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if made within ten days after the challenged person is listed, and if supported by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and such challenge shall be determined within seven days after it was made. A petition for review of the decision of the hearing officer may be filed in the United States Court of Appeals for the circuit in which the person challenged

resides within fifteen days after service of such decision by mail on the moving party, but no decision of a hearing officer shall be overturned unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

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

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

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

SEC. 9. (a) 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 fined not more than $5,000, or imprisoned not more than five years, or both.

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

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

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 7 or 8 or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them to honor listings under this Act.

(e) Whenever a person alleges to an examiner within 24 hours after the closing of the polls that notwithstanding his listing under this Act he has not been permitted to vote or that his vote was not counted, the examiner shall forthwith notify the United States Attorney for the judicial district if such allegation in his opinion appears to be well founded. Upon receipt of such notification, the United States Attorney may forthwith apply to the district court for an order enjoining certification of the results of the election, and the court shall issue such an order pending a hearing to determine whether the allegations are well founded. In the event the court determines that persons who are entitled to vote under the provisions of this Act were not permitted to vote or their votes were not counted, it shall provide for the casting or counting of their ballots and require the inclusion of their votes in the total vote before any person shall be deemed to be elected by virtue of any election with respect to which an order enjoining certification of the results has been issued.

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

SEC. 10. Listing procedures shall be terminated in any political subdivision of any State whenever the Attorney General notifies the Civil Service Commission

(1) that all persons listed by the examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision.

SEC. 11. (a) All cases of civil and criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U. S. C. 1995).

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

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

(d) Any statement made to an examiner may be the basis for a prosecution under section 1001 of Title 18, United States Code.

SEC. 12. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

A BILL

To enforce the Fifteenth Amendment to the Constitution of the United States

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

SEC. 2. No voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color.

SEC. 3. (a) No person shall be denied the right to vote in any federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which (2) the Director of the Census determines that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percent of such persons voted in the presidential election of November 1964.

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

(3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(c) Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the petitioner nor any person acting under color of law has engaged during the ten years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this Act shall after judgment be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

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

SEC. 4. (a) Whenever the Attorney General certifies (1) that he has received complaints in writing from twenty or more residents of a political subdivision with respect to which determinations have been made under section 3(a) alleging that they have been denied the right to vote under color of law by reason of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment the appointment of examiners is otherwise necessary to enforce the guarantees of the Fifteenth Amendment, the Civil Service Commission shall appoint as many examiners in such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in federal, State, and local elections. Such appointments shall be made without regard to the Civil Service laws and the Classification Act of 1949, as amended, and may be terminated by the Commission at any time. Examiners shall be subject to the provisions of Section 9 of the Act of August 2, 1939, as amended (the Hatch Act). An examiner shall have the power to administer oaths.

(b) A determination or certification of the Attorney General or of the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register.

SEC. 5. (a) The examiners for each political subdivision shall examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote, and that, within

ninety days preceding his application, he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law: Provided, That the requirement of the latter allegation may be waived by the Attorney General.

(b) Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 6(b) shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 6(a) and shall not be the basis for a prosecution under any provision of this Act. The list shall be available for public inspection and the examiner shall certify and transmit such list, and any supplements as appropriate, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State. Any person whose name appears on such a list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least 45 days prior to such election.

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

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) he has been successfully challenged in accordance with the procedure prescribed in section 6(a), or (2) he has been determined by an examiner (i) not to have voted at least once during three consecutive years while listed, or (ii) to have otherwise lost his eligibility to vote.

(e) No person 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, 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 to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 6. (a) Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if made within ~~seven~~ 10 days after the challenged person is listed, and if supported by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and such challenge shall be heard and determined within 7 days. A petition for review of the decision of the hearing officer may be filed in the United States Court of Appeals for the circuit in which the person challenged

resides within fifteen days after service of such decision by mail on the moving party, but no decision of a hearing officer shall be overturned unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

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

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

SEC. 8. ~~No~~ whenever a State or political subdivision for which determinations are in effect under section 3(a) Enacts ~~shall enforce~~ any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on ~~March 15, 1965~~ NOV. 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the district court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the Fifteenth Amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

SEC. 9. (a) 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 fined not more than $5,000, or imprisoned not more than five years, or both.

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

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

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

(e) Whenever a person alleges to an examiner within 24 hours after the closing of the polls that notwithstanding his listing under this Act he has not been permitted to vote or that his vote was not counted, the examiner shall forthwith notify the United States Attorney for the judicial district if such allegation in his opinion appears to be well founded. Upon receipt of such notification, the United States Attorney may forthwith apply to the district court for an order enjoining certification of the results of the election, and the court shall issue such an order pending a hearing to determine whether the allegations are well founded. In the event the court determines that persons who are entitled to vote under the provisions of this Act were not permitted to vote or their votes were not counted, it shall provide for the casting or counting of their ballots and require the inclusion of their votes in the total vote before any person shall be deemed to be elected by virtue of any election with respect to which an order enjoining certification of the results has been issued.

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

SEC. 10. Listing procedures shall be terminated in any political subdivision of any State whenever the Attorney General notifies the Civil Service Commission

(1) that all persons listed by the examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision.

SEC. 11. (a) All cases of civil and criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

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

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

Title 18 1001 applies

SEC. 12. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

March 15, 1965

MEMORANDUM

FOR : John Stewart
FROM : The Vice President

Be sure you keep copies of the President's press conferences on Selma. You may want to mark up the key portions and pertinent comments for our general guidance.

# Text of President Johnson's Statement on Selma

*Following is the text of President Johnson's statement and a partial transcript of his news conference yesterday:*

**The President:** Good afternoon, ladies and gentlemen.

This March week has brought a very deep and painful challenge to the unending search for American freedom. That challenge is not yet over, but before it is ended, every resource of this Government will be directed to insuring justice for all men of all races, in Alabama and everywhere in this land. That is the meaning of the oath that I swore before Almighty God when I took the office of the Presidency. That is what I believe in with all of my heart. That is what the people of this country demand.

Last Sunday a group of Negro Americans in Selma, Alabama, attempted peacefully to protest the denial of the most basic political right of all—the right to vote. They were attacked and some were brutally beaten. From that moment until this, we have acted effectively to protect the constitutional rights of the citizens of Selma, and to prevent further violence and lawlessness in this country wherever it occurred. More than 70 United States Government officials, including FBI agents, including Justice Department lawyers, Governor Collins, the Assistant Attorney General, Mr. John Doar, whom I asked to go to Selma, have been continuously present in Selma. They have all been working to keep the peace and to enforce the law.

At all times the full power of the Federal Government has been ready to protect the people of Selma against further lawlessness, but the final answer to this problem will be found not in armed confrontation, but in the process of law. We have acted to bring this conflict from the streets to the court room. Your Government, at my direction, asked the Federal Court in Alabama to order the law officials of Alabama not to interfere with American citizens who are peacefully demonstrating for their constitutional rights. When the court has made its order, it must be obeyed.

## No Repetition

and powerful government to this task. We ask that all of our citizens unite in this hour of trial. We will not be moved by anyone or anything from the path of justice, and in this task we will seek the help of the Divine Power which surpasses the petty barriers between man and man, and people and people. Under His guidance, we can seek the biblical promise: "I shall light a candle of understanding in thine heart which shall not be put out." And we will follow that light until all of us have bowed to that command: Let there be no strife between me and thee, for we be brethren.

I met today with Governor Wallace of Alabama to discuss very thoroughly the situation that exists in that state. The Governor expressed his concern that the demonstrations which have taken place are a threat to the peace and security of the people of Alabama. I expressed my own concern about the need for remedying those grievances which led to the demonstrations by people who feel their rights have been denied. I said that those Negro citizens of Alabama who have systematically been denied the right to register and to participate in the choice of those who govern them should be provided the opportunity of directing national attention to their plight. They feel that they are being denied a very precious right, and I understand their concern. In his telegram last night to me, Governor Wallace expressed his belief that all eligible citizens are entitled to exercise their right to vote. He repeated that belief today, and he stated that he is against any discrimination in that regard. I am firmly convinced, as I said to the Governor a few moments ago, that when all of the eligible Negroes of Alabama have been registered, the economic and the social injustices they have experienced throughout will be righted, and the demonstrations I believe will stop. I advised the Governor of my intention to press with all the vigor at my command to assure that every citizen of this country is given the right to participate in his government at every level through the complete voting process.

## Suggests Actions

some of your suggestions, to solve this violence there?

The President: I will have to let the governor speak for himself. He is going to appear tomorrow. We spoke very frankly, and very forthrightly, and we exchanged views, and we are not in agreement on a good many things. I am hopeful that the visit will be helpful and I did my best to make my viewpoint clear.

Question: Mr. President, I was going to ask how the governor reacted.

The President: The governor had his share of the conversation. He told me of the problems that he had in Alabama, the fears that he entertained and he expressed the hope that I could do something to help bring the demonstrations to an end.

I told him very frankly that I thought our problem, which I had been working on for several weeks now, was to face up to the cause of the demonstrations and remove the cause of the demonstrations, and that I hoped if he would give assurance that people would be protected in their demonstrations in Alabama, he would give assurance that he would try to improve the voting situation in Alabama — if I do submit my message to the Congress and get prompt action on it — that would insure the right of the people of Alabama to vote, that I thought that we could improve the demonstration situation.

Question: Mr. President, a two-part question on the same subject.

Can you tell us what your thinking is if Gov. Wallace would not accept any or all of your suggestions, and, secondly, in the accounting from Montgomery that he had asked to see you, he indicated that he was concerned about a threat throughout the country. Do you share that concern?

The President: I am deeply concerned that our citizens anywhere should be discriminated against and should be denied their constitutional rights. I have plotted my course. I have stated my views. I have made clear whether the governor agrees or not that law and order will prevail in Alabama, that people will be—their rights to peacefully assemble will be preserved and that their constitutional rights will be protected.

## Given Encouragement

Question: Mr. President, some of the clergymen who came out yesterday reported that you had detected a resurgence among moderates — a resurgence among the whites in the South. Can you tell us what evidence you have seen of that and perhaps anything that is being done to encourage it?

The President: The presence of a good many people from the South in Selma, the presence of some of the ministers from the South here, the messages that I have received from the citizens of that area, the support that the businessmen and the clergy and the labor people have given the Civil Rights Act and its enforcement, have all given me strength and encouragement.

Question: Mr. President, to turn to the other problem that has occupied so much of your hours in Viet Nam, about five weeks ago, when you felt it necessary to give an order that our wives and children of our men in Viet Nam be withdrawn, a high officer said to me, "Give us a year and they will be back." I have two questions:

First, would you like to see the wives and children of our civilian and military officers in Viet Nam go back; and secondly, do you think that a year is a good prognostication?

The President: No, I do not think that I can be much of a prophet in either respect. First, I do not think that Saigon is the place for our wives and children of our military people at the moment, or else I wouldn't ask for them to come out. If the situation changes, and conditions are different, I will pass on them in the light of those changes. I think that anyone that makes a prophecy now as to what the situation will be a year from now would have to be a big guesser.

## Difficult Situation

Question: Mr. President, in the last five weeks the American participation in the situation in South Viet Nam has undergone certain changes. Could you give us your view of any benefits that have accrued to us, or your view of the situation over the past five weeks in South Viet Nam?

The President: I think we have a very difficult situation there as a result of the instability of the governments and the frequent changes of them. I would not say it has improved in the last five weeks. I would say that our policy there is the policy that was established by President Eisenhower, as I have stated, since I have been president, 46 different times, the policy carried on by President Kennedy, and the policy that we are now carrying on.

I have stated it as recently as Feb. 17 in some details, and prior to that, in my last press conference, on Feb. 4. Although the incidents have changed, in some instances the equipment has changed, in some instances the tactics and perhaps the strategy, in a decision or two, has changed.

Our policy is still the same, and that is to any armed attack our forces will reply. To any in Southeast Asia who ask our help in defending their freedom, we are going to give it, and that means we are going to continue to give it. In that region, there is nothing that we covet, there is nothing we seek, there is no territory or no military position or no political ambition. Our one desire and our one determination is that the people of Southeast Asia be left in peace to work out their own destinies in their own way.

## Troops Ready

Question: Mr. President, there was a report published this morning that some federal troops had already been alerted at your direction for a possible move into Alabama. Will you confirm this report?

The President: I would say that the FBI officials, the marshals in the general area, the United States forces, including the armed forces, were ready to carry out any instructions that the President gave them, and the President was prepared to give them any instructions that were necessary and justified and wise.

Question: Mr. President, I wonder if you could tell us your reaction to the pressures that have been mounting around the world for you to negotiate the situation in Viet Nam. Could you explain to us under what conditions you might be willing to negotiate a settlement there?

The President: Well, since the Geneva conference of 1962, as has been stated before, the United States has been in rather active and continuous consultation. We have talked to other governments about the great danger that we could foresee in this aggression in Southeast Asia. We have discussed it in the United Nations. We have discussed it in NATO (the North Atlantic Treaty Organization). We have discussed it in the SEATO (Southeast Asia Treaty Organization) councils. On innumerable occasions we have discussed it directly through diplomatic channels. We have had direct discussions with almost every signatory of the 1954 and 1962 pacts.

We have not had any indication, and as the secretary of state said the other day, what is still missing is any indication — any indication — from anyone — that Hanoi is prepared or willing or ready to stop doing what it is doing against its neighbors. I think that the absence of this crucial element affects the current discussion of negotiation. A great friend of mine who had great responsibilities for a long period of military and executive life in our government said to me the oth-

See TRANSCRIPT, Page A-14



## No Repetition

The events of last Sunday cannot and will not be repeated, but the demonstrations in Selma have a much larger meaning. They are a protest against a deep and very unjust flaw in American democracy itself. Ninety five years ago our Constitution was amended to require that no American be denied the right to vote because of race, or color. Almost a century later, Americans are kept from voting simply because they are Negroes. Therefore, this Monday I will send to the Congress a request for legislation to carry out the amendment of the Constitution. Wherever there is discrimination, this law will strike down all restrictions used to deny the people the right to vote. It will establish a simple, uniform standard which cannot be used however ingenuous the effort to flaunt our Constitution. If State officials refuse to cooperate, then citizens will be registered by Federal officials. This law is not an effort to punish or coerce anyone. Its object is one which no American in his heart can truly reject. It is to give all our people the right to choose their leaders; to deny this right, I think, is to deny democracy itself. What happened in Selma was an American tragedy. The blows that were received, the blood that was shed, the life of the good man that was lost, must strengthen the determination of each of us to bring full and equal and exact justice to all of our people.

This is not just the policy of your Government or your President. It is in the heart and the purpose and the meaning of America itself. We all know how complex and how difficult it is to bring about basic social change in a democracy, but this complexity must not obscure the clear and simple moral issues.

It is wrong to do violence to peaceful citizens in the streets of their town. It is wrong to deny Americans the right to vote. It is wrong to deny any person full equality because of the color of his skin. The promise of America is a simple promise: Every person shall share in the blessings of this land, and they shall share on the basis of their merits as a person. They shall not be judged by their color or by their beliefs, or by their religion, or by where they were born, or the neighborhood in which they live.

## Bigger Opportunity

All my life I have seen America move closer toward that goal, and every step of the way has brought enlarged opportunity and more happiness for all of our people. Those who do injustice are as surely the victims of their own acts as the people that they wrong. They scar their own lives and they scar the communities in which they live. By turning from hatred to understanding they can insure a richer and fuller life for themselves, as well as for their fellows. For if we put aside disorder and violence, if we put aside hatred and lawlessness, we can provide for all our people great opportunity almost beyond our imagination.

We will continue this battle of human dignity. We will apply all the resources of this great process.

## Suggests Actions

The Governor's expressed interest in law and order met with a warm response. We are a Nation that is governed by laws, and our procedure for enacting and amending and repealing these laws must prevail. I told the Governor that we believe in maintaining law and order in every county and in every precinct in this land. If State and local authorities are unable to function, the Federal Government will completely meet its responsibilities.

I told the Government that the brutality in Selma last Sunday just must not be repeated. He agreed that he abhorred brutality and regretted any instance in which any American citizen met with violence. As the Governor had indicated his desire to take actions to remedy the existing situation in Alabama, which caused people to demonstrate, I respectfully suggested to him that he consider the following actions which I believed and the Attorney General and others familiar with the matter, and associated with me believed, would be highly constructive at this stage of the game.

First, I urged that the Governor publicly declare his support for universal suffrage in the State of Alabama, and the United States of America.

Second, I urged him to assure that the right of peaceful assembly will be permitted in Alabama so long as law and order is maintained.

Third, I expressed the hope that the Governor would call a bi-racial meeting when he returns to Alabama, to seek greater cooperation and to ask for greater unity among Americans of both races.

I asked the Governor for his cooperation and I expressed my appreciation for his coming to Washington to discuss this problem.

Question: Mr. President, against the background of what you said, and aside from the situation in Selma, I wonder if you could tell us your general philosophy, your belief in how demonstrators in other parts of the country should conduct themselves? For example, how do you feel about the demonstrations that are going on outside of the White House right now, or in other parts or other cities of the United States and in front of federal buildings?

The President: I tried to cover that in my statement, but I believe in the right of peaceful assembling. I believe that people have the right to demonstrate. I think you must be concerned with the rights of others, and I do not think a person as has been said, has the right to holler fire in a crowded theater. But I think that people should have the right to peacefully assemble and to demonstrate their views and to do anything they can to bring those views to the attention of people, provided they do not violate laws themselves and provided they conduct themselves as they should.

## Meeting Is Forthright

Question: Mr. President, did Gov. Wallace indicate, sir, at all, an area of understanding and cooperation, except answer

# *Appalachia, Education Bills Start Rolling In House, With Clear Road Sighted Ahead*

March?

*By a* WALL STREET JOURNAL *Staff Reporter*

WASHINGTON—Two big chunks of Johnson Administration uplift legislation have started rolling in the House, and no barriers are in sight to stop either.

Both the Administration's $1.1 billion five-year plan for aiding Appalachia and its $1.2 billion first-year instalment toward improving elementary and secondary schools in deprived areas cleared House subcommittees Friday with solid Democratic backing.

The full House Public Works Committee appears set to pass the Appalachia aid bill tomorrow, and House floor action is tentatively slated for the last week of this month.

The education measure may take a somewhat slower routing, with full committee action unlikely before next week at the earliest. But the House Democratic leadership has high hopes of bringing it to a floor vote by the end of March and, despite a long history of school bill failures on the floor, talks confidently of success.

**Appalachian Bill**

House Republicans, true to their promise, presented a "constructive alternative" to the Appalachia aid plan and, true to their expectations, got nowhere. After completion of three days of Appalachia hearings Friday morning, Democrats on the special subcommittee considering the program paused only for lunch before adopting the Administration's version to the exclusion of GOP substitutes.

The House panel followed line for line the legislative language approved by the Senate last week. Of the $1.1 billion authorized under the Appalachia aid bill, $840 million would go to pay up to 70% of the cost of a 3,350-mile highway network through currently inaccessible mountain sections of 11 Appalachian states. The road money, supplementing funds already flowing into the region under existing Federal highway aid programs, is designed to promote tourism and attract industry.

Actually, the $1.1 billion price tag on the current legislation doesn't cover all anticipated Appalachia outlays. The highway funds are supposed to stretch over the full five-year life of the program, but the balance of the money will cover other projects in only the first few years. Administration projections call for the ultimate infusion of about $2 billion to help the ailing region.

Republicans sought to extend the program's benefit to other distressed regions and were willing to boost the total pricetag to accomplish this objective. A GOP substitute, sponsored by Rep. Cramer of Florida with the blessing of House Minority Leader Ford of Michigan, provided for outlays of $995 million in the first two years alone.

**Education Measure**

The $1.2 billion elementary and secondary school assistance measure sailed through an education subcommittee of the House Labor Committee by a 6-to-0 vote. Three Republican panelists stayed away to protest what they said was "hasty and superficial" consideration of the bill and to avoid being counted.

Though united in their support of the legislation, Democratic panel members are in considerable disagreement about what sort of school support it provides.

Lawmakers from heavily Protestant districts in the South and West emphasize provisions stating that "control of funds and title to property" provided under the bill shall rest with local public school authorities. Easterners with big Roman Catholic constituencies dwell on a directive to public school officials to provide "special education services and arrangements" to help parochial school students.

Thus, to Brooklyn's Democratic Rep. Carey, a provision for "mobile educational services and equipment" sanctions such projects as assigning public school teachers part time to parochial schools and equipping those schools with science and language laboratory gear on a "lending library" basis.

To such public school men as the subcommittee chairman, Rep. Perkins (D., Ky.), on the other hand, "mobile" means mobile and only covers such endeavors as sending a remedial reading laboratory around on wheels to private school parking lots.

**Local Interpretations**

Their disagreement is probably more apparent than real in that each will probably get the sort of projects he has in mind for his home district. The legislation puts a premium on local initiative—and ingenuity—in determining special education services to help deprived children.

Of the $1.2 billion authorized for the Government's fiscal year beginning next July 1, the biggest part, about $1 billion, is earmarked for school districts with a heavy enrolment from families earning less than $2,000 a year. The Federal Government could pay up to 30% of such a school district's operating expenses. In addition, special incentive payments are provided for districts that boost their own school budgets 5% a year.

Republicans have yet to crystalize their approach to the legislation or to a separate $250 million aid-to-higher-education bill currently in the hearing stage in both the House and Senate. Hearings on the elementary and secondary school bill are also still under way in the Senate.

Two important votes will be taken by the House this week. A vote is likely today on whether the House should stand fast on its ban on shipments of $37 million in surplus food to the United Arab Republic. The Senate last week softened the House's anti-Nasser amendment to an Agriculture Department money bill by agreeing to leave it up to President Johnson to decide whether the food should be shipped.

**Vote on Gold Backing Expected**

Later in the week, the House is expected to vote on the Administration's proposal to repeal the rule requiring 25% gold backing for bank deposits held in Federal Reserve Banks. The measure, which has considerable bipartisan support, would release about $5 billion of the nation's gold stock for use in defense of the international value of the dollar. The Senate Banking Committee plans to wind up its hearings on an identical measure this week.

Congressional critics of Currency Comptroller James Saxon plan to question him about recent bank failures and a new outbreak of feuding with other Federal bank supervisory officials at a hearing before the House Banking Committee on Wednesday. Committee Chairman Patman (D., Texas) had scheduled such a "get-acquainted" session some time ago, but the hearing will be Mr. Saxon's first public appearance on Capitol Hill since the controversy over bank failures erupted. Treasury Secretary Dillon will appear before the banking panel tomorrow.

The House Ways and Means Committee, meanwhile, will continue its deliberations on the Administration's proposal for Social Security-financed hospital care for the elderly. Committee Chairman Mills (D., Ark.) decided early in the session not to hold public hearings on the proposals. As it's turning out, the committee actually has been taking testimony from a parade of witnesses, though the "hearings" are being held behind closed doors. Spokesmen for the American Medical Association are scheduled to testify today, following earlier appearances by representatives of insurance and hospital groups. The committee's hearings are expected to be concluded this week, permitting the panel to get down to some serious drafting after members return from the Lincoln's Birthday Congressional recess.

**MEMORANDUM**
March 15 1965

TO: THE VICE PRESIDENT

cc: Bill Connell
John Stewart

FROM: Ronald Stinnett

RE: March 15th Report on the Status of the President's Legislative Program

Pursuant to your request for a detailed report on the status of the President's legislative program for March 15th, I submit the following pages.

With the exceptions duly noted in the body of the report, I concerned myself only with those bills recognized as part of the President's program.

After two summary pages of bills which have become law, bills which have passed the Senate but not the House, bills which have passed the House but not the Senate, bills presently on the House and Senate Calendars, I give a detailed account of where the rest of the President's program is, how it is doing, what are the prospects, and when action will be taken. This is entitled "THE PRESIDENT'S PROGRAM IN THE COMMITTEES."

The information was obtained from talks with committee chairmen, staff counsel and directors, Members of Congress and the Senate, newsmen and from printed reports.

I am not sure whether you wanted to send this report to the President or not. I am drafting a suggested memorandum in case you do want to send it.

In accordance with your other suggestions, we now have a list of all liaison personnel from each department with their business and home addresses and phone numbers. We also have a list of all the staff and their numbers on each committee in the House and Senate.

I will talk to Bill Connell this week to set up a reception for the Staff Directors in the House and Senate. We will do this on two occasions -- one for the House, and one for the Senate.

THE VICE PRESIDENT'S LEGISLATIVE REPORT

Monday, March 15, 1965

Bills in the President's Program which have become laws:

1. Agricultural Supplemental
2. Aid to Appalachia
3. Gold Cover Bill
4. Inter-American Development Bank
5. Disarmament Act Authorization--H.R. 2998 (now in conference)

Bills in the President's Program which have passed the Senate but not the House:

1. S.J. Res. 1--Presidential Inability--passed on February 19.
2. S. 4--Water Pollution Control--passed January 28.
3. S. 21--River Basin Planning--passed on February 25.
4. S. 28--Stockpile Management and Disposal--passed February 9.
5. S. 491--Bighorn Canyon Park--passed the Senate February 10
6. S. 507--V.A. Distressed Home Owners' Relief--passed on January 27.
7. S. 510--Community Health Services Extension--passed on March 11.

8. S. 701--Coffee Agreement Implementation--passed on February 1

Bills in the President's Program which have passed the House but not the Senate:

1. H.R. 2--Drug Abuse Control--passed on March 10.

Bills in the President's Program presently on the Senate Calendar:

1. Manpower Training Act Amendments--S. 974--slated for Senate floor action March 15.

Bills in the President's Program on the House Calendar:

1. H.R. 1111--River Basin Planning.

2. H.R. 2362--Elementary and Secondary Education Bill (in Rules Committee, meeting on Tuesday, March 16).

3. H.R. 4185--Patent Fee Increase--House floor action on Tuesday, March 16.

4. H.R. 4257--Manpower Training Act Amendments.

5. H.R. 4527--Coast Guard Authorization--House floor action on Tuesday, March 16.

## THE PRESIDENT'S PROGRAM IN THE COMMITTEES

### Major Legislation:

Elementary and Secondary Education Bill--

The report on the Education Bill has been filed, and the bill now rests in the Rules Committee of the House.

Congressman Perkins filed the Resolution for consideration of the bill, invoking the 21-day rule. This was done last Thursday, March 11. This was House Resolution 274.

April 12 is the first day the bill can be called to the floor since it must be done on Motion day. This is the Monday before Easter. The bill would be taken up immediately and discussed, and could be passed on the Wednesday or Thursday, April 14 or 15 before the break for Easter.

The Rules Committee is supposed to be taking up the Education Bill this Tuesday, March 16. Our report shows that we have the votes in the Committee to get the Education Bill out of Rules, but Chairman Smith is not friendly toward the bill. However, he has said that he will not obstruct the bill. Therefore, the bill could be taken up much sooner, possibly during the week of March 22. Nobody seems to know for sure just what particular amount of time the Rules Committee will spend on the bill.

THE Medicare Bill--

A consensus was reached in the Ways and Means Committee to include some of the Republican proposals in the Administration's Medicare Bill. The draft of a new bill was drawn up on Thursday, March 11.

No votes in the Committee have been taken yet, and all of next week will be devoted to voting in the Committee

on the bill.

The new bill will probably be introduced about a week from Tuesday, March 23.

The report of the Committee on the bill will probably be around March 28 or 29.

It appears now that at least two days of debate will be asked on the bill, thus making passage of the bill somewhere around the first week in April.

Agriculture--

S. 821 and H.R. 4532--the Tobacco Acreage, Poundage, and Marketing Quotas Bill, are moving along rapidly in both the Senate and the House. The Senate Committee has held hearings and meets in Executive Session today, and Monday, March 15.

The House Committee has reported the bill--last week--and will be brought up in Rules in Tuesday, March 16. There is a possibility that the Tobacco Bill can be brought up in the House next week. There should be no problem in getting the bill out of the Committee.

H.R. 2469, the Insured Farm Ownership Loan Authorization, was reported last week and is up on suspension of the rules in the House on Monday. There has been no movement of this bill in the Senate yet.

The big Omnibus Farm Bill may come from down town next week on Wednesday or Thursday, according to the House Agriculture Committee. The bill is still in the Bureau of the Budget. This bill would deal with acreage allotment transfers, cropland adjustment program, food

stockpile, and would expand an improved program for wheat, feed grains, cotton, wool, and rice.

The following farm bills have not been drafted or have not been sent to the committees yet:

1. The Agricultural Trade Development Act, a modification.

2. Commodity Exchange Regulations.

3. The Omnibus Farm Bill.

4. Pesticide Control.

5. Create a revolving fund in the REA.

6. Meat and Poultry Inspection, Users' charges.

All of these farm suggestions made by the President have not been sent to committee yet.

Appropriations:

The Agricultural Supplemental Appropriations has been passed and is now law.

The House Appropriations Committee is about a week ahead of last year's program.

The schedule for reporting bills and floor action in the House Committee on Appropriations is:

| Subcommittee | Report On | Floor Action[1] |
|---|---|---|
| District of Col. | Thur., Mar. 18 | Tues., Mar. 23 |
| Interior | Thur., Mar. 25 | Tues., Mar. 30 |

| | | |
|---|---|---|
| Treasury - P.O. | Thur., Apr. 1 | Tues., Apr. 6 |
| Supplemental | Fri., Apr. 2 | Wed., Apr. 7 |
| (Easter is April 18) | | |
| Labor - HEW | Thur., Apr. 29 | Tues., May 4 |
| Independent Offices | Thur., May 6 | Tues., May 11 |
| Defense | Thur., May 13 | Tues., May 18 |
| Agriculture | Thur., May 20 | Tues., May 25 |
| Legislative | Thur., May 20 | Wed., May 26 |
| State, Justice, Comm. & Jud'y. | Thur., May 27 | Tues., June 1 |
| Military Construction | Thur., June 3 | Tues., June 8 |
| Public Works | Thur., June 10 | Tues., June 15 |
| Foreign Operations | Thur., June 17 | Tues., June 22 |

[1] Floor action may vary a day or two depending on the over-all legislative program.

Action:

It is important that the House Appropriations Committee get the Supplemental Bill reported and passed before Easter for a number of reasons. The Budget Bureau estimates aren't up here yet, and they should get to the House committee this week. It is reported that the Appalachia and Northwest Flood Damage are holding up the bill. It seems that there has been plenty of time to take these matters into account. If we wait another full week before voting on the Supplemental Bill, it may be too late to get the bill reported and on the floor before Easter.

The Senate Appropriations Committee has already started hearings on agriculture, defense, labor, HEW, Treasury, and the Post Office. The Senate hearings on the Interior were concluded on March 10.

The House Appropriations Committee is moving along very well.

Armed Services:

The few major bills in the Armed Services each year are the Military Authorization for Procurement and Military Construction.

H.R. 4016 and S. 800, the Military Authorization Bill, is now before the full House Armed Services Committee. A report is expected on March 22. Floor action should come around April 1.

The Senate started hearings February 24.

H.R. 5885, the Military Construction Authorization will be taken up around March 22. It will take the House Armed Services Committee about two or three weeks on this bill in committee. The bill has not been sent to the Senate yet.

S. 28, the Stockpile Management and Disposal Bill, has passed the Senate and awaiting House action.

The bill to increase the size of the joint staff is still being drafted and has not been sent to the Hill yet.

The above are the bills in the President's program. The House Armed Services Committee has also passed the following bills, not specifically stipulated in the President's program:

1. H.R. 3043, the evacuation of dependents.

2. H.R. 1496, zinc disposal (this passed the Senate Friday, March 12, with a committee amendment in the nature of a substitute which authorizes the release from the national stockpile or certain amounts of zinc, lead, and copper.

3. H.R. 1658, lead disposal.

These three measures have passed the House.

Banking:
Gold cover has already become law.

S. 507, the V.A. Distressed Home Owners' Bill, passed the Senate on January 27 and is before the House Veterans' Affairs Committee.

S. 1354, the Omnibus Housing Bill, has just been introduced in the Senate with no action yet. The Banking and Currency Committee in the House expects to have the Housing Bill soon and put before the Housing Subcommittee during the week of March 22.

The Truth in Lending Bill, H.R. 1111, has been introduced in the House but will not be acted upon by the House Banking and Currency Committee until the Senate has done something with it. There is no need for the House to take up the bill until the problems in the Senate are resolved. There has been no action in the Senate on this bill yet.

Hearings will begin March 22 on the International Monetary Fund Bill, to increase subscription.

S. 1332, the Export Control Expension, was introduced in the Senate, but no action has been taken yet.

The ARA amendments have not been drafted and sent to the Hill yet.

Other action in the House Banking and Currency Committee includes the closing of hearings on H.R. 5306, the bill concerning foreign governments and interest rates. The bill should come out of the committee next week (week of March 15).

The House Banking and Currency Committee is just beginning to organize its subcommittees. It just received its money yesterday (March 11).

Commerce:

H.R. 4527, Coast Guard authorization, is up for floor action tomomow, Tuesday, March 16th. The Senate bill, S. 1053, started hearings on March 5th.

Truth in packaging, S. 985, has been introduced in the Senate but no action has been taken yet. The corresponding bill in the House, H.R. 1664, has been referred to the House Judiciary Cpmmittee. No action has been taken there either.

H.R. 5863, the high speed ground transport bill, is in the House Interstate and Foreign Commerce Committee.

No bills have been drafted or sent to the Hill on the maritime policy revision and on the transportation policy revision.

These are the bills in the Commerce Committee which are in the President's program. Other action, especially on the House Interstate and Foreign Commerce Committee, include:

1. Hearings have been closed on H.R. 2984-87, four bills which came up from HEW. The Intesstate and Foreign Commerce are now meeting in executive sessions on the bills. These bills should come sometime during the week of March 29th. The only bill among these which may present a little problem is H.R. 2984 which includes the patent part of the bill like Senator Long's amendment on patents. Otherwise, there should be no problem here.

2. Six or seven bills on rail or motor transportation will be taken up beginning the week of March 22nd. The definite bills to be taken up have not been determined yet, although the non-controversial bills will most likely be the ones taken up first. (This is on the House side.)

3. Other bills to be taken up by the House Interstate and Foreign Commerce Committee in the future deal with communications, twenty recommendations in the power field, weather bureau (smog, afterburners),

There should not be too much in this session on the securities and exchange field.

District of Columbia:

Home Rule, S. 1118 and H.R. 4644, is still in the committee on each side. The hearings on the Senate side were concluded on March 10th. The House has not done anything on this yet.

The House committee has been holding hearings on rapid transit and will continue with hearings on Thursday, March 18th. The rapid transit bill, S. 1117 and H.R. 4822, will present many problems before it is passed. The Senate has done nothing with this yet.

H.R. 560, the federal payment and loan authorization amendments, has been referred to a subcommittee on the House side. No action has been taken on this yet.

Several other items included in the President's messages and in the President's program have not been drafted or have not been sent to the Hill. These include:

1. Higher education -- two colleges.
2. Highway construction, loan authorization incfease; gas tax and certain other tax increases.
3. Pennsylvania Avenue rehabilitation authorization.
4. Public safety.

The House D.C. Committee expects to bring out its crime bill, H.R. 5688, on March 22nd or thereabouts. It passed by a margin of two to one before, and it appears this will happen again.

A bill will be coming up soon in the House D.C. Committee which deals with approximately 100 unauthroized expenditures which have been made over a number of years. The material on this is needed from downtown. The Committee hopes to get this bill soon so that it can take up these unauhhorized expenditures.

Finance:

For a report on S. 1 and H.R. 1, the medicare bill, see the beginning of this section on committee activity. The Senate will not act on the bill until the House does. The House Ways and Means Committee will conclude its exectitive meetings probably sometime next week.

The coffee agreement, S. 701, has already passed the Senate and is in the House Ways and Means Committee. No action has been taken there because of the time spent on the medicare bill.

H.R. 4750, the interest equalization tax, to extend and to broaden, has been sent to the House Ways and Means Committee. No action has been taken on this yet.

Other items in the President's program on which drafts have not been made or have not been sent to the Hill are:

1. Debt ceiling increase.
2. The extension of duty free limitations.
3. Excise taxes repeal.
4. Investment tax for less developed countries.
5. Tax exempt charitable foundations (new restrictions
6. Unemployment insurance improvements.
7. User charges for airways, highways, and waterways.

Foreign Affairs:

H.R. 45, the bill on the Inter-American Development Bank, has passed both the House and the Senate and is now public law.

H.R. 2998, on Disarmament Act authorizations, has passed the House and the Senate and is now in Conference. There should be some action on this during the coming week.

S. 1367, the foriegn aid authorization, is moving on both sides of the Hill. The House hearings started on February 4, and the Senate started hearings last week on March 9th. Although the foreign aid bill has been split into two separate sections, the economic and the military, on the Senate side, there is no chance that this will

happen on the House side.We will probably have to bring the House bill to the Senate and offer a substitute bill from the two parts in the Senate. There will be a great deal of difficulty on the Senate side with this bill. There are many indications that this is the case.

The Vice President, some members of his staff, and the liaison people on foreign aid are meeting informally this Thursday, March 18th. This is for the purpose of having an informal discussion of the foreign aid bill.

The bill to implement the agreement with Canada on auto parts is in subcommittee, and hearings began on February 10 Although this is not a definite part of the President's program, it is in accord with the program.

S. 1368, the Peace Corps authorization of $125.2 million dollars has been introduced in the Senate, but no action has been taken yet.

The draft on the International Monetary Fund quota increase has not been introduced in the House or Senate yet. It should be coming from downtown shortly.

H. Con. Res. 285 on the showing of the USIA Kennedy film should come up sometime this week or next. A ruling from the Rules Committee was asked today, March 12. It appears that this resolution will pass, although there are some "hookers" to watch. This is not a part of the President's program, but it is of interest to us.

Government Operations:

S. 1135 and H.R. 4623, the bill to give the President permanent reorganization authority, is being worked on in both the Senate and the House. The Senate Government Operations Committee is holding hearings on March 22nd. The House committee was sent the bill after action by a subcommittee on March 3rd. The full committee will consider it on Wednesday, March 17th. There seem to be no problems in getting the bill out of the full Committee next week. It is expected, however, that the minority will put up opposition.

Although H.R. 4845, the automatic data processing bill of Congressman Brooks, is not a part of the President's program, hearings will begin on it on March 23rd. This bill passed the House last year, but not the Senate. This may still be the case.

H.R. 5012-5021 and S. 1160, bills authorizing federal agencies and offices to withhold information, although not part of the President's program, will be heard on March 30th-April 2nd on the House side.

S. 1045, the bill to establish the Department of Housing and Urban Development, has been introduced in the Senate. The House is still waiting for a communication from the President before appearing in that body.

Interior and Insular Affairs:

S. 491, Bighorn Canyon National Recreation Area in Montana and Wyoming, passed the Senate on February 10th. This has not been acted on in the House yet.

The House Committee on Interior and Insular Affairs gives priority to three major bills in the National Park System: Tocks Island, Whiskeytown National Recreation Area in California, Assateague Island National Seashore.

The Senate committee held hearings on the Assateague Island National Seashore last week on March 17-19th. The House has not taken any action on this yet, and evaluates the bill as controversial.

There seems to be favorable reaction to the Whiskeytown bill since it was left over from last year.

The House committee concluded its hearings on Tocks Island on March 1st. These are bills H.R. 89, 542, 888, 5169. There will be additional hearings in the fieldon April 22nd and 23rd.

Final passage of these three major interior items seems to be all right with the expectation of a few problems on the Assateague Island bill.

S. 360, the Indiana Dunes, was brought up in the Senate for hearings on February 8th. It is now ready for full committee consideration. The House bill, H.R. 51, is in the House committee but nothing is scheduled on it yet.

S. 22, Water Research Act amendments, was heard with hearings concluding on March 3rd. The subcommittee meets in executive session on Tuesday, March 16th. There seems to be no great hurry in scheduling this bill in the House committee since this was a bill which went to conference last year because of a difference between the Senate and the House versions on a title which the House deleted but the Senate kept in. There is a feeling on the House side that the Department of the Interior has not made a good case for including this title, and the bill may have some trouble.

S. 21 and H.R. 1111, River Basin Planning authorization, are moving on both sides of the Hill. The Senate bill passed the Senate on February 25th. The House committee expects to file the bill on Monday, and it should come up within two or three weeks. There seem to be no problems with the bill.

S. 1446, the National Wild River system, has been introduced in the Senate.

Bills in the President's program which have not been drafted or which have not been sent to the Hill include:

1. A bill to create revolving funds for Bonneville, Southeastern and Southwestern power.
2. A bill on research and development of saline water. This whole saline question may represent some problems.

Although not part of the President's program, the Oregon Dunes project is to be resolved between Congressman Duncan and Senator Morse.

Another bill not included in the President's program, but very important, is H.R. 5269 which provides policies and procedures to be followed in recreation development in water projects. The House Interior Committee is working very closely with the Public Works Committee on thisbill. The bill should be approved and reported sometime next week. After this, the following water projects can then be considered:

1. The Garrison Diversion Project in North Dakota. (Maybe this is the bargaining point for Burdick's vote on foreign aid -- if we need it.)
2. The Auburn-Folsom South Project in California.
3. The Lower Colorado River Basin Project.

The Garrison Diversion Project will come in full committee for hearings on March 25th. There is only one problem in this bill, and that is the provision indicating that the interest rate for past investments for the Corps of Engineers in power at 2⅜% instead of 3% as has been the case. This may mean a possible increase in the power rate in the Missouri Basin if this part of the bill is defeated.

The Auburn-Folsom South Project will have its hearings on March 29th-30th. It will take a week or two for the hearings.

Atomic Energy:

S. 700 and H.R. 3597, on the Atomic Energy authorization, is moving along very well. Hearings started on January 27th.

Judiciary:

S. 730 and H.R. 4185, dealing with patent fee increases, are moving well in the House and the Senate. The Senate subcommittee started hearings on March 3rd, and the House brings the bill up for floor action this Tuesday, March 16th.

S.J. Res. 1 and H.J. Res. 1, the bill dealing with Presidential inability, has passed the Senate. The House Judiciary committee concluded its hearings on the bill on February 17th. The committee meets in executive session on Tuesday, March 16th. This bill should be moving out of committee and onto the floor very soon. Markup of the bill comes this week with a possible report of the bill by Wednesday, March 17th. The committee is trying to move quickly so that the bill can become law before April 1st to accommodate the state legislatures this year.

S. 1240 and H.R. 5280, dealing with balance of payments, is moving in the House, but not the Senate. The House Judiciary subcommittee held hearings on the bill on March 3rd, 4th, and 11th. The hearings are finished, and subcommittee action is expected within two weeks. The bill has not moved at all on the Senate side.

S. 500 and H.R. 2580, dealing with immigration revision, are being heard in both houses. Hearings started in the Senate committee on February 10th, and the House Judiciary hearings started on February 24th. The House hears the Secretary of Labor on the problem this Thursday, March 18th.

S.J. Res. 11 and H.J. Res. 278, concerned with electoral college reform, have been introduced, but that is all.

Although not part of the President's program, H.R. 4347, dealing with copyright laws, is being heard now. This is a very controversial bill.

Bills in the President's program which have not been sent to the Hill include:

1. Federal firearms control amendments.
2. Narcotics control.
3. State and local law enforcement assistance.

Education:

S. 370 and H.R. 2362, the elementary and secondary education bills, are moving very well. See the discussion of this bill at the beginning of the committee activity section of this report. The Senate concluded its hearings on the bill on February 18th, and the bill is on the House calendar.

S. 600 and H.R. 3200, the bill on higher education, is in the middle of hearings. The Senate hearings start Tuesday, March 16th. The House Labor subcommittee hearings started on February 1st on the bill.

Health and Medical:

H.R. 2, the Drug Abuse Control Act, passed the House on March 10th of last week. There is no action in the Senate yet on this bill.

The Community Health Services Extension bill, S. 510, passed the Senate last Thursday, March 11th. House Interstate committee hearings started on this bill on March 2nd.

S. 596 and H.R. 4130, the Regional Complex Act of 1965, is in the House committee. The Senate hearings were concluded on February 10th.

S. 508 and H.R. 2987, the Group Practices Facilities Construction bill, has not moved in the Senate. Hearings were held on March 2nd in the House committee.

S. 595 and H.R. 3141, the Health Professions Educational Assistance amendments of 1965, have not had any action in the Senate or in the House.

S. 512 and H.R. 2984, the Health Research Facilities amendments of 1965, have been recommitted a subcommittee in the Senate for further consideration of the Long amendment. The House hearings on the bill were started on March 2nd.

S. 513 and H.R. 2985, dealing with the initial staffing support for Community Health Centers, has had no action in the Senate. The House started its hearings on March 2nd.

So far, there has been no action on the medical library assistance, S. 597, or on the vocational rehabilitation amendments, which have not been introduced in the House or the Senate.

For further information on health bills, see the section on Commerce.

Public Works:

Aid to Appalachia has been passed by both houses and is now public law.

S. 4, the water pollution control bill, passed the Senate on January 28th, and is now in the House Public Works committee (executive session). The committee meets in executive session March 16-18th. Action on this bill in the House should be coming very quickly.

S. 560, the water pollution control bill dealing with federal installations, is moving well in the Senate. Hearings were concluded on the bill on February 26th. The subcommittee meets in executive session on the bill this Wednesday, March 17th.

H.R. 890, 4878, the solid waste disposal bill, is presently in the House Public Works Committee.

The air pollution amendments, S. 306, have not been acted upon or started in either house.

Suggestions in the President's program which have not been drafted or sent to the Hill include:

1. Advertising and junkyard control along highways.
2. Highway beautification and the expansion of the use of 3% of all federal aid highway funds.

Space:

Hearings in the space field on NASA authorization are being held in the Senate until March 26th. The House hearings started on February 17th.

The Arts:

The bill on the National Foundation on the Arts, S. 4483, is moving well in both houses. The concluded its hearings on March 5th, and the House Labor Committee hearings on the bill are now in recess.

We still need drafts of bills on the extending and amending of the war against poverty mentioned by the President, on the juvenile delinquency program extension, and on the Fair Labor Standards Act amendments. These have not reached the Hill yet.

Post Office and Civil Service:

H.R. 5180 is a bill which would kill the Postmaster General's proposal for having mailers sort their 3rd class mail by zip codes. Hearings begin on this bill on March 24th. This bill bears some watching.

H.R. 550 and H.R. 9 are bills to increase civil service retirees' annuities by about 10%. Hearings begin on the bill on March 31st. One of these bills will probably get through committee -- probably Arnold Olson's version. The real problem in these bills is to determine where the money will come from.

It will be a month before any major legislation gets out of the Post Office and Civil Service Committee in the House.

March 15, 1965

The Vice President
United States Senate
Washington, D.C.

Dear Mr. Vice President:

Pursuant to your request I am pleased to enclose a report on Major Legislation of direct concern to the Department of Justice.

Sincerely,

Ramsey Clark
Deputy Attorney General

Enclosure

March 15, 1965

# Report to the Vice President on Major Legislation

## Voter Legislation

**Substance:** Legislation to implement the President's State of the Union Message commitment to "eliminate every remaining obstacle to the right and opportunity to vote."

**Status:** This legislation has been drafted and redrafted as a result of continuous conferences between representatives of the Department and the congressional leadership. It was discussed at a meeting of the congressional leadership with the President and Vice President at the White House, Sunday afternoon, March 14. The draft legislation is to be discussed further with the congressional leadership in Senator Dirksen's office at 10:00 a.m. this morning.

**Anticipation:** The President will deliver his Voting Message to a joint session of the Congress tonight. The legislation will be submitted to the Congress Tuesday, March 16 or Wednesday, March 17.

## Immigration

**Substance:** Revision of Immigration and Nationality Act.

**Status:** Hearings have been continuing in both Houses before the Immigration Subcommittees of the Judiciary Committees, in the Senate on S. 500 and in the House on H.R. 2580.

On the Senate side, thus far the Attorney General, the Secretary of State, the Secretary of Labor, the Secretary of Health, Education and Welfare, and the Surgeon General have testified, as have some other subordinate officials. On the House side, the Attorney General and the Secretary of State have testified, as has the State Department Adviser on Refugee and Immigration Affairs.

**Anticipation:** On the Senate side, the Subcommittee has announced its hearings will continue from March 15 through March 19, the Subcommittee to hear non-Government witnesses except that Senators Neuberger, Pell, and Williams (New Jersey) are to be heard on the 17th.

Senator Ted Kennedy is quietly discouraging private groups from insisting on testifying in support of the legislation, encouraging them to submit statements instead.

This practice is calculated to shorten the hearings to avoid intensive "cross examination" by Senator Ervin. The last of the witnesses in favor of the legislation will be heard on or about March 25. Then opposition witnesses will be heard and Senator Eastland has indicated he will assume the Chair. He has told Senator Kennedy that he will not move the hearings which he chairs quite so fast but has not made any statements clearly indicating he would deliberately slow down the hearing process. Senator Eastland also told Senator Kennedy that he would be expecting Administration pressure for the hearings to be concluded by May 1. Senator Kennedy suggested an approach be made to Senator Eastland at the end of March in an attempt to get some commitment from him for a closing date for the hearings.

On the House side, Congressman Feighan has advised that the Secretary of Labor is tentatively scheduled to appear before the Subcommittee on Thursday, along with a representative of Health, Education, and Welfare to discuss the provision relating to epilepsy and persons with mental afflictions.

## Presidential Inability

**Substance:** Constitutional amendment relating to Presidential inability and succession to the Presidency and Vice Presidency.

**Status:** S.J. Res. 1 (Bayh) passed the Senate and, together with H.J. Res. 1 (Celler) was the subject of full House Judiciary Committee hearings.

**Anticipation:** The House Judiciary Committee will meet in Executive Session on March 16 and 17 to consider this legislation. The Committee expects to be in a position to report the legislation immediately thereafter.

Congressman Poff, second ranking Republican on the House Judiciary Committee, has proposed that the legislation be amended to require the Congress to act within ten days of the date on which the question of whether the President continues to be disabled is presented to it. This proposal has been discussed by us with Senator Bayh and he has indicated he is opposed to any such time limitation being placed on the Congress. Efforts are being made to dissuade Congressman Poff from insisting on this amendment.

One other amendment to which your attention is invited was proposed by Senator Hruska when the legislation was being debated in the Senate. This amendment, which was accepted by the Senate, changed from two days to seven days the time

limitation within which the Vice President and a majority of the principal officers of the Executive Departments may transmit a written declaration that the President is unable to discharge the powers and duties of his office. The Department is of the view that this extension of time is unduly long. Senator Bayh is not particularly concerned about this provision but prefers that it be amended to reinstate the original two-day time limitation for the Vice President's transmittal to be made following the declaration of the President that his inability has ceased.

## CRIME

**Substance:**

In his Crime Message the President called for a grant program to assist local police, legislation against organized crime, amendments to the narcotics and psychotoxic drugs laws and greater firearms control. He repeated his intention to appoint a D.C. Crime Commission and a national Commission on Law Enforcement and Administration of Justice.

Legislation implementing the President's crime program, as well as additional legislation in the crime field has been prepared. The status of each pertinent proposal is set out below.

**Status:**

The Department of Justice has assumed responsibility for all of the crime legislation except that the Treasury Department has such responsibility with respect to the firearms control legislation and HEW has responsibility with respect to the legislation to strengthen federal controls over psychotoxic drugs, such as barbiturates and amphetamines and the juvenile delinquency programs.

Immunity legislation (relating to bankruptcy matters, bribery of government officials and interstate travel in

aid of racketeering enterprises) is with the Bureau of the Budget for clearance.

The arson legislation was submitted to the Congress on March 9 and introduced by Congressman Pucinski in the House as H.R. 6147 on March 11. It has not yet been introduced in the Senate.

The legislation to provide grants-in-aid for the training of local law enforcement officers was submitted to the Congress on March 8 and referred to the Judiciary Committee in each House. It has not as yet been introduced.

The firearms control legislation is to be submitted to Congress by the Treasury Department today.

Legislation to provide for the civil commitment of narcotics addicts and legislation to limit the coverage of the mandatory minimum penalties now applicable in narcotics cases is in preparation, informal comments having been received from Treasury and HEW with respect to earlier drafts.

With respect to the Commission which the President intends to appoint to study law enforcement and the administration of justice in the District of Columbia and the Commission on Law Enforcement and the Administration of Justice which the President is establishing to make a comprehensive study nationally

and make a report by the summer of 1966, the Department is playing an active role in assisting in the search for qualified members and personnel and is assisting in developing suggestions for organization and procedures.

The legislation directed to frauds in public roads projects was cleared by the Bureau of the Budget on March 8 and is presently before the Attorney General for signature for submission to the Congress.

The Department's wiretapping legislation was submitted to the Bureau of the Budget for clearance on December 3, 1964. The legislation is being reconsidered in an attempt to develop some amendments to eliminate certain objections which have been raised to that provision of the legislation which permits wiretapping on the order of the Attorney General rather than a court in national security cases.

The legislation to facilitate the rehabilitation of prisoners by providing for home leave, work furloughs and half-way houses was submitted to Budget for clearance on January 13. Clearance has not yet been received.

Bail reform legislation drafted by staff of the Senate Judiciary Committee Subcommittee on Constitutional Rights

in consultation with personnel of the Justice Department has been introduced by Senator Ervin and others as S. 1357. Hearings have been announced for March 30 and 31 and April 1. The Attorney General will testify on March 30.

D.C. Crime legislation (H.R. 5688) introduced by Congressman Whitener was ordered reported on March 3 by the House District of Columbia Committee with provisions to which constitutional objections were voiced last Congress. Although the measure has not been reported formally, it is likely to pass the House substantially as reported. The Department of Justice plans to work with the Senate District Committee to attempt to effect appropriate amendments before that Committee reports the measure.

Anticipation: Senator McClellan has indicated an interest in sponsoring much of the crime legislation in the Senate, but details of sponsorship have not as yet been worked out with the Chairman of the Senate Judiciary Committee.

We are advised that the Treasury Department has been in contact with Senator Dodd and that there is a possibility the Senator will sponsor the firearms legislation. Also, we are advised that efforts are being made by Treasury through approaches

to the Leadership to have the legislation referred to the Senate Judiciary Committee rather than the Senate Commerce Committee. The Chairman of the Senate Commerce Committee is not particularly enthusiastic over gun control legislation and, as you know, failed to report gun legislation on which hearings were held last Congress.

H.R. 2, the legislation which implements the President's recommendation with respect to psychotoxic drugs, passed the House on March 10, by a vote of 402 to 0. It is expected that the legislation will move through the Senate easily and promptly.

## Presidential Assassination

**Substance:** Legislation growing out of the Warren Commission Report to make it a Federal crime to kill the President, the President-elect, the Vice President or other officer next in order of Presidential succession and the Vice President-elect or anyone acting as President. It also makes certain other acts against the same persons Federal crimes.

**Status:** This legislation was submitted to the Congress on March 8 and referred to the Judiciary Committees. It is presently circulating among the Senate Judiciary Committee staff for comment. Congressman Rogers of Colorado introduced the legislation on March 10 as H.R. 6097.

**Anticipation:** The legislation will probably be introduced in the Senate this week and it is anticipated that a one-day hearing will be held on it at which the Attorney General, the Director of the Administrative Office of the United States Courts, and perhaps one or two members of the Warren Commission will testify.

Congressman Rogers, Chairman of Subcommittee No. 4 of the House Judiciary Committee, to which the legislation has been referred, will similarly hold a short hearing. There is a possibility that the date will be set today or tomorrow.

## Election of President and Vice President

**Substance:** Constitutional amendment relating to the election of President and Vice President and abolishing the electoral college.

**Status:** H.J. Res. 278 (Celler) is with Subcommittee No. 5 of the House Judiciary and S.J. Res. 58 (Bayh) is with the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee.

**Anticipation:** Although Chairman Celler plans to hold hearings on this legislation as soon as he can in the light of the other high priority items he has before the Committee, no date has as yet been set. Presently scheduled hearings, including those on state reapportionment and copyright legislation make it unlikely that this legislation will be heard before early May. In addition, the voter legislation may, of course, require the further postponement of hearings on this measure.

On the Senate side, the Constitutional Amendments Subcommittee continues to expect to hold hearings in early April. However, no dates have as yet been set.

## Exemptions from Antitrust Laws for Voluntary Programs and Agreements in the Banking Field to Safeguard Balance of Payments

**Substance:** Provides for exemption of voluntary programs and agreements from the antitrust laws to assist in safeguarding the balance of payments position of the United States.

**Status:** The Antitrust Subcommittee of the House Judiciary Committee concluded hearings on March 11, having heard the Deputy Attorney General, Under Secretary Deming of the Treasury Department, Mr. Martin, Chairman of the Federal Reserve Board, and a representative of the Banking Industry.

S. 1240 (Hart) is pending with the Antitrust Subcommittee of the Senate Judiciary Committee.

**Anticipation:** The House Subcommittee is hopeful of being able to consider and report the legislation this week or next.

On the Senate side, the Antitrust Subcommittee plans hearings, tentatively for the first week in April. Staff consultation between Justice Department and Subcommittee personnel has been set for March 19.

Minnesota
Historical Society



www.mnhs.org