Department of Justice

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ADDRESS

BY

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"The Right to Vote -- Responsibility of State and Nation"

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It is a privilege for me to appear at the Economic Club of Detroit. Because of the calibre of your membership and the energy of your officers your organization is an outstanding national forum.

You symbolize the growing awareness of all thoughtful Americans that the people of our nation must be interested not only in the problems that immediately affect them or in matters that touch their daily lives. Their interest must also extend to all national and international problems. The harm to our national standing and prestige as a result of the brutual lynching of Mack Charles Parker in Mississippi is of as much concern to us as anything which might happen in our own home towns or our own state. What happens in some remote province in India tomorrow may change the entire course of our lives. Never before in the history of our nation has it been so important that we have an awareness that we live in a world community and that we put aside personal prejudices and look beyond our immediate self-interests. Because this forum recognizes that fact, I want to discuss with you a national problem of considerable magnitude that has been largely brushed under the rug for more than 80 years.

We are beginning a new decade in America with pride in our democratic way of life. This fall we will go to the polls to elect our state and national leaders. Many thousands of American citizens, however, who are fully qualified under our laws to take part in that process will be

denied that right because of their color. This is a serious matter and it concerns every person in our country whether he be Negro or white.

It is basic in a free society that the individual shall not only be free from oppression, but that he shall enjoy, in full measure, the means of self-expression. A fundamental method of expression depends upon the right to choose his representatives. Governments, as stated by the men who declared this nation's independence, derive "their just powers from the consent of the governed." Voting is the principal means by which the will and the consent of the governed may be manifested. Its practical bite is sharp. Those who vote have leverage. Thus, it is axiomatic that when minority groups exercise their franchise effectively, they realize, in greater measure, other fundamental protections and freedoms.

The right to vote free from invidious discrimination has been part of our constitutional fabric for 90 years. The 15th Amendment states unequivocally:

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

Despite this mandate, which falls equally on state and nation, we must acknowledge with candor that after almost a century this constitutionally protected right has remained largely unfulfilled in a few areas of our country for many of the citizens who were intended to be its principal beneficiaries.

What are some of the particulars of this contradiction between our principles and our practices?

In ten of our states, as a recent report of the Commission on Civil Rights discloses, only about 25 percent of the Negroes of voting age are registered as contrasted with 60 percent of the white population of voting age. In five of these states there were fifteen counties in which not one Negro of voting age was registered despite the fact that these citizens comprised more than 50 percent of the population in each county. Similarly, there were more than 100 counties in which fewer than 5 percent of the Negroes of voting age were registered. And, in not one of these ten states did Negroes comprise more than 14 percent of the enfranchised population.

First, I think it may be helpful to analyze the problem briefly in terms of the respective responsibilities of state and nation. There is a persistent confusion, in this and related fields, concerning "states' rights," on the one hand, and the role of the federal government on the other.

The idea advanced by some that "states' rights" mean that a state has a right to do what it wants to do regardless of the federal constitution is fallacious and dangerous. Our nation learned the futility of such thinking under the Articles of Confederation. It is accurate to say that a state has a right to exercise powers not delegated to the United States -- but it is inaccurate if you neglect to add that the state has a responsibility to exercise those powers in conformity with the Constitution of the United States.

It is for this reason that when we speak of "states' rights" we should add the words "and responsibilities." Every state has a responsibility to exercise its rights in conformity with the Constitution of the United States. It is this constitutional responsibility, solemnly imposed on each state, which makes our nation the United States of America.

So, under our constitutional system a state has a right to conduct elections and to establish qualifications for voters. However, it has a corresponding responsibility under the Constitution of the United States to do these things without discrimination on account of race or color -- either by law or by administrative action.

In considering elections, a state may set the voting age at 18 or 21 or some other figure. It may prescribe other reasonable requirements -- citizenship, residence, literacy, and the like. One proposition

is, however, plain. Race or color is not a proper ground for disqualification. It is arbitrary, unreasonable, and unconstitutional.

Let us consider for a moment some of the techniques which have been used over the years to keep Negroes from voting in some areas.

One of the earliest devices was the enactment of registration laws containing so-called "grandfather clauses." These laws prescribed formidable registration tests but exempted those whose ancestors had been entitled to vote prior to the Civil War. This discriminatory technique was struck down when it came before the Supreme Court but the disappearance of one device has been regularly followed by the appearance of a variety of substitutes. Indeed, a latter-day version of the "grandfather" approach has appeared recently in the form of a state statute which gives permanent status to all persons currently registered and prescribes new and difficult tests for future registrants. The obvious aim is to "freeze" the existing voting pattern.

Some state qualification laws call for the applicant to prove a grasp of civics, a familiarity with current affairs and even an ability to interpret abstruse clauses of the Constitution. One such statute, for example, requires the answer to such questions as: "What is a republican form of government? What is the definition of a felony? Who is the Solicitor General of the Judicial Circuit in which you live? What does the

Constitution of the United States provided regarding the suspension of the writ of habeas corpus?" Not all qualifying examinations are necessarily unreasonable, but it is apparent that they may be used as a means of racial discrimination. A biased registrar who gives an oral test to an applicant can readily translate his prejudice into a failing mark for the candidate.

Other discriminatory techniques have been widely employed in some areas. There are registrars who make themselves highly inaccessible to Negroes or who somehow never get around to processing their applications in time.

A somewhat more subtle discriminatory device is the requirement that a would-be registrant bring with him two persons already registered to "vouch" for him. The effect in communities where no Negroes are registered is apparent. Thus, in one county, a court found that for 31 years the registrar had failed to register any Negroes because no Negroes were registered and no one else would "vouch" for them. In other areas, the requirement has been given added teeth by refusing to permit any person to "vouch" for more than two other people in any given year.

We have witnessed, therefore, almost a century of persistent and successful efforts by some states to avoid their constitutional responsibilities and to defeat the objectives of the 15th Amendment. When the forces of a state officialdom are marshalled to deny constitutional rights to some citizens, the problem becomes one of national significance and demands national attention.

In the years preceding 1957, it had become unmistakably plain that the legal weapons available to the federal government were inadequate. At our disposal were several criminal statutes enacted in the post-Civil War years. However, they were of little practical value in securing and protecting the right to vote. It was virtually impossible to convince grand juries and petit juries that they should indict or convict state officials whose conduct reflected attitudes prevalent in the community.

Civil suits brought by private complainants to protect their individual rights had also proved largely ineffectual as a means of altering the pattern. To require a Negro to institute a suit against a state official was a high price to pay for the privilege of voting and few who were discriminated against had either the means or the inclination to pursue such a course.

Realizing these things, President Eisenhower took a vitally important step in the field of civil rights by recommending to the Congress what is now known as the Civil Rights Act of 1957. It is the first statute to be passed in more than 80 years to protect the Negro in exercising his right to vote.

It authorizes the Attorney General to bring an action in the name of the United States on behalf of Negroes who have been discriminated against on account of race or color by state officials. If the court finds that the state officials have so discriminated they may be enjoined from continuing such practices and may, upon refusal to comply, be sentenced to jail for criminal contempt.

Let me mention two of the cases which the United States has brought under that Act.

One of the cases before the court arises out of a suit to enjoin the registrars of Terrell County, Georgia, from discriminating against Negro applicants on the pretext that they are illiterate. The government offered to prove in that case that among those turned down on the ground of illiteracy were four Negroes who were graduates of Georgia colleges and teachers in Georgia's public schools. One of the four also held a master's degree from New York University. This case is now before the Supreme Court on the question of the constitutionality of the statute.

In another case which the Supreme Court will soon consider, the District Judge has ordered the registrar of a Louisiana parish to restore to the rolls some 1,400 Negroes whose names have been stricken because of trivial deficiencies in the registration forms. It was established in that case that there were similar deficiencies in most of the forms covering white voters. Challenges, however, were directed almost exclusively at Negro voters pursuant to an organized campaign which the trial court characterized as "massively discriminatory."

The experience of the last three years indicates that the 1957 Act should be strengthened in important respects.

Several states have recently passed statutes authorizing or requiring the destruction of voting records. This, of course, would

lead to the disappearance of evidence which might be vital to proof of racial discrimination. We have accordingly recommended to the Congress an amendment which would require state registrars to preserve election records and would authorize the Attorney General to inspect them.

The Administration has also proposed an amendment to the Civil Rights Act of 1957 which would provide that in a case where a Federal District Court finds a "pattern of discrimination" it may appoint a "voting referee". He would be responsible to the court and, with the approval of the court, could authorize qualified Negroes to vote in any election. This bill would avoid the necessity of separate and lengthy litigation for each voter or each group of voters.

If Congress enacts these important and worthwhile bills the United States will proceed with utmost vigor and perseverance to enforce them. As head of the Department of Justice, I believe that we have a solemn duty to our country to make the Constitution of the United States mean what it says to all its citizens in every part of our country.

Up to this point I have been speaking of law enforcement. Possibly the most important question of all is whether there are any other ways to accomplish the objective except by law enforcement methods. The answer is that if the states concerned lived up to their responsibilities to the nation they would not be necessary. Unfortunately, as I have said, in some states this has not been the case. This was forcefully brought home by Judge Wright in the Louisiana case I referred to earlier when he

concluded his opinion by suggesting "that instead of challenging the constitutionality of the Civil Rights Act of 1957, these defendants should be searching their souls to see if this charge is well founded."

It is most distasteful for the United States to be proceeding against states or state officials for refusing to comply with the Constitution of the United States. But what is the alternative? Must we continue to close our eyes to the inconsistency of our national position in this regard?

There is only one answer that makes sense either for the states concerned or the nation. The practice should be stopped by voluntary action of the states and state officials concerned. Although law enforcement will finally succeed, it will be costly to our national prestige and to our national self-respect.

Why shouldn't responsible leaders of the areas involved urge voluntary action to remove this blot? Why shouldn't this voluntary action be forthcoming? All concerned know that there is no justification for continuing racial discrimination in the voting process and that it will ultimately be removed. But wouldn't it be a great national blessing if the change could be made voluntarily rather than by the difficult and disruptive processes of law enforcement?

If this were done--if good faith efforts were being made to give Negroes an equal opportunity to vote--there would be no necessity for federal action and none would be taken. But until this happens, particularly

because the Negro has been made to wait so long, the United States must, by legislation and law enforcement methods, move forward with the greatest possible speed.

In conclusion, let me say that there is considerable hope that a meaningful civil rights bill will be enacted by this Congress. But it is important that any new measures in this field meet two tests -- will they stand up under court challenge and will they be effective? We can ill afford to atone for 90 years of failure by enacting legislation effective in theory but impractical in application.

In our thinking on this problem we must consider the image that racial discrimination presents to a largely non-white world. Naturally doubts will arise about whether our system holds forth the greatest hope for individual freedom and dignity when we exclude from our voting process some of our own citizens on account of color.

Prime Minister MacMillan stated the other day before the South African Parliament that the "wind of change" throughout Asia and Africa is blowing. These nations have not committed themselves to either Western ideas of democracy or to Communism. But they are watching. "What is now on trial" he said "is much more than our military strength or our diplomatic or administrative skill. It is our way of life."

Throughout the world, today, the word "democracy" is a rallying cry. It expresses men's basic desires for dignity and the fullest utilization of human potential. The concept of democracy, indeed the word

itself, is a source of such powerful inspiration that even its greatest enemies cynically attempt to use it by designating themselves "peoples democracies".

This nation, both at home and abroad, has consistently espoused the principles of equality before the law and the worth of every individual. To keep faith with ourselves, to live up to our national ideal, we must be unremitting in our efforts to secure to all our citizens the full opportunity to exercise those basic rights which are the common heritage of all free peoples.