



Department of Justice

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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 than 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 intimidation 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 expressly 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 itself 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 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 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 continuing 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.