The original documents are located in Box 28, folder "8/6/75 HR6219 Amendments to the Voting Rights of 1965 (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94–196

VOTING RIGHTS ACT EXTENSION

MAY 8, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. EDWARDS, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, SEPARATE, ADDITIONAL SUPPLEMENTAL, AND VIEWS CONCURRING IN PART AND DISSENTING

[To accompany H.R. 6219]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6219) to amend the Voting Rights Act of 1965 to extend certain provisions for an additional ten years, to make permanent the ban against certain prerequisites to voting and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 13, immediately after line 10, add the following:

SEC. 407. Title III of the Voting Rights Act of 1965 is amended to read as follows:

"TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

"ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

"SEC. 301. (a) (1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284

of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"DEFINITION

"SEC. 302. As used in this title, the term 'State' includes the District of Columbia."

SEC. 408. Section 10 of the Voting Rights Act of 1965 is amended—

(1) by striking out subsection (d);

(2) in subsection (b), by inserting "and section 2 of the twenty-fourth amendment" immediately after "fifteenth amendment"; and

(3) by striking out "and" the first time it appears in subsection (b), and inserting in lieu thereof a comma.

PURPOSE

The principal objectives of H.R. 6219, as amended, are: (1) to extend for an additional ten years the special provisions of the Voting Rights Act of 1965; (2) to make permanent the 1970 temporary ban on literacy tests and other devices; and (3) to expand the coverage of the Act to certain jurisdictions in which language minorities reside.

The special provisions of the existing Voting Rights Act apply to certain states and political subdivisions with a history of voting discriminations. In those jursdictions, all literacy tests and other similar devices have been suspended, by operation of Section 4(a), since August 6, 1965, the date on which the original Act was approved.[1] Under the current provisions of the Voting Rights Act, a state or political subdivision may exempt itself from coverage by showing that, during the preceding ten years, no such test or device has been used for the purpose or with the effect of denying the right to vote on account of race or color. Thus, many jurisdictions now subject to the Section 4(a) literacy test suspension will be in a position to obtain automatic exemption beginning in August, 1975—10 years after passage of the Act.[2] In effect, H.R. 6219 would continue the coverage of the Act for those jurisdictions until August 1985.

A second purpose of H.R. 6219 is to enact a permanent nationwide ban on the use of literacy tests and other similar devices as prerequisites to voting or registration. In 1970, when the Act was last

[1] In those jurisdictions where literacy tests are suspended by operation of Section 4(a) of the Act, enforcement of voting qualifications or procedures different from those in force and effect on November 1, 1964 or November 1, 1968 (by virtue of the 1970 amendments), is prohibited unless and until judicial approval or acquiescence of the Attorney General of the United States is obtained (Section 5) (This procedure will be referred to hereinafter as Section 5 preclearance or preclearance). The Act also authorizes the Attorney General to provide for the appointment of Federal examiners to list qualified applicants to vote and Federal election observers to monitor the casting and counting of ballots in such jurisdictions (Sections 6 and 8).

[2] The automatic availability of this exemption, of course, assumes compliance with the test or device suspension since its imposition in 1965.

extended, Congress also created, in Section 201 of the Voting Rights Act, a temporary nationwide "test or device" [3] suspension (P.L. 91-285). Under the Act's present provisions, that suspension is scheduled to expire on August 6, 1975. Title I of H.R. 6219 would convert that temporary suspension into a permanent prohibition against the use of such tests or devices, with that prohibition to be applicable to all states and political subdivisions.

As a third objective, this bill also seeks to expand the Act's special coverage to additional areas throughout the country. The focus of the proposed legislation, in this regard, is to insure that the Act's special temporary remedies are applicable to states and political subdivisions where (i) there has been evidenced a generally low voting turnout or registration rate and (ii) significant concentrations of minorities with native languages other than English reside. The provisions of H.R. 6219 accomplish this goal by expanding the definition of "test or device" to include the conduct of English-only elections where large numbers of language minority persons live. In these newly covered areas, where severe voting discrimination was documented, H.R. 6219 would, for ten years, mandate bilingual elections, make applicable the Section 5 preclearance provisions, and authorize the appointment of Federal examiners and observers by the Attorney General.

In those areas of the country with significant populations of language minorities who experience a high rate of illiteracy, the provisions of H.R. 6219 would also impose, for ten years, a bilingual elections mandate. In these particular areas, where no showing is required with respect to low voting turnout or registration rates, and where evidence of discrimination was less egregious, none of the Act's other special remedies, such as Section 5 preclearance, would apply.

Apart from its three principal aims, H.R. 6219, as amended, would also require the Director of the Census to collect voting and registration statistics by race, color and national origin in those jurisdictions covered by the Act and in jurisdictions designated by the U.S. Commission on Civil Rights. The bill also codifies the administrative procedure employed by the Attorney General to provide expedited consideration for Section 5 submissions. Furthermore, private persons are authorized to request the application of the Act's special remedies in voting rights litigation. The awarding of attorney's fees to prevailing parties is provided for in suits brought to enforce the voting guarantees of the 14th or 15th Amendment. Finally, H.R. 6219 would update Section 10 and Title III of the Voting Rights Act to reflect the current state of the law with respect to poll taxes and 18 year old voting.

HISTORY OF THE LEGISLATION

On January 14, 1975, H.R. 939 was introduced to extend the special provisions of the Voting Rights Act of 1965 for ten years, and to make permanent the temporary nationwide ban on literacy tests enacted in 1970. On January 27, 1975, H.R. 2148 was introduced to

[3] Section 201(b) of the Act defines the term "test or device" as "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.

extend the Act and the temporary ban on literacy tests for only five years. Furthermore, on February 19 and 20, 1975, two bills (H.R. 3247 and 3501) were introduced to expand coverage of the Act, in various ways, to certain language minority groups.

All of these measures were referred to the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary which conducted hearings for 13 days in February and March, 1975. [*Hearings on H.R. 939 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., ser. 7, pts. land 2 (1975), hereinafter referred to as "Hearings"]. During these sessions, the Subcommittee received testimony relating to all aspects of the proposed legislation. The witnesses included congressional sponsors of the legislation, other Members of Congress, the Assistant Attorney General of the United States, representatives of the U.S. Commission on Civil Rights, state and local officials, private citizens, as well as members of various civic organizations with special interest in the Voting Rights Act of 1965. Those who did not appear personally were given an opportunity to submit relevant material for the record.

Upon conclusion of the hearings, H.R. 5552 was introduced representing a consolidation of H.R. 3247 and 3501. On April 17, 18 and 23, 1975, the Subcommittee met in open session to consider the pending proposals. The Subcommittee acted to amend H.R. 939 to include coverage of new geographic jurisdictions with significant language minority populations. Thereafter, on April 23, 1975, the Subcommittee adopted H.R. 6219, a new proposal which had been introduced to reflect the provisions of H.R. 939 with Subcommittee amendments, and recommended it for favorable action by the full Committee.

On April 29, 30 and May 1, 1975, the full Committee on the Judiciary met in public session to consider H.R. 6219. In its deliberations, the Committee adopted an amendment to conform the provisions of the Voting Rights Act dealing with the poll tax and the 18 year old vote with recent court decisions and constitutional amendments. On May 1, 1975, the Committee voted 27 to 7 to report H.R. 6219, as amended, for favorable action by the House.

STATEMENT

A. TITLE I: EXTENSION OF THE VOTING RIGHTS ACT

Background for Extension

The Voting Rights Act of 1965 has been hailed by many to be the most effective civil rights legislation ever passed. It was designed to provide swift administrative relief in those areas of the country where racial discrimination plagued the electoral processes. The case-by-case litigation approach of the 1957, 1960, and 1964 voting legislation had proven to be totally ineffectual. In describing the expeirences under earlier voting rights legislation, this Committee's report on the 1965 Act noted the following:

> Progress has been painfully slow, in part because of the intransigence of state and local officials and repeated delays in the judicial process. Judicial relief has had to be gauged not in terms of months—but in terms of years. With reference to the 71 voting rights cases filed to date by the Department of Justice under the 1957, 1960, and 1964 Civil Rights Acts, the Attorney General testified before a Judiciary subcommittee that an incredible amount of time has had to be devoted to analyzing voting records—often as much as 6,000 man-hours—in addition to time spent on trial preparation and the almost inevitable appeal. The judicial process affords those who are determined to resist plentiful opportunity to resist. Indeed, even after apparent defeat resisters seek new ways and means of discriminating. aBrring one contrivance too often caused no change in result, only in methods [H.R. Rep. No. 439, 89th Cong., 1st Sess. 9–10 (1965)].

The Voting Rights Act of 1965 was landmark in terms of its abandonment of this case-by-case approach. Under the provisions of the 1965 enactment, literacy tests and other devices were automatically suspended in states or political subdivisions where a literacy test or other similar device was in effect on November 1, 1964 and where less than 50% of voting age persons were registered for or voted in the presidential election of November 1964. In these same jurisdictions, the Section 5 preclearance provisions applied to all changes relating to voting which were to be implemented after November 1, 1964. Also, the Attorney General was authorized to certify the need for Federal examiners to list eligible voters and Federal observers to oversee the casting and counting of ballots in covered jurisdictions. Jurisdictions brought under the Act's coverage by the 1965 legislation included the entire states of Alabama; Alaska, Georgia; Louisiana; Mississippi; South Carolina; and Virginia; 40 counties in North Carolina; four counties in Arizona; Honolulu County, Hawaii; and Elmore County, Idaho.[4] See Appendix A.

These jurisdictions were originally eligible for automatic release from special coverage after August of 1970. However, when Congress passed the Voting Rights Act Amendments of 1970 (P.L. 91–285) their special coverage was continued for an additional five years, now making them eligible for automatic release under the current provisions of the Act after August of 1975.

In the 1970 amendments, Congress also brought under the Act's special coverage states and political subdivisions which maintained a test or device on November 1, 1968 and which had less than a 50% turnout or registration rate at the time of the November 1968 presidential election. In these newly-covered jurisdictions, the same special remedies applied: literacy tests and other devices were suspended, Section 5 preclearance requirements were applied to voting changes to be implemented after November 1, 1968, and Federal examiners and observers could be authorized by the Attorney General. Juris-

[4] Of these covered jurisdictions, the following successfully sued to exempt themselves or "bail-out" from the Act's special coverage: Alaska [*Alaska* v. *United States*, Civil No. 101–66 (D.D.C. Aug. 17, 1966)]; Wake County, North Carolina [*Wake County* v. *United States*, Civil No. 1198–66 (D.D.C. Jan. 23, 1967)]; Elmore County, Idaho [*Elmore County* v. *United States*, Civil No. 320–66 (D.D.C. Sept. 22, 1966)]; and Apache, Navajo and Coconino Counties, Arizona [*Apache County* v. *United States*, 256 F. Supp. 903 (D.D.C. 1966)]. It is important to note that the Voting Rights Act does in fact provide for such bailout or exemption on the part of a covered jurisdiction. Under existing provisions, if the jurisdiction can demonstrate nondiscriminatory use of "tests or devices" during the ten years preceding the exemption request, it is removed from the Act's special provisions. The jurisdictions listed above, as well as others referred to in subsequent discussion, have successfully met this burden.

dictions brought under coverage by the 1970 amendments include Bronx, Kings and New York Counties in the State of New York; Campbell County, Wyoming; Monterey and Yuba Counties in California; Apache, Coconino, Navajo, Cochise, Mohave, Pima, Pinal, and Santa Cruz Counties in Arizona; Elmore County, Idaho; Election Districts 8, 11, 12, and 13 in Alaska; and towns in Connecticut, New Hampshire, Maine, and Massachusetts.[5] See Appendix B.

Analysis of Progress Under the Act

The Voting Rights Act has been extremely effective in terms of diminishing barriers to and improving minority voting and registration throughout the covered areas. Registration rates for blacks in the covered southern jurisdictions has continued to increase since the passage of the Act. For example, while only 6.7 percent of the black voting age population of Mississippi was registered before 1965, 63.2 percent of such persons were registered in 1971–72. Similar dramatic increases in black registration can be observed in Alabama, Georgia, Louisiana and Virginia.

Severe gaps between black and white registration rates have also greatly diminished since the Act's passage. Prior to 1965, the black registration rate in the State of Alabama lagged behind that of whites in that state by 49.9 percentage points. In 1972, that disparity had decreased to 23.6 percentage points. Likewise, in Mississippi, that disparity has decreased from 63.2 to 9.4 percentage points. As the following table indicates, these closing registration gaps have occurred throughout the covered southern jurisdictions.

REGISTRATION BY RACE AND STATE IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

[In percent]

	Preact estimate [1]			Post-act estimate [3]			1971–72 estimate		
	White	Black	Gap [2]	White	Black	Gap [2]	White	Black	Gap [2]
Alabama	69.2	19.3	49.9	[4] 89.6	51.6	38.0	80.7	57.1	23.6
Georgia	62.6	27.4	35.2	[4] 80.3	52.2	27.7	70.6	67.8	2.8
Louisiana	80.5	31.6	48.9	93.1	58.9	34.2	80.0	59.1	20.9
Mississippi	69.9	6.7	63.2	91.5	59.8	31.7	71.6	62.2	9.4
North Carolina	96.8	46.8	50.0	83.0	51.3	31.7	62.2	46.3	15.9
South Carolina	75.7	37.3	38.4	81.7	51.2	30.5	51.2	48.0	3.2
Virginia	61.1	38.3	22.8	63.4	55.6	7.8	61.2	54.0	7.2
Total	73.4	29.3	44.1	79.5	52.1	27.4	67.8	56.6	11.2

[1] Available registration data as of March 1965.
[2] The gap is the percentage point difference between white and black registration rates.
[3] Available registration data as of Sept. 1967.
[4] The race was unknown for 14,279 registered voters in Alabama, and for 22,776 in Georgia.

Sources: U.S. Commission on Civil Rights, "Political Participation" (1968), appendix VII: voter education project. attachment to press release, Oct. 3, 1972.

[5] The State of Alaska; Elmore County, Idaho, and Apache, Coconino, and Navajo Counties in Arizona had been covered in 1965 and subsequently, released from the Act's coverage, The 1970 amendments resulted in these areas being re-covered. However, with respect to the State of Alaska only certain election districts were recovered and not the entire state. The election districts in Alaska were subsequently exempted in 1972 [*Alaska* v. *United States*, Civil No. 2122–71 (D.D.C. July 2, 1972)]. The three New York counties were exempted in April 1972, but the exemption was rescinded and the three counties re-covered two years later [*New York* v. *United States*, Civil No. 2419–71 (D.D.C.) (orders of April 13, 1972, January 10, 1974 and April 30, 1974), *aff'd* 95 S. Ct. 166 (1974 (per curiam)].
It should be noted that, unlike the earlier covered jurisdictions, the jurisdictions brought under the Act's coverage by the 1970 amendments will not be eligible for exemption beginning in August 1975. Rather, those jurisdictions will not be eligible for such exemption until 1980 and thereafter.

Despite these impressive gains in the area of black registration, a bleaker side of the picture yet exists. Most recently available data reveal that percentage point disparities of 23.6, 16, and 17.8 can still be found in the States of Alabama, Louisiana and North Carolina,[6] respectively. In addition, the diminishing statewide disparities which have been pointed to cannot be allowed to obscure the tremendously low rates of registration still afflicting blacks within various counties in the covered states. In Louisiana, for example, significant disparities are much more evident in rural than in urban parishes. The disparity is greater than 20 percentage points in eight of the ten least populous parishes of that state. In six of the covered counties in North Carolina, white registration exceeds that of blacks by more than 25 percentage points. In South Carolina, as in Louisiana, whites are registered at much higher rates than blacks in many rural counties. For example, in Newberry County, South Carolina the gap is 37 percentage points and in McCormick County, South Carolina the gap is 28 percentage points (Hearings, 1038–1039).

In much the same manner as improved registration rates have been documented for blacks in covered southern jurisdictions so also has there been improvement in those areas in terms of an increasing number of black elected officials. One estimate suggests that only 72 blacks served as elected officials in the 11 southern states in 1965, including those southern states presently covered by the Act (Hearings, 115). By April 1974, the total of black elected officials in the seven southern states covered by the Act had increased to 963. After the November 1974 elections, those states could boast of one balck member of the United States Congress, 68 black state legislators, 429 black county officials, and 497 black municipal officials (Hearings, 1032). This rapid increase in the number of black elected officials marks the beginning of significant changes in political life in the covered southern jurisdictions (Hearings, 1035).

So as not to be misled by the sheer numbers, however, other points should be noted when assessing this progress. Significant among these points is the fact that most of the offices newly-held by blacks are relatively minor and located in small municipalities or counties with overwhelmingly black populations. Also, in the seven southern states which are totally or partially covered by the Voting Rights Act, no black holds statewide office. As of November 15, 1974, the number of blacks in the state legislatures in the covered southern areas fell far short of being representative of the number of blacks residing in those jurisdictions. In Mississippi, for example, the percent of state legislative seats held by blacks is 0.6, despite the fact that 36.8 percent of Mississippi's population is black. In South Carolina, a state with a 30.7 percent black population, only 7.6 percent of the state legislative seats are occupied by blacks (Hearings, 1044–1046).

That minority political progress has been made under the Voting Rights Act is undeniable. However, the nature of that progress has been limited. It has been modest and spotty in so far as the continuing and significant deficiencies yet existing in minority registration and political participation. The Committee thus approached its delibera-

[6] For this most recent data on Louisiana and North Carolina, see Hearings, 1037.

tion on this legislation with both an awareness of the significant strides which have been made during the Act's special coverage as well as an appreciation of the gains yet to be achieved.

Need for Special Remedies

Under the provisions of the Voting Rights Act, covered states and political subdivisions are subject to a series of special statutory remedies. Included among these remedies are: (1) an automatic suspension of literacy tests or other similar devices as prerequisites to voting or registration; (2) Section 5 preclearance requirements; (3) Attorney General authority to appoint Federal examiners; and (4) Attorney General authority to appoint Federal observers. Beginning in August 1975, many jurisdictions may remove themselves from the coverage of these remedies. It was the Committee's task, in considering various legislative proposals to extend the Voting Rights Act, to make an assessment of the continued need for these special provisions, particularly in those jurisdictions soon eligible for release under the Act's current provisions. As the following discussion reveals, it was the Committee's judgment that each of the Act's special remedies must continue to apply in currently covered areas for at least an additional ten year period. Such a ten year extension is provided for in Title I of H.R. 6219.

Review of Voting Changes

Section 5 of the Act requires review of all voting changes prior to implementation by the covered jurisdictions. The review may be conducted by either the U.S. District Court for the District of Columbia or by the Attorney General of the United States.

In recent years the importance of this provision has become widely recognized as a means of promoting and preserving minority political gains in covered jurisdictions. Section 5 attests to the foresight and wisdom of the 89th Congress, in anticipating the need for future Federal review of voting changes in covered jurisdictions. At the time of the 1965 enactment, this Committee had evidence of the great lengths to which certain jurisdictions would go in order to circumvent the guarantees of the 15th amendment (H.R. Rep. No. 439, 89th Cong., 1st Sess., 10–11). In order to insure that any future practices of these jurisdictions be free of both discriminatory purpose and effect, the Section 5 preclearance requirements were adopted. The Supreme Court, in upholding the constitutionality of Section 5, noted:

> Congress knew that some of the States covered by Section 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for discrimination contained in the Act itself. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966).

Under Section 5 the jurisdiction submitting the proposed change bears the burden of proving nondiscriminatory purpose and effect and the change cannot be implemented until the Section 5 review requirements have been met.

It was not until after the 1970 Amendments that Section 5 actually came into extensive use. At the time of the adoption of those amendments, Congress resisted attempts to repeal the preclearance provisions, and in so doing gave a clear mandate to the Department of Justice that it improve enforcement of Section 5 (Hearings, 169). In addition, near that same time, the Supreme Court acted in two decisions [*Allen* v. *State Board of Elections*, 393 U.S. 544 (1969) and *Perkins* v. *Matthews*, 400 U.S. 379 (1971)] which gave broad interpretations to the scope of Section 5. On September 10, 1971, the Department of Justice for the first time adopted regulations for implementing Section 5's preclearance provisions.[7] Today, enforcement of Section 5 is the highest priority of the Voting Section of the Department of Justice's Civil Rights Division (Hearings, 169).

As is evidenced from the following tables, many and varied changes have been submitted from most of the covered jurisdictions for the Attorney General's review.[8] The number of submissions increased from 1 in 1965 to 1,118 in 1971. In 1974, the number of submissions was 988. The Justice Department has entered objections to changes submitted from a number of jurisdictions, including Arizona, Georgia, Louisiana, Alabama, Virginia, North Carolina, and New York.

NUMBER OF CHANGES SUBMITTED UNDER SEC. 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965–74

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	Total
Alabama	1	0	0	0	13	2	86	111	60	58	331
Arizona[1]							19	69	33	28	149
California[1]							0	6	1	5	12
Georgia	0	1	0	62	35	60	138	226	114	173	809
Idaho[1]							0	0	0	0	0
Louisiana	0	0	0	0	2	3	71	136	283	137	632
Mississippi	0	0	0	0	4	28	221	68	66	41	428
North Carolina[1]	0	0	0	0	0	2	75	28	35	54	194
New York[1]							4	0	0	84	88
South Carolina	0	25	52	37	80	114	160	117	135	221	941
Virginia	0	0	0	11	0	46	344	181	123	186	891
Wyoming[1]							0	0	0	1	1
Total	1	26	52	110	134	255	1,118	942	850	988	4,476

[1] Selected county (counties) covered rather than entire State.

Source: United States Department of Justice (hearings, 182).

NUMBER OF CHANGES SUBMITTED UNDER SEC. 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY TYPE AND YEAR, 1965–74

Type of change	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	Total
Redistricting		2	4		12	25	201	97	47	55	443
Annexation		1	2		2	6	256	272	242	244	1,025
Polling place		2	4	4	7	28	174	127	131	154	631
Precinct		2	9	7	11	22	144	69	55	81	400
Reregistration			1			2	52	15	6	4	80
Incorporation			1				4	1	3	1	10
Election law[1]	1	18,	24	96	67	105	226	332	258	422	1,549
Miscellaneous[2]				3	14	8	15	26	99	12	177
Not within the scope of Sec. 5		1	7		21	59	46	3	9	15	161
Total	1	26	52	110	134	255	1,118	942	850	988	4,476

[1] Ordinance or other legislation affecting election laws.
[2] Miscellaneous change not included in the above classifications.

Note: These figures are based on computer tabulations. The computer program is limited to the above general classifications.

Source: U.S. Department of Justice (Hearings, 182).

[7] 36 Fed. Reg. 18186 (September 10, 1971). 28 C.F.R. Part 51. Issuance of the regulations was approved in *Georgia* v. *United States*, 411 U.S. 526 (1973).

[8] While covered jurisdictions have the option of seeking court review rather than the approval of the Attorney General, few have chosen to pursue the judicial remedy.

NUMBER OF SEC. 5 OBJECTIONS INTERPOSED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, FROM 1965 TO 1975[1]

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	Tota
Alabama	0	0	0	0	10	1	2	6	1	2	0	22
Arizona[2]						0	0	0	1	0	1	2
California[2]						0	0	0	0	0	0	0
Georgia	0	0	0	4	0	0	5	11	8	9	0	37
Idaho[2]						0	0	0	0	0	0	0
Louisiana	0	0	0	0	2	0	19	8	6	2	0	37
Mississippi	0	0	0	0	3	1	13	2	8	1	1	29
New York[2]						0	0	0	0	1	0	1
North Carolina[2]	0	0	0	0	0	0	6	0	0	0	0	6
South Carolina	0	0	0	0	0	0	0	4	3	12	0	19
Virginia	0	0	0	0	0	1	5	1	0	3	0	10
Wyoming[2]						0	0	0	0	0	0	0
Total	0	0	0	4	15	3	50	32	27	30	2	163

[1] Through Feb. 28, 1975.
[2] Selected county(ies) covered rather than entire State.

Source: United States Department of Justice (Hearings, 185).

The recent objections entered by the Attorney General of the United States to Section 5 submissions clearly bespeak the continuing need for this preclearance mechanism. As registration and voting of minority citizens increases, other measures may be resorted to which would dilute increasing minority voting strength. Such other measures may include switching to at-large elections, annexations of predominantly white areas, or the adoption of discriminatory redistricting plans (Hearing, 1187–1232). In fact, the Justice Department has recently entered objections, at the state and local level, to at-large requirements, polling place changes, majority vote requirements, staggered terms, increased candidate filing fees, redistrictings, switches from elective to appointive offices, multimember districts, and annexations (Hearings, 183–185). In each of these objection situations the submitting jurisdiction failed to meet its burden of satisfying the Attorney General of the nondiscriminatory purpose or effect of the proposed change.

The provisions of H.R. 6219 propose to amend the Act so that the special remedies, including Section 5 preclearance, will be operative for an additional ten years. Although the 1965 legislation and the 1970 amendments did, in large part, provide for only five year coverage periods at a time, the Committee concludes that it is imperative that a ten year extension now be adopted in order to insure the applicability of Section 5 protections during the reapportionment and redistricting which will take place subsequent to the 1980 Decennial Census.

Approximately one-third of the Justice Department's objections have been to redistrictings at the state, county and city levels (Hearings, 170). This past experience ought not be ignored in terms of assessing the future need for the Act. While it is something of an irony, the Supreme Court's "one man-one vote" ruling [*Reynolds* v. *Sims*, 377 U.S. 533 (1964)] has created opportunities to disfranchise minority voters. Having to redraft district lines in compliance with that ruling, jurisdictions may not always take care to avoid discriminating against minority voters in that process.[9] By providing that Section 5 protections not be removed before 1985, H.R. 6219 would guarantee

[9] See Parker, *County Redistricting in Mississippi: Case Studies in Racial Gerrymandering*, 44 Miss. L.J. 391 (1973).

Federal protection of minority voting rights during the years that the post-census redistrictings will take place.

The Committee is convinced that it is largely Section 5 which has contributed to the gains thus far achieved in minority political participation, and it is likewise Secton 5 which serves to insure that that progress not be destroyed through new procedures and techniques. Now is not the time to remove those preclearance protections from such limited and fragile success.

Appointment of Federal Examiners

Under the Act, jurisdictions which are covered by the statutory formula are subject to the appointment of Federal examiners (Section 6). However, the appointment of examiners is not automatic. The Attorney General must determine into which localities covered by the Act examiners should be sent, and Section 6(b) sets standards to guide the exercise of his discretion. Examiners prepare lists of applicants eligible to vote whom state officials are required to register.

Federal examiners have served in a Mississippi county as recently as 1974 and Mississippi citizens were also listed by such examiners in 1971 and 1972. Since the passage of the Act, approximately 317 examiners have been sent to 73 designated jurisdictions. In the period from 1970–1974, Federal examiners listed 1,974 black voters. Estimates provided by the Voter Education Project in Atlanta, Georgia, indicate that the registration of blacks by Federal examiners accounted for 34.2 percent of the total increase in black voter registration in Alabama from 1964–1972. The work of Federal examiners accounted for 1.9 percent of the black registration increase in Georgia, 13.2 percent in Louisiana, 27.5 percent in Mississippi, and 7.4 percent in South Carolina. In general, it is estimated that 18.9 percent of black registration has been accomplished through Federal examiners (Hearings, 171–172).

Although Federal examiners have been used sparingly in recent years, the provisions of the Act authorizing their appointment must be continued. Diminishing disparities between black and white registration rates in the covered southern states can hardly be hailed as indicative of a lack of work to be performed by Federal examiners. The use of such Federal officers cannot now be eliminated when most recently available data indicates that the gap in Alabama is still over 20 percentage points and in Louisiana the disparity continues at 16 percentage points. Also, such examiners might serve to increase minority registration in rural areas where it is found to be lowest.[10]

In additon, the hearing record developed before the Subcommittee revealed that in many of the covered jurisdictions, the times and places of registration are so restrictive that blacks, frequently living in rural communities, are unable to register (Hearings, 1054–1061). Some white registrars in these areas are reputed to treat blacks with extreme discourtesy, so much so that "[b]lacks find the registration process under these circumstances at best embarrassing and humiliating" (Hearings, 1062). Discriminatory purgings have also been experienced by minority voters in certain covered areas (Hearings, 1070–1073). Thus, the job which can yet be performed by Federal examiners in these covered jurisdictions is significant and the Committee recommends that the availability of this important remedy be continued.

[10] See previous discussion.

Appointment of Federal Observers

Under Section 8 of the Act, whenever Federal examiners are serving in a particular area, the Attorney General may request that the Civil Service Commission assign one or more persons to observe the conduct of an election. These Federal observers monitor the casting and counting of ballots.

In 1974, a total of 464 observers served in Alabama, Georgia, Louisiana, and Mississippi. A total of 568 observers served in 1970, 1,014 served in 1971 and 495 served in 1972. It has been found that the presence of observers tends to diminish the intimidation of minority voters, especially when they must vote in polling places located in traditionally hostile areas of a community. Also, observer reports have served as important records relating to the conduct of particular elections in subsequent voting rights litigation (Hearings, 1020 n. 95).

Despite the fact that the number of observers recently assigned has decreased from the large numbers which were consistently assigned during the earlier years of the Act's coverage, their use has nevertheless been significant since the time of the passage of the 1970 amendments. Furthermore, the Subcommittee's record reveals that the need for such Federal election observers continues. Many minority voters in the covered jurisdictions have frequently found that their names have been left off precinct lists and that other problems and abuses exist with respect to aid to be provided to illiterate voters. Also, polls in these areas continue to be located in all-white clubs and lodges where minority persons are otherwise not allowed to go, with such locations representing an extreemly hostile atmosphere for the nonwhite voter (Hearings, 1080–1113). Under such circumstances, the role of Federal observers can be critical in that they provide a calming and objective presence which can serve to deter any abuse which might occur. Federal observers can also still serve to prevent or diminish the intimidation frequently experienced by minority voters at the polls.

Thus, based upon the record developed in its Subcommittee's hearings and the report of the U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, the Committee concludes that it is essential to continue for an additional ten years all the special temporary provisions of the Act in full force and effect in order to safeguard the gains thus far achieved in minority political participation, and to prevent future infringements of voting rights.

Permanent Nationwide Ban on Literacy Tests and Devices

When Congress enacted the Voting Rights Act of 1965, it suspended literacy tests and other similar devices in the limited jurisdictions covered by the Act.[11] In 1970, Congress extended this prohibition to all other jurisdictions, with that extended prohibition to be effective until August 6, 1975. H.R. 6219 proposes to convert that temporary nationwide prohibition against the use of such tests and devices into a permanent nationwide ban on such use.

[11] In covered states and political subdivisions, tests and devices are suspended by virtue of Section 4(a) of the Act. Therefore, under the provisions of H.R. 6219, there would be two separate statutory prohibitions against the use of such tests or devices applicable to covered jurisdictions; one being temporary in nature and applying only to the specially covered areas and the other being permanent and having nationwide application.

Tests or devices, as defined in Section 201(b) of the Act,[12] remain on the books in 14 states.[13] If the provisions of Section 201 are not extended or made permanent, these states will be able to enforce their literacy requirements as a prerequisite to voting or registration. In addition, other states, which are not covered jurisdictions and therefore subject to the Section 4(a) test suspension, will be able to enact and enforce such provisions.

In 1970, when the Congress enacted the temporary nationwide test suspension, it adopted a proposal which had been advanced strongly the Administration's proposed legislation. In testimony presented by the Department of Justice before a Judiciary subcommittee, the Attorney General testified that, under the Supreme Court's decision in *Gaston County* v. *United States*, 395 U.S. 285 (1969), any literacy test has a discriminatory effect if the state or county has offered its minority citizens inferior educational opportunities. It may be assumed that many minority citizens who have received inferior educations in certain areas of the country migrate to northern and western states where literacy tests might be imposed [Hearings on H.R. 4249 Before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 1st Sess. 221–224 (1969)]. For this reason, Congress felt that a nationwide test suspension would be appropriate to protect throughout the country the voting rights of minorities who had been unconstitutionally subjected to educational disparities.

According to 1970 Census statistics, only 5.5 percent of the total population 25 years old or older had less than five years of school. In contrast, the 1970 data indicate that 14.6 percent of the blacks and 18.9 percent of persons of Spanish heritage had less than five years of school.[14] Clearly, the imposition of any literacy test by any state or county where such minority citizens reside would have a disproportionate and discriminatory impact upon these citizens. In reaching the conclusion that such tests ought to be permanently banned throughout the country, the Committee takes into account not only the unequal educational opportunities which minority citizens have experienced, but also the long and tragic history of the discriminatory use of such tests to disfranchise minority voters.

The Committee further notes that, in its opinion, there is no legitimate reason for any jurisdiction to retain such literacy requirements as a prerequisite to voting. The proliferation of broadcast media, programming in many languages and serving many different communities,[15] clearly evinces the inappropriateness of requiring a reading and writing ability on the part of voters. The expressed justification

[12] It is noted that while H.R. 6219 adds to the meaning of "test or device" the conduct of English-only elections in jurisdictions with significant populations of language minorities, this additional meaning is applicable only to the operative provisions found in Title I of the Act. The definition of test or device as it appears in Title II of the Act is not broadened. It is Title II which now establishes the temporary nationwide test suspension and, under the provisions of H.R. 6219, it is this title which will also establish the permanent nationwide ban. Therefore, the expanded definition of the term "test or device" is not to apply to the nationwide test-ban provisions.

[13] Those states are Alabama, Connecticut, Delaware, Georgia, Idaho, Louisiana, Maine, Mississippi, New Hampshire, New York, North Carolina, South Carolina, Washington, and Wyoming.

[14] *Census of Population: 1970. General Social and Economic Characteristics.* United States Summary, PC(1)–C(1). Table 88, page 386.

[15] Approximately 450 radio and television stations throughout the country serve black, American Indian, Spanish speaking or Asian-American communities. United States Department of Justice, *Directory of Organizations Serving Minority Communities*, 1972.

for such requirements is that they serve to weed out the informed from the uninformed voter. In view of the availability of numerous sources of data on candidates and political issues, other than in printed form, it is obvious that many well-informed voters can be excluded by this process. Furthermore, there is no guarantee that the literate citizen, who is allowed to vote, has used his skills to become informed about election issues and candidates.

Essentially, in recommending a permanent ban on literacy tests, the Committee relies on facts to which Mr. Justice Douglas referred in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court's decision upholding the constitutionality of the temporary nationwide test suspension. In that regard, Mr. Justice Douglas noted:

> [The Congress] can rely on the fact that most States do not have literacy tests, that the tests have been used at times as a discriminatory weapon against some minorities, not only Negroes but Americans of Mexican ancestry, and American Indians; that radio and television have made it possible for a person to be well informed even though he may not be able to read and write. *Id.* at 147.

Congress has authority under the 14th and 15th Amendments to ban permanently the use of literacy tests. In *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Supreme Court held that Congress could enact "appropriate" legislation to secure the rights protected by the 14th Amendment. The Congress can act under Section 5 of the 14th Amendment even though there has not been a judicial determination that the evil to be legislated against is a denial of equal protection, or any other constitutional guarantee.

There is ample evidence for the Congress to conclude that literacy tests abridge, interfere with, or deny the right to vote and ought to be eliminated. Literacy tests isolate one class of citizens, the illiterates, and deny to them the franchise. The commonly stated purpose of literacy tests is to maintain an intelligent electorate and Congress can clearly find that this purpose is not met through the use of literacy tests. Given the total absence of any evidence that the quality of government or of elected officials is higher in states with literacy tests than in any others, Congress can reasonably conclude that literacy tests are not accomplishing the purpose for which they were designed.

Additionally, literacy tests do not achieve their stated purpose becase they do not assure the qualification of "intelligent voters." Clearly, with electronic media so widely available, it is possible for one with little formal education to be a well-informed and intelligent member of the electorate.

For much the same reasons that the Supreme Court upheld the existing temporary nationwide ban, in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Congress can now act under the 14th and 15th Amendments to make that ban permanent. Mr. Justice Black, announcing the judgment of the Court, noted the long history of the discriminatory use of such tests against minorities as well as the country's history of discriminatory educational opportunities in both the North and South. The long history of such discriminatory use of literacy tests

and the ever-present danger of such tests being applied in such a manner in the future are clearly sufficient grounds for the Congress to ban permanently their use in the future.

With respect to the "test or device" of "good morals" as a requirement to vote, the Supreme Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301, (1966), found it "so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials." It is certainly within the power of Congress to revoke permanently such an open invitation to abuse. The requirement of proving qualifications by voucher of other persons would also appear to be a restriction on voting that is not justified by any compelling state interest and Congress could so find on a permanent basis. Such voucher and "good morals" requirements have traditionally been used as instruments of discrimination in voting [*United States* v. *Ward*, 349 F. 2d 795 (5th Cir. 1965); *United States* v. *Manning*, 205 F. Supp. 172 (W. D. La. 1962); *United States* v. *Atkins*, 323 F. 2d 733 (5th Cir. 1963)].

Furthermore, the Supreme Court's decision in *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959), does not bar the action proposed by this Committee. The Supreme Court's decision in *Lassiter* rested on narrow grounds. The Court held that literacy tests were not per se unconstitutional. It reserved judgment on the issue of racially discriminatory administration of such tests since that issue had not been raised before it.

Additionally, recent developments and Supreme Court decisions cast serious doubt on the continued vitality of the *Lassiter* holding. Since that time, the standard to be applied to voting cases has changed. The state must now have a *compelling* governmental interest, not merely a rational basis, to justify a restriction on the right to vote. *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969); *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969); *Dunn* v. *Blumstein*, 405 U.S. 330 (1972). It seems apparent that, under this more stringent standard, literacy tests are likely to be declared unconstitutional.

In Lassiter, Mr. Justice Douglas further noted that, "Literacy and illiteracy are neutral on race, creed, color, and sex. . . ." Whatever the accuracy of that statement in 1959, recent studies indicate that it can no longer be supported. The illiteracy rate among blacks and Mexican Americans is much higher than for whites, a result directly attributable to the denial of equal educational opportunities (See *Gaston County* v. *United States*, *supra*. Thus, not only is the *Lassiter* decision narrow, but it is also dated so far as the standard which was applied and the data upon which it was based.

A final point to be made with respect to the *Lassiter* case is that it is a decision where the straight constitutional issue was addressed in the absence of a Federal statute. That factor alone makes the *Lassitor* situation quite distinguishable from one where the Congress has in fact acted. Congress can enact appropriate legislation against an evil, even in the absence of a judicial determination that the evil to be legislated against is violative of the Constitution. *Katzenbach* v. *Morgan*, *supra*. Such Congressional action permanently banning literacy tests throughout the country would now be appropriate.

B. TITLE II: EXPANSION OF THE VOTING RIGHTS ACT

Background

In January 1975, the U.S. Commission on Civil Rights submitted to Congress *The Voting Rights Act: Ten Years After*, a report evaluating the current status of minority voting rights in jurisdictions covered by the Voting Rights Act of 1965. In its report, the Commission indicated that although the focus of its study was on covered jurisdictions, there was evidence to establish that minority citizens in other jurisdictions encounter discrimination in the electoral process. Serious consideration should be given, the Commission recommended, to an amendment to the Voting Rights Act to cover those language minorities who, according to preliminary information, require the protection of the law (Hearings, 1339).

Following the recommendation of the Commission, the Subcommittee's study on whether to extend the Voting Rights Act or to allow it to expire in August 1975, was broadened to include an examination of the voting problems of minority citizens outside the current jurisdiction of the Act. In 13 days of hearings and testimony from 34 witnesses, the Subcommittee documented a systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English. Based on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, the Subcommittee acted to amend the current provisions of the Voting Rights Act to broaden its special coverage to new geographic areas in order to ensure the protection of the voting rights of "language minority citizens." The term language minority citizens refers to those persons who are Asian American, American Indian, Alaskan Natives and of Spanish heritage.[16]

Barriers to Voting

The extensive record before the Subcommittee is filled with examples of the barriers to registration and voting that language minority citizens encounter in the electorial process. Testimony was received regarding inadequate numbers of minority registration personnel, uncooperative registrars, disproportionate effect of purging laws on non-English-speaking citizens because of language barriers (Hearings, 1068–1070).

In addition, liberal electoral laws in some jurisdictions are nullified by inadequate and unsystematic local implementation. Such problems discourage the exercise of voting rights, particularly by those who are newcomers to politics by virtue of previous total exclusion from the political process. Language minority citizens, like blacks

[16] Based on usage by the Bureau of the Census, the category of Asian American includes persons who indicated their race as Japanese, Chinese, Filipino, or Korean. The category of American Indian includes persons who indicated their race as Indian (American) or who did not indicate a specific race category but reported the name of an Indian tribe. The population designated as Alaskan Native includes persons residing in Alaska who identified themselves as Aleut, Eskimo or American Indian. Persons of Spanish heritage are identified as (a) "persons of Spanish language" in 42 States and the District of Columbia; (b) "persons of Spanish language" as well as "persons of Spanish surname" in Arizona, California, Colorado, New Mexico and Texas; and (c) "persons of Puerto Rican birth or parentage in New Jersey, New York and Pennsylvania." Letter from Meyer Zitter, Chief, Population Division, Bureau of the Census, to House Judiciary Committee, April 29, 1975.

throughout the South, must overcome the effects of discrimination as well as efforts to minimize the impact of their political participation. The State of Texas, for example, has a substantial minority population, comprised primarily of Mexican Americans and blacks. Evidence before the Subcommittee documented that Texas also has a long history of discriminating against members of both minority groups in ways similar to the myriad forms of discrimination practiced against blacks in the South.

Turnout in recent presidential elections in Texas (1960–1972) has been consistently below 50 percent of the voting age population. Indeed, the only reason that Texas was not covered by the Voting Rights Act in 1965 or by the 1970 amendments was that it employed restrictive devices other than a formal literacy requirement. A generation ago numerous suits were required to eliminate the Texas white primary. *Nixon* v. *Herndon*, 273 U.S. 536 (1927); *Nixon* v. *Condon*, 286 U.S. 73 (1932); *Grovey* v. *Townsend*, 295 U.S. 45 (1935); *Smith* v. *Allwright*, 321 U.S. 649 (1944); *Terry* v. *Adams*, 345 U.S. 461 (1953). More recently a Federal constitutional amendment and a suit brought by the Department of Justice pursuant to Congressional instructions, contained in Section 10 of the Voting Rights Act, were required to eliminate the Texas poll tax. *United States* v. *Texas*, 252 F. Supp. 234 (W.D. Tex. 1966), *aff'd* 384 U.S. 155 (1966) (per curiam). Subsequently, the state enacted the "most restrictive voter registration procedures in the nation" to replace the poll tax. *Graves* v. *Barnes*, 343 F. Supp. 704, 731 (W.D. Tex. 1972), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973). This new registration system was declared unconstitutional through private litigation in the Federal court. *Beare* v. *Smith*, 321 F. Supp. 1100 (S.D. Tex. 1971), *aff'd sub nom. Beare* v. *Briscoe*, 498 F. 2d 244 (5th Cir. 1974) (per curiam). The District Judge in *Graves* v. *Barnes*, *supra* at 731 noted the effect which this history has had on persons of Spanish origin:

> This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.

Registration is merely the beginning of participation in the political process. Once registered language minorities have no guarantee that they may easily cast a ballot. What is done at the local level by local officials has the most impact upon the ability of these minorities to vote and the effectiveness of that vote. Language minorities do not control the election or appointment of local officials and are seldom in positions of influence. Many obstacles placed by these officials frighten, discourage, frustrate, or otherwise inhibit language minority citizens from voting. Outright exclusion and intimidation at the polls are only two of the problems they face.

Other problems that have a discrimination impact on language minority voters are denial of the ballot by such means as failing to locate voters' names on precinct lists, language location of polls at places where minority voters feel unwelcome or uncomfortable, or which are inconvenient to them, and the inadequacy of voting facilities.[17] Some of the other barriers to voting which language minority

[17] U.S. Commission on Civil Rights, Staff Memorandum, "Survey of Preliminary Research on the Problems of Participation by Spanish-Speaking Voters in the Electoral Process," April 23, 1975, page 11. The memorandum arrived too late to be printed in the record.

citizens face are the underrepresentation of minority persons as poll workers; unavailability or inadequacy of assistance to illiterate voters; lack of bilingual materials at the polls for these non-English-speaking persons; and problems with the use of absentee ballots. Memories of past discourtesies or physical abuse may compound the problems for many language minority voters. The people in charge are frequently the same ones who so recently excluded minorities from the political process.

The exclusion of language minority citizens is further aggravated by acts of physical, economic, and political intimidation when these citizens do attempt to exercise the franchise. Witnesses testified that local law enforcement officials in areas of Texas patrol only Mexican American voting precincts, and harass and intimidate Mexican American voters. (Hearings, 522); see also *Allee* v. *Medrano*, 416 U.S. 802 (1974).

Much more common, however, are economic reprisals against minority political activity. Fear of job loss is a major deterrent to the political participation of language minorities. A witness from Texas indicated that an Anglo candidate who was a loan officer at the bank went to each Mexican American who had loans with the bank and told them he expected their votes. (Hearing, 521). The Subcommittee record is replete with overt economic intimidation designed to interfere with and abridge the rights of Mexican American voters. In its analysis of problems of electoral participation by Spanish-speaking voters, the Commission on Civil Rights reported that some Mexican Americans in Uvalde, Texas, are afraid their welfare checks will be reduced because of their political activity.[20] Underlying many of the abuses is the economic dependence of these minorities upon the Anglo power structure. People whose jobs, credit, or housing depend on someone who wishes to keep them politically powerless are not likely to risk retaliation for asserting or acting on their own views.

Because of discrimination and economic dependence, and the fear that these have created, language minority citizens for the most part have not successfully challenged white political domination. The proportion of elected officials who are Mexican American or Puerto Rican, for example, is substantially lower than their proportion of the population. In Texas, although Mexican Americans comprise 16.4 percent of the population, they hold only 2.5 percent of the elective positions. In New York, where Spanish heritage citizens comprise 7.4 percent of the population, they hold less than .1 percent of elective positions. If a language minority person is not permitted to register, or if registered not allowed to vote, that person is obviously denied full participation in the political process. The same result occurs when a candidate whom a voter might support is kept from running.

But these blatant examples are not the only barriers obstructing equal opportunity for political participation. The Subcommittee heard extensive testimony on the question of representation of language minority citizens, that is, the rules and procedures by which voting strength is translated into political strength. The central problem documented is that of dilution of the vote—arrangements by which the votes of minority electors are made to count less than the votes of the majority. Testimony indicated that racial discrimination against language minority citizens seems to follow density of minority population. As one witness noted, "As the Mexican American or Black voter appears to threaten potentially local power structures, a wide variety of legal devices are employed to intimidate, exclude and otherwise deny voting rights to minority citizens" (Hearings, 400).

[20] *Ibid.*

The way lines are drawn for election districts have a significant effect on the ability of voters to elect the candidate of their choice. Often lines are drawn in order to dilute or negate minority voting strength. For example, although Navajos residing on the reservation constitute about three-quarters of Apache County' population, the three supervisors' districts are drawn in such a way that all the Navajos are placed in one grossly overpopulated district. The Navajos and the Department of Justice have filed suit against the districting plan. Moreover, the one Navajo candidate who was elected to the three-member Apache County Board of Supervisors by a three to one margin, was refused his office until the Arizona Supreme Court ordered him seated (Hearings, 1315).

In Nacogdoches, Texas, the city charter provided for at-large elections with electoral victory for a plurality of the votes. In spring, 1972, a black candidate almost won a plurality of votes in the election. In June, 1972, the all-white city commission amended the city charter for the first time in 43 years to adopt a majority run-off, numbered place system for city elections.[21] In the April, 1973, election, another black candidate ran for city commissioner only to win a plurality of the votes but to lose in a majority run-off election (Hearings, 400–401). In 1975, a Federal district court ordered single-member districts for the City of Nacogdoches on grounds that the at-large majority run-off, numbered place system abridged the voting rights of black citizens. *Weaver* v. *McUlroy*, Civil No. 5524 (E.D. Tex. 1975).

Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise the right to vote. The following communities have adopted such changes in the face of growing minority voting strength: Corpus Christi, Lufkin and Waco, in addition to a number of local school districts throughout the state (Hearings, 401). In January, 1972, a three-judge Federal court ruled that the use of multi-member districts for the election of state legislators in Bexar and Dallas counties, Texas, unconstitutionally diluted and otherwise cancelled the voting strength of Mexican Americans and blacks in those counties. This decision was affirmed by the United States Supreme Court in *White* v. *Regester*, 412 U.S. 755 (1973); see also *Robinson* v. *Commissioners' Court, Anderson County*, 505 F.2d 674 (5th Cir., December 23, 1974); *Smith* v. *Craddick*, 471 S.W. 2d 375 (Tex. Sup. Ct. 1971).

The at-large structure, with accompanying variations of the majority run-off, numbered placed system, is used extensively among the 40 largest cities in Texas. And, under state statute, the countless school districts in Texas elect at-large with an option to adopt the majority run-off, numbered place system. These structures effectively

[21] A majority run-off is a requirement that a candidate receive a majority of the votes for victory and provides for a run-off between the two top candidates if no one receives a majority. A system of numbered places divides the field into at-large elections with as many separate races as there are vacancies to be filled. This is most commonly done through the use of numbered posts. When numbered posts are combined with a majority vote requirement, the chance for a minority candidate becomes practically impossible unless minorities are in a voting majority (Hearing, 1511–1512).

deny Mexican American and black voters in Texas political access in terms of recruitment, nomination, election and ultimately, representation (Hearings, 403).

Another device which is used to affect adversely minority participation is the annexation of areas with large white voting populations. In 1972, in Pearsall, Texas, for example, the City Council, while refusing to annex compact contiguous areas of high Mexican American concentration, chose to bring a 100 percent Anglo development within the city. The City of San Antonio, in 1972, made massive annexations including irregular or finger annexations on the city's heavily Anglo north side. The population breakdown in the areas annexed was overwhelmingly Anglo, although the city was previously almost evenly divided between Anglos and Mexican Americans (Hearings, 369).

In addition to the serious strictures on their access to political participation outlined previously, language minority citizens are also excluded from the electoral process through the use of English-only elections. Of all Spanish heritage citizens over 25 years old, for example, more than 18.9 percent have failed to complete five years of school compared to 5.5 percent for the total population.[22] In Texas, over 33 percent of the Mexican American population has not completed the fifth primary grade. A series of reports by the U.S. Commission on Civil Rights on Mexican American education in the southwestern United States found that over 50 percent of all Mexican American children in Texas who enter the first grade never finish high school.[23] The Commission concluded that the practices of Mexican American education "reflect a systematic failure of the educational process, which not only ignores the educational needs of Chicano students but also suppresses their culture and stifles their hopes and ambitions. In a very real sense, the Chicano is the excluded student.[24]

The Committee found that these high illiteracy rates are not the result of choice or mere happenstance. They are the product of the failure of state and local officials to afford equal educational opportunities to members of language minority groups. For example, until 1947, a California statute authorized local school districts to maintain separate schools for children of Asian descent, and if such separate schools were established, the statute prohibited these children from attending any other school. See *Guey Heung Lee* v. *Johnson*, 404 U.S. 1215 (1971).[25] The effects of that past discrimination against Asian Americans in education continues into the present.

In addition the language disabilities of Asian Americans are particularly egregious and deter their participation in the electoral process. In *Lau* v. *Nichols*, 414 U.S. 563 (1974), the Supreme Court held that the failure of the San Francisco Board of Education to provide language instruction to Chinese students who do not speak English denied them a fruitful opportunity to participate in the public school program. The Court observed:

[22] *Census of Population: 1970. General Social and Economic Characteristics.* United States Summary, pc(1)–C1. Table 88, page 386.

[23] U.S. Commission on Civil Rights, *The Excluded Student,* Mexican American Education Study, Report III, May 1972, at 23.

[24] *Id.*, at 14.

[25] Discrimination against Americans of Oriental descent is a well known and sordid part of our history. See generally *Koretmatsu* v. *United States,* 323 U.S. 214 (1944); *Hirabayashi* v. *United States,* 320 U.S. 81 (1943); *Yu Cong Eng* v. *Trinidad,* 271 U.S. 500 (1926); *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886).

> We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. *Id.* at 566.

If we substitute the word "voting" for the word "classroom" in the Court's opinion, we can appreciate the difficulties which Asian Americans face when they seek to engage in the political process.

The same pattern of educational inequality exists with respect to children of Indian, Alaskan Native, and Hispanic origin. In one of its many reports on the subject, the United States Commission on Civil Rights concluded:

> The basic finding of this report is that minority students in the Southwest—Mexican Americans, blacks, American Indians—do not obtain the benefits of public education at a rate equal to that of their Anglo classmates.[26]

In *Natonabah* v. *Board of Education*, 355 F. Supp. 716 (D. N. Mex. 1973), a Federal district court has found that Navajo pupils in the Gallup-McKinley School District have been denied equal educational opportunities. Similar findings have been made by the Supreme Court and lower Federal courts regarding students of Spanish origin. *E.g.*, *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973); *Cisneros* v. *Corpus Independent School District*, 467 F.2d 142 (5th Cir. 1972 (en banc)); *United States* v. *Texas Education Agency*, 467 F.2d 848 (5th Cir. 1972) (en banc); *Romero* v. *Weakley*, 226 F.2d 399 (9th Cir. 1955); *Soria* v. *Oxnard School District Board of Trustees*, 328 F. Supp. 155 (C.D. Cal. 1971); see generally Rangel and Alcalo, *De Jure Segregation of Chicanos in Texas* Schools, 7 Harv. Civil Rights and Liberties Rev. 370 (1972).[27] Finally, in *Hootch* v. *State Operated School System*, Civil No. 72–2450 (Super. Ct. Alaska 1973) (plaintiff's motion for summary judgment denied) (appeal pending before Supreme Court of Alaska).

The plaintiffs have challenged the practice of the State of Alaska to provide public secondary schools for Alaskan native children only in urban areas distant from their communities. Most non-native children, on the other hand, are offered public secondary schools in their own communities.

In addition to disparative treatment in the areas of voting and education, language minority citizens have been the target of discrimination in almost every facet of life. The U.S. Commission on Civil Rights in reports and hearings has documented this discrimination in areas such as housing, administration of justice and employment.[28] Another measure for need is provided by the extent of litigation needed

[26] U.S. Commission on Civil Rights, *The Unfinished Education,* Mexican American Education Study, Report II, October, 1971. See also *Keyes* v. *School District No. 1,* 413 U.S. 189, 197–198 (1973).

[27] See U.S. Commission on Civil Rights, *Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest* (1971); *The Unfinished Education* (1971); *The Excluded Student: Educational Practices Affecting Mexican Americans in the Southwest* (1972); *Mexican American Education in Texas: A Function of Wealth* (1972); *Teachers and Students* (1973); *Toward Quality Education for Mexican Americans* (1974).

[28] *Mexican Americans and the Administration of Justice in the Southwest* (1970); Hearing, San Antonio, Texas (1968); *The Navajo Nation: An American Colony* (1975); *The Southwest Indian Report* (1973); Hearing, Washington, D.C. (1971); Hearing, New York (1972); Hearing, Newark, N.J. (1962). See also Texas State Advisory Committee to the U.S. Commission on Civil Rights, *Employment Practices at Kelly Air Force Base,* San Antonio, Texas (1968); *The Civil Rights Status of Spanish Speaking Americans in Kleberg, Nueces, and San Patricio Counties, Texas* (1967); and *Asian American and Pacific Peoples: a Case of Mistaken Identity.*

to secure the rights of language minorities. The Assistant Attorney General testified that the Department of Justice has had to take legal action against state and local governments to enjoin discrimination against language minorities in public schools, employment, voting rights, and penal institutions (Hearings, p. 178). The Department's Civil Rights Division, for example, has participated in 97 civil suits and initiated fourteen criminal actions involving the rights of Spanish-speaking citizens, Asian Americans and American Indians (Hearings, 277–279).[29]

In 1973, the Supreme Court upheld a lower court finding which noted that the Mexican American population in Texas had "historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others." *Graves* v. *Barnes*, 343 F. Supp. 704, 728 (W.D. Tex. 1972), *aff'd in relevant part sub nom. White* v. *Regester*, 412 U.S. 755 (1973). Later, the same three-judge district court iterated its finding that Texas has "a history pockmarked by a pattern of racial discrimination that has stunted the electoral and economic participation of the black and brown communities in the life of state." [*Graves* v. *Barnes*, 378 F. Supp. 640, 643 (W.D. Tex.), *prob. juris. noted sub nom. White* v. *Regester*, 417 U.S. 906 (1974) (sub judice).]

Despite the evidence of high illiteracy rates for language minority citizens, states and local areas where they reside continue to adhere to a uniform language system. It is clear from the subcommittee record that the practice of conducting registration and voting only in English does impede the political participation of voters whose usual language is not English. The failure of states and local jurisdictions to provide adequate bilingual registration and election materials and assistance undermines the voting rights of non-English-speaking citizens and effectively excludes otherwise qualified voters from participating in elections.

In view of this overwhelming evidence of voting discrimination aaginst language minorities, it is not surprising that the registration and voting statistics of language minorities are significantly below those of the Anglo majority. In 1972, for example, only 44.4 percent of persons of Spanish origin were registered compared to 73.4 percent for Anglos.[30] The data for 1974 indicates similar disparities: 34.9 percent of persons of Spanish origin were registered to vote compared to 63.5 percent for Anglos.[31] Only 22.9 percent of Spanish origin persons voted in the 1974 national election, less than one-half the rate of participation for Anglos.[32]

Expansion of the Voting Rights Act

Weighing the overwhelming evidence before it on the voting problems encountered by language minority citizens, the Committee acted to expand the protections of the Voting Rights Act to insure their free access to the franchise. The definition of those groups included in "language minorities" was determined on the basis of the evidence

[29] See also Letter from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, May 6, 1975.

[30] *Current Population Reports: 1972. Population Characteristics.* Voting and Registration Statistics in the Election of November 1972. Series p. 20, No. 263. Table 1, page 22.

[31] *Ibid.*

[32] Unpublished data from the *Current Population Survey: 1974,* provided by the Bureau of the Census.

of voting discrimination. Persons of Spanish heritage was the group most severely affected by discriminatory practices, while the documentation concerning Asian Americans, American Indians and Alaskan Natives was substantial.

No evidence was received concerning the voting difficulties of other language groups. Indeed, the voter registration statistics for the 1972 Presidential election showed a high degree of participation by other language groups: German, 79 percent; Italian, 77.5 percent; French, 72.7 percent; Polish, 79.8 percent; and Russian, 85.7 percent.[33]

TABLE 2.—REPORTED VOTER PARTICIPATION AND REGISTRATION OF PERSONS OF VOTING AGE, BY ETHNIC ORIGIN AND SEX: NOVEMBER 1972

[Numbers in thousands: civilian noninstitutional population]

Ethnic origin	Total			Male			Female		
	All persons	Percent reported registered	Percent reported voted	Total	Percent reported registered	Percent reported voted	Total	Percent reported registered	Percent reported voted
German	16,010	79.0	70.8	7,858	80.1	72.1	8,152	78.0	69.5
Italian	5,900	77.5	71.5	2,918	78.7	73.1	2,982	76.4	70.0
Irish	9,863	76.7	66.6	4,429	78.3	68.4	5,434	75.4	65.1
French	3,275	72.7	63.2	1,528	74.8	64.4	1,747	70.9	62.1
Polish	3,355	79.8	72.0	1,630	81.3	73.4	1,725	78.3	70.8
Russian	1,605	85.7	80.5	756	88.5	83.5	849	83.2	78.0
English, Scottish, and Welsh	19,400	80.1	71.3	9,010	81.4	72.7	10,390	78.9	70.1
Spanish	5,616	44.4	37.5	2,641	45.6	39.4	2,975	43.4	35.7
Mexican	3,219	46.0	37.5	1,551	47.2	38.4	1,668	44.9	36.6
Puerto Rican	834	52.7	44.6	360	54.7	50.9	474	51.3	39.8
Other Spanish	1,563	36.8	33.5	730	37.7	35.8	832	36.0	31.5
Negro[1]	12,467	67.5	54.1	5,571	67.2	53.8	6,896	67.7	54.3
Other	46,855	74.1	65.9	21,631	74.7	66.7	25,225	73.5	65.2
Do not know	9,962	64.9	51.8	4,997	65.8	53.5	5,965	64.0	50.1
Not reported	1,714	47.9	42.4	790	46.6	41.3	924	48.9	43.4

[1] There were 13,493,000 persons classified by the interviewers as Negro (see table 1) compared with the 12,467,000 who classified themselves as of Negro ethnic origin.

Source: U.S. Bureau of the Census. "Current Population Reports." Population characteristics, October 1973, series p. 20, No. 253, p. 27.

The Committee, although cognizant of the extent of voting discrimination against these language minorities, was nonetheless aware that the problems were not uniform in their severity across the nation. Therefore, in expanding the Act, two distinct triggers were developed to identify areas with differing magnitude of barriers to full participation by language minorities in the political process. The remedies set in operation by these triggers mirror the differences in the evidentiary record on the severity of voting discrimination against language minorities. Title II of H.R. 6219 contains the prohibition and remedies for those jurisdictions with the more serious problems, while Title III imposes more lenient restrictions upon areas with less severe voting difficulties.[34]

Extending the protection of the Act to language minorities is accomplished by expanding the definition of Test or device" to mean the use of English-only election materials in jurisdictions where more than five percent of the voting age citizen population is comprised of any single language minority group. In other words, a jurisdiction is deemed to employ a "test or device" if it provided election materials or assistance only in the English language, and if it had more than

[33] 1972 Current Population Reports, *supra* n.

[34] A discussion of the formula used to trigger coverage in Title III is set forth herein after.

a five percent citizen population of American Indians, Alaskan Natives, Asian Americans or Spanish heritage.[35] Even when such a test or device exists, however, coverage is not triggered for a jurisdiction unless it also had a low voter registration or turnout in the 1972 presidential election, namely, less than than 50% turnout. Thus, the "trigger" of Title II is essentially identical to the traditional trigger, now found in Section 4(b) of the Act, that is, the existence of a "test or device," as newly defined, and less than 50% registration or turnout in the most recent presidential election.

By covering these new geographic areas, we simply apply the Act's special remedies to jurisdictions where language minorities reside in greatest concentrations and where there is evidence of low voting participation. Currently available data indicate that Title II coverage would be triggered in certain counties in California (including the two counties already covered), in areas of Arizona (again, most of which are already covered), in areas of Florida, Colorado, New Mexico, Oklahoma, New York, North Carolina, South Dakota, Utah, Virginia, Hawaii, and for the entire states of Alaska and Texas (See Appendix C for a tentative list of coverage under Title II.)

Remedies

Title II would therefore mandate that in these covered areas bilingual election procedures be implemented, that Section 5 preclearance be given to all new voting changes, and that Federal examiners and observers be able to be designated to serve in those areas.

Title II of the bill would for ten years prohibit English-only elections in certain areas and mandate bilingual elections. There is no question but that bilingual election materials would facilitate voting on the part of langauge minority citizens and would at last bring them into the electoral process on an equal footing with other citizens. The provision of bilingual materials is certainly not a radical step. Some court decisions already suggest that in order for the right to vote to be effective voters belonging to a substantial minority which speaks a language other than English should be provided election materials in their own language. Courts decisions in New York have resulted in specific orders that the board of elections provide extensive bilingual assistance to voters in election districts with substantial non-English-speaking population.[36] The rationale behind the decisions is the same as the reasoning that required help for illiterate voters: meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise. In *Torres* v. *Sachs*, 381 F. Supp. 309 (S. D. N.Y. 1974) a Federal court found that the conduct of elections only in English deprived Spanish speaking citizens of rights protected by the Voting Rights Act: "It is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election,

[35] The five percent figure is one which has been established as a relevant cut-off in judicial decisions mandating bilingual materials and assistance in Philadelphia, *Arroyo* v. *Tucker*, 372 F. Supp. 764 (E. D. Pa. 1974), and in New York, *Torres* v. *Sachs*, 381 F. Supp. 309 (S.D. N.Y. 1974).

[36] With reference to elections for the school board of Community School District One in Manhattan, see *Lopez* v. *Dinkins*, 73 Civ. 695 (S.D.N.Y. February 14, 1973). The court invalidated the election because the bilingual assistance was not adequately provided. *Coalition for Education in School District One* v. *Board of Elections of the City of New York*, 370 F. Supp. 42 (S.D.N.Y. 1974), *affirmed* 495 F.2d 1090 (2d Cir. 1974). With reference to city elections, see *Torres* v. *Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1974).

must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired."[37]

Courts in New York have ordered complete bilingual election assistance, from dissemination of registration information through bilingual media to use of bilingual election inspectors. In some jurisdictions which have substantial Puerto Rican populations and which are not subject to the special provisions of the Voting Rights Act, courts have also ordered the development of bilingual systems pursuant to Section 4(e) of the Act.[38] Some jurisdictions not under court order have moved voluntarily to deal with the problem of assisting the non-English-speaking voter.[39]

The California Supreme Court found that state's English-language literacy requirement a violation of the equal protection clause of the 14th amendment but did not eliminate the requirement of literacy altogether (since suspended by the 1970 Voting Rights Act Amendments) or order the development of "a bilingual electoral apparatus."[40] Subsequently, the California state legislature enacted legislation which required county officials to make reasonable efforts to recruit bilingual deputy registrars and election officials in precincts with three percent or more non-English-speaking voting age population. In addition, California now requires the posting of a Spanish-language facsimile ballot, with instructions, that also must be provided to voters on request for their use as they vote.[41]

Since 1967, Congress has sought to improve the educational opportunities of language minorities through amendments to various education acts. The Bilingual Education Amendments of 1974, for example, provided that a limited English speaking child should receive his instruction in whichever language is necessary to insure that he has the same opportunity to learn and develop his skills as a non-limited English-speaking child during the time that he is building his English competence to a level equivalent with his non-limited English speaking peers.[42]

These statutes are, of course, designed to affect a permanent solution to the difficulties encountered by citizens who do not speak Eng-

[37] 381 F. Supp. 312. The criticism of New York's monolingual elections in the *Torres* decision prompted the Justice Department to move to recover the New York counties which formerly bailed out from under the Act's special provisions. Arguing that such monolingual elections constituted discriminatory "tests or devices", the Department succeeded in bringing these counties back under the Act's special provisions. *New York* v. *United States*, Civil No. 2419–71 (D.D.C., Orders of Jan. 10, 1974 and April 30, 1974) *aff'd* 95 S. Ct. 166 (1974) (per curiam).

[38] *Puerto Rican Organization for Political Action* v. *Kusper*, 490 F.2d 575 (7th Cir. 1973) (Chicago); *Marquez* v. *Falcey*, Civil No. 1447–73 (D. N.J. Oct. 9, 1973); *Ortiz* v. *New York State Board of Elections*, Civil No. 74–455 (W.D.N.Y. Oct. 11, 1974) (Buffalo); and *Arroyo* v. *Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974) (Philadelphia).

[39] New Jersey has adopted a statute requiring bilingual sample ballots and registration forms in election districts with 10 percent or more Spanish speaking registered voters (N.J. Laws, 1974, ch. 51). Dade County, Florida, has provided all registration and election materials in English and Spanish for two years. Massachusetts provides sample ballots and instructions in English and Spanish in any precinct with more than 700 persons of Spanish speaking background. Bilingual assistance, including ballots, is provided in Pennsylvania in areas of significant concentrations of non-English-speaking persons. In Connecticut, bilingual assistance is supplied in towns and cities where Spanish speaking comprise 5 percent of the population. Library of Congress, Congressional Research Service, *Memorandum on Fifty-State Survey Relating to Bilingual Voter Assistance*, March 11, 1975, and Staff telephone survey of state election officials.

[40] *Castro* v. *California*, 85 Cal. Rptr. 20, 466 P.2d 244, 258 (1970).

[41] A 1974 study by the California Secretary of State on enforcement of its bilingual requirements found that, on the basis of a poll of all 58 counties, "the vast majority of County Clerks and/or registrars of voters in this state have not responded to the mandate of section 1611 (bilingual assistance act) and have made little progress in assisting voters who have difficulty in voting in English." (Hearings, 265).

[42] H.R. Rep. No. 93–1211, 93d Congress, 2d Sess. 149 (1974).

lish. However beneficial those laws may be, they have not yet been in operation long enough to reduce the illiteracy rate of certain language minorities below the national average and thus allow free and full participation in the political life of the Nation. Consequently, the prohibition of English-only elections in certain areas is necessary to fill that hiatus until genuinely equal educational opportunities are afforded language minorities.

Suspending English-only elections and mandating bilingual ones for a ten year period is an appropriate remedy for the kind of voting discrimination against language minorities disclosed by the record. But even if that remedy rested solely on the unequal educational opportunities which state and local officials have afforded members of language minority groups, it would still be proper to require it. In *Gaston County* v. *United States*, 395 U.S. 285 (1969), the Supreme Court recognized the inextricable relationship between educational disparities and voting discrimination. Even though a literacy test or other practice may be racially neutral on its face, see *Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959), it may disproportionately disadvantage minorities when applied to persons denied equal educational opportunities. That reasoning is fully applicable to English-only elections which, while racially neutral, may have an impermissible discriminatory impact. See *Torres* v. *Sachs*, *supra*.

To be sure, the purpose of suspending English-only and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now. See *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970). This bill rejects the notion that the "denial of a right deemed so precious and fundamental in our society [is] a necessary or appropriate means of encouraging persons to learn English." *Katzenbach* v. *Morgan*, *supra* at 655. Title II of H.R. 6219 is a temporary measure to allow such citizens to register and vote immediately; it does not require language minorities to abide some unknown, distant time when local education agencies may have provided sufficient instruction to enable them to participate meaningfully in an English-only election.

The record before the Committee establishes that prohibition of English-only elections would not alone assure access of all language minority citizens to registration and voting. Although English-only elections are an impediment to the participation of language minorities, other tactics of discrimination have also been used and would still readily be available to state or local election officials. Thus, the Committee believes that the appointment of examiners and observers in those areas, where violations of the voting guarantees of the 14th or 15th Amendments are occurring or where the Attorney General considers examiners and observers necessary, is the effective answer to such tactics. Federal observers could clearly serve to diminish the intimidating impact of having to vote in all-white areas of the city or being subject to constant "law enforcement surveillance." Examiners could "list" those citizens residing in the communities of the uncooperative registrars.

Further, in light of the ingenuity and prevalence of discriminatory practices that have been used to dilute the voting strength and otherwise affect the voting rights of language minorities, the Committee acted to extend the preclearance mechanism of Section 5 of the Voting Rights Act to the newly covered jurisdictions. The exhaustive case-by-case approach of the pre-1965 period proved to be inadequate and futile in dealing with the magnitude of the voting problems confronting blacks. The pervasive voting discrimination which now affects language minorities in certain areas throughout the Nation requires the application of the Section 5 remedy. That procedure has been in force for ten years and a whole body of administrative law has developed around it.[43] As a method which has shown a marked degree of success, it is appropriate to adopt it to the present task.

Bail-out from Coverage

Coverage under Title II is based on a rational trigger which describes those areas for which we had reliable evidence of actual voting discrimination in violation of the 14th or 15th Amendments. It is possible, of course, that there may be areas covered by this title where there has been no voting discrimination. The bill takes account of this possibility by a provision which allows a jurisdiction to exempt itself from coverage of the Act if it meets certain criteria. Any state or political subdivision may exempt itself by obtaining a declaratory judgment that English-only elections or any other "test or device" has not in fact been used in a discriminatory fashion against language minorities and other racial or ethnic groups for the ten years preceding the filing of action. The "bail-out" process operates in the same manner as the current provision in the Act and is a relatively minor one if no evidence of discrimination is present. In fact, the Attorney General may consent to the entry of a declaratory judgment if, in his opinion, no violations of voting rights have occurred. Alaska; Arizona; Wake County, North Carolina; Elmore County, Idaho; and Apache, Navajo, and Coconino Counties, Arizona have successfully sued to bail-out from the special provisions of the present Act.

Constitutionality

Section 5 of the 14th Amendment and Section 2 of the 15th Amendment give Congress broad powers "to enforce, by appropriate legislation, the provisions" of the amendments. Those sections expand the authority of Congress to remedy problems arising under them, and anticipate that the national legislature will act to protect the rights of minorities. In *Ex parte Virginia*, 100 U.S. 339, 345–46 (1879), the Supreme Court held:

> It is the power of Congress which has been enlarged, Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. 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

[43] In reviewing Section 5 submissions from the jurisdictions covered by Title II of H.R. 6219, the Attorney General or the district court will be required, as they are now under the present Act, to evaluate the proposal for its impact on each racial, ethnic, or language minority group encompassed by the phrase "race or color," and by the prohibitions of Title II [the new Section 4(f)(2)].

prohibited, is brought within the domain of congressional power (emphasis in original).

In recent years, Congress has enacted and the Supereme Court has sustained legislation which seeks to enfranchise members of minority groups. In *South Carolina* v. *Katzenbach*, 338 U.S. 301 (1966), the Court upheld the original Voting Rights Act of 1965 with its provisions suspending "tests and devices," requiring preclearance for new election laws, and authorizing Federal registrars and observers. Three months later, the Court approved the sections of that Act which allowed Puerto Ricans to vote even though they were illiterate in English. *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

The *Morgan* case has enormous significance for the bill now before us. The Court approved the exercise of congressional power to enfranchise language minorities who are being denied the right to vote because of their inability to read or Understand English. In that instance, Congress suspended the New York State statute requiring ability to understand English as a prerequisite for voting as it applied to Puerto Rican residents. Later litigation under that section held that New York must provide bilingual election materials, as well as allow Spanish-speaking Puerto Ricans to vote. *Torres* v. *Sachs*, *supra*.

H.R. 6219 is merely an extension of the legislative and constitutional principles approved by the Supreme Court in *South Carolina* v. *Katzenbach*, *supra*, and *Katzenbach* v. *Morgan*, *supra*. Unlike the provision sustained in *Morgan*, which was limited to one group, this bill would enfranchise four principle language minorities: persons of Spanish heritage (including Puerto Ricans), American Indians, Alaskan natives, and Asian Americans. These are the groups which, the evidence shows, have been subjected to voting discrimination. In suspending English-only elections, this bill does no more than the statute upheld in *Morgan*. In applying the special remedies of the present Act through Title II, H.R. 6219 does no more than the law validated in *South Carolina* v. *Katzenbach*, *supra*. And in mandating bilingual elections, it affords a remedy implicit in the provisions sustained in *Morgan*, and required by later court decisions. *Torres* v. *Sachs*, *supra* and *Arroyo* v. *Tucker*, *supra*.

In both cases, the Court deferred largely to the congressional judgment as to what is "appropriate legislation" under the enforcement sections of the Fourteenth and Fifteenth Amendments. So long as it perceived a rational basis for the legislative enactment, the Court would sustain the statute. In this instance, the record is replete with evidence of the discrimination against certain language minorities. And since the Court has already sustained the remedial devices in prior litigation, the corrective measures embodied in H.R. 6219 present no novel constitutional issues.

It is argued that, in extending the Act only to the four language minority groups, the bill is constitutionally defective. In *Morgan*, the Supreme Court upheld a federal law extending the right to vote to non-English-speaking Puerto Ricans. The Court rejected the contention that the provision was too narrowly drawn in its application only to Puerto Ricans residing in New York. In response to that argument, the Court observed:

> [I]n deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone further than it did," *Roschen* v. *Ward*, 279 U.S. 337, 339, that a legislature need not "strike at all evils at the same time," *Semler* v. *Dental Examiners*, 294 U.S. 608, 610, and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489. *Id.* at 657.

Finally it is said that, since the decisions in *South Carolina* v. *Katzenbach*, supra, and *Katzenbach* v. *Morgan*, supra, the Supreme Court has retreated from the broad latitude given Congress in those cases to deal with voting problems. In support of this view, some cite the opinions in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), in which a sharply and hopelessly divided Court sustained the constitutionality of congressional legislation that enfranchised 18 year olds in federal elections and that removed certain residency requirements as a prerequisite to voting. At the same time, it invalidated the provision which sought to enfranchise 18 year olds in state and local elections.

Whatever the ultimate impact of the *Mitchell* case, a majority of the justices did not disagree with the principles of *South Carolina* and *Morgan* as they applied to protecting the rights of "discrete and insular minorities." That protection, after all, was the thrust of the 14th and 15th Amendments, and, at a minimum, Congress is fully authorized to secure the rights of such minorities. Whether a particular language minority is in need of protection is a question left largely to the judgment of the legislature. In view of the hearing record in this case, it should be quite plain to all that the Congress would properly be exercising its discretion by enacting H.R. 6219.

Separability

H.R. 6219 contains a separability clause to ensure that the current provisions of the Voting Rights Act of 1965, as amended by this bill, are preserved if the constitutionality of the 1975 expansion amendments is successfully challenged. At issue in questions of separability is the intent of the legislative body in entering the statute. *Lynch* v. *United States*, 292 US 571 (1934). The separability clause in H.R. 6219 clearly establishes the intent of Congress that the provisions of these amendments be viewed independently. Although the amendments in the bill are interwoven into the current Act, the indication of intent by Congress as to the separability of the expansion amendments is sufficient for a court to determine that Congress did not intend that the 1975 Act be enacted as an entirety. This 1975 legislation should thus be considered as separable, and it is not to be rejected as a whole in the event of a successful court challenge to any part thereof.

C. TITLE III: BILINGUAL ELECTIONS PROVISIONS

Background

Title III of H.R. 6219, like Title II, seeks to enfranchise citizens of four language minority groups (persons of Spanish heritage, Asian Americans, American Indians, and Alaskan natives) which have been excluded from the electoral process because of their inability to speak, write, or understand English. The line between Title II and Title III

is based upon the severity of voting discrimination against such language minorities. The evidence before the Committee demonstrates that the voting problems of language minority groups are not uniform in all parts of the country. That evidentiary record is reflected in the different findings made under the two titles. The less stringent provisions of Title III are based largely on the unequal educational opportunities which language minorities have suffered at the hands of state and local officials. In contrast, the more severe remedies of Title II are premised not only on educational disparities, but also on evidence that language minorities have been subjected to "physical, economic, and political intimidation" when they seek to participate in the electoral process.

The evidence before the Committee indicated a close and direct correlation between high illiteracy among these groups and low voter participation. For example, the illiteracy rate among persons of Spanish heritage is 18.9 percent, among Chinese is 16.2 percent and among American Indians is 15.5 percent, compared to a nationwide illiteracy rate of only 4.5 percent for Anglos.[44] In the 1972 presidential election 73.4 percent of Anglos were registered to vote compared to 44.4 percent of persons of Spanish origin.[45]

The Committee found that the high illiteracy rate among these language minorities is not the result of mere happenstance. It is the product of the failure of state and local officials to afford equal educational opportunities to members of language minority groups. In the discussion of Title II earlier in this report, the extent of educational disparities among the four language minority groups covered by the expansion amendments is detailed.

While Title III is predicated upon unequal educational opportunity for which the state bears responsibility, the purpose of the title is not to correct the deficiencies of prior educational disparities, although that may be a necessary concomitant. Its aim is to permit persons disadvantaged by such inequality to vote now, a point discussed in greater depth previously in this report in the section on Title II.

Coverage

Title III covers the same language minorities as Title II: citizens of Spanish heritage, Asian Americans, American Indians, and Alaskan Natives. As noted earlier, the hearing record did not disclose any evidence of voting discrimination against other language minority groups. Needless to say, this does not mean that members of other minorities are not discriminated against to any degree. It signifies only that we had no such evidence at the time this bill was drafted. It is not the intention of Congress to preclude other language minority groups from presenting their evidence of voting discrimination to the courts or to the Attorney General for appropriate relief. See *United Jewish Organization of Williamsburgh* v. *Wilson*, 500 F. 2d 434 (2d Cir. 1974) (per. curiam), 510 F. 2d 512 (2d Cir. 1975) (full opinion). Such persons may wish to pursue other remedies to insure nondiscrimination in the electoral process.

[44] *Census of Population: 1970. General Social and Economic Characteristics.* United States Summary, PC(1)–C1. Table 88, page 386. *Census of Population: 1970. Subject Reports.* Japanese, Chinese, and Filipinos in the United States, PC(2)–1G. Table 18, page 10. *Census of Population: 1970. Subject Report* American Indians PC(2)–1F. Table 3, page .

[45] *Current Population Reports: 1972. Population Characteristics.* Voting and Registration Statistics in the Election of November 1972. Series P–20, No. 263. Table 1 , page 22.

Because of the disparate voting problems reflected in Titles II and III, the Committee designed different triggers to take account of the dissimilarities among the jurisdictions with language minorities. A state or political subdivision is brought within the purview of Title III if a single language minority comprises five percent of the total voting age citizen population, and if the illiteracy rate of that group is greater than the national average. For purposes of this title, "illiteracy" is defined as failing to complete the fifth primary grade, the level at which a minimum comprehension in English ordinarily would be achieved. It is also a demarcation utilized by the Bureau of the Census in collecting data on educational attainment. The use of Census classifications is important because administrative determinations of coverage under this title are made by the Director of the Census.

Unlike Title II and the present Voting Rights Act, covering an entire state under Title III does not automatically cover every political subdivision within it. In order for a smaller governmental unit to be covered, it must also meet the five percent minimum requirement, i.e., that five percent of its population is of a single language minority. If the population of a political subdivision does not contain five percent of the same single language minority which triggered statewide coverage, then that subdivision is not obligated to provide bilingual election materials.

Based on preliminary calculations, the Committee has determined which jurisdictions will be covered by Title III. Those determinations are, of course, subject to change as it is the Director of the Census, not this Committee, which makes the final determinations of coverage based on Census data. (See Appendix D for a tentative list of coverage under Title III).

As is readily apparent, most of the jurisdictions covered by Title II are also covered by Title III. That occurs because coverage under H.R. 6219, as under the Voting Rights Act, is determined by a "trigger" mechanism based on objective findings of the Attorney General and the Director of the Census. Underlying those administrative determinations is an extensive record and a legislative finding of a direct relationship between the "trigger" device and voting discrimination. As under the present Act, coverage is thus "triggered" automatically.

It should be recalled that the line between Title II and Title III is based on severity of voting discrimination. Generally those jurisdictions in which the evidence shows extensive discrimination against language minorities will be covered by Title II. On the other hand, Title III is designed to be both broader and narrower. It covers more areas but imposes less stringent remedies. As a consequence, most of the jurisdictions covered under Title II are also covered under Title III. However, such double coverage will not impose any additional obligations upon the covered area. A state or political subdivision which complies with Title II will invariably comply with Title III.

Remedies and Enforcement

Unlike Title II, Title III provides a limited remedy for the protected classes residing in the covered jurisdictions. It requires only that they provide for ten years bilingual election materials and information in the language of the applicable minority group or groups. If

a state, for example, has two or more language minorities comprising more than five percent of the population and whose illiteracy rate is above the national average, then it would have to provide such materials for each group which triggered coverage. On the other hand, the State would not be required to provide bilingual materials for groups which did not exceed five percent of the total population and whose illiteracy rate is not greater than the national average. In other words, a political subdivision which is required to provide bilingual materials in Spanish would not have to provide bilingual materials for its American Indian residents if they comprised less than five percent of the population.

Title III authorizes the Attorney General to bring suit against any state or political subdivision which fails or refuses to comply with its prohibitions. Of course, private persons who are injured by the failure or refusal of a state or political subdivision to comply would also have the right to bring suit. *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969); see *J. I. Case Co.* v. *Borak*, 377 U.S. 426 (1964). An injured person would include any individual, whether registered to vote or not, or any organization which could allege sufficient injury to satisfy the requirements of Article III of the Constitution. *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); *United States* v. *SCRAP*, 412 U.S. 669 (1973); *NAACP* v. *Button*, 371 U.S. 415 (1963).

Bail-Out

Because of the limited nature of Title III, its bail-out procedure is different from the one which is in the present Act and in Title II. Under Title III, a jurisdiction, which seeks to use English-only procedures before 1985, may bail-out if it shows that the illiteracy rate of the language minority which triggered coverage has dropped below the national average. If it bails out, it may then conduct English-only elections without violating Title III of H.R. 6219. Whether such English-only elections would violate other provisions of Federal law or the Constitution is left to the courts for determination.

H.R. 6219 provides a Title III bail-out procedure which rewards those jurisdictions where literacy rates among language minority residents improve to at least the national measure. Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities, the Committee believes it appropriate to provide, through the bail-out mechanism, this incentive to educate and make more literate language minority citizens. By so doing, jurisdictions could be released from the Title III requirements prior to their expiration in 1985.

Allowing jurisdictions covered by Title III to remove themselves from the requirements of the title does not mean that the coverage determinations to the Director of the Census are reviewable. Those determinations are effective upon publication in the Federal Register and are not reviewable in any court. That is the way the present Voting Rights Act and Title II operate. Thus the question of initial coverage is not subject to administrative or judicial challenge.

After the initial determination by the Director of the Census, however, there may be changed circumstances which provide a basis for bailing out. For example, assume that a particular subdivision is covered based upon the 1970 census data showing that the illiteracy rate

of the language minority which triggers coverage exceeds the national average. If the 1980 census figures show that the illiteracy rate of that group has dropped below the national average, then the subdivision would be eligible for bail-out.

In seeking to bail out, a state or political subdivision may rely on data not gathered by the Census Bureau. Any survey which meets accepted scientific standards of reliability and validity may provide a basis for reviewing continued inclusion of a jurisdiction under Title III. The survey results will, of course, be subject to challenge in the judicial proceeding instituted by the State or political subdivision against the United States to remove itself from Title III. In such litigation, members of the language minority which triggered coverage, or their organizational representative, or any other aggrieved person, may intervene in the law suit in appropriate circumstances. *Trovich* v. *United Mine Workers of America*, 404 U.S. 528 (1972) [which appears to have greatly liberalized the standard for intervention announced in *Apache County* v. *United States*, 256 F. Supp. 903 (D.C.C. 1966)]; see also, *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129 (1967). As noted earlier, some jurisdictions will be covered by both Titles II and III. If such a state or political subdivision "bails out" from either title, it does not relieve itself of the obligations of the other title. A jurisdiction covered by both titles must satisfy the requirements of each, including the differing provisions for bailing out. It must be remembered that the "trigger" mechanisms of Titles II and III are quite different, and the determinations under each are made separately and independently. It should also be recalled that the remedial devices in those titles are different. It is not the intention of Congress to merge them for bail-out or any other purpose.

Constitutionality

The question of the constitutionality of Title III of H.R. 6219 raises the same issues as Titles I and II. It would serve little purpose to iterate those contentions here. The enforcement provisions of the 14th and 15th Amendments provide ample constitutional authority for the Congress to enact this title. *South Carolina* v. *Katzenbach*, *supra*; *Katzenbach* v. *Morgan*, *supra*; *Gaston County* v. *United States*, *supra*; *Oregon* v. *Mitchell*, *supra*.

Separability

Since Title III is an amendment to the present Title II of the Voting Rights Act of 1965, it is unnecessary to include a separability section as the curernt Act already has one. In addition there is no doubt that the prohibitions contained in Title III are to be considered separate and apart from the provisions of the present Act, and thus raise no cognizable separability issue.

D. Title IV: Miscellaneous Provisions

Section 401 of H.R. 6219 amends Section 3 of the Voting Rights Act to afford to private parties the same remedies which Section 3 now affords only to the Attorney General. Under the current provisions of Section 3, whenever the Attorney General has instituted a proceeding to enforce the guarantees of the 15th Amendment, the court

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may authorize the appointment of Federal examiners, may suspend the use of literacy tests and other similar devices, and may impose preclearance restrictions on all changes relating to voting or election processes. The amendment proposed by H.R. 6219 would authorize courts to grant similar relief to private parties in suits brought to protect voting rights in covered and noncovered jurisdictions.[46] The term which is used, "aggrieved person," is a commonly used phrase which appears throughout the United States Code. The words are used in the Civil Rights Acts of 1964 and 1968, and a similar expression is employed in the Administrative Procedure Act. An "aggrieved person" is any person injured by an act of discrimination. It may be an individual or an organization representing the interests of injured persons. See *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); and *NAACP* v. *Button*, 371 U.S. 415 (1963). In enacting remedial legislation, Congress has regularly established a dual enforcement mechanism. It has, on the one hand, given enforcement responsibility to a governmental agency, and on the other, has also provided remedies to private persons acting as a class or on their own behalf. The Committee concludes that it is sound policy to authorize private remedies to assist the process of enforcing voting rights.

The provisions of H.R. 6219 also amend the Act to allow a court, in its discretion, to award attorney's fees to prevailing parties in suits brought to enforce the voting guarantees of the 14th or 15th Amendment. The awarding of such fees is important in the area of voting rights because of the significant role which private citizens must play in their enforcement. Similar attorney's fees provisions can be found in Title II of the Civil Rights Act of 1964 [42 U.S.C. § 2000a–3(b)] and in Title VII of the same Act [42 U.S.C. § 2000e–5(k)], which are designed to prohibit discrimination in public accommodations and employment, respectively. Also, attorney's fees are authorized by the Fair Housing Act of 1968 [42 U.S.C. § 3612(c)] and by the Emergency School Aid Act of 1972 (20 U.S.C. § 1617).

The Committee further notes its approval of the prevailing case law which holds that where a statute authorizes it, a successful plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an aware unjust." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (per curiam); *accord*, *Northcross* v. *Board of Education of the Memphis City Schools*, 412 U.S. 427 (1973) (per curiam); *Robinson* v. *Lorillard Corp.*, 444 F.2d 791 (4th Cir. 1971). In appropriate circumstances, counsel fees may be awarded pendente lite. See *Bradley* v. *School Board of City of Richmond*, 416 U.S. 696 (1974).

During its deliberations on extending the Act, the Subcommittee became very much aware of the paucity of data by race, color, and national origin on voter registration and turnout. Although Congress passed legislation in 1964 to help remedy this problem, the surveys called for by Title VIII of the Civil Rights Act of 1964 [42 U.S.C. § 2000(f)] have never been undertaken (Hearings, 1607–1625). In H.R. 6219, the Committee is again requiring the collection of such

[46] Section 205 of H.R. 6219 also amends Section 3 to authorize courts to apply the Act's special remedies in suits brought to enforce the guarantees of the 14th Amendment. This amendment was adopted in part because the Committe is aware of the significant numbers of suits brought under the 14th Amendment to enforce the voting rights of Spanish-speaking citizens (Hearings, 877).

data. Section 403 of H.R. 6219 requires the Director of the Census to collect data on registtation and voting by race or color, and national origin. Such data is to be collected for each national election in the covered jurisdictions and for such other elections in any areas, as designated by the U.S. Commission on Civil Rights. Reports of such surveys are to be transmitted to the Congress. The confidentiality and criminal penalties provisions which are normally applicable to Census data collection processes are also applicable to the surveys mandated by H.R. 6219, except that no one is to be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor) and no penalty shall be imposed for the failure or refusal to make such disclosures.

The Chairman of the House Post Office and Civil Service Committee and the Chairwoman of the Subcommittee on Census and Population of the House Post Office and Civil Service Committee were contacted regarding § 207 of Title IV.

They have informally indicated that they do not feel the necessity for a sequential reference, inasmuch as the bill does not contain any authorization for the funding of such surveys.

H.R. 6219 amends Section 5 of the Act to make clear in the statute the Attorney General's authority, upon good cause shown, to provide expedited consideration of Section 5 submissions during the 60 day period following their receipt. In a situation where such expedited consideration is being accorded, the statute is amended to allow the Attorney General to indicate affirmatively, before the running of the full 60-day period, that no objection will be made. However, the statute would further provide that the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the 60-day period. These amendments to Section 5 serve to codify the already existing expedited consideration procedures which the Department of Justice has established in its Section 5 regulations. 28 C.F.R. § 51.22. It is noted that, in codifying these procedures, the Committee is not in any way intending to cast doubt upon the legality of the Attorney General's regulations, as already promulgated. [See, *e.g. Georgia* v. *United States*, 411 U.S. 526 (1973)].

The single amendment to H.R. 6219, adopted by the Committee, serves simply to conform Section 10 and Title III of the present Act to reflect the current state of the law and particularly the ratification of the 24th and 26th Amendments. Title III of the current Act, which prohibits the denial of the right to vote of citizens 18 years of age and older in national, state and local elections, was passed by the Congress as part of the 1970 amendments. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court upheld the constitutionality of Title III insofar as it lowered the voting age to 18 for national elections. However, the Court held that Title III prohibition was not valid for state and local elections. Subsequently, in 1971, the 26th Amendment to the Constitution was ratified. That amendment, by prohibiting the denial or abridgment of the right to vote of persons 18 years of age and older by the United States or any State, accomplishes the end which Congress had sought to achieve by its enactment of Title III. The Committee's amendment to Title III deletes what are now unnecessary findings and prohibitions. The amendment retains, how-

ever, Title III's enforcement provisions, but modifies them to authorize Attorney General enforcement of the 26th Amendment.

The amendment of the Committee to Section 10 is intended to conform that section to reflect the ratification of the 24th Amendment and the Supreme Court's decision in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), the latter having been decided after the 1965 enactment of Section 10. The 24th Amendment prohibits the denial or abridgment of the right to vote in Federal elections because of the failure to pay any poll or other tax. In *Harper*, *supra*, the Court held that it is a denial of the equal protection clause of the 14th Amendment for a state to deny the right to vote in state elections because of the failure to pay a poll tax. Section 10(b) is amended by adding Section 2 of the 24th Amendment to the other enforcement provisions, pursuant to which Congress directs the Attorney General to institute actions against poll tax requirements. Section 10(d) is deleted. That provision provides for the eligibility of voters in covered jurisdictions upon payment of current year poll taxes to either Federal examiners or local election officials. The 24th Amendment to the Constitution and the Supreme Court's decision interpreting the 14th Amendment now clearly prohibit the imposition of poll taxes for all elections.

The provisions of 11(c) of the Act are amended to reflect the recent addition to Congress of Delegates from Guam and the Virgin Islands. The amendment made by Section 406 of H.R. 6219 corrects what is apparently a typographical error which has appeared in the Act since the adoption of the 1970 amendments.

Other Legislative Proposals

Apart from the bills which were the antecedents to H.R. 6219, discussed earlier in the report, the Committee had only one other legislative proposal before it. On January 27, 1975, Representative McClory and four other Members of the House Committee on the Judiciary introduced H.R. 2148. This bill would have extended the special remedies of the Voting Rights Act for a period of five years, and would have extended the temporary ban on literacy tests and other devices for a similar period.

During the mark-up of H.R. 6219, Mr. McClory sought to substitute the terms of H.R. 2148 for Title I of this bill. That move was rejected by the full Committee for several reasons: (1) the five year extension would mean that the Voting Rights Act would come up for renewal in 1980, the year of the Decennial Census. Because many legislatures would be enacting new apportionment laws, the full thrust of which would not be realized for several years after 1980, it was thought that expiration should not occur prior to the time when those plans could be evaluated carefully for their voting rights impact; (2) 1980 also is an election year, which presents many peculiar circumstances not present in other years; and (3) the five year provision would also have applied to the literacy test ban. The Committee believes that such devices no longer play any role in a society in which the electronic media and oral communication are the principle means of transmitting information. It also believes that ability to read or write should not be a prerequisite for registration and voting. Sound judgment in political matters is not related to literacy.

In addition to the McClory proposal, the Committee also considered a number of other proposals to amend H.R. 6219. These included amendments to give overseas citizens the right to vote, to strengthen criminal penalties for voting fraud, to allow covered jurisdictions to bring "bail-out" suits outside the District of Columbia, and to ease the standards for "bailing-out." These proposals were rejected largely because the hearing record did not support their adoption. The so-called "impossible bail-out" amendment offered by Mr. Butler produced the longest debate of the Committee sessions.

Under the present Act, jurisdictions may exempt themselves from coverage if they show that, during the past ten years, they have not used a "test or device" for the purpose or with the effect of abridging the right to vote on account of race or color. Under the "bail-out" proposal presented to the Committee, covered jurisdictions could more easily remove themselves from the Act. The "period of purity," for example, would be reduced from ten to five years; the jurisdiction would not have to show, as it does now, that it has afforded equal educational opportunities to its minority citizens so that they may participiate in the electoral process on an equal footing; and it requires only that a jurisdiction *repeal* any "test or device" during the past five years, whereas the present law requires a jurisdiction to show that it has not administered or used in a discriminatory fashion, a "test or device" during the past ten years.

The principal effect of adopting the "bail-out" proposal would have been to take from minority citizens with one hand what we purport to give them with the other. Title I of H.R. 6219 would extend the basic provisions of the Act for ten years. That extension is based on the substantial evidence of discriminatory practices in presently covered jurisdictions since the last extension in 1970. (See previous discussion of Title I in this report). The premise is that, while some progress has been made, covered jurisdictions need to remain under the Act so that retrogression does not occur. Voting discrimination has been practiced for hundreds of years. The effects of such discrimination cannot be dissipated totally in ten years. To ease the standards for "bailing-out" would, in effect, nullify the purpose of the extension contained in Title I.

Furthermore the proponents of the bail-out argued, in part, that the eased "bail-out" provision was necessary so that covered jurisdictions could reform their election laws to increase minority participation in the electoral process. They contended that the present Act "freezes" them in to old and archaic laws which, by the logic of the proponents, adversely affect minority voting rights. In short they maintained that improvement in minority participation could not be made until the States and political subdivisions were allowed to remove themselves from the Act.

The Committee rejected that contention simply because it puts the cart much before the horse. The purpose of extending coverage for ten years is to continue the gains made by minorities over the past ten years. We voted to extend its provisions because states and political subdivisions have not demonstrated sufficient progress to warrant exemption. If covered jurisdictions wish removal, they must take all the necessary steps *prior* to exemption.

Contrary to their contentions, nothing in the Act now prevents covered jurisdictions from taking any and all steps to reform their

election laws to remove all barriers to minority registration and voting. While such changes would, under the present Act, need to be approved by the Attorney General or the United States District Court prior to their implementation, neither of those persons has in the past, nor would in the future, disapprove changes which would advance minority voting rights. The fact of the matter, however, is that covered states and political subdivisions have not done so. The number of "affirmative" steps taken by presently covered areas in the past ten years to improve minority participation has been minimal. Until that situation improves, there is no reason not to extend the Act, or to ease the "bail-out" provisions.

Finally, the Committee did not approve the amendment, in part, because the Assistant Attorney General in charge of the Civil Rights Division believes it was unnecessary. On several occasions, he stated that the present "bail-out" provisions are adequate and sufficient to accomplish the objectives of the proposal the Committee rejected.

Analysis of the Bill

A. Title I

Title I of the bill amends the Voting Rights Act to extend certain provisions for an additional ten years and to make permanent the ban against certain prerequisites to voting.

Section 101

Sections 4 through 9, the temporary provisions of the Voting Rights Act of 1965, as they apply to covered jurisdictions, are extended for ten years. Essentially, Section 4 provides a nondiscretionary, automatic formula, or "trigger," by which states or their political subdivisions (collectively called jurisdictions) are covered, or made subject to the Act's temporary remedies. Section 4 prohibits the use of "tests or devices" as a prerequisite to registering or voting in any jurisdiction that maintained such tests or devices on November 1, 1964 or November 1, 1968 *and* whose voter registration or turnout in the 1964 or 1968 presidential election was less than 50 percent of the voting age population.

Section 5 freezes the electoral laws and procedures of such jurisdictions as of November 1, 1964 or 1968, and prohibits enforcement of any changes in the covered jurisdictions unless there is certification by the United States Attorney General or the United States District Court for the District of Columbia that the changes are not discriminatory in purpose or effect. This process is often called "preclearance."

Sections 6 through 9 provide for, but do not require, the assignment of Federal examiners to "list" eligible persons for registration by state and local officials in the covered jurisdictions. These sections further permit the assignment of Federal observers to monitor and report on the conduct of elections in any jurisdictions which have been designated by the Attorney General for Federal examiners.

Section 102

This section establises a permanent nationwide ban on literacy tests and other similar devices as a voting qualification or prerequisite to voting.

Under the provisions of the original 1965 Act, literacy tests and other devices were suspended in the several states and counties covered at the time of the original enactment, primarily in the southern part of the United States. In 1970, when the Congress extended the temporary provisions of the original 1965 enactment, it also established a temporary nationwide ban on such tests and devices in areas not subject to the suspension of the 1965 Act. This section would permanently prohibit the use of any literacy tests or devices as a prerequisite to voting in any Federal, state or local election in every jurisdiction in the United States, both covered and uncovered.

B. Title II

Title II of the bill expands the coverage of the Voting Rights Act to new geographic areas which meet certain criteria.

Section 201

The use of election and registration materials or assistance only in the English language is suspended in the new jurisdictions which are brought within coverage of the Act by operation of Sections 202 and 203 of this title. These newly covered jurisdictions may be exempted from coverage under the Act, if they can establish before a three-judge District Court for the District of Columbia that English-only election and registration procedures or any other "tests or devices" were not used for the purpose or with the effect of denying the right to vote on account of race or color or in contravention of the guarantees of Section 4(f)(2), during the 10 years preceding the filing of the bail-out action. The phrase "on contravention of the guarantees of Sec. tion 4(f)(2)" refers to the prohibition of the denial or abridgement of the right to vote of any citizen because he is a member of a language minority group. Language minority group, as defined in this title, means minority persons who have a native language other than English and includes persons who are Asian American, American Indians, Alaskan Native or of Spanish heritage. The Attorney General may consent to a "bail-out" action if he determines that there has been no discriminatory purpose or effect in the use of English-only elections or any other "tests or devices" in the ten years prior to the filing of the action.

A jurisdiction currently subject to the special provisions of the Act may also be covered under the separate determinations made in this title. Exemption from coverage under the Act would require a jurisdiction to satisfy two differing requirements for bail-out.

Section 202

This subsection prescribes the conditions for determination of whether a jurisdiction is covered under the expansion amendments. The formula established requires certain factual determinations that are final when made and are not reviewable in court.

A jurisdiction is covered if:

(a) The Attorney General determines that a state or political subdivision maintained a "test or device" on November 1, 1972 as a qualification for voting; and

(b) The Director of the Census determines that less than 50 percent of the persons of voting age residing in any state or political subdivision of a state were registered to vote on November

1, 1972, or voted in the presidential election of 1972. The vote in the presidential election of 1972 is the vote cast for presidential candidates. Where an entire state falls within this subsection, so does each and every political subdivision within that state.

Figures showing the probable effects of the bill upon various states and political subdivisions have been developed. (See Appendix C for a tentative list of coverage under this title.) Some of these figures represent preliminary estimates and projections and are, therefore, subject to change when determinations are finally made by the Bureau of Census.

Section 203

All of the special remedies of the Voting Rights Act are extended to citizens of language minority groups based on their right to vote under the Fourteenth and Fifteenth Amendments. The Congress finds that these minority citizens are from environments in which the dominant language is other than English. These language minorities experience voting discrimination and exclusion caused by unequal educational opportunities and by acts of physical, economic, and political intimidation.

States and local governments are prohibited from enacting any voting procedure to deny or abridge the right to vote of any citizen because he is a member of a language minority group. To implement this prohibition within the context of the Voting Rights Act, a jurisdiction is determined to employ a "test or device" if:

(a) The Attorney General determines that a state or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, to eligible voters only in the English language. The factual determinations of the Attorney General are final when made and are not reviewable in any court; and

(b) The Director of the Census determines that more than five per centum of the citizens of voting age residing in any state or political subdivision are members of a single language minority. In making determinations under this subsection, the five per centum coverage criteria must be met by a single language minority group, and not by an aggregate population of more than one group. Therefore, in any specific jurisdiction, the American Indian population and the Spanish heritage population cannot be added together to meet the five per centum test. Census determinations are to be based on the proportion of voting age citizens of each single language minority group in the population. Citizens data is used to avoid any question on the proportion of citizens which are actually represented in the designated language minority groups. The determination of the Director of the Census under this subsection is effective upon publication in the Federal Register and is not subject to review in any court.

Whenever any jurisdiction covered under this title provides to the public any registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots, it must provide them in the language of the minority group which triggered coverage. For those languages which have no written form, registration and voting assistance in the language of the applicable minority group will serve to comply with the section. Of course, the implementation of bilingual procedures in covered jurisdictions amount to changes relating to voting would therefore be subject to preclearance by the Attorney General or the district court for the District of Columbia.

Section 204

The electoral laws and procedures of newly covered jurisdictions are frozen as of November 1, 1972. Any change relating to voting in these jurisdictions cannot be enforced unless there is certification by the United States Attorney General or the United States District Court for the District of Columbia that the change is not discriminatory in purpose or effect.

Section 205

The Fourteenth Amendment is added as a constitutional basis for these voting rights amendments. The Department of Justice and the United States Commission on Civil Rights have both expressed the position that all persons defined in this title as "language minorities" are members of a "race or color" group protected under the Fifteenth Amendment. However, the enactment of the expansion amendments under the authority of the Fourteenth as well as the Fifteenth Amendment, would doubly insure the constitutional basis for the Act.

Section 206

The operative provisions of Sections 2, 3, 4, 5, 6 and 13 of the Voting Rights Act are amended to insure the protection of the voting rights of language minority citizens.

Section 207

The classification "language minorities" or a "language minority group" is defined as persons who are Asian Americans, American Indians, Alaskan Natives or of Spanish heritage. Each of these is a term of usage or a specific identifier employed by the Bureau of the Census and each refers to specific classes of persons.

Provides for the separability of the amendments made by this title from the existing provisions of the Voting Rights Act, as amended. The separability clause is of particular importance because it should be the demonstrable intent of Congress that the extension of the Voting Rights Act of 1965 not be impaired by a challenge to the constitutionality of the provisions of this title, which would expand the coverage of the Act. Similarly, the separability clause demonstrates that it is the intent of Congress that valid portions of the amendments expanding coverage of the Voting Rights Act be separable from any portions of the expansion amendments which might be held to be unconstitutional.

C. TITLE III

Title III of the bill would prohibit, for 10 years, the use of English-only registration and election materials in certain jurisdictions, without setting into operation all of the stringent remedies of the Voting Rights Act.

Section 301

Although in some areas language minority group citizens do not appear to suffer severe discrimination, they do experience high illiteracy in the English language, frequently as a result of unequal educational opportunities. The conduct of elections only in English in these jurisdictions, therefore, operates as an impediment to their access to the franchise.

For a period of 10 years, state and local officials are prohibited from providing English-only registration and election materials if (i) more than five percent of the citizens of voting age in the jurisdiction are of a single language minority and (ii) the illiteracy rate of the language minority group citizens is higher than the national illiteracy rate for all persons of voting age.

Illiteracy is defined as the failure to complete the fifth primary grade. Any jurisdiction with five or less percent language minority citizen population is not covered by this Section. The determination of coverage is to be made by the Director of the Census and is not subject to review in any court. A tentative list of the areas covered by this title is attached as Appendix D.

Whenever any jurisdiction covered under this title provides official registration or election materials, those materials must be provided in the language of the applicable language minority group as well as in English.

Any jurisdiction subject to this title may be removed from coverage if it can demonstrate before the United States District Court for the District of Columbia that the illiteracy rate among voting age members of the language minority group which triggered its coverage is less than the national illiteracy rate. This provision would provide covered jurisdictions with an incentive to educate persons who are members of pertinent language minority groups.

The term "language minorities" or "language minority group" is defined as persons who are American Indians, Asian Americans, Alaskan Native or of Spanish heritage.

Section 302

Sections of the Act are renumbered due to addition of this title.

Section 303

Section 203 is amended to authorize Attorney General suits whenever he believes that there has been a violation of the prohibitions of Title III. Currently, such suits are authorized by Section 203 for violations of the nationwide literacy test suspension and the residency requirements established for Federal elections.

Section 304

Section 204 is amended to authorize criminal penalties whenever there are violations of the prohibitions of Title III. Currently, such penalties are authorized by Section 204 for violations of the nationwide literacy test suspension and the residency requirements established for Federal elections.

D. TITLE IV

Title IV of H.R. 6219 contains several amendments to facilitate enforcement of the Voting Rights Act.

Section 401

Section 3 of the Voting Rights Act provides that the court, in a case brought by the Attorney General to enforce the 15th Amendment (and 14th Amendment under Title II amendments), may grant the special remedies of the Voting Rights Act, i.e., Federal registrars, observers and preclearance of voting changes. The amendment to Section 3 would allow a court, in a suit brought by a private party, to grant the Act's special remedies. The sole consequence of this amendment is to broaden the scope of equitable relief which may be requested and granted when such litigation has been filed by private parties.

Section 402

The proposed amendment would authorize the payment of attorney's fees to prevailing parties, other than the United States, in suits to enforce the voting guarantees of the 14th or 15th Amendment. A similar attorney's fees provision is already contained in Title II and Title VII of the Civil Rights Act of 1964 and in Section 718 of the Emergency School Aid Act of 1972. The proposed amendment follows the language as it appears in such existing legislation.

Section 403

The Director of the Census is directed to collect, after each congressional election, registration and voting statistics by race or color and national origin in every jurisdiction covered by the Voting Rights Act. The United States Commission on Civil Rights may designate the collection of data in other specific areas for any election.

Section 404

Section 11(c) of the Voting Rights Act provides for criminal penalties against those who knowingly and willfully provide false information for establishing voting eligibility. Section 404 is a technical amendment to add the elections of the Delegates of Guam and the Virgin Islands to the list of elections covered by the criminal penalties section. When the Act was passed in 1965, no Delegates from these areas were in Congress.

Section 405

Section 5 of the Voting Rights Act currently requires all covered jurisdictions to submit changes in voting laws and practices to the Attorney General for preclearance prior to their implementation. The statute currently gives the Attorney General 60 days in which to file an objection to the voting change. Section 5 regulations now provide that for good cause shown, the Attorney General can permit enforcement of the voting change within the 60 day period, subject to reexamination upon the receipt of additional evidence during the remainder of the 60 day period.

The purpose of this amendment is to codify the existing regulation enabling the Attorney General to affirmatively indicate, under the circumstances set forth in the regulations, that he will not object to a voting change under Section 5 prior to the expiration of the 60 day period.

Section 406

Section 203 of the Voting Rights Act is amended to correct a typographical error in the Code citation, which has appeared in the Act since the 1970 amendments.

Section 407

Title III of the Voting Rights Act prohibits the denial to vote of citizens 18 years of age and older in national, state and local elections. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court, while upholding the lowering of the voting age for national elections, held that the prohibition was invalid for state and local elections. Subsequently, the 26th Amendment to the Constitution was ratified which accomplishes the end Congress sought to achieve. The amendment deletes unnecessary findings and prohibitions in Title III but retains its enforcement provisions while modifying them to authorize Attorney General enforcement of the 26th Amendment.

Section 408

The amendment to section 10 is intended to conform that section to reflect the ratification of the 24th Amendment and the Supreme Court's decision in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), that denial of the right to vote because of the failure to pay a poll tax was a denial of equal protection. Section 10(b) is amended by adding Section 2 of the 24th Amendment to the other enforcement provisions pursuant to which Congress directs the Attorney General to institute action against poll tax requirements. Section 10(d) is deleted. The 24th Amendment, and the Supreme Court decision interpreting the 14th Amendment now clearly prohibit the imposition of poll taxes for all elections.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

VOTING RIGHTS ACT OF 1965

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes

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

TITLE I—VOTING RIGHTS

Sec. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)2.*

Sec. 3. (a) Whenever the Attorney General *or an aggrieved person* institutes a proceeding under any statute to enforce the guarantees of the *fourteenth or* fifteenth amendment, in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political

subdivisions as the court shall determine is appropriate to enforce the guarantees of the *fourteenth or* fifteenth amendment (1) as part of any interloctuory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the *fourteenth or* fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)*, (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General *or an aggrieved person* under any statute to enforce the guarantees of the *fourteenth* or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)*, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General *or an aggrieved person* under any statute to enforce the guarantees of the *fourteenth or* fifteenth amendment in any State or political subdivision the court finds that violations of the *fourteenth or* fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2): Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Sec. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under

the first two sentences of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the [ten] *twenty* years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of [ten] *twenty* years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. *No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), through the use of tests or devices have occurred anywhere in the territory of such plaintiff.*

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2).*

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the [ten] *twenty* years preceding the filing of [the action] *an action under the first sentence of this subsection* for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

If the Attorney General determines that he has no reason to belive that any such test or device has been used uring the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. *On or after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.*

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

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

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)* if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools

in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officals conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of an language minority group.

(3) In addition to the meaning given the term under section 4(c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than 5 per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, *or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,* such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to a vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2),* and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, [except that neither] *or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor* the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. *In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.* Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from

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twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)*, and that he believes such complains to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the *fourteenth or* fifteenth amendment or whether substantial evidence exists that bonda fide efforts are being made within such subdivision to comply with the *fourteenth or* fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the *fourteenth or* fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these position. Examiners and hearing officers shall have the power to administer oaths.

* * * * * * *

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tav as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment [and], section 2 of the fifteenth amendment *and section 2 of the twenty-fourth amendment*, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purpose of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of

three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination therefore, and to cause the case to be in every way expedited.

[(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.]

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the Unietd States House of Representatives, Delegate from the District of Columbia, *Guam, or the Virgin Islands*, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements

or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * * * *

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color *or in contravention of the guarantees set forth in section 4(f)(2)* in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 or this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

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TITLE II—SUPPLEMENTAL PROVISIONS

APPLICATION OF PROHIBITION TO OTHER STATES

SEC. 201. (a) [Prior to August 6, 1975, no,] *No* citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State [as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4 (b) of this Act].

* * * * * * *

BILINGUAL ELECTION REQUIREMENTS

SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than five percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group of higher than the national illiteracy rate: Provided, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.

(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for the District of Columbia for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

JUDICIAL RELIEF

SEC. [203] *204.* Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, *or 203*, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section [2282] *2284* of title 28 of the United States Code and any appeal shall be to the Supreme Court.

PENALTY

SEC. [204] *205.* Whoever shall deprive or attempt to deprive any person of any right secured by section 201 [or 202], *202, or 203* of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEPARABILITY

SEC. [205] *206.* If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

Sec. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the

United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of persons of voting age by race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

[TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

[DECLARATION AND FINDINGS

[SEC. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

[(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

[(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

[(3) does not bear a reasonable relationship to any compelling State interest.

[(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

[PROHIBITION

[SEC. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

[ENFORCEMENT

[SEC. 303. (a)(1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this title.

[(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

[(b) Whoever shall deny or attempt to deny any person of any right secured by this title shall be fined not more than $5,000 or imprisoned not more than five years, or both.

[DEFINITION

[SEC. 304. As used in this title the term "State" includes the District of Columbia.

[EFFECTIVE DATE

[SEC. 305. The provisions of title III shall take effect with respect to any primary or election held on or after January 1, 1971.]

TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

SEC. 301. (a) (1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITION

SEC. 302. As used in this title, the term "State" includes the District of Columbia.

COST OF LEGISLATION

Pursuant to the requirement of clause 7 of rule XIII of the Rules of the House of Representatives the following estimate of costs incurred in carrying out the provisions of this bill are submitted.

According to estimates provided by the Department of Justice, this bill would have the effect of increasing enforcement expenditures beyond current enforcement outlays by about $200,000 to $300,000 in incremental outlays over the next ten years.

Rough estimates which have been provided by the Director of the Census indicate that the cost of each of the surveys which has been mandated by this bill, will range from $45 to $55 million. It is expected that approximately five such surveys will be conducted, with one survey to be conducted every two years over the next ten year period. The Committee believes that such costs, to be spread out over an approximate ten year time period, are modest (It is noted that the provisions of H.R. 6219 do not provide for any authorizations). Presumably, the Bureau of the Census will be able to carry out its mandate under this bill within the confines of its regular budgetary appropriations. If increased authorizations and appropriations are required, then requests to the appropriate committee(s) can be made. At such time, more precise estimates would be available and such estimated expenditures would again be reviewed in terms of their impact on the national economy.

STATEMENTS UNDER CLAUSE 2(l)(3) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

A. OVERSIGHT STATEMENT

This report embodies certain of the unanimous findings and recommendations of the Civil Rights Oversight Subcommittee made during the Second Session of the Ninety-Second Congress [Civil Rights Oversight Subcomm. of the House Comm. on the Judiciary, 92nd Cong., 2nd Sess., Report on Enforcement of the Voting Rights Act of 1965 in Mississippi, (Comm. Print 1972]. These earlier oversight activities related to the Department of Justice's enforcement of Section 5 of the Act and were referred to during the Subcommittee's recent legislative hearings relating to this bill. Some have attributed the recently improved enforcement of Section 5 to these earlier oversight efforts (Hearings, 627).

Portions of the Subcommittee's findings and recommendations follow:

D. ANALYSIS AND FINDINGS

1. THE INTENTION OF CONGRESS IN ENACTING SECTION 5

a. General purpose

Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory. This type of practice had been described in detail during the

consideration of the Voting Rights Act of 1965. See, for example, H. Rept. 439, 89th Cong., first session, 10–11 and hearings on H.R. 6400 before Subcommittee No. 5, House Committee on the Judiciary, 89th Cong., first session, 60–62. Congress therefore decided, as the Supreme Court held it could, "to shift the advantage of time and inertia from the perpetrators of the evil to its victim," [1] by "freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory." [2]

b. Prohibition Against Enforcement Prior to Preclearance

Section 5 was intended to prohibit enforcement of all changes affecting voting until a determination had been made that the change did not have the purpose and would not have the effect of discriminating on the basis of race or color. As described by the House Judiciary Committee:

> In order to preclude such future State or local circumvention of the remedies and policies of the 1965 Act, Section 5 of the statute provides that no State or political subdivision in which literacy tests are suspended may enforce any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," different from that in effect on November 1, 1964, *unless and until* the U.S. District Court for the District of Columbia determines that such change does not have the purpose and will not have the effect of discriminating on account of race or color. However, section 5 alternatively permits a covered jurisdiction to enforce a new voting enactment if the jurisdiction submits the new provision to the Attorney General of the United States and if, within 60 days of submission, the Attorney General does not object to the new statute or regulations. (Emphasis added) [3]

It was this suspension which most offended the opponents of section 5:

> A Federal law which raises a presumption of illegality against a law newly enacted by a State legislature and *suspends its operation until the State comes to the Attorney General or a Federal court and proves its legality* offends State sovereignty. (Emphasis added) [4]

Section 5 is a stringent remedy. By, in effect, presuming that changes affecting voting which are adopted by covered jurisdictions are a violation of the statutory standard, it treats all changes as unenforceable. Perhaps, it would be more accurate to say that section 5 imposes a new legislative procedure upon a covered jurisdiction desiring to make a change affecting voting; in addition to whatever steps are made necessary by State or local law for a proposed change to become law, section 5 requires federal approval. Without such federal approval, which must be in the form of a decree by the District Court for the District of Columbia or a failure by the Attorney General to object within 60 days after the change is submitted, the change is only a proposed change. Proposed changes are not law and, of course, are not enforceable.

[1] *South Carolina* v. *Katzenbach*, 385 U.S. 301, 328 (1966).
[2] Joint views of 10 members of the (Senate) Judiciary Committee relating to Extension of the Voting Rights Act of 1965, printed at 196 Cong. Rec. S. 2756 (daily ed. Mar. 2, 1970).
[3] H.R. Report No. 91–397, 91st Cong., 1st Sess., p. 7.
[4] H.R. Report No. 91–387, 91st Cong., 1st Sess., p. 14 (1969) (Separate views of Representative Poff, Virginia).

c. The Covered Jurisdiction Has the Burden of Proof

When the proposed change affecting voting is submitted to the Attorney General or to the District Court for the District of Columbia, section 5 presumes that the change has the purpose or would have the effect of discriminating on the basis of race or color. The presumption is not legally conclusive but rebuttable. If no evidence is submitted to overcome the presumption the District Court or the Attorney General must disapprove the change. It has been suggested by the Department of Justice that the presumption is overcome when the submitting jurisdiction offers an affidavit stating that the change is discriminatory neither in purpose nor effect because the jurisdiction could have filed an action for declaratory judgment in the District Court for the District of Columbia, moved for summary judgment pursuant to rule 56 of the Federal Rules of Civil Procedure, attached a similar affidavit, and, in the absence of any additional evidence, been granted judgment.

The subcommittee disagrees with that analysis. The suggestion that a party carrying the burden of proof could shift that burden by swearing that he has carried it runs counter to our knowledge of the law. If pleadings cannot state legal conclusions, it would seem inconsistent to permit an affidavit to do so. Rule 56(e) of the Federal Rules of Civil Procedure states quite clearly that "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

* * * * * * *

The subcommittee agrees with the Department's position that a submitting jurisdiction should receive the same treatment regardless of whether the submission is made to the Attorney General or to the District Court. In either forum, the burden of proof is on the submitting jurisdiction. However, the subcommittee does not agree that it is appropriate to adopt as an operational principle the position that the burden of proof imposed by section 5 is met when the covered jurisdiction asserts, in one forum or the other, that the proposed change is not racially discriminatory in purpose or effect. Rather, the covered jurisdiction should be treated under section 5 as a court would treat a plaintiff in a civil case.

2. THE DEPARTMENT OF JUSTICE HAS NOT PROPERLY ENFORCED SECTION 5

a. The Department of Justice has not sought to enjoin enforcement of nonenforceable changes affecting voting in Mississippi

When a covered jurisdiction adopts a change affecting voting, it has—strictly speaking—an option. It may seek to transform the change into law by obtaining approval from the district court or a nonobjection from the Attorney General. Alternatively, it may do nothing. In such a case the change has, for example, the force of a bill passed by the House but not by the Senate—no force at all.

* * * * * * *

The fact which the subcommittee cannot overlook is that present enforcement policies of the Department have placed the burden on the people Congress sought to protect rather than on the covered juris-

dictions. Given the present enforcement policies of the Department, the only prudent course that a citizen might pursue is to act as if the Voting Rights Act of 1965 had never been enacted.

* * * * * * *

b. The Department of Justice Should Have Objected to Mississippi Reregistration

This year 26 counties in Mississippi undertook reregistration of voters. Submissions were received by the Department of Justice from 25 counties. In every instance but one, the Department failed to object.

* * * * * * *

It appears that the Department essentially proceeds in the following manner: First, with respect to the purpose of a change, it accepts the assertion of the covered jurisdiction that the purpose of the change is something other than to discriminate on the basis of race. There is generally available some evidence of nondiscriminatory motivation. (Congress knew this would be so; that is why it legislated a much broader standard.) Second, with respect to the effect of change, the Department too often seeks to judge only whether the administration of the change affecting voting has been, is, or will be without bias.

The second question is almost always the critical question. The only problem with the question is that it is the worng question. It is the wrong question because proof of nondiscriminatory administration of a change is not sufficient to prove that the change does not have the effect of discriminating on the basis of race or color. This is not to suggest that potential administrative discrimination is irrelevant, but only to suggest that this is one aspect of a broader inquiry.

* * * * * * *

E. Recommendations

We recommend that the Department of Justice promptly seek judicial relief where a jurisdiction covered by the Voting Rights Act of 1965 knowingly enforces a change affecting voting which has not been precleared—particularly where the change would have a substantial impact on the voting rights of many people.

We recommend that the Department of Justice, in determining whether a change affecting voting will have the effect of discriminating on the basis of race or color, apply the standard as Congress intended it and as the Supreme Court of the United States has interpreted it. That standard is not fully satisfied by an indication that the administration of the change affecting voting will be impartial or neutral. Rather that standard can only be fully satisfied by determining on the basis of the facts found by the Attorney General to be true whether the ability of minority groups to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting in view of the political, sociological, economic, and psychological circumstances within the community proposing the change.

We recommend that the Department of Justice clearly demonstrate a no-nonsense policy of enforcement by utilizing civil and criminal

sanctions in certain cases where the action of State or local officials openly flouts the provisions of the Voting Rights Act.

B. Budget Statement

Clause 2(1)(3)(B) of Rule XI is not applicable. Section 308(a) of the Congressional Budget Act of 1974 will not be implemented this year. See last paragraph of House Rept. No. 94–25, 94th Cong., 1st sess. (1975).

C.

No estimate or comparison from the Director of the Congressional Budget Office was received.

D.

No related oversight findings and recommendations have been made by the Committee on Government Operations under clause 2(b)(2) of Rule X.

Statement Under Clause 2(l)(4) of Rule XI of the Rules of the House of Representatives Concerning Any Inflationary Impact on Prices and Costs in the Operation of the National Economy

The Committee concludes that, in view of the modest increased expenditures spread over a ten year period, which would result from enactment of this legislation, there will be no inflationary impact on prices and costs in the operation of the national economy.

Appendix A: States and Subdivisions Covered by the Voting Rights Act of 1965

1965

Alaska.
Alabama.
Georgia.
Louisiana.
Mississippi.
South Carolina.
Virginia.
North Carolina:
Anson County, Beaufort County, Bertie County, Bladen County, Camden County, Caswell County, Chowan County, Cleveland County, Craven County, Cumberland County, Edgecombe County, Franklin County, Gaston County, Gates County, Granville County, Greene County, Guilford County, Halifax County, Harnett County, Hertford County, Hoke County, Lee County, Lenoir County, Martin County, Nash County, Northampton County, Onslow County, Pasquotank County, Perquimans County, Person County, Pitt County, Robeson County, Rockingham County, Scotland County, Union County, Vance County, Wake County,[1] Washington County, Wayne County, Wilson County.
Arizona:
Apache County,[1] Coconino County,[1] Navajo County,[1] Yuma County.
Idaho: Elmore County.[1]
Hawaii: Honolulu.

[1] Obtained exemption via Section 4(a) lawsuit.

Appendix B: States and Subdivisions Covered by the Voting Rights Act Amendments of 1970

1970

Coverage continued as to Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, the 39 North Carolina counties, and Honolulu County, Hawaii. Newly covered jurisdictions were:

Alaska [1]:

Anchorage Election District, Kodiak Election District, Aleutian Islands Election District, Fairbanks-Fort Yukon Election District.

Arizona:

Apache County,[1] Cochise County, Coconino County,[1] Mohave County, Navajo County,[1] Pima County, Pinal County, Santa Cruz County.

California:

Monterey County, Yuba County.

Connecticut:

Southbury, Groton, Mansfield.

Idaho: Elmore County.[1]

New Hampshire:

Rindge, Millsfield, Pinkhams Grant, Stewardstown, Stratford, Benton. Antrim, Boscawen, Newington, Unity.

New York:

Bronx County, Kings County, New York County.

Maine:

Caswell plantation, Limestone, Ludlow, Nashville plantation, Reed Plantation, Woodland, Unorg. Terr. of Connor, New Gloucester, Sullivan, Winter Harbor, Chelsea, Somerville plantation, Carroll plantation, Charleston, Webster plantation, Waldo, Beddington, Cutler.

Massachusetts:

Bourne, Sandwich, Sunderland, Amherst, Belchertown, Ayer, Shirley, Wrentham, Harvard.

Wyoming: Campell County.

APPENDIX C

TITLE II COVERAGE—JURISDICTIONS IN WHICH MORE THAN 5 PERCENT OF THE POPULATION ARE LANGUAGE MINORITY CITIZENS AND WHICH HAD LESS THAN 50 PERCENT VOTER PARTICIPATION IN 1972

I. Spanish heritage	Voter turnout 1972 (percent)	Spanish heritage/VAP 1970
Arizona:		
Apache [1]	36.7	6.9
Cochise [1]	41.6	24.6
Coconino [1]	49.3	12.4
Maricopa	49.5	11.0
Mohave [1]	47.2	5.5
Navajo [1]	41.5	10.1
Pima [1]	48.6	18.4
Pinal [1]	37.8	30.2
Santa Cruz [1]	43.7	65.4
Yuma [1]	37.0	19.5
California:		
Kings	43.7	20.1
Merced	47.4	19.4
Monterey [1]	48.2	16.2
Solano	49.1	8.8
Tulare	48.4	18.3
Yuba [1]	43.3	5.9
Colorado: El Paso	44.9	7.2
Florida:		
Collier	47.5	6.2
Dade	45.0	9.3
Hardee	39.7	7.9
Hendry	43.3	5.2
Hillsborough	42.6	9.6
Monroe	46.0	12.5
New Mexico:		
Curry	41.9	14.3
McKinley	42.8	20.2
Otero	42.7	20.7

[1] Re-covered by 1970 Amendments.

APPENDIX C—Continued

TITLE II COVERAGE—JURISDICTIONS IN WHICH MORE THAN 5 PERCENT OF THE POPULATION ARE LANGUAGE MINORITY CITIZENS AND WHICH HAD LESS THAN 50 PERCENT VOTER PARTICIPATION IN 1972—Continued

I. Spanish heritage	Voter turnout 1972 (percent)	Spanish heritage/VAP 1970
New York:		
Bronx [1]	43.7	16.9
Kings [1]	43.3	6.7
New York [1]	46.2	6.6
Texas—Statewide	45.3	13.9

II. American Indian	Voter turnout 1972 (percent)	Indian/VAP 1970
Arizona:		
Apache [1]	36.7	70.1
Coconino [1]	49.3	18.6
Navajo [1]	41.5	42.8
Pinal [1]	37.8	8.1
Florida Glades	49.1	5.22
New Mexico: McKinley	42.7	55.4
North Carolina:		
Hoke	34.8	9.1
Jackson	46.6	7.6
Robeson	35.8	28.3
Swain	49.5	15.0
Oklahoma:		
Choctaw	47.6	6.0
McCurtain	42.7	6.1
South Dakota:		
Shannon	35.3	80.3
Todd	47.9	60.5
Utah: San Juan	48.0	40.14
Virginia: Charles City [1]	47.2	8.9

III. Alaskan Natives (Aleutians and Eskimos)	Voter turnout 1972 (percent)	Percent total population 1970
Alaska—Statewide	48.2	8.64

IV. Asian American [2]	Voter turnout 1972 (percent)	Asian American/VAP 1970 (percent)
Hawaii, Honolulu	47.9	36.99

[1] Districts already covered by VRA.

[2] Complete data is not yet available for coverage for Asian Americans. Preliminary figures, however, indicate that very few jurisdictions have more than 5 percent Asian American population.

Appendix D. Title III Coverage

A. Spanish Heritage

Arizona: Statewide (14 counties).

California: Alameda, Amador, Colusa, Contra Cosa, Fresno, Imperial, Kern, Kings, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Monterrey, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Sutter, Tulare, Tuolumne, Ventura, Yolo, Yuba.

Connecticut: Bridgeport.

Colorado: Adams, Alamosa, Archuleta, Bent, Boulder, Chaffee, Clear Creek, Conejos, Costella, Crowley, Delta, Denver, Eagle, El Paso, Fremont, Huerfano, Jackson, Lake, La Plata, Las Animas, Mesa, Moffat, Montezuma, Montrose, Morgan, Otero, Prowers, Pueblo, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Weld.

Florida: Collier, Dade, Hardee, Hendry, Hillsborough, Monroe.
Idaho: Cassia.
Kansas: Finney.
Louisiana: St. Bernard.
Nevada: Elko, Humboldt, Lander, Mineral, Nye, Pershing, White Pine.
New Mexico: Statewide (32 counties).
New York: Bronx, Kings, New York County.
Oklahoma: Harmon, Tillman.
Oregon: Marion.
Texas: Andrews, Aransas, Atascosa, Bailey, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Borden, Brazoria, Brazos, Brewster, Briscoe, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Castro, Cochran, Coke, Colorado, Comal, Concho, Coryell, Crane, Crockett, Crosby, Culberson.

Dallas, Dawson, Deaf Smith, De Witt, Dickens, Dummit, Duval, Ector, Edwards, Ellis, El Paso, Falls, Fisher, Floyd, Foand, Fort Bend, Frio, Gaines, Galveston, Garza, Gilliespie, Glasscock, Goliad, Gonzales, Grimes, Guadalupe, Hale, Hall, Hansford, Harris, Haskell, Hays, Hemphill, Hidalgo, Hockley, Howard, Hudspeth, Irion, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox.

Lamb, Lampasas, La Salle, Live Oak, Loving, Lubbock, Lynn, McCulloch, McLennon, McMullen, Madison, Martin, Mason, Matagorda, Meverick, Medina, Menard, Midland, Milam, Mitchell, Moore, Motley, Nolan, Nueces, Parmer, Pecos, Potter, Presidio, Reagan, Real, Reeves, Refugio, Robertson, Runnels, San Patricio, San Saba, Schleicher, Scurry, Sherman, Starr, Sterling, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis.

Upton, Uvalde, Val Verde, Victoria, Ward, Webb, Wharton, Willacy, Williamson, Wilson, Winkler, Yoakum, Zapata, Zavala.

Utah: Carbon, Toole.
Washington: Adams, Columbia, Grant, Yakima.
Wyoming: Carbon, Laramie, Sweetwater, Washakie.

B. American Indians

Alaska: Juneau, Ketchikan, Kuskokwim, Prince of Wales, Sitka, Skagway-Yakutat, Southeast Fairbanks, Upper Yukon, Valdes-Chitna-Whitier, Wrangell-Petersburg, Yukon-Koyukuk.
Arizona: Apache, Coconino, Gila, Graham, Navajo, Pinal.
California: Inyo.
Colorado: Montezuma.
Idaho: Bingham.
Minnesota: Beltrami, Cass.
Mississippi: Neshoba.
Montana: Big Horn, Blaine, Glacier, Lake, Roosevelt, Rosebud, Valley.
Nebraska: Thurston.
Nevada: Elko.
New Mexico: McKinley, Rio Arriba, Sandoval, San Juan, Taos, Valencia.
North Carolina: Hoke, Jackson, Robeson, Swain.
North Dakota: Benson, Mountrail, Rolette, Sioux.
Oklahoma: Adair, Blaine, Caddo, Cherokee, Coal, Craig, Delaware, Hughes, Johnston, Latimer, McCurtain, McIntosh, Mayes, Muskegee, Okfuskee, Osage, Ottawa, Rogers, Pushmataha, Seminole, Sequoyah.
Oregon: Jefferson.
South Dakota: Bennett, Buffalo, Corson, Lyman, Mellette, Shannon, Walworth, Washabaugh.
Utah: San Juan, Vintah.
Virginia: Charles City.
Washington: Ferry, Okanegan, Stevens.
Wyoming: Fremont.

C. Alaskan Natives

Aleutians: Alaska, Aleutian Islands, Bristol Bay Division, Kodiak.
Eskimos: Alaska, Barrow, Bethel, Bristol Bay Division, Kobuk, Kuskokwim, Nome, Wade Hampton.

D. Asian Americans

California: San Francisco County.
Hawaii: Honolulu County.

ADDITIONAL VIEWS TO H.R. 6219 EXTENSION OF THE VOTING RIGHTS ACT

I have been a consistent supporter of civil rights legislation during my membership in Congress. I voted for enactment of the original Voting Rights Act in 1965 and for its extension in 1970. I support the present extension and voted for passage in committee, as I shall also do on the Floor of the House.

My support for the present extension in committee included general support for the concepts contained in Titles II and III, which provide for protection of minority language groups. I express this support fully recognizing that acts of discrimination undoubtedly occur against minority language groups in many States and political subdivisions. Moderating my support, however, is the fact that I find several serious defects in the draftsmanship of these two titles.

The primary defect and one that I attempted to remedy in committee is the retroactive applications of Titles II and III. The position of those authorizing these titles is that minority language persons suffer a denial of voting rights in those jurisdictions which operate election procedure solely in the English language. In order to correct such discriminatory practices, the titles call for every jurisdiction having five percent or more minority language persons in a State or political subdivision to conduct bilingual elections. I support this position and am proud that the State of Texas has recently enacted legislation to provide such bilingual elections. California, and perhaps other States have taken a similar course of action in recent years. Titles I and III, however, do not take into account any such action that occurred subsequent to 1972. In consequence, the entire weight and machinery of the Voting Rights Act will be directed against Texas even though Texas initiated correction of the defect long before Titles I and III were brought before the Committee for consideration. Instead of invoking these sanctions against a State which is in compliance, I believe a State's good faith efforts in enacting bilingual legislation prior to the Committee's adoption of Titles II and III should be recognized.

Texas has generally pursued a progressive course of action in recent years to eliminate possible voter discrimination. A postcard registration is now in effect under which a person remains registered as long as he or she votes once every three years. A strengthened version of this law, which would make voter registration permanent, has passed the State Senate and is pending in the House. No literacy test, no educational achievement test, no test of good moral character, no procedural requirement proving qualifications are required under Texas law. Even voters imprisoned for crimes less than a felony may now vote by absentee ballot.

A second defect in these titles is that they are not based on substantial evidence. The Supreme Court, in upholding the constitu-

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tionality of the Voting Rights Act in *South Carolina* v. *Katzenbach*, did so on the basis that the Act represented "a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant." As I acknowledged above, there obviously have been abuses of voting rights of minority language groups and, in particular States or political subdivisions, such abuses may have been flagrant. But, Congress, and especially the Judiciary Committee, should enact far-reaching constitutional legislation only when it is supported with solid evidence. To date, I question whether adequate evidence exists.

In recent testimony before the Senate Subcommittee on Constitutional Rights, Assistant Attorney General Pottinger, addressing this very issue, stated:

> In light of the other remedies available and in light of the stringent nature of the special provisions, the Department of Justice has concluded that the evidence does not *require* expansion based on the record currently before us. (Emphasis included.)

Mr. Pottinger expreseed a similar viewpoint in his testimony before the House Subcommittee on Civil and Constitutional Rights when he said the information gathered to date is "spotty" and not broken down by individual States or political subdivision. He further stated that the Justice Department "had not yet documented widespread systematic discrimination against Spanish-surnamed Americans in noncovered jurisdictions."

Similarly, Arthur Fleming, Chairman of the U.S. Commission on Civil Rights, informed the House Judiciary Subcommittee that the Commission lacked conclusive evidence of minority language discrimination in the electoral process and recommended that immediate steps be taken to gather such data prior to enacting new legislation.

It should be noted that the 1964 Civil Rights Act requires the Census Bureau to gather data on voting discrimination when the Civil Rights Commission requests it. Since 1968 the commission has been making such requests, particularly in regard to Mexican-American voting patterns in Texas and California. The requests have not been acted on, however, and thus the factual basis for legislation dealing with minority language voters simply does not exist. The Committee recognizes this lack of adequate data by directing the Bureau of Census in section 403 of the bill to gather the necessary data.

In regard to the issue of insufficient evidence, it should also be noted that Titles II and III speak in terms of "heritage." Thus, a State is to be under the Voting Rights Act if, for example, it has large numbers of Spanish surname persons of voting age, coupled with an overall registration or voter turnout of less than 50 percent, even though evidence is lacking as to how many individuals are lacking fluency in the English language. On the other hand, large numbers of Spanish heritage persons of voting age are to be excluded from coverage in States or political subdivisions either because a particular jurisdiction has an overall registration or voter rate above 50 percent, or a minority language population below 5 percent, although still substantial. The effect of this could well be that jurisdictions are excluded which practice greater discrimination than those covered

under the Act. It should also be noted that, as Assistant Attorney General Pottinger told the Senate, the titles—being limited to American Indians, Asian Americans, Native Alaskans, and persons of Spanish heritage—do not provide similar protection to many minority language groups which also seem to deserve protection.

Finally, it is important to stress that if evidence exists showing that Texas or any other State now covered under the Voting Rights Act is, in fact, engaging in acts of voter discrimination, the Act is capable of reaching them. Let us not forget that section 2 provides:

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

Section 3 of the Act directs the Attorney General to institute legal actions to enforce the above section. Under sections 11 and 12, any official found to have deprived anyone of their voting rights can be fined or imprisoned. Mr. Pottinger, in his testimony before House and Senate Subcommittees, expressed the view that such provisions of the Voting Rights Act do apply to minority language persons.

In conclusion, no person should be denied the right to vote on grounds of race, creed, color or national origin. States should be required to take positive steps to enforce this right. Those that do not should be subjected to all the sanctions of the Voting Rights Act. But, states which have been making a good faith effort and where there is insufficient evidence of discrimination, if any, should not be subjected to harassment by examiners and registrars.

JACK BROOKS.

INTRODUCTORY SUPPLEMENTAL VIEWS OF MESSRS. HUTCHINSON, McCLORY, WIGGINS, FISH, BUTLER, COHEN, MOORHEAD, HYDE, AND KINDNESS

In order to facilitate an intelligent discussion of the numerous issues involved in considering H.R. 6219 and the extension of the Voting Rights Act, Members wishing to submit supplemental or dissenting views have prepared an issue by issue analysis of this legislation. The entire contents of H.R. 6219 is analyzed by exploring various Republican Amendments which were offered to the full Committee on the Judiciary to remedy the deficiencies of H.R. 6219. Only Secs. 402 and 406 of H.R. 6219 will be omitted from the discussion; these sections are noncontroversial and should be adopted.

The undersigned members ascribe to the above stated views.

EDWARD HUTCHINSON.
ROBERT MCCLORY.
CHARLES E. WIGGINS.
HAMILTON FISH, JR.
M. CALDWELL BUTLER.
WILLIAM S. COHEN.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
THOMAS N. KINDNESS.

SUPPLEMENTAL VIEWS OF MESSRS. HUTCHINSON, McCLORY, WIGGINS, FISH, BUTLER, COHEN, MOORHEAD, HYDE, AND KINDNESS CONCERNING TECHNICAL AMENDMENTS WHICH PASSED

The undersigned Members endorse the unanimous adoption of Republican amendments now embodied in Section 404 and 405 of H.R. 6219 and of the technical amendment adopted by the Committee on the Judiciary.

Section 404 extends the anti-fraud provisions of § 11(c) to cover elections for the delegates from Guam and the Virgin Islands. These positions were created subsequent to the 1970 amendments to the Voting Rights Act and should be incorporated therein.

Section 405 codifies a Department of Justice regulation, 28 C.F.R. § 51.22, thereby removing any doubt of its validity. Section 5 of the Voting Rights Act currently requires all covered jurisdictions to submit changes in voting laws and practices to the Attorney General for preclearance prior to their implementation. The statute currently gives the Attorney General 60 days in which to file an objection to the voting change. 28 C.F.R. § 51.22 provides that for good cause shown the Attorney General can permit enforcement of the voting change within the 60 day period subject to reexamination upon the receipt of additional evidence during the remainer of the 60 day period.

The purposes of this amendment is to remove statutory ambiguities of § 5 of the Voting Rights Act and to codify the existing regulation enabling the Attorney General to affirmatively indicate that he will not object to a voting change under § 5 prior to the expiration of the 60 day submission period enumerated in § 5. While the Attorney General presently maintains that he has the power to affirmatively sanction a voting change prior to the expiration of the 60 day submission period, a literal reading of the statute would not authorize this procedure. Hence in order to technically amend the statute to comply with present day practices, language is inserted in § 5 authorizing an affirmative indication that an objection will not be made.

A rapid approval mechanism is desirable in order that critical last minute voting changes can be implemented in emergency situations prior to an election. An example given during the hearings pointed out that if a polling place were to burn down two weeks prior to an election, one possible construction of the law would not permit changing that polling place prior to the running of the 60 day period specified in § 5. Clearly, the statute must be amended to allow such changes. This amendment cures a statutory ambiguity and, in effect, codifies existing regulations; it is reasonable and should be adopted.

Lastly, the Committee passed a Republican amendment designed to alter Title III and § 10 of the Voting Rights Act to incorporate reference to the 26th and 24th Amendments respectively. Obsolete provisions were also deleted.

These amendments were all adopted without dissent and improve the draftsmanship of the Voting Rights Act. We concur in their adoption.

The undersigned members ascribe to the above stated views.

EDWARD HUTCHINSON.
ROBERT MCCLORY.
CHARLES E. WIGGINS.
HAMILTON FISH, JR.
M. CALDWELL BUTLER.
WILLIAM S. COHEN.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
THOMAS N. KINDNESS.

SUPPLEMENTAL VIEWS OF MESSRS. BUTLER, HUTCHINSON, MCCLORY, WIGGINS, MOORHEAD, HYDE, KINDNESS, AND MANN CONCERNING THE BAIL OUT AMENDMENT

The Fifteenth Amendment to the United States Constitution expressly guarantees that no one shall be denied the right to vote on account of race or color.

Circumstances existing in the year 1964 clearly demonstrated that this constitutional protection was not universally observed and government intervention in some form was clearly indicated. The undersigned Members regret exceedingly that it was necessary that the action taken was a federal action.

The Voting Rights Act of 1965 was in response to this effort. We would have thought at the time that it was unconstitutional because of its violation to the federal nature of our system of government, and trespasses upon the rights of the States to pass their own laws. This view is expressed with particular eloquence by Mr. Justice Black in his dissent in the case of *South Carolina* v. *Katzenbach*, 383 U.S. 301, 355 (1966), where he said, omitting a footnote, at pp. 358–60:

Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them.[2] Moreover, it seems to me that § 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government." I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far-away places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces.

We are for the second time called upon to review the effectiveness of the Voting Rights Act as enacted in 1965 and extended in 1970.

Undoubtedly the Voting Rights of Minorities have been improved tremendously during this period [1] and we can take some pride in the fact that very few of the complaints expressed in 1964 remain.

Nevertheless, the United States Commission on Civil Rights found the need for continuance for further extension of the Voting Rights Act because of continued existence of certain barriers to registration, voting and candidacy.[2] These are expressed in great detail and may be summarized as follows:

(1) outright exclusion and intimidation at the polls;
(2) inadequacy of voting facilities;
(3) location of polls at places where minority voters feel unwelcome or uncomfortable, or which are inconvenient to them;
(4) underrepresentation of minority persons as poll workers;
(5) unavailability or inadequacy of assistance to illiterate voters;
(6) failing to locate voters' names on precinct lists;
(7) lack of bilingual materials at the polls for non-English-speaking persons;
(8) problems with the use of absentee ballots;
(9) inconvenient times and places of registration;
(10) underrepresentation of minorities as registration personnel;
(11) frequent purging of registration rolls necessitating reregistration;
(12) unreasonable filing fees;
(13) burdensome qualifications on independent or third party candidates;
(14) dishonest counting of votes;
(15) lack of access to voters at the polls; and
(16) lack of campaign information.

Many of the reasons the Civil Rights Commission points to as evidence of continuing discrimination of our voting activities indcate failures in the Voting Rights Act. As they point to existing circumstances, they put their finger on a basic shortcoming of the Voting Rights Act: There is an inconvenience involved in changing existing practices and there is the absence of any incentive to do so. A brief review of the mechanics of the Voting Rights Act is necessary in order to point out the two basic problems to which the proposed legislation does not respond.

By virtue of the triggering device of Section 4 of the Voting Rights Act certain States are made subject to its sanctions, the principal one of which is Section 5. Section 5 requires that all legislation passed in certain covered States and affecting voting rights, prior to its enforcement, must be (1) determined in a declaratory judgment in the United States District Court for the District of Columbia to be without unlawful purpose and effect, or (2) approved by the Attorney General

[1] Testimony of Hon. Arthur S. Fleming, Chairman, United States Commission on Civil Rights, confirmed that by January, 1972, the gap in black and white voter registration in the covered jurisdictions had decreased from 44.1 percent in 1964 to only 11.2 percent. *Hearings on the Extension of the Voting Rights Act before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., Ser. No. 1, at 20 (1975) [hereinafter referred to as *"Hearings"*]. *See also*, Report of the Civil Rights Commission entitled *The Voting Rights Act: Ten Years After*, at 42, reproduced in the *Hearings* at 1025.

[2] *See* Report of the United States Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, at 69, 97, 131 (1975), reproduced in the *Hearings* at 1052, 1080, 1114.

of the United States within 60 days after submission. These are called the preclearance provisions.

As a result of recent Supreme Court interpretations of the responsibility of the Attorney General, it is now clear that every voting procedure is subject to these limitations.[3] An extreme example is one which occurred in the State of Virginia. In the city of Fredericksburg a situation arose where in the city hall, they were going to enlarge the hallway to make an alcove for a sitting room for the mayor. The enlarging of this hallway would require partitioning off part of the registrar's office—approximately 3 feet. The city was advised by the Department of Justice this was a change subject to the Voting Rights Act, and the hallway was not widened for a period of 60 days.[4]

The means by which States are determined to be covered are set forth in section 4. It is this triggering device which is a matter of major concern to us.

By provision of the first sentence of Section 4(b) of the Voting Rights Act of 1965, States which had in use on November 4, 1964, a "test or device" [5] are presumed to have used the test or device for purposes of denying or abridging the right to vote on account of race or color and are therefore subject to provisions of Section 5.

It was the theory of the Voting Rights Act that this constituted a mere shift of the burden of proof and that after a given period of time, five years, a covered State could come into court and prove in an action for a declaratory judgment that it had not used such test or device for the purpose of or with the effect of denying or abridging the right to vote on account of race or color.

The Supreme Court of the United States said in *Gaston County* v. *United States*, 395 U.S. 385 (1969), that the presence of a separate but unequal school system for blacks could be a basis for inferring that a literacy test has the effect of denying or abridging the right to vote on account of race or color.

In 1974 the State of Virginia undertook to prove in the case of *Virginia* v. *United States* (C.A. 1100–73) that the test or device which it had used in 1964 and which has subsequently been repealed, was not used to discriminate; abundant evidence was offered to the appropriate court to establish this contention. The court ruled that in view of the *Gaston* case, the presence of a separate but unequal school system contemporaneously with a test or device established conclusively that the test or device was used for purposes of discrimination with respect to voting rights.

The Supreme Court denied the appeal *per curiam*.

The effect of the recent case of *Virginia* v. *United States* (C.A. No. 1100–73) is to establish that there is no way that States which were covered by the Act in 1965 can introduce evidence to prove that they did not discriminate. There is no way to escape the provisions of the Act.

[3] *See Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), and *Georgia* v. *United States*, 411 U.S. 526 (1973).

[4] Testimony of Anthony Troy, Deputy Attorney General of Virginia at 761 of the *Hearings*.

[5] The definition of "test or device" is set forth in section 4(c). The term means "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any class."

When asked if there is "any way the State of Virginia under this existing legislation could come out from under the Act", J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, responded at page 303 of the *Hearings:* "I do not believe so." Similarly, when asked if the effect of the case of *Virginia* v. *United States* was to "foreclose the State of Virginia from making use of the bailout provision of the Voting Rights Act", Howard A. Glickstein, director, University of Notre Dame Center for Civil Rights, responded at page 356 of the *Hearings*, "yes." [6]

The significance of the effect of the recent case is made more clear when we read once more the decision of the case of *South Carolina* v. *Katzenbach*, *supra*. In that opinion the constitutional question was raised as to the overbreadth of the statute in covering jurisdictions which did not in fact deny or abridge the right to vote on account of race or color. The Court disposed of this argument at 331 as follows:

> Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years.

However, the effect of the holding in *Virginia* v. *United States* in combination with theh imminent extension of the Act operates to eliminate any method of terminating the special statutory coverage. A statute is overbroad when it penalizes those persons who do not deserve to be penalized as well as those who do. The fifteenth amendment justifies the imposition of congressional remedies only where the right to vote is denied or abridged on account of race or color. Once a State no longer denies or abridges the right to vote on account of race or color, the constitutional basis for imposing the extraordinary remedies of section 5 evaporates. To this extent, the failure to provide a meaningful bailout device will leave the statute unconstitutionally overbroad.[7] It is simply not rational to assert that a State with 100% blacks registered, voting and elected, is denying or abridging the right to vote on account of race or color. Yet, if the Act is extended, Southern States attaining that standard will still be unable to escape from the special coverage provisions.[8] Accordingly, we respectfully suggest that in the absence of an effective escape or bailout provision replacing the current provision in § 4(a) which has been made impotent by the Supreme Court, extensions of the Act, which are in fact a reenactment of the Act, are of doubtful constitutionality.[9]

The second major problem not responded to by the proposed extension was mentioned earlier. A glaring defect of the Act of 1965 as it presently exists and as it will likely exist as extended by H.R. 6219 is that it provides *no* incentive for any covered jurisdiction to change any voting laws in any manner whatsoever. By compelling a covered juris-

[6] This view was sustained by the following witnesses in their testimony before the Subcommittee: Hon. Stone D. Barefield, Member, Mississippi House of Representatives at 718 of the *Hearings;* Andrew P. Miller, Attorney General, Commonwealth of Virginia, at 745 of the *Hearings;* Hon. Walter Flowers, Member, United States House of Representatives at 147 of the *Hearings;* and Hon. Daniel R. McLeod, Attorney General of South Carolina at 590 of the *Hearings.*

[7] See generally, Hearings at 718, 764.

[8] *See* Testimony of J. Stanley Pottinger, Assistant Attorney General, Department of Justice, at 303 of the *Hearings.*

[9] *See* Testimony of Hon. Andrew P. Miller, Attorney General of Virginia, at 764 of the *Hearings;* testimony of Hon. Stone D. Barefiled, Member, Mississippi House of Representatives at 718 of the *Hearings.*

diction to submit all voting changes to the Attorney General of the United States for preclearance before such changes may be enforced, the Act "freezes in" past voting practices. Even if these past practices are discriminatory in intent or in effect, the Act does nothing to force or even encourage a covered jurisdiction to change its laws. Throughout the hearings,[10] and during markup of this legislation in both the Subcommittee and the full Committee, alternatives were discussed with witnesses suggesting plans to encourage affirmative changes in voting laws by the covered jurisdictions; this aim was pursued by offering covered jurisdictions exemption from the burdens of section 5 as a reward for passing and implementing progressive new voting laws.

J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, suggested several factors at 791 of the *Hearings* which form the basis for the second prerequisite set forth in the amendment, *infra*. He said, at 791 of the *Hearings:*

> It seems to us that it might be worth a line of inquiry for this entire committee, and certainly yourself included because of your keen interest to pursue whether or not such standards can be drawn along the lines that I am suggesting. That is to say, perhaps it is possible to state that if there has been for a period of 5 years no literacy tests or devices which were in use in the given jurisdiction, whether State or subdivision of it, no outstanding objections by the Attorney General under section 5, no judgment of the court stating the political subdivision or State has violated either the 15th amendment or any implementing legislation under the 15th amendment, the literacy tests, and devices of the States have actually been repealed, not simply put in disuse, and there have been timely submissions of changes and the like, if all of those things that are now covered by the act can be shown to have been complied with, I suppose it would be difficult to argue that the State has not freed itself of the obligations under the act as other States have.

Howard A. Glickstein thought a 5 percent disparity level between black and white voter turnout might be appropriate, at 350 of the *Hearings*. The Hon. Stone D. Barefield supported the 60 percent test now incorporated as the first prerequisite in the amendment, as developed *infra*. Other views and reactions were also placed on the record.[11]

Many of us have availed ourselves of the opportunity to meet with our constituents representing minorities and found that the complaints set forth in the Report of the Civil Rights Commission do in fact exist in many instances. The principal problems related are the real absence of opportunities to register, the inconvenience in voting locations, and probably most significant, a failure to readjust local government boundaries to create voting opportunities to accommodate the new voting strength of minorities.

A particular complaint is in the larger cities: that as blacks become more sophisticated, they are still limited in their choice of candidates; but there is no way to implement a desire for a ward system of voting or other system of voting which would assure representation for

[10] *See Generally, Hearings* at 147, 303, 350, 489, 718, 741, 764 and 790.

[11] *See generally, Hearings* at 303–05, 350, 489, 718, 741, 764, and 790–91.

minorities on local governing boards. A similar complaint has developed with reference to the use of multi-member districts in reapportionment plans which meets all the requirements of the equal protection section of the fourteenth amendment.

Since the preclearance provisions of the Voting Rights Act are directed to monitor future voting changes and not existing voting laws, there is no incentive to correct voting practices which are not subject to the Voting Rights Act. These complaints cannot be met under the Voting Rights Act.

Accordingly, we have an amendment which we feel would solve these problems; the amendment was rejected in the Committee by a 17–17 vote.

The amendment sets up three basic requirements which a jurisdiction must meet to be rewarded with exemption from § 5. First, actual registration and voting percentages must indicate the absence of racial discrimination. Second, the jurisdication must have remained pure for at least the preceding five years of all concceivable condemnation rating to voting discrimination. Third, the jurisdiction must have initiated an affirmative action program to revamp its voting laws, and this program must have been implemented to produce concrete results. By establishing these three broad goals, our amendment remedies both of the above described deficiencies in the Voting Rights Act as it presently exists and even as it would exist if extended by H.R. 6219. Jurisdictions are not helplessly trapped within the onerous confines of § 5, and at the same time they are encouraged to implement progressive new voting laws to earn their freedom.

The specific requirements of these three broad areas are rigorous. There is no better way to describe them than to set them out. Specifically, in order for a jurisdiction to bailout of § 5, that jurisdiction must prove in an action for a declaratory judgment each of the following circumstances:

(1) No less than sixty percentum of the persons of voting age residing therein on the date of the most recent Presidential election were registered and no less than sixty percentum of such persons voted in said election: *Provided that* the percentage of persons of minority race or color or national origin (which terms include language minorities) who were registered and the percentage of such minority persons who voted in said election were not substantially less than the percentage of persons voting, respectively, in said election in said State or political subdivision;

(2) During the five years preceding the filing of such action for declaratory judgment there has been

(a) no final judgment of a federal court ruling that such State or political subdivisions has violated the fifteenth amendment, or fourteenth amendment respecting voting rights, or any legislation implementing such amendments;

(b) no change in any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting of such State or political subdivision put into force or effect without timely filing of a declaratory judgment action in the District Court for the District of Columbia or timely submission to the Attorney General pursuant to this Section;

(c) no objection interposed by the Attorney General pursuant to this Section against such State or political subdivision which objection was based upon substantial potential denial or abridgment of the right to vote on account of race or color or in contravention of the guarantees set forth in section 4(f)(2);

(d) repealed any test or device as defined by subsection (c) of Section 4 of this title and section 4(f)(3) and that all changes in any voting qualification, or prerequisite to voting, or standard, practice, or procedure with respect to voting to which the Attorney General interposed an objection, or the District Court for the District of Columbia denied an action for declaratory judgment pursuant to this Section, in such State or political subdivision, have been repealed, and

(e) no federal voting examiner sent to such political subdivision of such State pursuant to Section 6 of this title; and

(f) no incident or any voting qualification or prerequisite to voting or standard, practice, or procedure has been enacted or applied in violation of the fourteenth or fifteenth amendments, or if there are any such incidents:

(1) the incidents have been few in number and have been promptly and effectively corrected by State or local action;

(2) the continuing effect of such incidents has been eliminated; and

(3) there is no reasonable probability of their recurrence in the future.

(3) The laws of the State or political subdivision provide and have been implemented to effectuate:

(a) an opportunity for every person of voting age residing therein to register to vote including the opportunity to register during evening hours on a reasonable number of days each month and on a reasonable number of Saturdays and Sundays of each month;

(b) reasonable public notice of the opportunity to register;

(c) places of registration and places for voting at locations with access to and not unreasonable distance from the place of residence of all persons of voting age residing within said State or political subdivision;

(d) reasonable provision for minority representatives among election officials at polling places where minorities are registered to vote;

(e) apportionment plans which assure equal voter representation and avoid submergence of cognizable racial or minority groups;

(f) removal of all unreasonable financial or other barriers to minority candidates; and

(g) adequate opportunity for minority representation in al local governing bodies where persons of a minority race or color or national origin (which terms include language minorities) exceed twenty-five percentum of the persons residing within such political subdivision.

Clearly any jurisdiction meeting these standards cannot rationally be denied its right to a Republican form of government upon a presumption that it is likely to deny or abridge the right to vote on the basis of race or color.

The amendment also provides that if the Attorney General determines that the State or political subdivision has complied with each of the above requirements, then he shall consent to the entry of such judgment and the Attorney General shall, upon request, advise in advance of litigation whether in his opinion the above circumstances exist. Moreover, the amendment provides that once a jurisdiction is exempted from § 5 that the court retains jurisdiction for ten years after judgment and reopens the action upon motion of the Attorney General alleging that a voting qualification, prerequisite, standard, procedure or practice has been used with the purpose or effect of denying or abridging the right to vote on account of race or color or in contravention of the "language minority" guarantees set forth in section 4(f)(2). This safeguard provides a mechanism to recommit a jurisdiction to the coverage of § 5 if undesirable laws are passed in the future.

This amendment provides an incentive to the covered jurisdictions to comply with the spirit of the Voting Rights Act by offering exemption from section 5 as a procedural reward; yet the substantive goals of section 5 are not meaningfully subverted. Adoption of this amendment would likely result in legislation at the State and local level designed to remove the existing barriers to Registration, Voting, and Candidacy so explicitly documented by the Commission.[12] Similarly, this amendment will encourage fair representation of minorities in national, State and local governments.[13]

The Voting Rights Act was described as Reconstruction by Rev. Theodore M. Hesburgh, C.S.C., President, University of Notre Dame; he urged the Subcommittee not to make the mistake of ending the "unfinished Second Reconstruction."[14] We believe that nothing is more inappropriate in the twentieth century than Reconstruction legislation. The time has come to vote against the hypocrisy of such legislation.

The undersigned members heartily encourage their colleagues to support this amendment on the Floor of the House of Representatives. We also invite you to consider the proposed amendment and to suggest any revision that may be necessary due to technical objections.

The undersigned members ascribe to the above stated views.

M. Caldwell Butler.
Edward Hutchinson.
Robert McClory.
Charles E. Wiggins.
Carlos J. Moorhead.
Henry J. Hyde.
Thomas N. Kindness.
James R. Mann.

[12] *See* Report of the Civil Rights Commission, *The Voting Rights Act: Ten Years After* at 69–172, reproduced in the *Hearings* at 1052–1155.
[13] *Cf. id.* at 1187–1310.
[14] *Hearings* at 320. *See also, Hearings* at 119.

SUPPLEMENTAL VIEWS OF MESSRS. McCLORY, HUTCHINSON, WIGGINS, MOORHEAD, HYDE, KINDNESS, AND MANN CONCERNING AN AMENDMENT TO MODIFY TITLE I OF H.R. 6219 TO EXTEND THE VOTING RIGHTS ACT AND THE BAN ON VOTING TESTS AND DEVICES FOR FIVE YEARS

The Administration proposal, H.R. 2184, would extend §§ 4, 5 and 201 of the existing Voting Rights Act for a period of 5 years. The bill reported to the House, H.R. 6219, incorporates the 10 year extension and a permanent ban on literacy tests in title I.

We urge adoption of an amendment designed to enact the recommendations of the Administration as supported during the hearings by Assistant Attorney General, J. Stanley Pottinger, that §§ 4, 5, and 201 be extended for a period of 5 years.[1] To facilitate a clear analysis of these issues, a separate discussion is appropriate.

A. Amendment To Modify Section 101 of H.R. 6219

H.R. 6219 currently proposes a ten year extension of the special coverage provisions of the Voting Rights Act by changing the burden of proof necessary to bailout of the special coverage provisions in § 4(a) from ten years to twenty years. This will have the effect of freezing in the six southern States which were originally covered in 1964 until at least 1985 by focusing on sins committed over twenty years prior to that date. Instead, we urge a five year extension of the Act by changing the period of the burden of proof in § 4(a) to fifteen years rather than twenty years.

Section 4 of the Voting Rights Act triggers the special coverage provisions of §§ 4, 5, and 6 by focusing on the 1964 and 1968 presidential elections. If a State or political subdivision had less than 50 percent of its voting age population registered or voting in either of those elections, and it also employed a voting test or device, then the trigger in § 4(b) would automatically operate upon a determination by the Director of the Census to bring such jurisdiction under the special coverage provisions of the Act. The trigger is saved from being unconstitutionally overboard by allowing a jurisdiction to "bail out" if it can show that within the past ten years it has not used a "test or device" with the purpose or with the effect of denying or abridging the right to vote on account of race or color.[2] Those

[1] *Hearings on the Extension of the Voting Rights Act before the Subcom. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., Ser. No. 1 at 286–87 (1975) [hereinafter referred to as "Hearings"]. *Cf.* testimony of Hon. Robert McClory at 311–19 of the *Hearings* and the statement of Hon. Thomas Railsback at 1604–05 of the *Hearings* supporting these recommendations.
[2] The bailout is accomplished by bringing an action for declaratory judgment in the United States District Court for the District of Columbia pursuant to § 4(a). The term "test or device" is a term of art defined in §§ 4(c) and 201 of the Act. The definition is much broader than mere literacy tests and includes a requirement that a person display knowledge of any matter.

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jurisdictions which cannot bail out must submit all changes in voting laws to the District Court for the District of Columbia or to the United States Attorney General for preclearance before such laws may be enforced.[3]

The original burden of proof required to bail out of the Act was 5 years, but in 1970, Congress "extended" the Act for another 5 years by altering the period of the burden of proof to ten years. This had the purpose and effect of keeping the 6 southern States which were covered in 1964 from successfully using the bailout, since their literacy tests were not suspended by the Act until 1965.[4] Now it is time to decide how long the southern States will remain under the Act for their misdeeds committed prior to 1965.

Those members favoring a ten year extension argue that it is necessary for the Act to be in effect to cover the reapportionment that will take place following the 1980 census.[5] If the need for the Act to be extended past August 6, 1980, can be justified at that time, then the 96th Congress which will be meeting in 1980, can in its wisdom, enact appropriate, brief extension. However the present record does not justify such action at this time.

Testimony during the *Hearings* confirmed that in order for an extension of this Act to be constitutional, the record must justify the legislation just as if this were an original enactment.[6] The constitutionality of the Voting Rights Act was established in *South Carolina* v. *Katzenbach*;[7] a case which focused on the temporary nature of this extraordinary legislation and noted that Congress could act to remedy an insidious and pervasive evil with stern and elaborate measures.[8] The record is clear that substantial progress has been made since 1964. In the words of the Chairman of the Committee on the Judiciary, "I am, of course, aware of the tremendous gains that have been made, especially in the covered jurisdictions."[9] Testimony of the Chairman of the United States Commission on Civil Rights confirmed that by January, 1972, the gap in black and white voter registration in the covered jurisdictions had decreased from 44.1 percent in 1964 to only 11.2 percent.[10] In light of this tremendous improvement, it would be unwise and possibly unconstitutional to extend the Voting Rights Act for 10 years when it was historically extended for only 5 years in 1970. Moreover, fears concerning the 1980 census are unwarranted because the bailout provision in § 4(a) of the Act requires the court to retain jurisdiction over the case of any State or political subdivision that successfully bails out for a period of 5 years during which time the Attorney General may reopen the action to bring the State or political subdivision back under the Act. Thus, even if all southern States could meet the burden of proof necessary to bail out in 1980, the court would retain jurisdiction for another 5 years or well past the 1980 reapportionment. Since the present evil is less insidious and pervasive than it

[3] Section 5 of the Voting Rights Act so provides.

[4] The option of proving that the literacy test did not in fact have the purpose or effect of denying or abridging the right to vote on accoun of race or color was effectively foreclosed to the six southern states by holding in *Virginia* v. *United States*, that jurisdictions which previously had both literacy tests and inferior schools for blacks were *per se* barred from proving the lack of discriminatory effect necessary to bail out under section 4(a).

[5] *See, e.g., Hearings* at 11, 315.

[6] *Hearings* at 597.

[7] 383 U.S. 301 (1966).

[8] 383 U.S. 301, 309 (1966).

[9] Statement of Hon. Peter W. Rodino, Jr., Chairman House Committee on the Judiciary, *Hearings* at 12.

[10] Statement of Hon. Arthur S. Flemming, Chairman, United States Commission on Civil Rights, *Hearings* at 20. *See also,* Report of the Civil Rights Commission entitled *The Voting Rights Act: Ten Years After* at 42, reproduced in the *Hearings* at 1025.

was in 1964, it would be inappropriate to extend the same stern and elaborate measures of this Act past 1980. An amendment to that effect will be offered on the floor of the House and we recommend its adoption.

B. Amendment To Modify Section 102 of H.R. 6219

Section 201 of the Voting Rights Act was enacted in 1970 to ban all "tests and devices" on a nationwide basis.[11] Those members of Congress supporting H.R. 6219 now desire to make that ban permanent. From both a legal and political perspective, the undersigned members deem this course of action unwise. We urge our colleagues to support a five year extension of the ban on literacy tests as appropriate legislation.

The United States Commission on Civil Rights has recommended a ten year extension of the ban on literacy tests,[12] against the wishes of Vice-Chairman Stephen Horn that the ban be extended for 5 years.[13] Logically, the temporary provisions of the Act should be extended for the same period of time; such a view was expressed by Assistant Attorney General J. Stanley Pottinger in testimony before the Subcommittee on Civil and Constitutional Rights.[14] It is reasonable that Congress should review all of the temporary provisions of the Act at one time to see if further extension is warranted. Thus, the undersigned members feel that whatever period of extension is adopted for §§ 4 and 5 is also appropriate for § 201.

However, the supporters of H.R. 6219 do not urge a temporary extension of § 201. Rather, they seek to make this a permanent provision.[15] Testimony was received during the *Hearings* indicating that there is a risk that a permanent ban on all tests and devices might be unconstitutional.[16] Testimony revealed that if such a decision were rendered that the Court itself could not impose a temporary ban and that States would immediately be free to reimpose literacy tests.[17] The undersigned members are simply unwilling to run the risk that literacy tests may be imposed within the next five years. This risk aversion is justified by the substantial possibility that a conservative Supreme Court will adhere to its holding in *Lassiter* v. *Northampton County* Board of Elections, 360 U.S. 45 (1959), that literacy tests are not per se unconstitutional. A Congressional determination to permanently ban such tests could easily be found to be irrational, since it is logical to assume that at some future time literacy tests will be administered on a racially equal basis.[18]

[11] The definition of "test or device" in section 201 of the Act tracks the definition set forth in section 4(c). The term means "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonsrate 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 class." Clearly this definition encompasses more than just literacy tests.

[12] Recommendation Number 2 of the Commission on Civil Rights reproduced in the *Hearings* at 1239.

[13] The views of Vice-Chairman Horn are reproduced in the *Hearings* at 1343–45.

[14] *Hearings* at 287.

[15] *See* section 102 of H.R. 6219.

[16] *See, e.g., Hearings* at 57–58.

[17] *Id.*

[18] Although the Court in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966) confined itself to perceiving a basis on which Congress might act without inquiring into the rationality of that basis, the weight of that opinion was substantially undermined in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970) where a majority of justices concurred that Congress does not have the power to determine what is or is not a compelling state interest for equal protection purposes. The case went on to hold that the Constitution reserves to the States the power to determine voter qualifications in State and local elections; this would include a knowledge requirement.

Advocates of the permanent ban on literacy tests often argue that in this day of mass media that the ability to read or write is not essential to cast an intelligent vote.[19] If all that were being banned by section 201 were tests concerning the ability to read and write, this argument might carry more weight. But the definition of test or device in section 201 bans all sorts of tests designed to measure *knowledge*.[20] Our system of government should not preclude for all time a State from limiting the franchise to knowledgeable voters. Yet in the light of the definition of test or device, section 102 of H.R. 6219 would do just that. The constitutionality of banning all tests and devices has never been decided; the Court has upheld the ban on literacy tests for five years, but the opinion did not pass on the legality of banning other tests or devices.[21] In light of the holding in that case that the Constitution reserves to the States the power to determine voter qualifications in State and local elections, a permanent withdrawal from the States of the right to require knowledgeable voters may be unconstitutional; indeed, there may even be a compelling State interest in requiring an informed electorate.[22]

Congress should adopt a policy to encourage literate voters and at the very least, knowledgeable voters. A permanent ban of literacy tests and other voting devices does nothing to further this goal. We urge adoption of an amendment that will be offered on the Floor to extend the temporary ban on tests and devices.

The undersigned members ascribe to the above stated views.

ROBERT MCCLORY.
EDWARD HUTCHINSON.
CHARLES E. WIGGINS.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
THOMAS N. KINDNESS.
JAMES R. MANN.

[19] *See, e.g., Hearings* at 12.
[20] *See* the definition of test or device in note 11 *supra*. A broad construction would forbid a state from prohibiting an insane person from voting.
[21] *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). *See* especially the dissenting opinion of Mr. Justice Harlan which notes that the legality of abolishing tests and devices other than literacy tests is an open question.
[22] *Id.* It is important to stress that the constitutionality of the temporary ban of literacy tests was based upon a showing of discriminatory impact on account of race or color.

SUPPLEMENTAL VIEWS OF MESSRS. MCCLORY, HUTCHINSON, WIGGINS, MOORHEAD, ASHBROOK, AND HYDE PERTAINING TO AN AMENDMENT TO STRIKE TITLES II AND III OF H.R. 6219; CONCURRING VIEW OF MR. FISH TO STRIKE TITLE II ONLY; CONCURRING VIEW OF MR. KINDNESS TO STRIKE TITLE III ONLY

Titles II and III of H.R. 6219 represent a distillation of effort to protect the voting rights of citizens with a mother tongue other than English, especially those citizens of Spanish origin.

Title II of H.R. 6219 expands coverage of the Voting Rights Act based upon the traditional § 4 trigger of less than 50 percent of the population registered or voting in the 1972 presidential election combined with the presence of an unlawful test or device.[1] But since all tests and devices as traditionally defined by sections 4(c) and 201 of the Act were banned in 1970, for the new trigger to be meaningful, a new definition of "test or device" was created.[2] The old definition is modified by adding in a new section 4(f)(3) which retroactively provides that a "test or device" existed in 1972 if an election in English only was conducted in a State or political subdivision where more than 5 percent of the citizens of voting age residing in the jurisdiction were members of a single "language minority" group.[3] The term "language minority group" is defined in the bill to mean persons who are "American Indian, Asian American, Alaskan Natives or of Spanish heritage."[4] Thus Title II will expand the traditional protections of the Act to cover language minority groups in areas of low voter turn out in the 1972 election where a single group is at least 5 percent of the population.[5]

To round out the expansion of the Act, title II makes conforming amendments to the other sections of the Act embodying the traditional remedies.[6] Noteworthy is the incorporation of the 14th Amendment to prevent discrimination against a person because he is a member of a "language minority group." This is effectively accomplished by prohibiting throughout the Act a denial or abridgment of the right to vote "in contravention of the guarantees set forth in section 4(f)(2)". Also an additional remedy is provided, applicable only to those jurisdictions brought under the Act by the 1972 trigger. A new section 4(f)(4) will require all election materials to be provided in the language of the minority group in future elections.[7] Lastly, the traditional bailout of

[1] Sec. 202 of H.R. 6219.
[2] *See* Sec. 203 of H.R. 6219.
[3] Sec. 203 of H.R. 6219.
[4] Sec. 207 of H.R. 6219. *Cf.* Sec. 301 of H.R. 6219 for a parallel definition for purposes of title III.
[5] No jurisdiction conducted elections in a language other than English to the degree required by the Act to escape the definition of test or device.
[6] *See* Secs. 201, 204, 205, and 206 of H.R. 6219.
[7] Sec. 203 of H.R. 6219.

§ 4(a) is modified to allow a jurisdiction to escape the Act if it can show that its English only election did not have the purpose or effect of denying or abridging the right to vote of any citizen on account of race, color, or by virtue of his being a member of a language minority group.[8] This bailout seems meaningless since there will undoubtedly be some people in any jurisdiction who are members of a language minority group and who cannot read English.

Title III of H.R. 6219 departs from the traditional Voting Rights Act in providing none of the traditional remedies. Rather, it provides only the new remedy created in the new section 4(f)(4) by requiring that all election materials shall be provided in the language of the single "language minority group" as well as in English.[9] The trigger for title III also is new and different from any traditional trigger. It provides that any jurisdiction will be covered where more than 5 percent of the citizens of voting age are members of a single language minority group and where the illiteracy rate of such persons as a group is higher than the national average.[10] Once a jurisdiction is covered, it must provide all future election materials in the language of the single language minority group unless it can "bail out" of title III by showing that the illiteracy rate of such group has become equal to or below the national average.[11] Title III is offered as a temporary provision with the apparent intent that it shall expire with §§ 4 and 5 of the Act on August 6, 1985.[12] Thus the coverage of title III is separate and distinct from the coverage of title II even though both titles mandate the remedy of multi-lingual elections.

Titles II and III are deficient in many respects. No hearings were had on these titles and the precise term "language minority group" appears nowhere in the record. At the full Committee, an amendment was offered to strike titles II and III while retaining the new relief in § 3 of the Act to assure 14th Amendment rights (equal protection of the laws) in addition to 15th Amendment remedies (prohibition against discrimination in voting based on race or color). At the full Committee the amendment was divided on the issue of whether to strike title III, and it seems best to treat these issues separately here.

A. Amendment To Strike Title II Retaining 14th Amendment Protection in § 3 for All Persons of National Origin

Title II has many deficiencies from both a legal and political standpoint. Politically speaking, it is unfair to impose such extraordinary relief, such as that embodied in §§ 4, 5 and 6 of the Voting Rights Act, upon States retroactively. Also, the record to justify the imposition of such relief is not nearly as strong as the record pertaining to blacks in the south in 1965. In Texas, for instance, persons of all colors, including those of Spanish origin, can register to vote by postcard registration; testimony revealed that only an "X" was required in lieu of a signature, and that bilingual material could be taken into the voting booth.[13] In short, there was no evidence of any discrimination

[8] Sec. 201.
[9] Sec. 301 of H.R. 6219 creates this remedy in a new Sec. 203(c) of the Voting Rights Act.
[10] Sec. 301 sets up this test in a new Sec. 203(b) of the Voting Rights Act. Illiteracy is defined therein to mean failure to complete the 5th grade.
[11] Sec. 301 of H.R. 6219 so provides in new Secs. 203 (c) and (d) of the Act.
[12] Sec. 301 of H.R. 6219 contains an expiration date in new Sec. 203(b) of the Act.
[13] *Hearings on Extension of the Voting Rights Act before the subcomm. on Civil & Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., Ser. No. 1, at 534–35 (1975) [hereinafter referred to as *"Hearings"*].

by State action or otherwise to prevent members of language minority groups from registering or voting. Moreover, no testimony was received to justify the definition of the term "language minority group." The hearings were concerned almost entirely with persons of Spanish origin and somewhat less with all those of a mother tongue other than English.[14] Very little evidence was received concerning American Indians, and virtually no testimony was given to justify inclusion of either Asian Americans or Alaskan Natives.[15]

In no other statute except for existing section 4(e) of the Voting Rights Act has Congress provided specific protection for national origin groups or races. All individuals of whatever race, color, or national origin are accorded a remedy by way of an appropriate court proceeding—where they experienced discrimination affecting their voting rights. As a matter of policy, if a new and additional remedy is to be established, relief should be afforded to all national origin groups or to none.

Testimony indicated that many groups of national origin other than those defined by the term "language minorities" sought relief under the Voting Rights Act but to no avail.[16] J. Stanley Pottinger, Assistant Attorney General for the Civil Rights Division of the Department of Justice, testified that problems raised with the 14h Amendment must clearly be addressed for "all native language minorities in the United States, whether they are caucasian or noncaucasian in origin.[17]

Legal infirmities with the approach taken in title II are well documented on the record. It is a well settled principle of law that any triggering device must be rational both in theory and in practice.[18] Throughout the hearings questions were raised concerning the rationality of the 5 percent cutoff prescribed in the trigger mechanism of both titles II and III.[19] The questions were never satisfactorily answered. Not one witness could justify this arbitrary figure except to note that two U.S. District Courts had hit upon it in formulating judicial remedies.[20] The use of an arbitrary 5 percent cutoff is irrational; it provides remedies to minorities living in ghettos and denies relief to minorities with similar needs living in an integrated society where they number less than 5 percent. Furthermore, the trigger is entirely irrational in that it does not measure minorities incapable of reading English who are thereby injured by an English only election. Instead, it measures groups based solely on racial or national origin factors. Additionally, the trigger is irrational in that it includes some language minority groups without any evidence having been entered on the record of any actual discrimination. Then it arbitrarily excludes other minority groups which have tried to utilize the Voting Rights Act and have been unable to do so.[21] Lastly, the trigger is

[14] Of the 171 references to various minority groups in the *Hearings*, 135 were to various Spanish groups.
[15] In the *Hearings*, 16 references were made to American Indian groups, one set of letters was submitted concerning Asian Americans at 1602–03 and no evidence was submitted concerning Alaskan Natives. When asked whether there were substantial groups of Asian Americans that really should have protection of the Voting Rights Act, J. Stanley Pottinger, Assistant Attorney General, Department of Justice, commented at page 767 of the *Hearings*, "We really don't know the answer to that."
[16] *See* Hearings at 621.
[17] *Hearings* at 788.
[18] *South Carolina* v. *Katzenbach*, 383 U.S. 301, 330 (1966).
[19] *Hearings* at 87–88, 503, 884, & 934.
[20] *Id.*
[21] *See* notes 15–17, *supra.*

irrational in that it applies in areas where no denial or abridgment of the right to vote is shown to have occurred while at the same time it excludes areas where such abridgment has been established by clear evidence.[22]

Insofar as title II is concerned, the remedies afforded by the statute are not rationally connected to the injury perceived on the record as reflected in the trigger. The extraordinary remedies of §§ 4 and 5, requiring a preclearance of all proposed changes in voting laws and procedures in States or political subdivisions where "language minority groups" exist, are only justified when Congress is confronted by an insidious and pervasive evil which requires these stern and elaborate remedies to enforce the guarantees of the 15th Amendment.[23] But testimony before the Subcommittee on Civil and Constitutional Rights indicated that there was no discriminatory intent and effect in running English only elections.[24] Finally, the special remedy created in new section 4(f)(4) is not rational in practice. That section requires all election materials to be "provided" in "the" language of the language minority group.[25] However, several Alaskan Native and American Indian languages are oral only; if a State is forced to supply ballots orally to the language minority group, it will undoubtedly also have to do so in English to avoid denying persons who can hear but not read English equal protection of the laws. Moreover, in the case of many language minority groups, there is no "one" language. Hence a composite group of Asian Americans living in Hawaii could trigger election remedies in Japanese, four dialects of Chinese, fifteen dialects of Phillipino, etc., since all "Asian Americans" are a "single" language minority group. The effect of title II is to mandate an "unequal protection of the laws." While attempting to afford special advantages to some poorly defined minorities, it discriminates against other minorities. Title II attempts to superimpose Federal control over State election prerogatives in an arbitrary and irrational manner. In the view of the undersigned Members, title II is unconstitutional.

For these and other reasons, the undersigned Members feel that title II of H.R. 6219 should be deleted. Accordingly, an amendment will be offered to strike title II with the proviso that all 14th Amendment rights will be preserved to protect the right to vote of all citizens without discrimination on account of national origin. This will enable the Attorney General, or any aggrieved person to sue on a case by case basis where necessary to extend the relief of the Voting Rights Act to any national origin group. We urge our colleagues to support this amendment.

B. Amendment to Delete Title III of H.R. 6219

For reasons similar to those stated in the argument to strike title II, title III should also be deleted. No testimony was presented to the Subcommittee on Civil and Constitutional Rights to warrant the relief afforded by title III. As a matter of policy, the issue of bilingual elections should be left to the States. To congressionally mandate bilingual elections on a uniform basis is unfeasible. Many groups speak languages which cannot be reduced to writing, and to place the burden

[22] *See Hearings* at 84–85 pertaining to the exclusion of Los Angeles County.
[23] *South Carolina* v. *Katzenbach*, 383 U.S. 301, 309 (1966).
[24] *Hearings* at 502.
[25] *See* Sec. 203 of H.R. 6219.

upon the States to supply all election materials orally to these groups is unworkable. In other cases the number of languages in which election materials would have to be provided under the Act is prohibitive. There is simply no showing that there is a need for bilingual elections in many of the areas that will be covered by title III.

The trigger mechanism of title III is irrational. The trigger presumes that bilingual elections are needed in areas where the illiteracy rate exceeds the national average and in which language minorities comprise greater than 5 percent of the voting age population. However, illiteracy is defined as failure to complete the 5th grade; this has not been linked on the record with the inability to read the name of a candidate on a ballot. Even if such a connection could be shown, the remedy of providing the election materials in the language of the minority group is insufficient. There is no showing that a person who is illiterate in English will be literate in his mother tongue. All title III requires is that the State print the ballots and other notices in the foreign language. Finally, there is no reason to deny bilingual relief to other national origin groups if they are "illiterate" within the terms of the statute. The racial element is simply not a factor in remedying illiteracy. Our efforts should be directed toward eradicating illiteracy—not perpetuating it by mandating elections in a vast variety of languages—many of which do not even exist in written form. The record of the hearings is bereft of any evidence justifying such a far-reaching and radical change as Title III contemplates.

For the above stated reasons, the undersigned Members endorse an amendment to strike title III of the bill.

The undersigned members ascribe to the above stated views.

Robert McClory.
Edward Hutchinson.
Charles E. Wiggins.
Carlos J. Moorhead.
John M. Ashbrook.
Henry J. Hyde.

The undersigned member ascribes to the above stated views to strike title II only.

Hamilton Fish, Jr.

The undersigned member ascribes to the above stated views to strike title III only.

Thomas N. Kindness.

SUPPLEMENTAL VIEWS OF MESSRS. McCLORY, HUTCHINSON, WIGGINS, FISH, AND HYDE CONCERNING AN AMENDMENT TO THE SURVEY PROCEDURE OF SECTION 403 OF H.R. 6219

Section 403 of H.R. 6219 provides for the Director of the Census to conduct a survey to compile registration statistics on the basis of race, color, and national origin. This section was added to the bill in subcommittee after virtually no hearings on the need for such statistics.[1] However, it would seem that the value of accurate information is readily apparent, provided that the cost of the survey is within reason. No provision is made in the bill to defray the cost of the survey, partly because the United States Civil Rights Commission is given unfettered discretion to conduct designated surveys in any jurisdiction for any election it chooses.

The major fault with Section 403 lies in its failure to make a response to the survey mandatory.[2] Experience in similar surveys has shown that voluntary responses lead to distorted and unreliable statistics.[3] In fact, present law mandates a mild criminal penalty for refusal to respond to most official surveys such as the census.[4]

At the mark up of this legislation before the House Committee on the Judiciary, Mr. McClory offered an amendment to encourage the eliciting of information concerning the race, color, or national origin of every person of voting age. Although such request is bolstered by the criminal penalty referred to above, the amendment also would require that the person being questioned shall be advised that the information being sought is solely to enforce nondiscrimination in voting. A copy of this amendment has been attached to facilitate your deliberation over this issue, and will be offered following general debate on H.R. 6219.

Opponents of this amendment fear that the right of privacy of the individual being invaded. It seems quite anomalous that any right to privacy could be affected by supplying information which should be readily apparent. Indeed, such an alleged "invasion" has repeatedly been held to be justifiable and constitutional in light of the compelling governmental interest in gathering valid data.[5]

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[1] A recommendation for a survey was however recommended by the United States Commission on Civil Rights in its report, *The Voting Rights Act: Ten Years After* at 355. *See Hearings* at 1338.

[2] While Sec. 403 incorporates the criminal provisions of 13 U.S.C. § 221 (1970), it specifically states that no penalty shall be imposed for failure to disclose race, color, or national origin. In fact, Sec. 403 specifically mandates notification of the right not to respond to the questions.

[3] John H. Powell, Jr., former general counsel of the United States Commission on Civil Rights testified that mandatory statistics were necessary to insure accuracy. *See Hearings on Federal Jury Service before Subcommittee No. 8 of the House Committee on the Judiciary*, 92d Congress, 1st Sess., Ser. No. 16, at 71–75 (1971). As the response falls below 99 percent the figures become increasingly unreliable. That is, the range of error becomes so great as to render the data meaningless. *See also* American University Study on the Effects of Optional Information, Cong. Rec. E3689 (daily ed. May 6, 1969).

[4] *See* 13 U.S.C. § 221 (1970).

[5] *See Hamm* v. *Virginia State Board of Elections*, 230 F. Supp. 156, 158 (E.D. Va.) *aff'd per curiam*, 379 U.S. 19 (1964).

Should this amendment fail to be adopted, then serious consideration should be given to striking Sec. 403, since it is highly improbable that all of the money spent on these surveys will produce data of statistical significance to benefit those sought to be aided by the money.[6]

AMENDMENT TO H.R. 6219 OFFERED BY MR. MCCLORY

On page 11, on line 12 strike "only include a count of persons of voting age by race or color, and national origin, and a determination of" and insert in lieu thereof "elicit the race, color, and national origin of each person of voting age and".

And on line 17 strike "race, color, national origin,".

And on line 24, before the period insert the following: "except with regard to information required by subsection (a), with regard to which every such person shall be informed that such information is required solely to enforce nondiscrimination in voting".

The undersigned members ascribe to the above stated views.

ROBERT MCCLORY.
EDWARD HUTCHINSON.
CHARLES E. WIGGINS.
HAMILTON FISK, Jr.
HENRY J. HYDE.

[6] *See* note 3, *supra*.

SUPPLEMENTAL VIEWS OF MESSRS. MCCLORY, HUTCHINSON, WIGGINS, BUTLER, MOORHEAD, HYDE, AND KINDNESS, PERTAINING TO AN AMENDMENT TO DELETE "ALASKAN NATIVES" FROM THE DEFINITION OF LANGUAGE MINORITIES IN H.R. 6219

Various measures to expand the Voting Rights Act seek to cover persons of Spanish origin or persons of a mother tongue different from English. However, at no time during the hearings was the term "language minority" ever discussed. Its first appearance was made on April 17, 1975, when it was adopted by the Subcommittee during a mark up session.

As defined in Secs. 207 and 301 of H.R. 6219, the term "language minorities" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish Heritage. While various testimony was received concerning Americans of Spanish Heritage, little information was received concerning American Indians, one tangential letter was received concerning Asian Americans, and *no* information or testimony was received concerning Alaskan Natives.[1]

Prior to final action by the full Committee on the Judiciary, telegrams were received from the Federation of Alaskan Natives, Inc., Cook Inlet Region, Inc., and from Doyon Ltd., representing over 10,000 Alaskan Natives urging that Alaskan Natives be deleted from the definition of "language minorities" in H.R. 6219. These groups recognize the unique burden imposed by Titles II and III of H.R. 6219 which require the State to provide ballots and other election materials in the language of the single "language minority group."[2] Of the twenty different Eskimo and Aleut dialects in the State of Alaska most have never been reduced to written form.[3] One language is spoken by only three people and most of the languages are oral only.

The State of Alaska has twice before been brought under the overbroad trigger of the Voting Rights Act and twice before has traveled to Washington, D.C., to escape—successfully—its onerous provisions.[4] It would border on absurdity to now attempt to subject the State of Alaska to the burdens of Titles II and III requiring ballots and voting information to be provided in 20 or more different dialects (languages which for the most part are spoken but not written) particularly when the only language which all of the citizens of Alaska have adopted is English.

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
DIVISION OF ELECTION,
Juneau, April 28, 1975.

[1] The scant correspondence concerning Asian Americans can be found on pp. 1602–03 of the Hearings. While there would seem to be a basis for excluding Asian Americans from the definition of language minorities, the undersigned members feel that the representatives from the State of Hawaii and other affected areas should be contacted before doing so.

[2] Secs. 203 and 301 of H.R. 6219.

[3] Since there is nothing in the record pertaining to this issue, copies of telegrams are included in this report for your convenience.

[4] *Alaska* v. *United States* (C.A. No. 101–66) (1966) and *Alaska* v. *United States* (C.A. No. 2122–71) (1971) are referred to in the table on page 181 of the Hearings as successful bailout suits.

Hon. DON YOUNG,
House of Representatives, Longworth House Office Building, Washington, D.C.
Attention: Jim Lexo.

DEAR CONGRESSMAN YOUNG: The following information is provided regarding the different languages spoken in the State.

There are 20 different dialects in the State of Alaska which are mutually unintelligible. These 20 different dialects are such that they can be considered as different languages. The attached Table 1 indicates the language population and number of people speaking the language.

The different languages are now being taught particularly in the State Operated Schools. In the above mentioned, Table I, most of the people speaking the language are those children currently receiving instructions in the language.

Writing systems for the languages have been developed since 1960. Only in the last 3 to 4 years have writing systems been developed. As a result, many older people are unable to read the newly developed writing system.

The University of Alaska, Bilingual Center, will have available next week a map intitled "Native People and Languages of Alaska". This map will show which languages are spoken in the different areas of the State. By referring to the enclosed article titled, "Alaska Native Languages and their Present Situations", I have determined that Election Districts 1, 5, 15, 16, 17, 18, 19, 21, and 22 would require a minimum of 2 ballots printed in the native languages. In several districts I feel that 4 or 5 ballots printed in the native languages would be required. In some of the languages, there is no word for "Vote" and "Ballot".

The map mentioned above will be mailed to you as soon as it is received.

The enclosed table and article are, also, enclosed for your information.

Sincerely,

PATTY ANN POLLEY, *Director.*

Enclosures.

TABLE 1.—ALASKA NATIVE LANGUAGES AND POPULATIONS[1]

Language family and name	Population	Number speaking
Eskimo-Aleut:		
Aleut, Aleut	2,000	700
Eskimo:		
Sugpiaq	3,000	1,000
Central Yupik	17,000	15,000
Siberian Yupik	1,000	1,000
Inupiaq	11,000	6,000
Tsimshian, Tsimshian	1,000	150
Haida, Haida	500	100
Tlingit, Tlingit	9,000	2,000
Athabaskan-Eyak:		
Eyak, Eyak	20	3
Athabaskan:		
Ahtna	500	200
Tanaina	900	250
Ingalik	300	100
Holiakachuk	150	25
Koyukon	2,100	700
Upper Kuskokwim	150	100
Tanana	360	100
Upper Tanana	300	250
Tanacross	175	120
Han	65	20
Kutchin	1,100	700

[1] Source: Map of Alaska Native Languages, Alaska Native Language Center, University of Alaska, Fairbanks, Alaska.

[Telegrams]

ANCHORAGE, ALASKA, *April 30, 1975.*

Congressman DON YOUNG,
Capitol Hill, Washington, D.C.

The Alaska Federation of Natives Incorporated does endorse the position of Congressman Don Young in his efforts to exempt the State of Alaska from printing bilingual ballots. Many native languages and dialects are just being put into written form, the number of Alaskan natives able to read their language is minimal. Alaska does not have literacy test as a condition of voting. The problem of Alaskans in voting is not solved by different writings or languages, nor will the general Native populous benefit from this section of H.R. 6219.

ROGER LANG, *President.*

APRIL 30, 1975.

Attention: Don Young.

Doyon, Ltd., representing 10,000 Indians in interior Alaska wish to oppose the requirement for voting ballots to be written in Indian dialects. Under State law Alaska has no requirement that voters must read or write.

Additionally a requirement such as this would be an extreme hardship to the State as we have over 35 dialects and very few people actually know how to read or write in any language.

JOHN SACKETT, *President.*

ANCHORAGE, ALASKA, *April 30, 1975.*

Representative DON YOUNG,
Capitol Hill, Washington, D.C.:

Cook Inlet Region, Inc., supports your position in striking Alaska from section 207 of H.R. 6219 Voting Rights Act of 1975.

RANDY JOHNSON, *President.*

The undersigned members ascribe to the above stated views.

ROBERT MCCLORY.
EDWARD HUTCHINSON.
CHARLES E. WIGGINS.
M. CALDWELL BUTLER.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
THOMAS N. KINDNESS.

SUPPLEMENTAL VIEWS OF MESSRS. WIGGINS, BUTLER, MOORHEAD, HYDE, FLOWERS, AND MANN OFFERING AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 6219

As the time for expiration of the special coverage provisions of the Voting Rights Act grows near, the Congress is once again urged to extend the Act for a period of five or ten years. The legislation reported to the House, H.R. 6219, also seeks to expand the coverage of the Act to encompass "language minority groups". The undersigned members feel that the entire Act is sorely in need of revision; thus, they plan to support an amendment in the nature of a substitute which will totally revitalize the right to vote in this country.

The present Voting Rights Act is deficient in many respects. Notably, the trigger mechanism of the Act excludes many areas where relief is needed. Also the Act does not reach problems of entrenched discrimination in that only new voting changes are subject to scrutiny of the Attorney General pursuant to § 5. Moreover, the bailout provision in § 4(a) is effectively meaningless for many of the covered jurisdictions, in light of the recent case of *Virginia* v. *United States*. Lastly, the present Act provides no incentive for the covered jurisdictions to improve their voting laws and procedures.

This amendment in the nature of a substitute cures all of these defects in the present Act. The twin goals of the amendment is first, to insure that no minority citizen is discriminated against by having his right to vote denied or abridged, and second, to encourage every citizen to vote in every general federal election. These goals are accomplished by substantially revising §§ 3, 4, and 5 of the present Act to implement a prospective triggering device after the 1976 presidential election.

Under the amendment, covered jurisdictions currently subject to the special provisions of § 4 and § 5 are prevented from bailing out prior to February 5, 1977, by extending the current ten year burden of proof to a period of eleven years and 180 days. At that time, all States and political subdivisions will be treated on an equal basis, regardless of prior transgressions.

The new § 4 trigger, which becomes effective on February 6, 1977, will cover any jurisdiction in which the Director of the Census determines that less than 50 per centum of the citizens of voting age or less than 50 per centum of the racial or language minority citizens of voting age voted in the preceding general federal election, in this instance, the presidential election of 1976. Such a covered jurisdiction becomes subject to the preclearance provisions of § 5, and before any voting law may be enforced, preclearance must be obtained in the traditional manner.

After February 5, 1977, a new bailout mechanism will also go into effect. Every covered jurisdiction will automatically be bailed out every

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two years when the next general federal election occurs unless they are re-covered by virtue of voter turn out within that jurisdiction in that subsequent election. To prevent the new Act from being unconstitutionally overbroad, an interim bailout is possible if the jurisdiction can prove in a traditional action for declaratory judgment that it has in use no qualification, prerequisite, standard, practice, or procedure that has or is likely to have the purpose or effect of denying or abridging the right to vote on the basis of race, color, or national origin. Standard language is incorporated to prevent *de minimis* use of devices from preventing a successful bailout. To guard against the possibility that a jurisdiction may repeal all of its nefarious laws, procure a bailout, and then reenact the laws, the court retains jurisdiction over the case until after the next general federal election.

Thus the new Act is simple, yet effective. To escape the onerous burden of § 5, a State is encouraged to turn out the vote, especially the minority vote. Dissatisfied minorities can procure special coverage either by failing to vote in great enough numbers percentage-wise, or by filing an action under § 3, which is appropriately amended by the new Act to incorporate many of the changes effectuated by §§ 203, 205, and 401 of H.R. 6219. Once covered either by virtue of § 4 or by § 3, all voting laws of the jurisdiction become the subject of review by the court or Attorney General. The automatic bailout provides an incentive for a State to provide bilingual ballots, fair districts, or whatever it takes to procure a turnout sufficient to escape in the next general federal election. States are encouraged to have a high voter turnout in off year elections also. Thus the new Act will remedy many existing difficulfties.

The new Act also incorporates many of the progressive provisions of H.R. 6219 contained in title IV of that bill. One change worth noting is a revision of section 403 of that bill to make the furnishing of racial statistics mandatory for purposes of preventing nondiscrimination in voting. The need for such a mandatory requirement is explored at length in other supplemental views and need not be rehashed here.

Since this amendment was not the subject of hearings and poses such a new approach to the problem of voting rights, it is fair to expect that many members will have the initial impulse to reject it out of hand. The undersigned members fervently urge their colleagues to give full and thoughtful study to this alternative. To further this end, some problem areas with this proposal will be examined in these views to provoke discussion.

One objection to the automatic bailout might be that once a jurisdiction is freed, it will be able to enact discriminatory legislation prior to the next general federal election. This objection overlooks the fact that special coverage could be reimposed pursuant to § 3 in an action by either the Attorney General or an aggrieved person. Also, to the extent a voting change actually does result in a low minority voter turnout, then the jurisdiction will find itself covered by the burden of § 5 for at least two years.

Another argument could be directed against the trigger in the new Act. If minorities vote in excess of 50 percent, there could still be a substantial gap between minority and nonminority voted turnout evidencing discrimination. The only reply to this argument is that

under the current Act as well as under the new Act, such "exotic" discrimination will have to be remedied by the case by case approach of § 3. A presumption of discrimination simply cannot be justified in that instance in light of the past record concerning voting rights before the Congress.

Another argument that can be mustered against the trigger is that in a year in which there is an unusually low voter turnout, *e.g.*, 1974, the Attorney General would be overburdened. The undersigned members feel that the voting participation is so fundamental to our system of democracy that sufficient resources should be expended to cope with such a situation.

Lastly, it can be contended that the new Act fails to deal effectively with the problem of gerrymandering or at large elections. Of course the Act will handle these problems for covered jurisdictions just as they are handled under § 5 of the present Act—even if there is no new redistricting. The problem area is when gerrymandering occurs in a non-covered jurisdiction. To the extent a minority population feels that it has no meaningful candidate to vote for it will fail to vote thus triggering the jurisdiction within two years; to the extent that minorities feel they reside in districts where their vote will not count they will refuse to vote and thus effectuate coverage of the jurisdiction within two years. Also § 3 and private actions under the 14th amendment will continue to exist as alternatives. Most importantly, at least some remedy will exist in the Act; under present law, including the proposal in H.R. 6219, existing gerrymandering is not susceptible to review in any jurisdiction, and new gerrymandering as the result of redistricting is reviewable only in the few jurisdictions presently covered under the Act. If it is the sense of the Congress that minorities are entitled to be grouped in blocs to elect minority candidates, then a separate piece of legislation to accomplish that end is appropriate. The Voting Rights Act never was intended to solve that problem and it never can solve it to a greater extent than is accomplished by this Act.

A copy of the amendment is attached for the convenience of our colleagues in considering this important piece of legislation.

Amendment in the Nature of a Substitute to H.R. 6219 Offered by Mr. Wiggins

In H.R. 6219 strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as "The Voting Rights Extension Act of 1975".

Sec. 2. Section 4(a) of the Voting Rights Act of 1965 is amended by striking out "ten years" each time it appears and inserting in lieu thereof "eleven-year-and-180-day period".

Sec. 3. Effective February 6, 1977.

(a) Section 4 of the Voting Rights Act is amended to read as follows:

"Sec. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color or national origin, the requirements of section 5 shall apply to any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no voting qualification, or prerequisite to voting or standard, practice, or procedure with respect to voting is in effect during or

preceding the filing of the action where such qualification, prerequisite, standard, practice, or procedure does have or is likely to have the purpose or the effect of denying or abridging the right to vote on account of race or color or national origin: *Provided,* That for purposes of this section no State or political subdivision shall be determined to have engaged in the use of such qualifications, prerequisites, standards, practices, or procedures for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and an appeal shall lie to the Supreme Court. The Court shall retain jurisdiction of any action pursuant to this subsection until two months following the next general federal election after the filing of the action and shall reopen the action upon motion of the Attorney General alleging that such qualifications, prerequisites, standards, practices, or procedures have been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

"If the Attorney General determines that he has no reason to believe that any such qualifications, prerequisites, standards, practices, or procedures are in effect or are likely to be effective with the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

"(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state for which the Director of the Census determines that less than 50 percentum of the citizens of voting age or less than 50 percentum of the racial or language minority citizens of voting age voted in the most recent general federal election. The provisions of subsection (a) shall continue in effect until 60 days past the next general federal election after which time such provisions shall only apply based upon determinations pertaining to the most recent general federal election at that time. The Director of the Census is directed to make determinations pursuant to this subsection to the greatest degree possible within 60 days after a general federal election is held.

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

"(c) As used in this Act, the phrase 'general federal election' shall mean any general election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

"(d) As used in this section, the phrase 'racial or language minority citizens' means citizens of the United States who are Asian Americans, Alaskan Natives, American Indians, or persons of Spanish or African heritage as those terms are defined by the Bureau of the Census."

(b) Section 5 of the Voting Rights Act is amended to read as follows:

"SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequiste, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or national origin, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission,

or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of such a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court."

SEC. 4. Section 3 of the Voting Rights Act is amended by—

(1) striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth amendment or fifteenth amendment";

(2) striking out "race or color" each time it appears and inserting in lieu thereof "race or color or national origin";

(3) striking out "test or device" each time it appears and inserting in lieu thereof "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting";

(4) striking out "tests or devices" each time it appears and inserting in lieu thereof "such voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting";

(5) striking out "except that neither" and inserting in lieu thereof "or upon good cause shown to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor";

(6) adding at the end thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of such a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.";

(7) striking out "deem appropriate" and inserting in lieu thereof "deem appropriate, but in no event for a period longer than two months past the date of the next general federal election from the date of the order for any proceeding instituted after February 5, 1977,";

(8) striking out "deems necessary" and inserting in lieu thereof "deems necessary, but in no event for a period longer than two months past the date of the next general federal election from the date of the order for any proceeding instituted after February 5, 1977";

(9) striking out "different from that in force or effect at the time the proceedings was commenced", effective February 6, 1977; and

(10) striking out "Attorney General" the first three times it appears and inserting in lieu thereof the following: "Attorney General or an aggrieved person".

SEC. 5. Section 201(a) of the Voting Rights Act of 1965 is amended by—

(1) striking out "Prior to August 6, 1975, no" and inserting "No" in lieu thereof; and

(2) striking out "as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act." and inserting in lieu thereof a period.

SEC. 6. Section 14 of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new subsection:

"(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

SEC. 7. Title II of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new section:

"SEC. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a)

of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision on Civil Rights. Such surveys shall elicit the race or color, and national origin, of each person of voting age and the extent to which such persons are registered to vote and have voted in the elections surveyed.

"(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information except with regard to information required by subsection (a), with regard to which every such person shall be informed that such information is required solely to enforce nondiscrimination in voting.

"(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

"(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section."

SEC. 8. Section 11(c) of the Voting Rights Act of 1965 is amended by inserting after "Columbia," the following words: "Guam, or the Virgin Islands,".

SEC. 9. Section 5 of the Voting Rights Act of 1965 is amended—

(1) by striking out "except that neither" and inserting in lieu thereof the following: "or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor"; and

(2) by inserting immediately after the words "failure to object" a comma; and

(3) by inserting immediately before the final sentence thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.".

SEC. 10. Section 203 of the Voting Rights Act of 1965, is amended by striking out "section 2282 of title 28" and inserting "section 2284 of title 28" in lieu thereof.

SEC. 11. Title III of the Voting Rights Act of 1965 is amended to read as follows:

"TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

"ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

"SEC. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"DEFINITION

"SEC. 302. As used in this title, the term 'State' includes the District of Columbia."

SEC. 12. Section 10 of the Voting Rights Act of 1965 is amended—

(1) by striking out subsection (d);

(2) in subsection (b), by inserting "and section 2 of the twenty-fourth amendment" immediately after "fifteenth amendment"; and

(3) by striking out "and" the first time it appears in subsection (b), and inserting in lieu thereof a comma.

SEC. 13. Section 6 of the Voting Rights Act of 1965 is amended by striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth or fifteenth amendment".

SEC. 14. Section 2, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by inserting immediately after "on account of race or color" each time it appears "or national origin."

The undersigned members ascribe to the above stated views.

CHARLES E. WIGGINS.
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of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision on Civil Rights. Such surveys shall elicit the race or color, and national origin, of each person of voting age and the extent to which such persons are registered to vote and have voted in the elections surveyed.

"(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information except with regard to information required by subsection (a), with regard to which every such person shall be informed that such information is required solely to enforce nondiscrimination in voting.

"(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

"(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section."

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(2) by inserting immediately after the words "failure to object" a comma; and

(3) by inserting immediately before the final sentence thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.".

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"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

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SEC. 14. Section 2, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by inserting immediately after "on account of race or color" each time it appears "or national origin."

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SUPPLEMENTAL VIEWS OF MESSRS. BUTLER, KINDNESS, HUTCHINSON, COHEN, MOORHEAD, AND HYDE CONCERNING AN AMENDMENT TO STRIKE "AGGRIEVED PERSON" FROM SECTION 401 OF H.R. 6219

Section 3 of the Voting Rights Act permits the Attorney General of the United States to seek the following extraordinary relief in suits pertaining to voting brought under any statute to enforce the guarantees of the 15th Amendment:

(a) appointment of Federal Examiners pursuant to § 6 by the Civil Service Commission;

(b) suspension of any voting test or device which has been used with the purpose or effect of denying or abridging the right to vote on account of race or color; and

(c) the court may remain jurisdiction for any amount of time it sees fit during which time all voting changes must be submitted prior to their enforcement to the court or to the Attorney General of the United States for preclearance similar to § 5 relief.

While the special relief afforded by §§ 4, 5 and 6 are of a temporary nature, it is important to stress that § 3 is permanent legislation which will never expire. Section 3 was intended to allow the Attorney General to enforce the guarantees of the 15th Amendment in jurisdictions not covered by the triggering device of the Voting Rights Act should future conditions require him to do so. In fact, the Attorney General has never used § 3.[1]

H.R. 6219 substantially changes § 3: It broadens the present scope of § 3 relief to embrace the 14th Amendment guarantees in a suit to redress the denial or abridgement of the right to vote on account of race or color; and it broadens § 3 to cover denials or abridgments of the right to vote in contravention of the guarantees set forth in section 4(f)(2)—(*i.e.* denial or abridgment of the right to vote because a person is a member of a language minority group [2]).

These changes are a logical consequence of the expansion of the Voting Rights Act to cover language minorities as set forth in Sec. 203 of Title II of the bill; and they will stand or fall based upon the fate of title II.[3]

Section 3 as expanded by section 401 of the bill, permits "an aggrieved person" to seek the extraordinary relief presently available only to the Attorney General. It does not create a separate cause of

[1] *Hearings on Extension of the Voting Rights Act before the Subcomm. on Civil & Constitutional Rights of the House Comm. on the Judiciary,* 94th Cong., 1st Sess., Ser. No. 1, at 15, 71 (1975) [hereinafter referred to as *"Hearings"*].

[2] Section 4(f)(2) is created by Sec. 203 of H.R. 6219. The term "language minorities" is defined in Sec. 207 of H.R. 6219 to mean any persons who are "American Indian, Asian American, Alaskan Natives or of Spanish heritage."

[3] The desirability of including Title II in H.R. 6219 is discussed in a separate issue. If Title II, which is based on extending protection of the 14th Amendment to minorities, is adopted, then these sections should be incorporated into § 3 to afford the Attorney General parallel enforcement powers in jurisdictions which are not subject to the special coverage provisions of the Act. Of course, § 3 allows the Attorney General to file suit on a nationwide basis in any State.

action for aggrieved persons, but it does mandate certain relief be made available in suits pertaining to voting rights brought under other statutes. Thus, any person who sues to redress a violation of his voting rights under a State or federal statute [4] would qualify as an "aggrieved person" to enable the court to give the extraordinary relief available under § 3 which is at present available only in a suit commenced by the Attorney General.

Section 401 of H.R. 6219 effectively makes § 3 a miniature voting rights act that is permanent, available to any person, and universal in scope. This raises significant questions of law and policy which must be resolved in order to judge Section 401 on its merits.

Representative Andrew Young of Georgia testified that he thought use of § 3 by the Attorney General "would only tend to overburden an already burdened court system. * * *" [5] The burden imposed by private parties using § 3 could be enormous; courts could be tied up for years preclearing voting changes. Alternatively, the burden on the Attorney General to preclear changes on a nationwide basis could be unwieldly without sufficient manpower.[6]

There are Constitutional reasons why the expansion of § 3, as effectuated by Sec. 401 of H.R. 6219, must be rejected. The extraordinary remedies of the Voting Rights Act embodied in §§ 4, 5 and 6 were based upon a record of rampant discrimination. The constitutionality of these sections was upheld in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), because "Congress felt itself confronted by an insidious and pervasive evil" that required "sterner and more elaborate" remedies to satisfy the clear commands of the 15th Amendment.[7] It is noteworthy that the Court did not pass upon the constitutionality of § 3 and that the Attorney General has never used this section of the Act.

While it is unnecessary to argue the constitutionality of § 3 as presently constituted, the above record supports the proposition that § 3 would be held unconstitutional insofar as it is extended by Sec. 401 of H.R. 6219. It is unthinkable that our Constitution would tolerate a suit by a private person based upon some future circumstance in some random part of the country to result in permanent withdrawal from the dependent State of its right to enact voting legislation without prior approval by the court or the Attorney General. While traditional powers of equity might enable a court to retain jurisdiction over a particular law affecting the case before it, retention of jurisdiction over all voting changes as mandated by the statute clearly violates the provision of Article III, section 2 of the Constitution that courts are limited to deciding cases and controversies.

For the above stated reasons of policy and law, the undersigned Members introduced an amendment in the full committee to strike section 401. Although the amendment failed, it will be offered again on the Floor of the House. It is important to report that no hearings were held on this issue; not even the report of the United States Commission on Civil Rights dared to recommend such an extraordinary step.

[4] *See, e.g.,* 42 U.S.C. and 1983 (1970), which creates a federal civil cause of action against any person who causes the deprivation of any rights secured by the Constitution or laws of the United States. This statute encompasses the deprivation of voting rights.
[5] Testimony of Hon. Andrew Young, *Hearings* at 71–72.
[6] *See Hearings* at 71–72, 296.
[7] *South Carolina* v. *Katzenbach,* 383 U.S. 301, 309 (1966).

We would therefore urge all Members to support an amendment to strike section 401 of this bill as ill considered, unwise, and of doubtful constitutionality.

The undersigned Members ascribe to the above stated views.

M. Caldwell Butler.
Thomas N. Kindness.
Edward Hutchinson.
William S. Cohen.
Carlos J. Moorhead.
Henry J. Hyde.

SUPPLEMENTAL VIEWS OF MESSRS. HYDE AND COHEN CONCERNING AMENDMENTS DEALING WITH SECTION 11 OF THE VOTING RIGHTS ACT; SUPPLEMENTAL VIEWS OF MESSRS. KINDNESS, HUTCHINSON, McCLORY, BUTLER, AND MOORHEAD, CONCURRING WITH RESPECT TO DIVISION A ONLY

Section 11 of the Voting Rights Act deals with problems of voter fraud. A minority person may be injured by failing to have his vote counted.[1] Likewise he may be injured if another person's vote is counted more than once. The following Republican amendments were offered to obviate the problem of voter fraud.[2] The undersigned Members encourage their colleagues to adopt these amendments when they are offered on the Floor of the House.

A. Amendment To Prohibit Voting More Than Once in a Federal Election

Section 11 of the Voting Rights Act of 1965 currently regulates voter fraud and conspiracy in federal elections. Severe criminal penalties are provided to punish anyone who knowingly gives false information for the purpose of establishing his eligibility to register or vote. But no federal law prohibits a person who is validly registered in two or more precincts from voting twice in a federal election.

At least six States[3] have no law prohibiting registration in more than one voting location. Thus, a person residing in Nevada could validly register there and move to Arkansas where he could also validly register within 30 days without having to give up his Nevada registration. If such a person were to vote twice in a subsequent federal election no law would be violated because each registration was procured with true information.

This amendment remedies this gap in federal law by prohibiting, in a new subsection 11(e), voting more than once in the same federal election. Of course, an exception is made to avoid punishing a voter whose ballot is invalidated and who votes again. A further exception is made to allow the procedure specified in section 202 where a person moving to a new State less than 30 days before an election can vote by absentee ballot in his prior State even though he qualifies in the new State for local elections.

Incredibly, this amendment was voted down on partisan lines in both the Subcommittee and the full Committee. It is inconceivable that some Members support a system of election laws that fail to prohibit voting more than once. Hearings need not be taken to justify curing a defect so fundamental.

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[1] *See generally The Voting Rights Act: Ten Years After* at 153–154. *Hearing on the Extension of the Voting Rights Act, before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., Ser. 1, Pt. 2, at 1136–38 (1975) [hereinafter referred to as *"Hearings"*].

[2] The amendments are germane since Sec. 404 of H.R. 6219 deals with § 11. The parliamentarian concurs in the germaneness of these amendments.

[3] Arkansas, Idaho, Nevada, Oklahoma, Texas and Washington have no specific prohibition against double voting. Other State statutes are, at best, ambiguous in many instances.

B. Amendment To Reduce the Possibility of Voter Fraud

Four specific abuses plague the electoral system in this country. First, ballot dissemination and tallying is not adequately supervised; second, voter "assistance" often results in coercion or intimidation; third, recount procedures are subject to partisan political influences by State officials; and fourth, frivolous challenges to a person's registration qualifications often preclude him from voting.[4] Section 11 of the Voting Rights Act treats these problems on a theoretical level without implementing practical solutions.

This amendment embellishes § 11 by providing four remedies. First, to monitor misdeeds by election officials, members of the media are certified and permitted to observe the dissemination and counting of ballots. Second, to prevent a precinct captain from "pulling the lever" or casting a vote, no person other than the voter is permitted inside the voting booth at any given time unless the voter is physically unable to cast a ballot in which case he may bring in any person of his choice to assist him. Third, to insure that recounts are resolved promptly and fairly, a federal district court supervises the recount and insures that results will be produced within 60 days of the request for recount. The regulation concerning when a recount may be held are still left to State law. The federal government will not be burdened in its supervisory roll unless a dispute arises. Fourth, to prevent intimidation of voters, frivolous challenges to registration credentials are specifically proscribed.

These remedies are needed to prevent abuses within the voting system. We urge our colleagues to give careful consideration to the benefits this amendment will produce in safeguarding the rights of minorities and all Americans.

The undersigned members ascribe to the above stated views.

Henry J. Hyde.
William S. Cohen.

The undersigned members ascribe to the above stated views expressed in division A only.

Thomas N. Kindness.
Edward Hutchinson.
Robert McClory.
M. Caldwell Butler.
Carlos J. Moorhead.

[4] *See Hearings* at 1080–87, 1094–95, 1132–38.

SUPPLEMENTAL VIEWS OF MESSRS. KINDNESS, HUTCHINSON, WIGGINS, BUTLER, MOORHEAD, HYDE, AND FLOWERS PERTAINING TO AN AMENDMENT TO PERMIT A DECLARATORY JUDGMENT TO BE FILED IN A DISTRICT COURT OTHER THAN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Section 4 of the Voting Rights Act currently triggers the special coverage provisions of the Act to cover any jurisdiction which used a voting test or device and in which less than 50 percent of the voting age population voted in the 1964 or 1968 presidential election. Section 5, one of the special coverage provisions triggered by § 4, provides that all voting changes must be submitted for preclearance prior to their enforcement to either the Attorney General or the United States District Court for the District of Columbia. To escape from the special coverage provisions of the Act a jurisdiction must prove in an action for declaratory judgment before the United States District Court for the District of Columbia that it has not used a voting test or device for the past ten years with the purpose or effect of denying or abridging the right to vote on the basis of race or color. Also a declaratory judgment to terminate the presence of federal examiners pursuant to § 13 must be brought in the District of Columbia. Thus, three vital aspects of the Act involve the possibility of an action for a declaratory judgment in the United States District Court for the District of Columbia.

Testimony was received during hearings before the Subcommittee on Civil and Constitutional Rights that it was an indignity to local federal district courts and an inconvenience to covered jurisdictions to be able to bring an action for a declaratory judgment only in the United States District Court for the District of Columbia.[1] The Honorable Daniel R. McLeod, Attorney General of South Carolina, testified that his State has not sued to bail out of the act because of the high cost of litigation and the additional expense of traveling to Washington, D.C.; he likened the present situation to that existing in this country some two hundred years ago when the colonists included in the Declaration of Independence a complaint that the British courts were too far distant and removed to dispense equal justice.[2] Further reference was made to the inconvenience of the forum involving the availability of witnesses and the taking of depositions; all of this was laid before the subcommittee on the record.[3]

The testimony of Attorney General McLeod was supported by comparable testimony from the Honorable Stone D. Barefield, Member, Mississippi House of Representatives. Mr. Barefield testified to the

[1] *Hearings on the Extension of the Voting Rights Act before the Subcomm. on Civil & Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., Ser. No. 1, at 590, 718 (1975) [hereinafter referred to as *"Hearings"*].
[2] *See Hearings* at 590.
[3] *Id.*

effect that the United States District Court for the District of Columbia was a court in which the Attorney General could sue for political reasons and in which a State such as Mississippi could not get a fair trial.[4] He also verified the detrimental nature of the cost and inconvenience necessitated by suing in Washington, D.C.[5]

Lastly, evidence was submitted showing the ultimate inconvenience of filing suit in Washington, D.C. The State of Alaska has twice had to sent Attorneys one-fourth of the way around the world to file a successful bailout suit; the County of Honolulu in the State of Hawaii has never endeavored to spend the time and money necessary to obtain a bailout.[6] With the coverage of the Act being expanded by titles II and III of H.R. 6219, the time has come to end the waste of resources caused by the requirement of suing only in Washington, D.C.

An amendment which was offered in Committee and will be offered again on the Floor allows States or political subdivisions to file these actions in an appropriate United States District Court. Pursuant to existing statutes, 28 U.S.C. §§ 1346, 1402, suit could be filed in the district in which the plaintiff resides. The amendment also provides for nationwide subpoena power with leave of Court.

An amendment to §§ 4, 5, 13, and 14 is necessary to remove an inconvenience which presently hinders a jurisdiction's right to file a declaratory judgment under the Act. No substitute law is changed by this amendment; it provides a mere procedural convenience and should be adopted.

Those Members who oppose this amendment do so based on the assumption that federal district court judges in the covered jurisdictions will be biased in their judgments and that the judges of the District Court for the District of Columbia have developed a specialized expertise; also they feel that uniform interpretations of the Voting Rights Act will result from centralizing all cases under the Act in the United States District Court for the District of Columbia.

While these contentions have superficial appeal, analysis of the actual litigation in the United States District Court for the District of Columbia under the Act leads inexorably to the conclusion that local litigation is fair and desirable. The record indicates that of the 10 bailout suits filed in the past 10 years under the Voting Rights Act, including the reopening of one case, that only two judges have sat four times and one judge has sat three times on the required three-judge panels.[7] Of the other eleven judges who have sat on the bench to decide these cases, five have sat twice and six have sat but once. Thus no expertise is in fact being developed. Of the 10 cases, only three resulted in decisions other than consent decrees. Thus one stated basis for centralizing litigation, to obviate the need of the United States to defend cases around various parts of the country, is of no importance in that only three cases have gone to trial.

The burden on States located far from Washington, D.C., and the inferential aspersion cast upon federal judges residing in those States

[4] *Cf. Hearigns* at 718.
[5] *Id.*
[6] *See Hearings* at 180–81. The similar failure of Honolulu to submit voting changes to the Attorney General for preclearance as required by § 5 may create further inconvenience by providing the basis for a lawsuit challenging the enforceability of those changes.
[7] *See Hearings* at 180–81. The two judges who sat four times, Edgerton and Leventhatl, have not sat in the last four cases decided on the Voting Rights Act. So even their limited expertise is not being utilized at present.

by withdrawing cases under the Voting Rights Act from their jurisdiction argue strongly for the adoption of this amendment.[8] The undersigned Members urge their colleagues to support this amendment on the Floor.

The undersigned members ascribe to the above stated views.

THOMAS N. KINDNESS.
EDWARD HUTCHINSON.
CHARLES E. WIGGINS.
M. CALDWELL BUTLER.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
WALTER FLOWERS.

[8] Aside from the attorneys from Alaska who have twice had to travel one-fourth of the way around the world to bail out, counties in Arizona and Idaho have also been inconvenienced by having to send attorneys great distances.

ADDITIONAL VIEWS OF MESSRS. KINDNESS, BUTLER, AND MOORHEAD CONCERNING THE PERIOD OF PURITY NECESSARY TO OBTAIN A DECLARATORY JUDGMENT TO BAIL OUT

Section 4 of the Voting Rights Act presently provides that a state may free itself from the special coverage of section 4 by filing a declaratory judgment in the U.S. District Court for the District of Columbia and proving that for the past ten years the state has not used a test or device that denied or abridged the right to vote on the basis of race or color. Hence if a state transgresses the law and uses a test or device with the prohibited effect, it must wait ten years before it can successfully escape the onerous special provisions of the Voting Rights Act.

Historically this "period of purity" was originally set at five years in the Voting Rights Act of 1965. When the Voting Rights Act was amended in 1970, proponents sought to "extend" the Act by changing the period of purity from five years to ten years. This had the effect of freezing in states then under the Act because transgressions in 1964 would still contaminate the necessary period of purity.

In 1975 the Voting Rights Act will again be "extended" for five or ten years. The proposed method of extension again lengthens the period of purity. While this will freeze in states presently covered by the Act by retaining 1964 transgressions for another five or ten years, it has the disadvantageous repercussion of punishing a future transgression for fifteen or twenty long years. For example, if Virginia were to employ a test or device in derogation of the Act in 1984, the special coverage provisions would apply until the turn of the century.

If the "bail out" amendment proposed by Mr. Butler is not adopted, an amendment will be offered which seeks to accomplish the goal of extension while concomitantly retaining a reasonable period of purity in order that a future transgression will not carry an inordinate penalty. The amendment provides that no escape from the Act will be possible prior to August 6, 1980. The period of purity is reduced to five years. This method of extension was supported during hearings before the Subcommittee and should be adopted as a superior means of effectuating extension. However, such an amendment would not be needed if Mr. Butler's amendment gains acceptance.

The undersigned members ascribe to the above stated views.

THOMAS N. KINDNESS.
M. CALDWELL BUTLER.
CARLOS J. MOORHEAD.

VIEWS OF MESSRS. McCLORY, FISH, HUTCHINSON, WIGGINS, MOORHEAD AND HYDE CONCURRING IN PART AND DISSENTING IN PART

In 1969, William M. McCulloch, then ranking Republican on the House Judiciary Committee, characterized the Administration's proposal to extend the Voting Rights Act and to expand its coverage throughout the 50 states as one which provided "a remedy for which there is no wrong and leaves grievous wrongs without adequate remedy." That criticism is, in part, applicable to the bill reported. It provides "a remedy for which there is no wrong." More accurately, in this instance, the bill applies the strongest remedies of the Voting Rights Act to jurisdictions whose record of voting discrimination is, in general, still waiting to be proved.

In 1965, when Congress first passed the Act, the record of hard-core voting discrimination in the jurisdictions covered by the legislation was so pervasive that Congress was justified in banning literacy tests and devices and in requiring that any and all changes in voting laws and practices in the affected areas be cleared in Washington, D.C., before they could go into effect. The jurisdictions covered were so clearly guilty that Congress made the judgment itself and imposed the extraordinary remedies. These remedies were imposed automatically by a "trigger" based upon discrimination borne out by statistical information and voluminous other evidence. There was no need to rely only on court remedies. That would have produced further delays without any advantages to show for it.

In 1975, in addition to a simple extension of the existing law, we are asked to expand the coverage far beyond the original concept, or the concept envisioned when the Voting Rights Act was given a 5-year extension in 1970. The new concept aims to protect "language minorities." This expansion of the original Voting Rights Act implies that we should not discriminate against "language minorities" by excluding them from coverage. But before one is induced into accepting that reasoning, one should note that "coverage" in this context does *not* deal with the *rights* of the individual voter *but* with the *remedies* imposed against governments that discriminate in voting. Those rights are already guaranteed for all by the Constitution. What the Voting Rights Act addresses in its pertinent provisions is the imposition of remedies for violations of those rights—violations which Congress finds have occurred in fact.

As with any remedy, its application must be justified. We don't provide welfare payments to all because some are poor; we don't prescribe medicine for all because some are sick; we don't put everyone in jail because some commit crimes.

Thus before Congress decides whether additional jurisdictions should be subjected to mandatory remedies such as preclearance, it

should determine whether, at least as a general proposition, the jurisdictions to be covered have engaged in discrimination to such an extent that one should *presume* that their future voting laws and practices are so constitutionally suspect that any such laws and practices should be void until cleared by the Attorney General of the United States or the U.S. District Court in Washington, D.C., to the effect that not until such preclearance is complied with, may any such laws or practices be enforced.

Although that argument is made, the case is not. The record simply does not support the expansion of coverage to include the additional jurisdictions contemplated by Title II of the bill. There is evidence of some acts of hard-core discrimination in a few of the jurisdictions contemplated. But whether the evidence in those counties is sufficient to justify the imposition of remedies such as preclearance even where they occurred is debatable. But certainly that evidence cannot justify coverage of other jurisdictions.

It would seem reasonable that an escape clause be provided for jurisdictions that have not discriminated in the past but that are included within the formula for expanded coverage. But although escape is authorized, it is in fact precluded. For in order to escape, a jurisdiction must show that as far back as 1972 it adopted an affirmative action plan to overcome the effects of illiteracy in the English language by providing election materials also in the language of any single "language minority group" comprising 5 per cent or more of the voting age population in the jurisdiction. Failure to have provided ballots and all other electoral information and materials in the language of the "language minority group" prevents the affected State or political subdivisions from escaping. And since it is already known that the contemplated jurisdictions did use only English, their escape while authorized is, in fact, foreclosed.

Congress should pause before it imposes such extraordinary remedies without recourse. The Committee unfortunately rejected an amendment that would have been tailor-made to the problem of discrimination against cognizable ethnic groups. Rather than *impose* extraordinary remedies directly the amendment would have made them *available* against a jurisdiction that a federal court found on the basis of the record to merit the application. Moreover, the lawsuit could have been brought by an aggrieved person or by the Attorney General. In view of the doubtful record *generally* it seems vastly preferable to call on the courts to sort out which jurisdictions, if any, deserve the coverage provided by Title II, and which do not.

By rejecting this approach to the problem for those areas with significant "minority language" populations the Committee has insured the overly broad application of extraordinary remedies. In fairness to the Committee, it should be recognized that it rejected an amendment to impose the extraordinary remedies on *every* State and subdivision. Such an amendment would have played into the hands of the opponents of the Act who believe that overbreadth will undo the Act either by building up a reaction to the Act in areas where the Act's application makes no sense or by inducing the Attorney General to ignore "covered" jurisdictions that have no history of discrimination.

It does the Act little credit that certain New England towns covered by the Act completely ignore the Act's requirements with the acquiescence of the Attorney General. To multiply those instances unnecessarily breeds contempt for the rule of law—and the Act in question. It should not go unnoticed that a very unusual alliance favors expanding the coverage to jurisdictions with 5 per cent "language minorities." For the opponents of the Act know full well what they are doing. To apply "remedies for which there are no wrongs" is to discredit the Act.

We believe that the Act should be extended. But we do not believe that the record has been made to justify the expanded coverage proposed in Title II of the bill. We believe that the Act's remedies should be made available in any jurisdiction not already covered where the evidence adduced in federal court warrants coverage for such jurisdiction.

As Members of this body we must discern and distinguish. All that is done in the name of a cause—any cause, no matter how noble—is not necessarily right. We support the Act but not its misapplication. We do so out of respect for the cause and out of respect for the law.

ROBERT MCCLORY.
HAMILTON FISH, JR.
EDWARD HUTCHINSON.
CHARLES E. WIGGINS.
CARLOS J. MOORHEAD.
HENRY J. HYDE.

SEPARATE VIEWS OF MR. ASHBROOK

I oppose the proposed extension of the Voting Rights Act. Extension of the 1965 act at this time can be construed only as a punitive measure directed at the southern states. These states are placed in a Catch 22 situation which makes it impossible for them to extricate themselves from coverage regardless of what they do because discrimination will always be inferred.

The clear pattern of legislative overkill is shown in the effort to extend coverage to alleged abuses in new areas. It would, under the pretext of assuring non-English speaking minorities their voting rights, interfere with state election procedures which could arbitrarily be considered wrong simply because of voter disinterest which in no way relates to legal procedures or restrictions. Their disinterest could be rewarded by federal intervention. It presumes discrimination wherever there might be apathy or voter disinterest.

The Voting Rights Act, extended and expanded by the Judiciary Committee majority, would without proven justification undermine the basic right of local governments to govern themselves as provided in our Constitution. It would deny local jurisdictions the basic right to make a wide range of decisions and actions because of possible consequences to minorities within their jurisdiction. It was astounding to hear questions raised in committee debate on this bill as to local actions such an annexation, deannexation, the establishment and location of voting booths and the printing of voter information by local jurisdictions.

If this bill passes as reported out of committee, I predict it will be only a matter of time before local jurisdictions would not have their basic right to annex or deannex to municipalities if it would change racial balance without first coming to Washington or having the question resolved by a federal court.

It treats English speaking citizens as first class citizens and infers a second class status on non-English speaking citizens, an affront to them.

Basic to our consideration is whether Southern states should ever be released from their bondage to this Act. If the bill has merit 10 years after its enactment, it should be made uniform in its application to all 50 states. It should be remembered that the 1965 act was represented at the time as a temporary federal intervention in traditional states rights areas on a limited basis. This bill disavows that original legislative intent and seeks broad new areas to support a federal invasion of state and local prerogatives. It should be rejected.

ADDITIONAL SUPPLEMENTAL VIEWS OF HON. HENRY J. HYDE

After reviewing the entire structure of the Voting Rights Act I have concluded that Section 5 of that Act must be deleted as a matter of policy and as a matter of law.

Both the legal and political arguments for rejecting Section 5 were set forth by Mr. Justice Black in his dissenting opinion in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 356–62 (1966). His eloquent views, reproduced in part in the supplemental views concerning the bailout amendment, still ring true today. If the power reserved to the states by the Constitution means anything it means that the states do not have to come, hat in hand, to Washington to receive prior approval of their laws or even a proposed amendment in a state's Constitution from a federal court or the Attorney General, all of whom are appointed, not elected, officials.

In their zeal to redress certain wrongs, the drafters of this section have forgotten that the federal government did not create the states in this Republic, the states created the federal government. It is singularly appropriate in the Bicentennial season that we remind ourselves of this basic truth.

The views adopted by those who support the requirement of a sovereign state pre-clearing its election laws with appointed officials in Washington reduces these sovereign states to mere administrative districts of the federal government. As was eloquently pointed out by Congressman Wiggins, this is too high a price to pay for what can be agreed is a desirable goal. This is especially so when the desirable ends of this Act can be accomplished by the remaining remedies in the Act that are not violative of our Constitution.

Government, like nature, abhors a vacuum, and the failure of some states to meet the requirement of providing equal access to the electoral process developed the excuse and nourished the temptation for the federal government to encroach on matters that are historically and Constitutionally within the sole jurisdiction of state legislatures. But this does not excuse our encouragement of legislation destructive of our whole federal system.

Surely we have a duty to breathe life into the 15th Amendment as the Voting Rights Act certainly does. But in doing so, must we embalm the 10th Amendment?

There is no basis in reason or law for Section 5 to remain in this Act. On the Floor of the House I plan to offer an amendment to repeal this section. I urge my colleagues to lend their support to this amendment, thus restoring the states to the position that is indispensably theirs if we are to retain a federalist system of government.

HENRY J. HYDE.

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94TH CONGRESS } SENATE { REPORT
1st Session } { No. 94-295

VOTING RIGHTS ACT EXTENSION

JULY 22 (legislative day, JULY 21), 1975.—Ordered to be printed.

Mr. TUNNEY, from the Committee on the Judiciary, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1279, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 1279) to amend the Voting Rights Act of 1965 to extend certain provisions for an additional ten years, to make permanent the ban against certain prerequisites to voting, having considered the same, reports favorably thereon with amendments and recommend that the bill as amended do pass.

TITLE I

SEC. 101. Section 4(a) of the Voting Rights Act of 1965 is amended by striking out "ten" each time it appears and inserting in lieu thereof "twenty".

SEC. 102. That section 5 of the Voting Rights Act is amended by adding after the first sentence thereof the following new sentence: "In carrying out the provisions of this section, whenever the Attorney General or his designee determines that there is a probability that he will object to the voting qualification or prerequisite to voting or standard practice or procedure with respect to voting which has been submitted, he shall, within 45 days of such submission, provide an opportunity for consultation with the appropriate State or political subdivision thereof."

SEC. 103. Section 201(a) of the Voting Rights Act of 1965 is amended by—

(1) striking out "Prior to August 6, 1975, no" and inserting "No" in lieu thereof; and

(2) striking out "as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act." and inserting in lieu thereof a period.

TITLE II

SEC. 201. Section 4(a) of the Voting Rights Act of 1965 is amended by—

(1) inserting immediately after "determinations have been made under" the following: "the first two sentences of";

(2) adding at the end of the first paragraph thereof the following new sentence: "No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) through the use of tests or devices have occurred anywhere in the territory of such plaintiff.";

(3) striking out "the action" in the third paragraph thereof, and by inserting in lieu thereof "an action under the first sentence of this subsection"; and

(4) inserting immediately after the third paragraph thereof the following new paragraph:

"If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), he shall consent to the entry of such judgment.".

SEC. 202. Section 4(b) of the Voting Rights Act of 1965 is amended by adding at the end of the first paragraph thereof the following: "On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.".

SEC. 203. Section 4 of the Voting Rights Act of 1965 is amended by adding the following new subsection:

"(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteeth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

"(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

"(3) In addition to the meaning given the term under section 4(c), the term 'test or device' shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term 'test or device', as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

"(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That (1) where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish bilingual oral instructions, assistance, or other in-

formation relating to registration and voting, (2) The provisions of this subsection shall not apply if the language of the minority is extinct. For the purposes of this provision, a language is extinct if there are no individuals known to have been raised with it as the primary language."

SEC. 204. Section 5 of the Voting Rights Act of 1965 is amended by inserting after "November 1, 1968," the following: "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,".

SEC. 205. Sections 3 and 6 of the Voting Rights Act of 1965 are each amended by striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth or fifteenth amendment".

SEC. 206. Sections 2, 3, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by adding immediately after "on account of race or color" each time it appears the following: ", or in contravention of the guarantees set forth in section 4(f)(2)".

SEC. 207. Section 14(c) is amended by adding at the end the following new paragraph:

"(3) The term 'language minorities' or 'language minority group' means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.'".

SEC. 208. If any amendments made by the Act or the application of any provision thereof to any person or circumstance is judically determined to be invalid, the remainder of the Voting Rights Act of 1965, or the application of such provision to other persons or circumstances shall not be affected by such determination.

TITLE III

SEC. 301. The Voting Rights Act of 1965 is amended by inserting the following new section immediately after section 202:

"BILINGUAL ELECTION REQUIREMENTS

"SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

"(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than five percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: Provided, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

"(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That (1) where the language of the applicable minority group is oral or unwritten, the State or political subdivsion is only required to furnish bilingual oral instructions, assistance, or other information relating to registration and voting. (2) The provisions of this subsection shall not apply if the language of the minority is extinct. For the purposes of this provision, a language is extinct if there are no individuals known to have been raised with it as the primary language.

"(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in an appropriate United States district court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

"(e) For purposes of this section, the term 'language minorities' or 'language minority group' means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."

SEC. 302. Sections 203, 204, and 205 of the Voting Rights Act of 1965 are redesignated as 204, 205, and 206 respectively.

SEC. 303. Section 203 of the Voting Rights Act of 1965, as redesignated section 204 by section 302 of this Act, is amended by inserting immediately after "in violation of section 202," the following: "or 203,".

SEC. 304. Section 204 of the Voting Rights Act of 1965, as redesignated section 205 by section 302 of this Act, is amended by striking out "or 202" and inserting in lieu thereof ", 202, or 203".

TITLE IV

SEC. 401. Section 3 of the Voting Rights Act of 1965 is amended by striking out "Attorney General" the first three times it appears and inserting in lieu thereof the following: "Attorney General or an aggrieved person".

SEC. 402. Section 14 of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new subsection:

"(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

SEC. 403. Revised Statutes section 722 (42 U.S.C. 1988) is amended by adding the following: "In any action or proceeding to enforce a provision of Sections 1977, 1978, 1979, 1980, 1981 of the revised statutes, or Title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

SEC. 404. Title II of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new section:

"SEC. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1976; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall include a count of citizens of voting age by race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

"(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

"(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

"(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section."

SEC. 405. Section 11(c) of the Voting Rights Act of 1965 is amended by inserting after "Columbia," the following words: "Guam, or the Virgin Islands,".

SEC. 406. Section 5 of the Voting Rights Act of 1965 is amended—

(1) by striking out "except that neither" and inserting in lieu thereof the following: "or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor";

(2) by placing after the words "failure to object" a comma; and

(3) by inserting immediately before the final sentence thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.".

SEC. 407. Section 203 of the Voting Rights Act of 1965, as redesignated 204 by section 302 of this Act, is amended by striking out "section 2282 of title 28" and inserting "section 2284 of title 28" in lieu thereof.

SEC. 408. Title III of the Voting Rights Act of 1965 is amended to read as follows:

"TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

"ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

"SEC. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"DEFINITION

"SEC. 302. As used in this act, the term 'State' includes the District of Columbia.".

SEC. 409. Section 10 of the Voting Rights Act of 1965 is amended—

(1) by striking out subsection (d);

(2) in subsection (b), by inserting "and section 2 of the twenty-fourth amendment" immediately after "fifteenth amendment"; and

(3) by striking out "and" the first time it appears in subsection (b), and inserting in lieu thereof a comma.

SEC. 410. Section 11 of the Voting Rights Act of 1965 is amended by adding at the end the following new subsection:

"(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

"(3) As used in this subsection, the term 'votes more than once' does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 202 of this Act, to the extent two ballots are not cast for an election to the same candidacy or office."

SEC. 411. Section 3 of the Voting Rights Act of 1965 is amended by inserting immediately before "guarantees" each time it appears the following: "voting".

Amend the title so as to read: "A bill to amend the Voting Rights Act of 1965 to extend certain provisions for an additional ten years, to make permanent the ban against certain prerequisites to voting, and for other purposes.".

PURPOSE

The principal objectives of S. 1279 as amended, are: (1) to extend for an additional ten years the special provisions of the Voting Rights Act of 1965; (2) to make permanent the 1970 temporary ban on literacy tests and other devices; and (3) to expand the coverage of the Act to certain jurisdictions in which language minorities reside.

The special provisions of the existing Voting Rights Act apply to certain states and political subdivisions with a history of voting discrimination. In those jurisdictions, all literacy tests and other similar devices have been suspended, by operation of Section 4(a), since August 6, 1965, the date on which the original Act was approved.[1]

[1] In those jurisdictions where literacy tests are suspended by operation of Section 4(a) of the Act, enforcement of voting qualifications or procedures different from those in force and effect on November 1, 1964 or November 1, 1968 (by virtue of the 1970 amendments), is prohibited unless and until judicial approval or acquiescence of the Attorney General of the United States is obtained (Section 5). (This procedure will be referred to hereinafter as Section 5 preclearance or preclearance). The Act also authorizes the Attorney General to provide for the appointment of Federal examiners to list qualified applicants to vote and Federal election observers to monitor the casting and counting of ballots in such jurisdictions (Sections 6 and 8).

Under the current provisions of the Voting Rights Act, a state or political subdivision may exempt itself from coverage by showing that during the preceding ten years, no such test or device has been used for the purpose or with the effect of denying the right to vote on account of race or color. Thus, many jurisdictions now subject to the Section 4(a) literacy test suspension will be in a position to obtain automatic exemption beginning in August, 1975—10 years after passage of the Act.[2] In effect, S. 1279 would continue the coverage of the Act for those jurisdictions until August 1985.

A second purpose of S. 1279 is to enact a permanent nationwide ban on the use of literacy tests and other similar devices as prerequisites to voting or registration. In 1970, when the Act was last extended, Congress also created, in Section 201 of the Voting Rights Act, a temporary nationwide "test or device"[3] suspension (P.L. 91–285). Under the Act's present provisions, that suspension is scheduled to expire on August 6, 1975. Title I of S. 1279 would convert that temporary suspension into a permanent prohibition against the use of such tests or devices, with that prohibition to be applicable to all states and political subdivisions.

As a third objective, this bill also seeks to expand the Act's special coverage to additional areas throughout the country. The focus of the proposed legislation, in this regard, is to insure that the Act's special temporary remedies are applicable to states and political subdivisions where (i) there has been evidenced a generally low voting turnout or registration rate and (ii) significant concentrations of minorities with native languages other than English reside. The provisions of S. 1279 accomplish this goal by expanding the definition of "test or device" to include the conduct of English-only elections where large numbers of language minority persons live. In these newly covered areas, where severe voting discrimination was documented, S. 1279 would, for ten years, mandate bilingual elections, make applicable the Section 5 preclearance provisions, and authorize the appointment of Federal examiners and observers by the Attorney General.

In those areas of the country with significant populations of language minorities who experience a high rate of illiteracy, the provisions of S. 1279 would also impose, for ten years, a bilingual elections mandate. In these particular areas, where no showing is required with respect to low voting turnout or registration rates, and where evidence of discrimination was less egregious, none of the Act's other special remedies, such as Section 5 preclearance, would apply.

Apart from its three principal aims, S. 1279, as amended, would also require the Director of the Census to collect voting and registration statistics by race, color and national origin in those jurisdictions covered by the Act and in jurisdictions designated by the U.S. Commission on Civil Rights. The bill also codifies the administrative procedure employed by the Attorney General to provide expedited consideration for Section 5 submissions. Furthermore, private persons are authorized to request the application of the Act's special

[2] The automatic availability of this exemption, of course, assumes compliance with the test or device suspension since its imposition in 1965.

[3] Section 201(b) of the Act defines the term "test or device" as "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.

remedies in voting rights litigation. The awarding of attorney's fees to prevailing parties is provided for in suits brought to enforce the voting guarantees of the 14th or 15th Amendment. The awarding of attorneys' fees to prevailing parties is also provided for in suits brought under 42 U.S.C. §§ 1981–1988 and Title VI of the Civil Rights Act of 1964. Finally, S. 1279 would update Section 10 and Title III of the Voting Rights Act to reflect the current state of the law with respect to poll taxes and 18 year old voting.

History of the Legislation

On January 27, 1975, S. 407 was introduced to extend the Act for five years and to continue for five more years the nationwide ban on "tests and devices." On March 23, 1975, S. 903 was introduced to repeal the "automatic provisions" of the Act, sections four and five. Subsequently, on March 21, 1975, S. 1279 was introduced to extend the special protections of the Act for 10 years and to make permanent the ban on "tests and devices." Finally, in April, 1975, four amendments to S. 1279 and two separate bills were introduced to expand the Act's protections to other minority groups.

All of these measures were referred to the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, which conducted hearings for seven days in April and May, 1975. The witnesses included congressional sponsors of the legislation, other Members of Congress, the Assistant Attorney General for Civil Rights, representatives of the U.S. Commission on Civil Rights, state and local officials, private citizens, as well as members of various civic organizations with special interest in the Voting Rights Act of 1965. Those who did not appear personally were given an opportunity to submit relevant material for the record.

In addition, the Subcommittee solicited the views of all state election officials affected by the proposed legislation.

With the conclusion of the hearings, the Subcommittee met in open Executive Session on June 6 and 11, 1975, to consider the various measures. Upon a proper motion, the Subcommittee chose to amend S. 1279 with the language of H.R. 6219, the Voting Rights bill passed by the House of Representatives. An amendment to award attorney's fees to prevailing parties in cases brought under Title 42 U.S.C. §§ 1981–1988 was also adopted.

The Subcommittee then voted, eight to two, to report favorably S. 1279, as amended.

The Committee on the Judiciary met in Executive Session on June 18, 1975, and upon motion delayed consideration of S. 1279 until a later date. Subsequently, on July 17 and 18, 1975, the Committee met in open Executive Session to consider its report on the bill. The Committee considered and adopted by voice vote the following amendments:

(1) Seven perfecting amendments;

(2) To amend Title I of S. 1279 to require the Attorney General or his designee to provide an opportunity for consultation "with affected state or political subdivision within 45 days of a Section 5 submission if the Attorney General determines there is a probability he will enter an objection";

(3) To amend Titles II and III of S. 1279 to exempt states or political subdivisions from compliance with the bilingual election mandate if the language in question is "extinct;"

(4) To amend Title IV of S. 1279 to change the effective date for the Bureau of the Census studies from January 1, 1974, to January 1, 1976;

The Committee also considered and rejected by roll call votes the following amendments:

(5) By a vote of 3 yeas to 9 nays, to repeal Sec. 4 of the Act. Chairman Eastland, not being present, was later polled as having voted yea;

(6) By a vote of 4 yeas to 8 nays, to extend the Act for a five year period. The Chairman was polled as having voted yea;

(7) By a vote of 3 yeas to 9 nays to strike November 1, 1964 and substitute November 1, 1972 in sections 4(b) and 5. The Chairman was polled as having voted yea;

(8) By a vote of 2 yeas to 6 nays to amend the Voting Rights Act by providing a new section allowing a state or political subdivision to "bail-out" if the number of citizens voting in the elections after November 1, 1976, was over 50 percent. The Chairman was polled as having voted yea. Senator Hruska, not being present, was polled as having voted yea;

(9) By a vote of 4 yeas to 4 nays, to allow all "bail-out" suits to be filed in the local Federal district courts. Jurisdiction is now exclusively in the District Court for the District of Columbia. The Chairman was polled as having voted yea, as was Senator Hruska;

(10) By a vote of 2 yeas to 5 nays, 1 present, to strike Sec. 5 of the Act. The Chairman was polled as having voted yea, as was Senator Hruska;

(11) By a vote of 2 yeas to 5 nays, to strike November 1, 1964 and substitute November 1, 1968 in Sections 4(b) and 5. The Chairman was polled as having voted yea, as was Senator Hruska.

(12) By a vote of 1 yea to 7 nays, 1 present, to allow courts to review relevant findings of the Census. The Chairman was polled as having voted yea, Senator Hruska was polled as having voted nay;

(13) By a vote of 5 yeas to 8 nays, to allow changes in precinct lines without Section 5 review if no district lines were changed. The Chairman was polled as having voted yea as was Senator Hruska;

(14) By a vote of 4 yeas to 9 nays, to allow a political subdivision, if the whole state is covered, to seek to receive declaratory judgment from the District Court for the District of Columbia, neither the Chairman nor Senator Hruska recorded their vote.

The Committee then voted, ten yeas to four nays, to report favorably S. 1279, as amended. The Chairman was polled as voting nay.

A. TITLE I: EXTENSION OF THE VOTING RIGHTS ACT

Background for Extension

The Voting Rights Act of 1965 has been hailed by many to be the most effective civil rights legislation ever passed. It was designed to provide swift administrative relief in those areas of the country where racial discrimination plagued the electoral processes. The case-by-case litigation approach of the 1957, 1960, and 1964 voting legislation had proven to be totally ineffectual. In describing the experiences

under earlier voting rights legislation, the House Judiciary Committee's report on the 1965 Act noted the following:

> Progress has been painfully slow, in part because of the intransigence of state and local officials and repeated delays in the judicial process. Judicial relief has had to be gauged not in terms of months—but in terms of years. With reference to the 71 voting rights cases filed to date by the Department of Justice under the 1957, 1960, and 1964 Civil Rights Acts, the Attorney General testified before a Judiciary subcommittee that an incredible amount of time has had to be devoted to analyzing voting records—often as much as 6,000 man-hours—in addition to time spent on trial preparation and the almost inevitable appeal. The judicial process affords those who are determined to resist plentiful opportunity to resist. Indeed, even after apparent defeat resisters seek new ways and means of discriminating. Barring one contrivance too often caused no change in result, only in methods [H.R. Rep. No. 439, 89th Cong., 1st Sess. 9–10 (1965)].

The Voting Rights Act of 1965 was landmark in terms of its abandonment of this case-by-case approach. Under the provisions of the 1965 enactment, literacy tests and other devices were automatically suspended in states or political subdivisions where a literacy test or other similar device was in effect on November 1, 1964 and where less than 50 percent of voting age persons were registered for or voted in the presidential election of November 1964. In these same jurisdictions, the Section 5 preclearance provisions applied to all changes relating to voting which were to be implemented after November 1, 1964. Also, the Attorney General was authorized to certify the need for Federal examiners to list eligible voters and Federal observers to oversee the casting and counting of ballots in covered jurisdictions. Jurisdictions brought under the Act's coverage by the 1965 legislation included the entire States of Alabama; Alaska; Georgia; Louisiana; Mississippi; South Carolina; and Virginia; 40 counties in North Carolina; four counties in Arizona; Honolulu County, Hawaii; and Elmore County Idaho.[4] See Appendix A.

These jurisdictions were originally eligible for automatic release from special coverage after August of 1970. However, when Congress passed the Voting Rights Act Amendments of 1970 (Public Law 91–285) their special coverage was continued for an additional five years, now making them eligible for automatic release under the current provisions of the Act after August of 1975.

In the 1970 amendments, Congress also brought under the Act's special coverage states and political subdivisions which maintained a test or device on November 1, 1968, and which had less than a 50%

[4] Of these covered jurisdictions, the following successfully sued to exempt themselves or "bail-out" from the Act's special coverage: Alaska [*Alaska* v. *United States*, Civil No. 101–66 (D.D.C. Aug. 17, 1966)]; Wake County, North Carolina [*Wake County* v. *United States*, Civil No. 1198–66 (D.D.C. Jan. 23, 1967)]; Elmore County, Idaho [*Elmore County* v. *United States*, Civil No. 320–66 (D.D.C. Sept. 22, 1966)]; and Apache, Navajo and Coconino Counties, Arizona [*Apache County* v. *United States*, 256 F. Supp. 903 (D.D.C. 1966)]. It is important to note that the Voting Rights Act does in fact provide for such bailout or exemption on the part of a covered jurisdiction. Under existing provisions if the jurisdiction can demonstrate nondiscriminatory use of "tests or devices" during the ten years preceding the exemption request, it is removed from the Act's special provisions. The jurisdictions listed above, as well as others referred to in subsequent discussion, have successfully met this burden.

turnout or registration rate at the time of the November 1968 presidential election. In these newly-covered jurisdictions, the same special remedies applied: literacy tests and other devices were suspended. Section 5 preclearance requirements were applied to voting changes to be implemented after November 1, 1968, and Federal examiners and observers could be authorized by the Attorney General. Jurisdictions brought under coverage by the 1970 amendments include Bronx, Kings and New York Counties in the State of New York; Campbell County, Wyoming; Monterey and Yuba Counties in California; Apache, Coconino, Navajo, Cochise, Mohave, Pima, Pinal, and Santa Cruz Counties in Arizona; Elmore County, Idaho; Election Districts 8, 11, 12, and 13 in Alaska; and towns in Connecticut, New Hampshire, Maine, and Massachusetts.[5] See Appendix B.

ANALYSIS OF PROGRESS UNDER THE ACT

The Voting Rights Act has been extremely effective in terms of diminishing barriers to and improving minority voting and registration throughout the covered areas. Registration rates for blacks in the covered southern jurisdictions has continued to increase since the passage of the Act. For example, while only 6.7 percent of the black voting age population of Mississippi was registered before 1965, 63.2 percent of such persons were registered in 1971–72. Similar dramatic increases in black registration can be observed in Alabama, Georgia, Louisiana and Virginia.

Severe gaps between black and white registration rates have also greatly diminished since the Act's passage. Prior to 1965, the black registration rate in the State of Alabama lagged behind that of whites in that state by 49.9 percentage points. In 1972, that disparity had decreased to 23.6 percentage points. Likewise, in Mississippi, that disparity has decreased from 63.2 to 9.4 percentage points. As the following table indicates, these closing registration gaps have occurred throughout the covered southern jurisdictions.

Despite these impressive gains in the area of black registration, a bleaker side of the picture yet exists. Most recently available data reveal that percentage point disparities of 23.6, 16, and 17.8 can still be found in the States of Alabama, Louisiana and North Carolina,[6] respectively. In addition, the diminishing statewide disparities which have been pointed to cannot be allowed to obscure the tremendously low rates of registration still afflicting blacks within various counties in the covered states. In Louisiana, for example, significant disparities are much more evident in rural than in urban parishes. The disparity is greater than 20 percentage points in eight of the ten least populous parishes of that state. In six of the covered counties in North Carolina,

[5] The State of Alaska; Elmore County, Idaho, and Apache, Coconino, and Navajo Counties in Arizona had been covered in 1965 and subsequently, released from the Act's coverage. The 1970 amendments resulted in these areas being re-covered. However, with respect to the State of Alaska only certain election districts were recovered and not the entire state. The election districts in Alaska were subsequently exempted in 1972 [*Alaska* v. *United States*, Civil No. 2122–71 (D.D.C. July 2, 1972)]. The three New York counties were exempted in April 1972, but the exemption was rescinded and the three counties re-covered two years later [*New York* v. *United States*, Civil No. 2419–71 (D.D.C.) (orders of April 13, 1972, January 10, 1974 and April 30, 1974), *aff'd* 95 S. Ct. 166 (1974) (per curiam)].

It should be noted that, unlike the earlier covered jurisdictions, the jurisdictions brought under the Act's coverage by the 1970 amendments will not be eligible for exemption beginning in August 1975. Rather, those jurisdictions will not be eligible for such exemption until 1980 and thereafter.

[6] For this most recent data on Louisiana and North Carolina, see Hearings, 1037.

REGISTRATION BY RACE AND STATE IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

[In percent]

	Preact estimate[1]			Post-act estimate[3]			1971–72 estimate		
	White	Black	Gap[2]	White	Black	Gap[2]	White	Black	Gap[2]
Alabama	69.2	19.3	49.9	[4] 89.6	51.6	38.0	80.7	57.1	23.6
Georgia	62.6	27.4	35.2	[4] 80.3	52.2	27.7	70.6	67.8	2.8
Louisiana	80.5	31.6	48.9	93.1	58.9	34.2	80.0	59.1	20.9
Mississippi	69.9	6.7	63.2	91.5	59.8	31.7	71.6	62.2	9.4
North Carolina	96.8	46.8	50.0	83.0	51.3	31.7	62.2	46.3	15.9
South Carolina	75.7	37.3	38.4	81.7	51.2	30.5	51.2	48.0	3.2
Virginia	61.1	38.3	22.8	63.4	55.6	7.8	61.2	54.0	7.2
Total	73.4	29.3	44.1	79.5	52.1	27.4	67.8	56.6	11.2

[1] Available registration data as of March 1965.
[2] The gap is the percentage point difference between white and black registration rates.
[3] Available registration data as of Sept. 1967.
[4] The race was unknown for 14,279 registered voters in Alabama, and for 22,776 in Georgia.

Sources: U.S. Commission on Civil Rights, "Political Participation" (1968), appendix VII: voter education project. attachment to press release, Oct. 3, 1972.

white registration exceeds that of blacks by more than 25 percentage points. In South Carolina, as in Louisiana, whites are registered at much higher rates than blacks in many rural counties. See generally Civil Rights Commission, "*The Voting Rights Act: Ten Years After*," dated January, 1975.[7]

In much the same manner as improved registration rates have been documented for blacks in covered southern jurisdictions so also has there been improvement in those areas in terms of an increasing number of black elected officials. One estimate suggests that only 72 blacks served as elected officials in the 11 southern states in 1965, including those southern states presently covered by the Act (Hearings, 115). By April 1974, the total of black elected officials in the seven southern states covered by the Act had increased to 963. After the November 1974 elections, those states could boast of one black member of the United States Congress, 68 black state legislators, 429 black county officials, and 497 black municipal officials (TYA 49). This rapid increase in the number of black elected officials marks the beginning of significant changes in political life in the covered southern jurisdictions (TYA 52).

So as not to be misled by the sheer numbers, however, other points should be noted when assessing this progress. Significant among these points is the fact that most of the offices newly-held by blacks are relatively minor and located in small municipalities or counties with overwhelmingly black populations. Also, in the seven southern states which are totally or partially covered by the Voting Rights Act, no black holds statewide office. As of November 15, 1974, the number of blacks in the state legislatures in the covered southern areas fell far short of being representative of the number of blacks residing in those jurisdictions. In Mississippi, for example, the percent of state legislative seats held by blacks is 0.6, despite the fact that 36.8 percent of Mississippi's population is black. In South Carolina, a state with a 30.7 percent black population, only 7.6 percent of the state legislative seats are occupied by blacks (TYA 61–63).

That minority political progress has been made under the Voting Rights Act is undeniable. However, the nature of that progress has

[7] Hereinafter referred to as "TYA".

been limited. It has been modest and spotty in so far as the continuing and significant deficiencies yet existing in minority registration and political participation. The Subcommittee thus approached its deliberation on this legislation with both an awareness of the significant strides which have been made during the Act's special coverage as well as an appreciation of the gains yet to be achieved.

NEED FOR SPECIAL REMEDIES

Under the provisions of the Voting Rights Act, covered states and political subdivisions are subject to a series of special statutory remedies. Included among these remedies are: (1) an automatic suspension of literacy tests or other similar devices as prerequisites to voting or registration; (2) Section 5 preclearance requirements; (3) Attorney General authority to appoint Federal examiners; and (4) Attorney General authority to appoint Federal observers. Beginning in August 1975, many jurisdictions may remove themselves from the coverage of these remedies. It was the Subcommittee's task, in considering various legislative proposals to extend the Voting Rights Act, to make an assessment of the continued need for these special provisions, particularly in those jurisdictions soon eligible for release under the Act's current provisions. As the following discussion reveals, it was the Subcommittee's judgment that each of the Act's special remedies must continue to apply in currently covered areas for at least an additional ten year period. Such a ten year extension is provided for in Title I of S. 1279.

REVIEW OF VOTING CHANGES

Section 5 of the Act requires review of all voting changes prior to implementation by the covered jurisdictions. The review may be conducted by either the U.S. District Court for the District of Columbia or by the Attorney General of the United States.

In recent years the importance of this provision has become widely recognized as a means of promoting and preserving minority political gains in covered jurisdictions. Section 5 attests to the foresight and wisdom of the 89th Congress, in anticipating the need for future Federal review of voting changes in covered jurisdictions. At the time of the 1965 enactment, the House committee had evidence of the great lengths to which certain jurisdictions would go in order to circumvent the guarantees of the 15th amendment (H.R. Rep. No. 439, 89th Cong., 1st Sess., 10–11). In order to insure that any future practices of these jurisdictions be free of both discriminatory purpose and effect, the Section 5 preclearance requirements were adopted. The Supreme Court, in upholding the constitutionality of Section 5, noted:

> Congress knew that some of the States covered by Section 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for discrimination contained in the Act itself. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966).

Under Section 5 the jurisdiction submitting the proposed change bears the burden of proving nondiscriminatory purpose and effect and the change cannot be implemented until the Section 5 review requirements have been met.

It was not until after the 1970 Amendments that Section 5 actually came into extensive use. At the time of the adoption of those amendments, Congress resisted attempts to repeal the preclearance provisions, and in so doing gave a clear mandate to the Department of Justice that it improve enforcement of Section 5. In addition, near that same time, the Supreme Court acted in two decisions [*Allen* v. *State Board of Elections*, 393 U.S. 544 (1969) and *Perkins* v. *Matthews*, 400 U.S. 379 (1971)] which gave broad interpretations to the scope of Section 5. On September 10, 1971, the Department of Justice for the first time adopted regulations for implementing Section 5's preclearance provisions.[8] Today, enforcement of Section 5 is the highest priority of the Voting Section of the Department of Justice's Civil Rights Division (S. Hearings 581).

As is evidenced from the following tables, many and varied changes have been submitted from most of the covered jurisdictions for the Attorney General's review.[9] The number of submissions increased from 1 in 1965 to 1,118 in 1971. In 1974, the number of submissions was 988. The Justice Department has entered objections to changes submitted from a number of jurisdictions, including Arizona, Georgia, Louisiana, Alabama, Virginia, North Carolina, and New York.

The recent objections entered by the Attorney General of the United States to Section 5 submissions clearly bespeak the continuing need for this preclearance mechanism. As registration and voting of minority citizens increases, other measures may be resorted to which would dilute increasing minority voting strength. Such other measures may include switching to at-large elections, annexations of predominantly white areas, or the adoption of discriminatory redistricting

NUMBER OF CHANGES SUBMITTED UNDER SEC. 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965–74

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	Total
Alabama	1	0	0	0	13	2	86	111	60	58	331
Arizona[1]							19	69	33	28	149
California[1]							0	6	1	5	12
Georgia	0	1	0	62	35	60	138	226	114	173	809
Idaho[1]							0	0	0	0	0
Louisiana	0	0	0	0	2	3	71	136	283	137	632
Mississippi	0	0	0	0	4	28	221	68	66	41	428
North Carolina[1]	0	0	0	0	0	2	75	28	35	54	194
New York[1]							4	0	0	84	88
South Carolina	0	25	52	37	80	114	160	117	135	221	941
Virginia	0	0	0	11	0	46	344	181	123	186	891
Wyoming[1]							0	0	0	1	1
Total	1	26	52	110	134	255	1,118	942	850	988	4,476

[1] Selected county (counties) covered rather than entire State.

Source: United States Department of Justice (hearings, 182).

[8] 36 Fed. Reg. 18186 (September 10, 1971), 28 C.F.R. Part 51. Issuance of the regulations was approved in *Georgia* v. *United States*, 411 U.S. 526 (1973).

[9] While covered jurisdictions have the option of seeking court review rather than the approval of the Attorney General, few have chosen to pursue the judicial remedy.

NUMBER OF CHANGES SUBMITTED UNDER SEC. 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY TYPE AND YEAR, 1965–74

Type of change	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	Total
Redistricting		2	4		12	25	201	97	47	55	443
Annexation		1	2		2	6	256	272	242	244	1,025
Polling place		2	4	4	7	28	174	127	131	154	631
Precinct		2	9	7	11	22	144	69	55	81	400
Reregistration			1			2	52	15	6	4	80
Incorporation			1				4	1	3	1	10
Election law[1]	1	18	24	96	67	105	226	332	258	422	1,549
Miscellaneous[2]				3	14	8	15	26	99	12	177
Not within the scope of Sec. 5		1	7		21	59	46	3	9	15	161
Total	1	26	52	110	134	255	1,118	942	850	988	4,476

[1] Ordinance or other legislation affecting election laws.
[2] Miscellaneous change not included in the above classifications.

Note: These figures are based on computer tabulations. The computer program is limited to the above general classifications.

Source: U.S. Department of Justice (Hearings, 182).

NUMBER OF SEC. 5 OBJECTIONS INTERPOSED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, FROM 1965 TO 1975[1]

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	Total
Alabama	0	0	0	0	10	1	2	6	1	2	0	22
Arizona[2]						0	0	1	0	1		2
California[2]						0	0	0	0	0	0	0
Georgia	0	0	0	4	0	0	5	11	8	9	0	37
Idaho[2]						0	0	0	0	0	0	0
Louisiana	0	0	0	0	2	0	19	8	6	2	0	37
Mississippi	0	0	0	0	3	1	13	2	8	1	1	29
New York[2]						0	0	0	0	1	0	1
North Carolina[2]	0	0	0	0	0	0	6	0	0	0	0	6
South Carolina	0	0	0	0	0	0	0	4	3	12	0	19
Virginia	0	0	0	0	0	1	5	1	0	3	0	10
Wyoming[2]						0	0	0	0	0	0	0
Total	0	0	0	4	15	3	50	32	27	30	2	163

[1] Through Feb. 28, 1975.
[2] Selected county(ies) covered rather than entire State.

Source: United States Department of Justice (Hearings, 185)

plans (TYA 204–207). In fact, the Justice Department has recently entered objections, at the state and local level, to at-large requirements, polling place changes, majority vote requirements, staggered terms, increased candidate filing fees, redistrictings, switches from elective to appointive offices, multimember districts, and annexations (S. Hearings 598). In each of these objection situations the submitting jurisdiction failed to meet its burden of satisfying the Attorney General of the nondiscriminatory purpose or effect of the proposed change.

The provisions of S. 1279 propose to amend the Act so that the special remedies, including Section 5 preclearance, will be operative for an additional ten years. Although the 1965 legislation and the 1970 amendments did, in large part, provide for only five year coverage periods at a time, the Committee concludes that it is imperative that a ten year extension now be adopted in order to insure the applicability of Section 5 protections during the reapportionment and redistricting which will take place subsequent to the 1980 Decennial Census.

Approximately one-third of the Justice Department's objections have been to redistrictings at the state, county and city levels. (S. Hearings 539–540, 581–582). This past experience ought not be ignored in terms of assessing the future need for the Act. It is ironic that the Supreme Court's "one man-one vote" ruling [*Reynolds* v. *Sims*, 377 U.S. 533 (1964)] has created opportunities to disfranchise minority voters. Having to redraft district lines in compliance with that ruling, jurisdictions may not always take care to avoid discriminating against minority voters in that process.[10] By providing that Section 5 protections not be removed before 1985, S. 1279 would guarantee Federal protection of minority voting rights during the years that the post-census redistrictings will take place.

Mr. J. Stanley Pottinger, the Assistant Attorney General of the Civil Rights Division said in this regard:

> Congress gave a strong mandate to us to improve the enforcement of section 5, we believe, by passing the 1970 amendments. We subsequently promulgated regulations for the enforcement of section 5 and directed more resources to section 5 so that today enforcement of this section is the highest priority of our voting section itself.
>
> The facts set forth in detail on pages 12 through 19 of my testimony, Senator, demonstrate, in summary, that the protections of section 5, we believe, should be extended because:
>
> First, it has been effective in preventing discrimination; second, it has never been completely complied with in the covered jurisdictions; and third, the guarantees it provides are more significant to the country than the slight interference to the federal system. (S. hearings, 537)

The Supreme Court, in *Connor* v. *Waller*, 43 U.S.L.W. 3643 (June 5, 1975), reiterated its previous holdings which make Section 5 the front line defense against voting discrimination. It held that where the Mississippi legislature had adopted a reapportionment plan, the plan had to be submitted for Section 5 review even though the plan arose in the context of ongoing litigation and even though it was patterned after a plan previously devised by the Court itself. The Court also ruled that the federal courts should not inquire into fourteenth and fifteenth amendment questions until all Section 5 questions had been determined.[11] This ruling is consistent with the Committee's objective to utilize a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or to the District of Columbia District Court.

Thus, for example, where a federal district court holds unconstitutional an apportionment plan which predates the effective date of coverage under the Voting Rights Act, any subsequent plan ordinarily would be subject to Section 5 review. In the typical case, the court

[10] See Parker, *County Redistricting in Mississippi: Case Studies in Racial Gerrymandering*, 44 Miss. L.J. 391 (1973).

[11] See also *Harper* v. *Kleindienst*, 362 F. Supp. 742 (D.D.C. 1973).

either will direct the governmental body to adopt a new plan and present it to the court for consideration or else itself choose a plan from among those presented by various parties to the litigation. In either situation, the court should defer its consideration of—or selection among—any plans presented to it until such time as these plans have been submitted for Section 5 review. Only after such review should the district court proceed to any remaining fourteenth or fifteenth amendment questions that may be raised.

The one exception where Section 5 review would not ordinarily be available is where the court, because of exigent circumstances, actually fashions the plan itself instead of relying on a plan presented by a litigant. This is the limited meaning of the "court decree" exception recognized in *Connor* v. *Johnson*, 402 U.S. 690 (1971). Even in these cases, however, if the governmental body subsequently adopts a plan patterned after the court's plan, Section 5 review would be required, *Connor* v. *Waller*, supra. Furthermore, in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases.

A correct application of Section 5, for example, was demonstrated in *Gaillard* v. *Young* (Civil Action No. 74–1265 D. South Carolina, 1975), which involved the reapportionment of the City Council of Charleston, S.C. The district court invalidated the existing apportionment plan on grounds of "population inequality" and then deferred consideration of any new plan pending Section 5 review. A number of plans were submitted to the Attorney General, who objected to all but one. That one was then submitted to the local district court which concluded that the plan would not meet the population equality requirements of the fourteenth amendment. The court then invited the litigants in the reapportionment case to present plans, and after selecting the one best meeting the population equality requirements of the fourteenth amendment, ordered that plan submitted for Section 5 review. Only after the Attorney General decided not to object to this last plan did the district court order it implemented.

In some Section 5 cases, a change in the voting practice or procedure may also retain some features of the previous system, and all aspects of such a change are within the reach of Section 5. The Attorney General and the United States District Court for the District of Columbia, as the experts in the area, have developed familiarity with the impact of discriminatory voting systems, and it is they who should assess the discriminatory impact of a system. For example, as in *Beer* v. *U.S.*, 374 F. Supp. 363 (D.D.C., 1974), Section 5 requires submission of the entire seven member council plan when New Orleans sought approval for a reapportionment of only the five single-member seats.

For the reasons above, the Committee is convinced that it is largely Section 5 which has contributed to the gains thus far achieved in minority political participation. Moreover, it is Section 5 which serves to insure that this progress shall not be destroyed through new procedures and techniques. Now is not the time to jeopardize this progress through the removal of these crucial preclearance protections.

APPOINTMENT OF FEDERAL EXAMINERS

Under the Act, jurisdictions which are covered by the statutory formula are subject to the appointment of Federal examiners (Section 6). However, the appointment of examiners is not automatic. The Attorney General must determine into which localities covered by the Act examiners should be sent, and Section 6(b) sets standards to guide the exercise of his discretion. Examiners prepare lists of applicants eligible to vote whom state officials are required to register.

Federal examiners have served in a Mississippi county as recently as 1974 and Mississippi citizens were also listed by such examiners in 1971 and 1972. Since the passage of the Act, approximately 317 examiners have been sent to 73 designated jurisdictions. In the period from 1970–1974, Federal examiners listed 1,974 black voters. Estimates provided by the Voter Education Project in Atlanta, Georgia, indicate that the registration of blacks by Federal examiners accounted for 34.2 percent of the total increase in black voter registration in Alabama from 1964–1972. The work of Federal examiners accounted for 1.9 percent of the black registration increase in Georgia, 13.2 percent in Louisiana, 27.5 percent in Mississippi, and 7.4 percent in South Carolina. In general, it is estimated that 18.9 percent of black registration has been accomplished through Federal examiners (S. Hearings 584–585).

Although Federal examiners have been used sparingly in recent years, the provisions of the Act authorizing their appointment must be continued. Diminishing disparities between black and white registration rates in the covered southern states can hardly be hailed as indicative of a lack of work to be performed by Federal examiners. The use of such Federal officers cannot now be eliminated when most recently available data indicates that the gap in Alabama is still over 20 percentage points and in Louisiana the disparity continues at 16 percentage points. Also, such examiners might serve to increase minority registration in rural areas where it is found to be lowest.[11]

In addition, the hearing record developed before the Subcommittee revealed that in many of the covered jurisdictions, the times and places of registration are so restrictive that blacks, frequently living in rural communities, are unable to register (TYA 71–78). Some white registrars in these areas are reputed to treat blacks with extreme discourtesy, so much so that "[b]lacks find the registration process under these circumstances at best embarrassing and humiliating" (TYR 79). Discriminatory purgings have also been experienced by minority voters in certain covered areas (TYA 87–90). Thus, the job which can yet be performed by Federal examiners in these covered jurisdictions is significant and the Committee recommends that the availability of this important remedy be continued.

APPOINTMENT OF FEDERAL OBSERVERS

Under Section 8 of the Act, whenever Federal examiners are serving in a particular area, the Attorney General may request that the Civil

[11] See previous discussion.

Service Commission assign one or more persons to observe the conduct of an election. These Federal observers monitor the casting and counting of ballots.

In 1974, a total of 464 observers served in Alabama, Georgia, Louisiana, and Mississippi. A total of 568 observers served in 1970, 1,014 served in 1971 and 495 served in 1972. It has been found that the presence of observers tends to diminish the intimidation of minority voters, especially when they must vote in polling places located in traditionally hostile areas of a community. Also, observer reports have served as important records relating to the conduct of particular elections in subsequent voting rights litigation (TYA 37).

Despite the fact that the number of observers recently assigned has decreased from the large numbers which were consistently assigned during the earlier years of the Act's coverage, their use has nevertheless been significant since the time of the passage of the 1970 amendments. Furthermore, the Subcommittee's record reveals that the need for such Federal election observers continues. Many minority voters in the covered jurisdictions have frequently found that their names have been left off precinct lists and that other problems and abuses exist with respect to aid to be provided to illiterate voters. Also, polls in these areas continue to be located in all-white clubs and lodges where minority persons are otherwise not allowed to go, with such locations representing an extremely hostile atmosphere for the nonwhite voter (TYA 97–130). Under such circumstances, the role of Federal observers can be critical in that they provide a calming and objective presence which can serve to deter any abuse which might occur. Federal observers can also still serve to prevent or diminish the intimidation frequently experienced by minority voters at the polls.

Thus, based upon the record developed in hearings and the report of the U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, the Committee concludes that it is essential to continue for an additional ten years all the special temporary provisions of the Act in full force and effect in order to safeguard the gains thus far achieved in minority political participation, and to prevent future infringements of voting rights.

SUSPENSION OF TESTS AND DEVICES

Congress, in 1965, banned the use of tests and devices[12] in jurisdictions covered by Section 4 of the Voting Rights Act. Strong evidence was presented to both Houses that these devices had been used to deny blacks the franchise in these areas, often in a humiliating and harassing fashion. See Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess.; Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess.; see also Washington Research Project Publi-

[12] Section 4(c) states that "Tests or devices" 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.

cation *The Shameful Blight*. The Supreme Court noted some of the more flagrant examples in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1965):

> In Panola County, Mississippi, the registrar required Negroes to interpret the provision of the state constitution concerning the rate of interest on the fund known as the "Chichasaw School Fund" (citation). In Forrest County, Mississippi, the registrar rejected six Negroes with baccalaureate degrees, three of whom were also Masters of Arts. 383 U.S. at 312.

Equally important in Congress' decision to ban tests and devices in the covered jurisdictions was the disparity in educational opportunities for blacks in these areas. Prior to the Civil War, for example, many of the slave states made it a crime to teach a Negro to read or write.[13] And from the Civil War until 1954 these states instituted racial segregation in their public schools, with those blacks who did have school available receiving a woeful calibre of education. See *Brown* v. *Board of Education*, 347 U.S. 483 (1954). While educational opportunities for blacks in these states have improved since the Court's decision in 1954, for many blacks *Brown* v. *Board of Education* came too late, as Table I shows:

TABLE I.—PERCENT OF POPULATION WITH LESS THAN 5 YEARS OF SCHOOL AND WITH 4 YEARS OF HIGH SCHOOL OR MORE, BY AGE, AND RACE OR ETHNIC ORIGIN: 1973

[Persons 25 years old and over as of March, 1973. All races include those not shown separately]

Race	Less than 5 years of school							4 years of high school or more						
	Total	25 to 29	30 to 34	35 to 44	45 to 54	55 to 64	65 and over	Total	25 to 29	30 to 34	35 to 44	45 to 54	55 to 64	65 and over
All races	4.5	1.0	1.5	2.4	3.4	5.2	12.1	59.8	80.2	75.5	69.4	61.7	48.9	32.1
White	3.6	0.9	1.3	2.2	2.7	3.7	9.5	61.9	82.0	77.5	71.8	64.5	51.5	33.8
Negro	12.6	1.5	2.3	3.9	10.7	19.6	39.7	39.2	64.2	58.1	47.6	33.5	22.2	11.9

Note: B not shown; base less than 75,000. Includes persons of Central or South America, Cuba, and other Spanish origin, not shown separately.

For both of these reasons, then—the overwhelming evidence of abuse in administering these tests, and the sorry history of educational neglect in these areas—Congress felt it necessary to ban all tests or devices as prerequisites to voting in jurisdictions covered under Section 4 of the Voting Rights Act.

Subsequent court cases further underscored the state responsibility for failing to provide blacks an adequate educational opportunity, and the unfairness of these same jurisdictions making educational achievement a prerequisite to voting. See *e.g.*, *Gaston County* v. *United States*, 395 U.S. 285 (1969).

In 1970, Congress, reiterating its view that the problems of "tests and devices" and illiteracy were racial in impact and application, extended the ban on tests and devices in the covered jurisdictions for five more years. (See Joint Views, S. 2753.) In addition, Congress acknowledged that inferior educational opportunities for blacks were not limited to jurisdictions covered by the automatic provisions of Section 4 and enacted Section 201 expanding the ban on tests or devices to cover the entire Nation. Section 201 was unanimously upheld by the Supreme Court. *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). The Court agreed that the legislation was a proper exercise of Congress' powers under the Fourteenth and Fifteenth Amendments, citing the two rationales discussed above: (1) "tests and devices" had been used to deny blacks access to the political process; and (2) discrimination in educational opportunity makes itself felt most severely on racial minorities. In addition, Justice Douglas asserted that little justification exists for denying illiterates the opportunity to vote, regardless of color, in a society where so much information is communicated through the electronic media. 383 U.S., at 144–147. This reiterated the Congress' view that "there is insufficient relationship between literacy and responsible interested voting to justify such a broad restriction of the franchise." 116 Cong. Rec. 5221 (1970).

[13] In 1890 over two-thirds of the adult Negroes in each of those states were illiterate, while fewer than one-quarter of the adult Whites were unable to read or write.

Since Section 201 has been in effect, use of tests and devices has been suspended throughout the United States. Section 201 is effective only until August 6, 1975. Much of the testimony presented to the Subcommittee in its hearings was directed to these problems of educational neglect and racial minorities. Virtually every witness agreed that Section 201 should be extended, even those witnesses opposed to Title I of the Act. Most of S. 1279 is an attempt to address these problems of illiteracy, race, and the political process. While Title II and parts of Title I of the bill address the problems of overt discrimination such as harassment, gerrymandering, and dilution of minority voting strength, Title III and the extension of Section 201 address the dual problems of state responsibility for illiteracy, particularly as to racial minorities, and state failure to respond to this situation in the area of voting. The failure to respond to the problems of language minorities—that is, those racial minorities whose primary language is other than English—is addressed in Title III of S. 1279, discussed in greater detail below. The problems of English-speaking illiterates—those citizens who can speak but can neither read nor write English—are addressed in the extension of Section 201.

SECTION 201

The Subcommittee heard extensive testimony on extending Section 201. Although other provisions of S. 1279 were often matters of controversy, no witness expressed opposition to extending Section 201. Indeed, only 14 states retain laws providing for literacy tests, and since 1970 six states have repealed their literacy requirements. Hearings at 666.

The Committee believes that extension of Section 201 is justified on several grounds. First, as discussed above, such tests and devices have notoriously been abused to deny minorities the franchise. Second, under the rationale of *Gaston County*, *supra*, it is patently unfair for the states to require citizens to achieve a certain level of education prior to voting when the state educational systems all too often have denied minority citizens the opportunity to achieve this level of education. Third, as the Department of Justice stressed in its statement to the Subcommittee, "such tests are invalid under the Fourteenth Amendment because they are not justified by any compelling state interest." Hearings at 588.

It is difficult to see why citizens who cannot read or write should be prevented from participating in decisions that directly affect their environment, particularly in an era when radio and television are primary sources of information. The Committee is convinced that the suspension of "tests and devices" as prerequisites to voting should continue indefinitely. While the Department of Justice recommended a five-year suspension, the Committee concluded that in light of the interests involved, the history of abuse of these tests, the inferior education offered to racial minorities, and the availability of radio and television as a means of informing the electorate, the suspension should continue until such time as the Congress is persuaded that the suspension on tests and devices is both unnecessary and undesirable.

B. Title II: Expansion of the Voting Rights Act

BACKGROUND

In January 1975, the U.S. Commission on Civil Rights submitted to Congress *The Voting Rights Act: Ten Years After*, a report evaluating the current status of minority voting rights in jurisdictions covered by the Voting Rights Act of 1965. In its report, the Commission indicated that although the focus of its study was on covered jurisdictions, there was evidence to establish that minority citizens in other jurisdictions encounter discrimination in the electoral process. Serious consideration should be given, the Commission recommended, to an amendment to the Voting Rights Act to cover those language minorities who, according to preliminary information, require the protection of the law (TYA 356).

Following the recommendation of the Commission, the Subcommittee's study on whether to extend the Voting Rights Act or to allow it to expire in August 1975, was broadened to include an examination of the voting problems of minority citizens outside the current jurisdiction of the Act. In 7 days of hearings and testimony from 29 witnesses, the Subcommittee documented a systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English. Based on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, the Subcommittee acted to amend the current provisions of the Voting Rights Act to broaden its special coverage to new geographic areas in order to ensure the protection of the voting rights of "language minority citizens." The term language minority citizens refers to those persons who are Asian American, American Indian, Alaskan Natives, or Spanish heritage.[14]

[14] Based on usage by the Bureau of the Census, the category of Asian American includes persons who indicated their race as Japanese, Chinese, Filipino, or Korean. The category of American Indian includes persons who indicated their race as Indian (American) or who did not indicate a specific race category but reported the name of an Indian tribe. The population designated as Alaskan Native includes persons residing in Alaska who identified themselves as Aleut, Eskimo or American Indian. Persons of Spanish heritage are identified as (a) "persons of Spanish language" in 42 States and the District of Columbia; (b) "persons of Spanish language" as well as "persons of Spanish surname" in Arizona, California, Colorado, New Mexico and Texas; and (c) "persons of Puerto Rican birth or parentage in New Jersey, New York and Pennsylvania." Letter from Meyer Zitter, Chief, Population Division, Bureau of the Census, to House Judiciary Committee, April 29, 1975.

Barriers to Voting

The extensive record before the Subcommittee is filled with examples of the barriers to registration and voting that language minority citizens encounter in the electoral process. Testimony was received regarding inadequate numbers of minority registration personnel, uncooperative registrars, and the disproportionate effect of purging laws on non-English-speaking citizens because of language barriers (TYA 85–87).

In addition, liberal electoral laws in some jurisdictions are nullified by inadequate and unsystematic local implementation. Such problems discourage the exercise of voting rights, particularly by those who are newcomers to politics by virtue of previous total exclusion from the political process. Language minority citizens, like blacks throughout the South, must overcome the effects of discrimination as well as efforts to minimize the impact of their political participation. The State of Texas, for example, has a substantial minority population, comprised primarily of Mexican Americans and blacks. Evidence before the Subcommittee documented that Texas also has a long history of discriminating against members of both minority groups in ways similar to the myriad forms of discrimination practiced against blacks in the South.

Turnout in recent presidential elections in Texas (1960–1972) has been consistently below 50 percent of the voting age population. Indeed, the only reason that Texas was not covered by the Voting Rights Act in 1965 or by the 1970 amendments was that it employed restrictive devices other than a formal literacy requirement. A generation ago numerous suits were required to eliminate the Texas white primary. *Nixon* v. *Herndon*, 273 U.S. 536 (1927); *Nixon* v. *Condon*, 286 U.S. 73 (1932); *Grovey* v. *Townsend*, 295 U.S. 45 (1935); *Smith* v. *Allwright*, 321 U.S. 649 (1944); *Terry* v. *Adams*, 345 U.S. 461 (1953). More recently a Federal constitutional amendment and a suit brought by the Department of Justice pursuant to Congressional instructions, contained in Section 10 of the Voting Rights Act, were required to eliminate the Texas poll tax. *United States* v. *Texas*, 252 F. Supp. 234 (W.D. Tex.), *aff'd* 384 U.S. 155 (1966) (per curiam). Subsequently, the state enacted the "most restrictive voter registration procedures in the nation" to replace the poll tax. *Graves* v. *Barnes*, 343 F. Supp. 704, 731 (W.D. Tex. 1972), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973). This new registration system was declared unconstitutional through private litigation in the Federal court. *Beare* v. *Smith*, 321 F. Supp. 1100 (S.D. Tex. 1971), *aff'd sub nom. Beare* v. *Briscoe*, 498 F. 2d 244 (5th Cir. 1974) (per curiam). The District Judge in *Graves* v. *Barnes*, *supra* at 731 noted the effect which this history has had on persons of Spanish origin:

> This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the blacks were formerly denied access by the white primary.

Registration is merely the beginning of participation in the political process. Once registered language minorities have no guarantee that

they may easily cast a ballot. What is done at the local level by local officials has the most impact upon the ability of these minorities to vote and the effectiveness of that vote. Language minorities do not control the election or appointment of local officials and are seldom in positions of influence. Many obstacles placed by these officials frighten, discourage, frustrate, or otherwise inhibit language minority citizens from voting. Outright exclusion and intimidation at the polls are only two of the problems they face.

Other problems that have a discriminatory impact on language minority voters are denial of the ballot by such means as failing to locate voters' names on precinct lists, location of polls at places where minority voters feel unwelcome or uncomfortable, or which are inconvenient to them, and the inadequacy of voting facilities.[15] Some of the other barriers to voting which language minority citizens face are the underrepresentation of minority persons as poll workers; unavailability or inadequacy of assistance to illiterate voters; lack of bilingual materials at the polls for these non-English-speaking persons; and problems with the use of absentee ballots. Memories of past discourtesies or physical abuse may compound the problems for many language minority voters. The people in charge are frequently the same ones who so recently excluded minorities from the political process.

The exclusion of language minority citizens is further aggravated by acts of physical, economic, and political intimidation when these citizens do attempt to exercise the franchise. Witnesses testified that local law enforcement officials in areas of Texas patrol only Mexican American voting precincts, and harass and intimidate Mexican American voters. (S. Hearings 735–737); see also *Allee* v. *Medrano*, 416 U.S. 802 (1974).

Much more common, however, are economic reprisals against minority political activity. Fear of job loss is a major deterrent to the political participation of language minorities. A witness from Texas indicated that an Anglo candidate who was a loan officer at the bank went to each Mexican American who had loans with the bank and told them he expected their votes. (S. Hearing 735–736). The Subcommittee record is replete with overt economic intimidation designed to interfere with and abridge the rights of Mexican American voters. In its analysis of problems of electoral participation by Spanish-speaking voters, the Commission on Civil Rights reported that some Mexican Americans in Uvalde, Texas, are afraid their welfare checks will be reduced because of their political activity.[16] Underlying many of the abuses is the economic dependence of these minorities upon the Anglo power structure. People whose jobs, credit, or housing depend on someone who wishes to keep them politically powerless are not likely to risk retaliation for asserting or acting on their own views.

Because of discrimination and economic dependence, and the fear that these have created, language minority citizens for the most part have not successfully challenged white political domination. The proportion of elected officials who are Mexican American or Puerto Rican, for example, is substantially lower than their proportion of the population. In Texas, although Mexican Americans comprise 16.4 percent of the population, they hold only 2.5 percent of the elective positions. In New York, where Spanish heritage citizens comprise 7.4 percent of the population, they hold less than .1 percent of elective positions. If a language minority person is not permitted to register, or if registered not allowed to vote, that person is obviously denied full participation in the political process. The same result occurs when a candidate whom a voter might support is kept from running.

[15] U.S. Commission on Civil Rights. Staff Memorandum. "Survey of Preliminary Research on the Problems of Participation by Spanish-Speaking Voters in the Electoral Process." April 23, 1975, S. hearings page 997.

[16] *Ibid.*

But these blatant examples are not the only barriers obstructing equal opportunity for political participation. The Subcommittee heard extensive testimony on the question of representation of language minority citizens, that is, the rules and procedures by which voting strength is translated into political strength. The central problem documented is that of dilution of the vote—arrangements by which the votes of minority electors are made to count less than the votes of the majority. Testimony indicated that racial discrimination against language minority citizens seems to follow density of minority population.

In Nacogdoches, Texas, the city charter provided for at-large elections with electoral victory for a plurality of the votes. In spring, 1972, a black candidate almost won a plurality of votes in the election. In June, 1972, the all-white city commission amended the city charter for the first time in 43 years to adopt a majority run-off, numbered place system for city elections.[17] In the April, 1973, election, another black candidate ran for city commissioner only to win a plurality of the votes but to lose in a majority run-off election (S. Hearings 489–490). In 1975, a Federal district court ordered single-member districts for the City of Nacogdoches on grounds that the at-large majority run-off, numbered place system abridged the voting rights of black citizens. *Weaver* v. *Muckleroy*, Civil No. 5524 (E.D. Tex. 1975).

Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise the right to vote. The following communities have adopted such changes in the face of growing minority voting strength: Corpus Christi, Lufkin and Waco, in addition to a number of local school districts throughout the state (S. Hearings 490). In January, 1972, a three-judge Federal court ruled that the use of multi-member districts for the election of state legislators in Bexar and Dallas counties, Texas, unconstitutionally diluted and otherwise cancelled the voting strength of Mexican Americans and blacks in those counties. This decision was affirmed by the United States Supreme Court in *White* v. *Regester*, 412 U.S. 755 (1973); see also *Robinson* v. *Commissioners' Court, Anderson County*, 505 F.2d 674 (5th Cir., 1974); *Smith* v. *Craddick*, 471 S.W. 2d 375 (Tex. Sup. Ct. 1971).

The at-large structure, with accompanying variations of the majority run-off, numbered place system, is used extensively among the 40 largest cities in Texas. And, under state statute, the countless school districts in Texas elect at-large with an option to adopt the majority run-off, numbered place system. These structures effectively

[17] A majority run-off is a requirement that a candidate receive a majority of the votes for victory and provides for a run-off between the two top candidates if no one receives a majority. A system of numbered places divides the field into at-large elections with as many separate races as there are vacancies to be filled. This is most commonly done through the use of numbered posts. When numbered posts are combined with a majority vote requirement, the chance for a minority candidate becomes practically impossible unless minorities are in a voting majority (*Federal Review of Voter Changes*).

deny Mexican American and black voters in Texas political access in terms of recruitment, nomination, election and ultimately, representation (S. Hearings 491).

Another device which is used to affect adversely minority participation is the annexation of areas with large white voting populations. In 1972, in Pearsall, Texas, for example, the City Council, while refusing to annex compact contiguous areas of high Mexican American concentration, chose to bring a 100 percent Anglo development within the city. The City of San Antonio, in 1972, made massive annexations including irregular or finger annexations on the city's heavily Anglo north side. The population breakdown in the areas annexed was overwhelmingly Anglo, although the city was previously almost evenly divided between Anglos and Mexican Americans (S. Hearings 477).

In addition to the serious strictures on their access to political participation outlined previously, language minority citizens are also excluded from the electoral process through the use of English-only elections. Of all Spanish heritage citizens over 25 years old, for example, more than 18.9 percent have failed to complete five years of school compared to 5.5 percent for the total population.[18] In Texas, over 33 percent of the Mexican American population has not completed the fifth primary grade. A series of reports by the U.S. Commission on Civil Rights on Mexican American education in the southwestern United States found that over 50 percent of all Mexican American children in Texas who enter the first grade never finish high school.[19] The Commission concluded that the practices of Mexican American education "reflect a systematic failure of the educational process, which not only ignores the educational needs of Chicano students but also suppresses their culture and stifles their hopes and ambitions. In a very real sense, the Chicano is the excluded student." [20]

The Committee found that these high illiteracy rates are not the result of choice or mere happenstance. They are the product of the failure of state and local officials to afford equal educational opportunities to members of language minority groups. For example, until 1947, a California statute authorized local school districts to maintain separate schools for children of Asian descent, and if such separate schools were established, the statute prohibited these children from attending any other school. See *Guey Heung Lee* v. *Johnson*, 404 U.S. 1215 (1971).[21] The effects of that past discrimination against Asian Americans in education continues into the present.

In addition the language disabilities of Asian Americans are particularly egregious and deter their participation in the electoral process. In *Lau* v. *Nichols*, 414 U.S. 563 (1974), the Supreme Court held that the failure of the San Francisco Board of Education to provide language instruction to Chinese students who do not speak

[18] *Census of Population: 1970. General Social and Economic Characteristics.* United States Summary, pc(1)–C1. Table 88, page 386.

[19] U.S. Commission on Civil Rights, *The Excluded Student,* Mexican American Education Study, Report III, May 1972, at 23.

[20] *Id.*, at 14.

[21] Discrimination against Asian Americans is a well known and sordid part of our history. See generally *Koretmatsu* v. *United States,* 323 U.S. 214 (1944); *Hirabayashi* v. *United States,* 320 U.S. 81 (1943); *Yu Cong Eng* v. *Trinidad,* 271 U.S. 500 (1926); *Vick Wo* v. *Hopkins,* 118 U.S. 356 (1886).

English denied them a fruitful opportunity to participate in the public school program. The Court observed:

> We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. *Id.* at 566.

If we substitute the word "voting" for the word "classroom" in the Court's opinion, we can appreciate the difficulties which Asian Americans face when they seek to engage in the political process.

The same pattern of educational inequality exists with respect to children of Indian, Alaskan Native, and Hispanic origin. In one of its many reports on the subject, the United States Commission on Civil Rights concluded:

> The basic finding of this report is that minority students in the Southwest—Mexican Americans, blacks, American Indians—do not obtain the benefits of public education at a rate equal to that of their Anglo classmates.[22]

In *Natonabah* v. *Board of Education*, 355 F. Supp. 716 (D. N. Mex. 1973), a Federal district court found that Navajo pupils in the Gallup-McKinley School District have been denied equal educational opportunities. Similar findings have been made by the Supreme Court and lower Federal courts regarding students of Spanish origin. *E.g.*, *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973); *Cisneros* v. *Corpus Christi Independent School District*, 467 F.2d 142 (5th Cir. 1972) (en banc); *United States* v. *Texas Education Agency*, 467 F.2d 848 (5th Cir. 1972) (en banc); *Romero* v. *Weakley*, 226 F.2d 399 (9th Cir. 1955); *Soria* v. *Oxnard School District Board of Trustees*, 328 F. Supp. 155 (C.D. Cal. 1971); see generally Rangel and Alcalo, *De Jure Segregation of Chicanos in Texas Schools*, 7 Harv. Civil Rights and Liberties Rev. 370 (1972).[23] Finally, in *Hootch* v. *State Operated School System*, Civil No. 72–2450 (Super. Ct. Alaska 1973) (plaintiff's motion for summary judgment denied) (appeal pending before Supreme Court of Alaska), the plaintiffs have challenged the practice of the State of Alaska to provide public secondary schools for Alaskan native children only in urban areas distant from their communities. Most non-native children, on the other hand, are offered public secondary schools in their own communities.

In addition to disparate treatment in the areas of voting and education, language minority citizens have been the target of discrimination in almost every facet of life. The U.S. Commission on Civil Rights in reports and hearings has documented this discrimination in areas such as housing, administration of justice and employment.[24]

[22] U.S. Commission on Civil Rights. *The Unfinished Education.* Mexican American Education Study, Report II, October, 1971. See also *Keyes* v. *School District No. 1,* 413 U.S. 189, 197–198 (1973).

[23] See U.S. Commission on Civil Rights, *Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest* (1971); *The Unfinished Education* (1971); *The Excluded Student: Educational Practices Affecting Mexican Americans in the Southwest* (1971); *Mexican American Education in Texas: A Function of Wealth* (1972); *Teachers and Students* (1973); *Toward Quality Education for Mexican Americans* (1974).

[24] *Mexican Americans and the Administration of Justice in the Southwest* (1970); Hearing, San Antonio, Texas (1968); *The Navajo Nation: An American Colony* (1975); *The Southwest Indian Report* (1973); Hearing, Washington, D.C. (1971); Hearing, New York (1972); Hearing, Newark, N.J. (1962). See also Texas State Advisory Committee to the U.S. Commission on Civil Rights, *Employment Practices at Kelly Air Force Base, San Antonio, Texas* (1968); *The Civil Rights Status of Spanish Speaking Americans in Kleberg, Nueces, and San Patricio Counties, Texas* (1967); and *Asian American and Pacific Peoples: a Case of Mistaken Identity.*

Another measure for need is provided by the extent of litigation needed to secure the rights of language minorities. The Assistant Attorney General in the Civil Rights Division testified that the Department of Justice has had to take legal action against state and local governments to enjoin discrimination against language minorities in public schools, employment, voting rights, and penal institutions (S. Hearings 588–592). The Department's Civil Rights Division, for example, has participated in 97 civil suits and initiated fourteen criminal actions involving the rights of Spanish-speaking citizens, Asian Americans and American Indians (S. Hearings 695).[25]

In 1973, the Supreme Court upheld a lower court finding that the Mexican American population in Texas has "historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others." *Graves* v. *Barnes*, 343 F. Supp. 704, 728 (W.D. Tex. 1972), *aff'd in relevant part sub nom. White* v. *Regester*, 412 U.S. 755 (1973). Later, the same three-judge district court iterated its finding that Texas has "a history pockmarked by a pattern of racial discrimination that has stunted the electoral and economic participation of the black and brown communities in the life of state." *Graves* v. *Barnes*, 378 F. Supp. 640, 643 (W.D. Tex.), vacated and remanded. *White* v. *Regester*, —— U.S. —— (1975) (per curiam).

Despite the evidence of high illiteracy rates for language minority citizens, states and local areas where they reside continue to adhere to a uniform language system. It is clear from the subcommittee record that the practice of conducting registration and voting only in English does impede the political participation of voters whose usual language is not English. The failure of states and local jurisdictions to provide adequate bilingual registration and election materials and assistance undermines the voting rights of non-English-speaking citizens and effectively excludes otherwise qualified voters from participating in elections.

In view of this overwhelming evidence of voting discrimination against language minorities, it is not surprising that the registration and voting statistics of language minorities are significantly below those of the Anglo majority. In 1972, for example, only 44.4 percent of persons of Spanish origin were registered compared to 73.4 percent for Anglos.[26] The data for 1974 indicates similar disparities: 34.9 percent of persons of Spanish origin were registered to vote compared to 63.5 percent for Anglos.[27] Only 22.9 percent of Spanish origin persons voted in the 1974 national election, less than one-half the rate of participation for Anglos.[28]

Expansion of the Voting Rights Act

Weighing the overwhelming evidence before it on the voting problems encountered by language minority citizens, the Subcommittee acted to expand the protections of the Voting Rights Act to insure

[25] See also Letter from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, to House Judiciary Committee, May 6, 1975.
[26] *Current Population Reports: 1972. Population Characteristics.* Voting and Registration Statistics in the Election of November 1972. Series p. 20, No. 263, Table 1, page 22.
[27] *Ibid.*
[28] Unpublished data from the *Current Population Survey: 1974,* provided by the Bureau of the Census.

their free access to the franchise. The definition of those groups included in "language minorities" was determined on the basis of the evidence of voting discrimination. Persons of Spanish heritage was the group most severely affected by discriminatory practices, while the documentation concerning Asian Americans, American Indians and Alaskan Natives was substantial.

No evidence was received concerning the voting difficulties of other language groups. Indeed, the voter registration statistics for the 1972 Presidential election showed a high degree of participation by other language groups: German, 79 percent; Italian, 77.5 percent; French, 72.7 percent; Polish 79.8 percent; and Russian, 85.7 percent.[29]

TABLE 2.—REPORTED VOTER PARTICIPATION AND REGISTRATION OF PERSONS OF VOTING AGE, BY ETHNIC ORIGIN AND SEX: NOVEMBER 1972

[Numbers in thousands: civilian noninstitutional population]

Ethnic origin	Total			Male			Female		
	All persons	Percent reported registered	Percent reported voted	Total	Percent reported registered	Percent reported voted	Total	Percent reported registered	Percent reported voted
German	16,010	79.0	70.8	7,858	80.1	72.1	8,152	78.0	69.5
Italian	5,900	77.5	71.5	2,918	78.7	73.1	2,982	76.4	70.0
Irish	9,863	76.7	66.6	4,429	78.3	68.4	5,434	75.4	65.1
French	3,275	72.7	63.2	1,528	74.8	64.4	1,747	70.9	62.1
Polish	3,355	79.8	72.0	1,630	81.3	73.4	1 725	78.3	70.8
Russian	1,605	85.7	80.5	756	88.5	83.5	849	83.2	78.0
English, Scottish, and Welsh	19,400	80.1	71.3	9,010	81.4	72.7	10,390	78.9	70.1
Spanish	5,616	44.4	37.5	2,641	45.6	39.4	2,975	43.4	35.7
Mexican	3,219	46.0	37.5	1,551	47.2	38.4	1,668	44.9	36.6
Puerto Rican	834	52.7	44.6	360	54.7	50.9	474	51.3	39.8
Other Spanish	1,563	36.8	33.5	730	37.7	35.8	832	36.0	31.5
Negro [1]	12,467	67.5	54.1	5,571	67.2	53.8	6,896	67.7	54.3
Other	46,855	74.1	65.9	21,631	74.7	66.7	25,225	73.5	65.2
Do not know	9,962	64.9	51.8	4,997	65.8	53.5	5,965	64.0	50.1
Not reported	1,714	47.9	42.4	790	46.6	41.3	924	48.9	43.4

[1] There were 13,493,000 persons classified by the interviewers as Negro (see table 1) compared with the 12,467,000 who classified themselves as of Negro ethnic origin.

Source: U.S. Bureau of the Census. "Current Population Reports." Population characteristics, October 1973, series p. 20, No. 253, p. 27.

The Subcommittee, although cognizant of the extent of voting discrimination against these language minorities, was nonetheless aware that the problems were not uniform in their severity across the nation. Therefore, in expanding the Act, two distinct triggers were developed to identify areas with differing magnitude of barriers to full participation by language minorities in the political process. The remedies set in operation by these triggers mirror the differences in the evidentiary record on the severity of voting discrimination against language minorities. Title II of S. 1279 contains the prohibition and remedies for those jurisdictions with the more serious problems, while Title III imposes more lenient restrictions upon areas with less severe voting difficulties.[30]

Extending the protection of the Act to language minorities is accomplished by expanding the definition of "test or device" to mean the use of English-only election materials in jurisdictions where more than five percent of the voting age citizen population is comprised of any

[29] 1972 Current Population Reports, *supra* n26.
[30] A discussion of the formula used to trigger coverage in Title III is set forth hereinafter.

single language minority group. In other words, a jurisdiction is deemed to employ a "test or device" if it provided election materials or assistance only in the English language, and if it had more than a five percent citizen population of American Indians, Alaskan Natives, Asian Americans or persons of Spanish heritage.[31] Even when such a test or device exists, however, coverage is not triggered for a jurisdiction unless it also had a low voter registration or turnout in the 1972 presidential election, namely, less than 50 percent. Thus, the "trigger" of Title II is essentially identical to the traditional trigger, now found in Section 4(b) of the Act, that is, the existence of a "test or device," as newly defined, and less than 50 percent registration or turnout in the most recent presidential election.

By covering these new geographic areas, we simply apply the Act's special remedies to jurisdictions where language minorities reside in greatest concentrations and where there is evidence of low voting participation. Currently available data indicate that Title II coverage would be triggered in certain counties in California (including the two counties already covered), in areas of Arizona (again, most of which are already covered), in areas of Florida, Colorado, New Mexico, Oklahoma, New York, North Carolina, South Dakota, Utah, Virginia, Hawaii, and for the entire states of Alaska and Texas. (See Appendix C of this Report, for a tentative list of coverage under Title II.)

Title II would therefore mandate that in these covered areas bilingual election procedures be implemented, that Section 5 preclearance be given to all new voting changes, and that Federal examiners and observers be able to be designated to serve in those areas.

Title II of the bill would for ten years prohibit English-only elections in certain areas and mandate bilingual elections. There is no question but that bilingual election materials would facilitate voting on the part of language minority citizens and would at last bring them into the electoral process on an equal footing with other citizens. The provision of bilingual materials is certainly not a radical step. Some court decisions already suggest that in order for the right to vote to be effective voters belonging to a substantial minority which speaks a language other than English should be provided election materials in their own language. Courts decisions in New York have resulted in specific orders that the board of elections provide extensive bilingual assistance to voters in election districts with substantial non-English-speaking population.[32] The rationale behind the decisions is the same as the reasoning that required help for illiterate voters: meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise. In *Torres* v. *Sachs*, 381 F. Supp. 309 (S. D. N.Y. 1974) a Federal court found that the conduct of elections only in English deprived Spanish speaking citizens of rights protected by

[31] The five percent figure is one which has been established as a relevant cut-off in judicial decisions mandating bilingual materials and assistance in Philadelphia. *Arroyo* v. *Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974), and in New York, *Torres* v. *Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1974).

[32] With reference to elections for the school board of Community School District One in Manhattan, see *Lopez* v. *Dinkins*, 73 Civ. 695 (S.D.N.Y. February 14, 1973). The court invalidated the election because the bilingual assistance was not adequately provided. *Coalition for Education in School District One* v. *Board of Elections of the City of New York*, 370 F. Supp. 42 (S.D.N.Y. 1974), *aff'd* 495 F. 2d 1090 (2d Cir. 1974). With reference to city elections, see *Torres* v. *Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1974).

the Voting Rights Act: "It is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired." [33]

Courts in New York have ordered complete bilingual election assistance, from dissemination of registration information through bilingual media to use of bilingual election inspectors. In some jurisdictions which have substantial Puerto Rican populations and which are not subject to the special provisions of the Voting Rights Act, courts have also ordered the development of bilingual systems pursuant to Section 4(e) of the Act.[34] Some jurisdictions not under court order have moved voluntarily to deal with the problem of assisting the non-English-speaking voter.[35]

The California Supreme Court found that state's English-language literacy requirement a violation of the equal protection clause of the 14th amendment but did not eliminate the requirement of literacy altogether (since suspended by the 1970 Voting Rights Act Amendments) or order the development of "a bilingual electoral apparatus." [36] Subsequently, the California state legislature enacted legislation which required county officials to make reasonable efforts to recruit bilingual deputy registrars and election officials in precincts with three percent or more non-English-speaking voting age population. In addition, California now requires the posting of a Spanish-language facsimile ballot, with instructions, that also must be provided to voters on request for their use as they vote.[37]

Since 1967, Congress has sought to improve the educational opportunities of language minorities through amendments to various education acts. The Bilingual Education Amendments of 1974, for example, provided that a limited English speaking child should receive his instruction in whichever language is necessary to insure that he has the same opportunity to learn and develop his skills as a non-limited English-speaking child during the time that he is building his English competence to a level equivalent with his non-limited English speaking peers.[38]

[33] 381 F. Supp. 312. The criticism of New York's monolingual elections in the *Torres* decision prompted the Justice Department to move to recover the New York counties which previously bailed out from under the Act's special provisions. Arguing that such monolingual elections constituted discriminatory "tests or devices", the Department succeeded in bringing these counties back under the Act's special provisions. *New York* v. *United States*, Civil No. 2419–71 (D.D.C., Orders of Jan. 10, 1974 and April 30, 1974), *aff'd* 95 S. Ct. 166 (1974) (per curiam).

[34] *Puerto Rican Organization for Political Action* v. *Kusper*, 490 F.2d 575 (7th Cir. 1973) (Chicago); *Marquez* v. *Falcey*, Civil No. 1447–73 (D. N.J. Oct. 9, 1973); *Ortiz* v. *New York State Board of Elections*, Civil No. 74–455 (W.D.N.Y. Oct. 11, 1974) (Buffalo); and *Arroyo* v. *Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974) (Philadelphia).

[35] New Jersey has adopted a statute requiring bilingual sample ballots and registration forms in election districts with 10 percent or more Spanish speaking registered voters (N.J. Laws, 1974, ch. 51). Dade County, Florida, has provided all registration and election materials in English and Spanish for two years. Massachusetts provides sample ballots and instructions in English and Spanish in any precinct with more than 700 persons of Spanish speaking background. Bilingual assistance, including ballots, is provided in Pennsylvania in areas of significant concentrations of non-English-speaking persons. In Connecticut, bilingual assistance is supplied in towns and cities where Spanish speaking comprise 5 percent of the population. Library of Congress, Congressional Research Service, *Memorandum on Fifty-State Survey Relating to Bilingual Voter Assistance*, March 11, 1975, and Staff telephone survey of state election officials.

[36] *Castro* v. *California*, 85 Cal. Rptr. 20, 466 P.2d 244, 258 (1970).

[37] A 1974 study by the California Secretary of State on enforcement of its bilingual requirements found that, on the basis of a poll of all 58 counties, "the vast majority of County Clerks and/or registrars of voters in this state have not responded to the mandate of section 1611 (bilingual assistance act) and have made little progress in assisting voters who have difficulty in voting in English." (H.R. Report No. 94–196, p. 25, n. 41.)

[38] H.R. Rep. No. 93–1211, 93d Congress, 2d Sess. 149 (1974).

These statutes are, of course, designed to affect a permanent solution to the difficulties encountered by citizens who do not speak English. However beneficial those laws may be, they have not yet been in operation long enough to reduce the illiteracy rate of certain language minorities below the national average for all citizens of voting age, and thus allow free and full participation in the political life of the Nation. Consequently, the prohibition of English-only elections in certain areas is necessary to fill that hiatus until genuinely equal educational opportunities are afforded language minorities.

Suspending English-only elections and mandating bilingual ones for a ten year period is an appropriate remedy for the kind of voting discrimination against language minorities disclosed by the record. But even if that remedy rested solely on the unequal educational opportunities which state and local officials have afforded members of language minority groups, it would still be proper to require it. In *Gaston County* v. *United States*, 395 U.S. 285 (1969), the Supreme Court recognized the inextricable relationship between educational disparities and voting discrimination. Even though a literacy test or other practice may be racially neutral on its face, see *Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959), it may disproportionately disadvantage minorities when applied to persons denied equal educational opportunities. That reasoning is fully applicable to English-only elections which, while racially neutral, may have an impermissible discriminatory impact. See *Torres* v. *Sachs*, *supra*.

To be sure, the purpose of suspending English-only and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now. See *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970). This bill rejects the notion that the "denial of a right deemed so precious and fundamental in our society [is] a necessary or appropriate means of encouraging persons to learn English." *Katzenbach* v. *Morgan*, *supra* at 655. Title II of S. 1279 is a temporary measure to allow such citizens to register and vote immediately; it does not require language minorities to abide some unknown, distant time when local education agencies may have provided sufficient instruction to enable them to participate meaningfully in an English-only election.

The record before the Subcommittee establishes that prohibition of English-only elections would not alone assure access of all language minority citizens to registration and voting. Although English-only elections are an impediment to the participation of language minorities, other tactics of discrimination have also been used and would still readily be available to state or local election officials. Thus, the Subcommittee believes that the appointment of examiners and observers in those areas where violations of the voting guarantees of the 14th or 15th Amendment are occurring or where the Attorney General considers examiners and observers necessary, is the effective answer to such tactics. Federal observers could clearly serve to diminish the intimidating impact of having to vote in all-white areas of the city or being subject to constant "law enforcement surveillance." Examiners could "list" those citizens residing in the communities of the uncooperative registrars.

Further, in light of the ingenuity and prevalence of discriminatory practices that have been used to dilute the voting strength and otherwise affect the voting rights of language minorities, the Committee acted to extend the preclearance mechanism of Section 5 of the Voting Rights Act to the newly covered jurisdictions. The exhaustive case-by-case approach of the pre-1965 period proved to be inadequate and futile in dealing with the magnitude of the voting problems confronting blacks. The pervasive voting discrimination which now affects language minorities in certain areas throughout the Nation requires the application of the Section 5 remedy. That procedure has been in force for ten years and a whole body of administrative law has developed around it.[39] As a method which has shown a marked degree of success, it is appropriate to adopt it to the present task.

Bail-out from Coverage

Coverage under Title II is based on a rational trigger which describes those areas for which we had reliable evidence of actual voting discrimination in violation of the 14th or 15th Amendment. It is possible, of course, that there may be areas covered by this title where there has been no voting discrimination. The bill takes account of this possibility by a provision which allows a jurisdiction to exempt itself from coverage of the Act if it meets certain criteria. Any state or political subdivision may exempt itself by obtaining a declaratory judgment that English-only elections or any other "test or device" has not in fact been used in a discriminatory fashion against language minorities and other racial or ethnic groups for the ten years preceding the filing of action. The "bail-out" process operates in the same manner as the current provision in the Act and is a relatively minor one if no evidence of discrimination is present. In fact, the Attorney General must consent to the entry of a declaratory judgment if, in his opinion, no violations of voting rights have occurred. Alaska; Wake County, North Carolina: Elmore County, Idaho; and Apache, Navajo, and Coconino Counties, Arizona have successfully sued to bail-out from the special provisions of the present Act.

Constitutionality

Section 5 of the 14th Amendment and Section 2 of the 15th Amendment give Congress broad powers "to enforce, by appropriate legistion, the provisions" of the amendments. Those sections expand the authority of Congress to remedy problems arising under them, and anticipate that the national legislature will act to protect the rights of minorities. In *Ex parte Virginia*, 100 U.S. 339, 345–46 (1879), the Supreme Court held:

> It is the power of Congress which has been enlarged, Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the pro-

[39] In reviewing Section 5 submissions from the jurisdictions covered by Title II, S. 1279, the Attorney General or the district court will be required, as they are now under the present Act, to evaluate the proposal for its impact on each racial, ethnic, or language minority group encompassed by the phrase "race or color," and by the prohibitions of Title II [the new Section 4(f)(2)].

> hibitions 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 (emphasis in original).

In recent years, Congress has enacted and the Supreme Court has sustained legislation which seeks to enfranchise members of minority groups. In *South Carolina* v. *Katzenbach*, 338 U.S. 301 (1966), the Court upheld the original Voting Rights Act of 1965 with its provisions suspending "tests and devices," requiring preclearance for new election laws, and authorizing Federal registrars and observers. Three months later, the Court approved the sections of that Act which allowed Puerto Ricans to vote even though they were illiterate in English. *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

The *Morgan* case has enormous significance for the bill now before us. The Court approved the exercise of congressional power to enfranchise language minorities who are being denied the right to vote because of their inability to read or understand English. In that instance, Congress suspended the New York State statute requiring ability to understand English as a prerequisite for voting as it applied to Puerto Rican residents. Later litigation under that section held that New York must provide bilingual election materials, as well as allow Spanish-speaking Puerto Ricans to vote. *Torres* v. *Sachs*, *supra*.

S. 1279 is merely an extension of the legislative and constitutional principles approved by the Supreme Court in *South Carolina* v. *Katzenbach*, *supra*, and *Katzenbach* v. *Morgan*, *supra*. Unlike the provision sustained in *Morgan*, which was limited to one group, this bill would enfranchise four principal language minorities: persons of Spanish heritage (including Puerto Ricans), American Indians, Alaskan natives, and Asian Americans. These are the groups which, the evidence shows, have been subjected to voting discrimination. In suspending English-only elections, this bill does no more than the statute upheld in *Morgan*. In applying the special remedies of the present Act through Title II, S. 1279 does no more than the law validated in *South Carolina* v. *Katzenbach*, *supra*. And in mandating bilingual elections, it affords a remedy implicit in the provisions sustained in *Morgan*, and required by later court decisions. *Torres* v. *Sachs*, *supra* and *Arroyo* v. *Tucker*, *supra*.

In both cases, the Court deferred largely to the congressional judgment as to what is "appropriate legislation" under the enforcement sections of the Fourteenth and Fifteenth Amendments. So long as it perceived a rational basis for the legislative enactment, the Court would sustain the statute. In this instance, the record is replete with evidence of the discrimination against certain language minorities. And since the Court has already sustained the remedial devices in prior litigation, the corrective measures embodied in S. 1279 present no novel constitutional issues.

It is argued that, in extending the Act only to the four language minority groups, the bill is constitutionally defective. In *Morgan*, the Supreme Court upheld a federal law extending the right to vote to non-English-speaking Puerto Ricans. The Court rejected the contention that the provision was too narrowly drawn in its application only

to Puerto Ricans residing in New York. In response to that argument, the Court observed:

> [I]n deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone further than it did," *Roschen* v. *Ward*, 279 U.S. 337, 339, that a legislature need not "strike at all evils at the same time," *Semler* v. *Dental Examiners*, 294 U.S. 608, 610, and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489. *Id* at 657.

Finally it is said that, since the decisions in *South Carolina* v. *Katzenbach*, supra, and *Katzenbach* v. *Morgan*, supra, the Supreme Court has retreated from the broad latitude given Congress in those cases to deal with voting problems. In support of this view, some cite the opinions in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), in which a sharply and hopelessly divided Court sustained the constitutionality of congressional legislation that enfranchised 18 year olds in federal elections and that removed certain residency requirements as a prerequisite to voting. At the same time, it invalidated the provision which sought to enfranchise 18 year olds in state and local elections.

Whatever the ultimate impact of the *Mitchell* case, a majority of the justices did not disagree with the principles of *South Carolina* and *Morgan* as they applied to protecting the rights of "discrete and insular minorities." That protection, after all, was the thrust of the 14th and 15th Amendments, and, at a minimum, Congress is fully authorized to secure the rights of such minorities. Whether a particular language minority is in need of protection is a question left largely to the judgment of the legislature. In view of the hearing record in this case, it is clear that the Congress would properly be exercising its discretion by enacting S. 1279.

Separability

S. 1279 contains a separability clause to ensure that the current provisions of the Voting Rights Act of 1965, as amended by this bill, are preserved if the constitutionality of the 1975 expansion amendments is successfully challenged. At issue in questions of separability is the intent of the legislative body in entering the statute, *Lynch* v. *United States*, 292 US 571 (1934). The separability clause in S. 1279 clearly establishes the intent of Congress that the provisions of these amendments be viewed independently. Although the amendments in the bill are interwoven into the current Act, the indication of intent by Congress as to the separability of the expansion amendments is sufficient for a court to determine that Congress did not intend that the 1975 Act be enacted as an entirety. This 1975 legislation should thus be considered as separable, and it is not to be rejected as a whole in the event of a successful court challenge to any part thereof.

C. Title III: Bilingual Elections Provisions

BACKGROUND

Title III of S. 1279 enhances the policy of Section 201 of removing obstructions at the polls for illiterate citizens. See the discussion above

under "Suspension of Tests and Devices." Title III is specifically directed to the problems of "language minority groups," that is, racial minorities whose dominant language is frequently other than English Section 307 of S. 1279 defines language minorities as persons who are "American Indian, Asian American, Alaskan Natives, or of Spanish heritage."

The Committee singled out the "language minority" groups for several reasons. First, as discussed above, illiteracy is all too often a product of racially discriminatory educational systems. See Civil Rights Commission, *A Better Chance to Learn: Bilingual Bicultural Education*, Published May, 1975. See also discussion in *Lau* v. *Nichols*, 414 U.S. 563 (1974).

Second, while the documentation of discrimination and non-responsiveness by the states was substantial with regard to the particular minority groups, the Subcommittee was presented with no evidence of difficulties for other language groups. Indeed, the voter registration statistics for the 1972 Presidential election showed a high degree of participation by other language groups:

TABLE 2.—REPORTED VOTER PARTICIPATION AND REGISTRATION OF PERSONS OF VOTING AGE, BY ETHNIC ORIGIN AND SEX: NOVEMBER 1972

[Numbers in thousands: civilian noninstitutional population]

Ethnic origin	Total			Male			Female		
	All persons	Percent reported registered	Percent reported voted	Total	Percent reported registered	Percent reported voted	Total	Percent reported registered	Percent reported voted
German	16,010	79.0	70.8	7,858	80.1	72.1	8,152	78.0	69.5
Italian	5,900	77.5	71.5	2,918	78.7	73.1	2,982	76.4	70.0
Irish	9,863	76.7	66.6	4,429	78.3	68.4	5,434	75.4	65.1
French	3,275	72.7	63.2	1,528	74.8	64.4	1,747	70.9	62.1
Polish	3,355	79.8	72.0	1,630	81.3	73.4	1,725	78.3	70.8
Russian	1,605	85.7	80.5	756	88.5	83.5	849	83.2	78.0
English, Scottish, and Welsh	19,400	80.1	71.3	9,010	81.4	72.7	10,390	78.9	70.1
Spanish	5,616	44.4	37.5	2,641	45.6	39.4	2,975	43.4	35.7
Mexican	3,219	46.0	37.5	1,551	47.2	38.4	1,668	44.9	36.6
Puerto Rican	834	52.7	44.6	360	54.7	50.9	474	51.3	39.8
Other Spanish	1,563	36.8	33.5	730	37.7	35.8	832	36.0	31.5
Negro[1]	12,467	67.5	54.1	5,571	67.2	53.8	6,896	67.7	54.3
Other	46,855	74.1	65.9	21,631	74.7	66.7	25,225	73.5	65.2
Do not know	9,962	64.9	51.8	4,997	65.8	53.5	5,965	64.0	50.1
Not reported	1,714	47.9	42.4	790	46.6	41.3	924	48.9	43.4

[1] There were 13,493,000 persons classified by the interviewers as Negro (see table 1) compared with the 12,467,000 who classified themselves as of Negro ethnic origin.

Source: U.S. Bureau of the Census. "Current Population Reports." Population characteristics, October 1973, series p. 20, No. 253, p. 27.

While the Committee clearly encourages states and political subdivisions to assist other ethnic groups in voting and registration, the Committee received no evidence of voting discrimination regarding these groups to compel Congressional action at this time.

Third, the historical experience of these groups is far different from the European immigrants who came to North America and eventually became part of the Great Melting Pot. For the most part, the Spanish-heritage, American Indian and Alaskan Native groups were living on territory suddenly annexed by the United States; in most cases their ancestors had been living on the same land for centuries. These groups stayed on their original lands after the annexation, and while mobility

certainly existed within their own cultures, opportunity for mobility within the European-dominated American culture was often denied them, most frequently by poor educational institutions and unresponsive political institutions. Important decesions of direct consequence to them were often made without their participation.

The states and local jurisdictions have been disturbingly unresponsive to the problems of these minorities. Some, such as Connecticut, do provide bilingual officials or materials in areas with 5 percent or more Spanish-speaking citizens; others, with a much higher concentration of language minorities, provide no assistance whatsoever. Seventeen states do allow for the possibility of bilingual assistance "through the aid of a judge or friend," but according to testimony by the Civil Rights Commission, this assistance is often inadequate. (*See* Senate Hearings, p. 94). Another seventeen states lack any provision for voter assistance whatsoever to language minorities, and of these seventeen, eleven come under Title III, which is based on a concentration of 5 percent or more of language minority citizens.

Because so many states and counties have not responded to the situation confronting the language minority citizens, the Committee believes strongly that Congress is obligated to intervene. Title III of S. 1279 requires that bilingual assistance and materials be provided in states or political subdivisions with a concentration of 5 percent or more of a language minority group, and where the illiteracy rate of that group is above the national average for all citizens of voting age (5.5 percent in 1970). It is hoped that this provision will assure language minority citizens equal access to the voting process.

The Committee has taken pains to insure that Title III will be implemented effectively with minimal cost to the states and political subdivisions involved. The Subcommittee obtained an opinion from the Department of Justice that Title III requires bilingual materials and assistance be provided only to the language minority citizens and not to every voter in the jurisdiction (see Appendix D). Nor does Title III require the impossible. A jurisdiction with a minority group whose language is oral is, of course, required only to provide oral assistance. And, obviously, a jurisdiction is not required to provide materials or assistance in an extinct language. The Subcommittee sent letters to election officials in all areas to be covered by Title III; the great majority responded that the cost was not prohibitive. New York City, for example, for several years has been holding elections in a manner complying with Title III, at relatively little cost ($100,000 per year covering 345,800 Spanish-speaking citizens).

Although the Subcommittee felt strongly that this legislation was essential, a constitutional expert was invited to help ascertain whether Title III was within Congress' powers under the Fourteenth and Fifteenth Amendments. Hearings, pp. 789–802. After examining the question at length, and after receiving the testimony of this witness, the Committee is convinced that Title III is clearly within Congress' enforcement powers under these two amendments.

D. Title IV: Miscellaneous Provisions

Section 401 of S. 1279 amends Section 3 of the Voting Rights Act to afford to private parties the same remedies which Section 3 now

affords only to the Attorney General. Under the current provisions of Section 3, whenever the Attorney General has instituted a proceeding to enforce the guarantees of the 15th Amendment, the court may authorize the appointment of Federal examiners, may suspend the use of literacy tests and other similar devices, and may impose preclearance restrictions on all changes relating to voting or election processes. The amendment proposed by S. 1279 would authorize courts to grant similar relief to private parties in suits brought to protect voting rights in covered and noncovered jurisdictions.[40] The term which is used, "aggrieved person," is a commonly used phrase which appears throughout the United States Code. The words are used in the Civil Rights Acts of 1964 and 1968, and a similar expression is employed in the Administrative Procedure Act. An "aggrieved person" is any person injured by an act of discrimination. It may be an individual or an organization representing the interests of injured persons. See *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); and *NAACP* v. *Button*, 371 U.S. 415 (1963). In enacting remedial legislation, Congress has regularly established a dual enforcement mechanism. It has, on the one hand, given enforcement responsibility to a governmental agency, and on the other, has also provided remedies to private persons acting as a class or on their own behalf. The Committee concludes that it is sound policy to authorize private remedies to assist the process of enforcing voting rights.

Section 402 allows a court, in its discretion, to award attorneys' fees to a prevailing party in suits to enforce the voting guarantees of the Fourteenth and Fifteenth amendments, and statutes enacted under those amendments. This section is similar to provisions in Titles II and VII of the Civil Rights Act of 1964, which prohibit discrimination in public accommodations and employment, and to Section 403 of this act (the coverage of which is described below).[41] Such a provision is appropriate in voting rights cases because there, as in employment and public accomodations cases, and other civil rights cases, Congress depends heavily upon private citizens to enforce the fundamental rights involved. Fee awards are a necessary means of enabling private citizens to vindicate these Federal rights.

It is intended that the standards for awarding fees under sections 402 and 403 be generally the same as under the fee provisions of the 1964 Civil Rights Act. A party seeking to enforce the rights protected by the Constitutional clause or statute under which fees are authorized by these sections, if successful, "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises, Inc.* 390 U.S. 400, 402 (1968).[42] Such "private attorneys general" should not be deterred from bringing meritorious actions to vindicate the fundamental rights here involved by the prospect of having to pay their opponent's counsel fees

[40] Section 205 of S. 1279 also amends Section 3 to authorize courts to apply the Act's special remedies in suits brought to enforce the guarantees of the 14th Amendment. This amendment was adopted in part because the Committee is aware of the significant numbers of suits brought under the 14th Amendment to enforce the voting rights of Spanish-speaking citizens.

[41] The attorneys' fee provisions of Titles II and VII of the 1964 Civil Rights Act are codified at 42 U.S.C. § 2000a–3(b) and § 2000e–5(k).

[42] In the large majority of cases the party or parties seeking to enforce such rights will be the plaintiffs and/or plaintiff-intervenors. However, in the procedural posture of some cases (e.g. a declaratory judgment suit under Sec. 5 of the Voting Rights Act), the parties seeking to enforce such rights may be the defendants and/or defendant-intervenors.

should they lose. *Richardson* v. *Hotel Corporation of America*, 332 F. Supp. 519 (E.D. La. 1971), *aff'd*, 468 F. 2d 951 (5th Cir. 1972). However, such a party, if unsuccessful, should be assessed his opponent's fee where it is shown that his suit was frivolous, vexatious, or brought for harassment purposes. *United States Steel Corp.* v. *United States*, 385 F. Supp. 346 (W.D. Pa. 1974), *aff'd*, 9 E.P.D. ¶ 10,225 (3rd Cir. 1975). These provisions thus deter frivolous suits by authorizing an award of attorneys' fees against a party shown to have litigated in "bad faith" under the guise of attempting to enforce the Federal rights covered by sections 402 and 403. Similar standards have been followed not only in the Civil Rights Act of 1964, but in other statutes providing for attorneys' fees. *E.g.* the Water Pollution Control Act, 1972 *U.S. Code Cong. & Adm. News* 3747; the Marine Protection Act, *Id.* at 4249–50; and the Clean Air Act, Senate Report No. 91–1196, 91st Cong., 2d Sess., p. 438 (1970). *See also Hutchinson* v. *William Barry, Inc.*, 50 F. Supp. 292, 298, (D. Mass. 1943) (Fair Labor Standards Act).

In appropriate circumstances, counsel fees under sections 402 and 403 may be awarded pendente lite. *See Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974). Such awards are especially appropriate where a party has prevailed on an important matter in the course of litigation, even when he ultimately does not prevail on all issues. *See Bradley, supra; Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970). Moreover, for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief. *Parham* v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421 (8th Cir. 1970); *Richards* v. *Griffith Rubber Mills*, 300 F. Supp. 338 (D., Ore. 1969); *Thomas* v. *Honeybrook Mines, Inc.*, 428 F. 2d 981 (3d Cir. 1970); *Aspira of New York, Inc.* v. *Board of Education of the City of New York*, 65 F.R.D. 541 (S.D.N.Y. 1975).

In several hearings held over a period of years, the Committee has found that fee awards are essential if the Constitutional requirements and Federal statutes to which sections 402 and 403 apply are to be fully enforced.[43] We find that the effects of such fee awards are ancilliary and incident to securing compliance with these laws, and that fee awards are an integral part of the remedies necessary to obtain such compliance. Fee awards are therefore provided in cases covered by sections 402 and 403 in accordance with Congress' powers under, *inter alia*, the Fourteenth Amendment, Section 5. As with cases brought under 20 U.S.C. § 1617, the Emergency School Aid Act of 1972, defendants in these cases are frequently state or local bodies or state or local officials. In such cases it is intended that the attorneys' fees, like other items of costs, will be collected either from the official directly, from funds of his agency or under his control, or from the State or local government (whether or not the agency or government is a named party).

It is intended that the amount of fees awarded under sections 402 and 403 be governed by the same standards which prevail in other types of equally complex Federal litigation, and not be reduced because the rights involved may be nonpecuniary in nature. *Stanford*

[43] *See, e.g., Hearings on the Effect of Legal Fees on the Adequacy of Representation Before the Subcomm. on Representation of Citizen Interests of the Senate Comm. on the Judiciary*, 93rd Cong., 1st Sess., pt. III.

Daily v. *Zurcher*, 64 F.R.D. 680 (N.D. Cal. 1974); *Davis* v. *County of Los Angeles*, 8 E.P.D. ¶ 9444 (C.D. Cal. 1974); *Swann* v. *Charlotte-Mecklenberg Board of Education* (Civil No. 1947, W.D.N.C., order entered Feb. 24, 1975).

Section 403 allows a court, in its discretion, to award attorneys' fees to a prevailing party in suits to enforce the civil rights acts which Congress has passed since 1866. This section follows the language of section 402 of this Act, and of Titles II and VII of the 1964 Civil Rights Act. All of these acts depend heavily upon private enforcement, and fee awards are an essential remedy if private citizens are to have a meaningful opportunity to vindicate these important Congressional policies.[44]

Courts have been instructed, since the passage of our first civil rights laws, to use the broadest and most effective remedies available to achieve the goals of these laws, and these remedies have included awards of attorneys' fees as costs. The Civil Rights Act of 1866 directed courts to use whatever combination of federal, state, and common law is most suitable to enforce civil rights. 42 U.S.C. § 1988. In 1870 Congress passed three separate provisions mandating counsel fee awards to victims of certain election law violations. Enforcement Act of 1870, 16 Stat. 140.[45] One year after enacting that law, Congress directed that remedies provided in such laws should be available in all cases involving official violations of civil rights. Sec. 1, Ku Klux Klan Act of 1871 (predecessor of 42 U.S.C. § 1983).

In several recent civil rights laws, Congress has included the effective remedy of attorneys fees. Fee-shifting provisions have been successful in enabling vigorous enforcement of these laws. Before May 12, 1975, when the Supreme Court handed down its decision in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 95 S. Ct. 1612 (1975), many lower Federal courts followed these Congressional policies and exercised their traditional equity powers to award attorneys' fees under earlier civil rights laws as well.[46]

These pre-*Alyeska* decisions remedied a gap in the specific statutory provisions and restored an important historic remedy for civil rights violations. However, in *Alyeska*, the Supreme Court held that the federal courts did not have the power to grant fees to "private attorneys general," or private enforcers of civil rights laws, except under statutes whose language specifically authorizes such fee awards.

The *Alyeska* decision created an unexpected and anomalous gap in our civil rights laws whereby awards of fees are barred in the most fundamental civil rights cases. For instance, fees are now authorized in an employment discrimination suit under Title VII of the 1964 Civil Rights Act, but not in the same suit brought under 42 U.S.C. § 1981, which protects similar rights but involves fewer technical prerequisites to the filing of an action. Fees are allowed in a suit under

[44] As former Justice Tom Clark said, in a union democracy suit, "Not to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose. . . . Without counsel fees the grant of Federal jurisdiction is but an empty gesture . . ." *Hall* v. *Cole*, 412 U.S. 1 (1973), quoting 462 F. 2d 777, 780–81 (2d Cir. 1972).

[45] The causes of action established by these provisions were eliminated in 1894. 28 Stat. 36.

[46] These civil rights cases are too numerous to cite here. *See, e.g., Sims* v. *Amos*, 340 F. Supp. 691 (MD Ala.), *aff'd* 409 U.S. 942 (1972); *Stanford Daily* v. *Zurcher*, 366 F. Supp. 18 (N.D. Cal. 4973). Many of the relevant cases are collected in *Hearings on the Effect of Legal Fees, supra*, at pp. 888–1024, and 1049–50.

Title II of the 1964 Act challenging discrimination in a private restaurant, but not in suits under 42 U.S.C. § 1983 redressing violations of the Federal Constitution or laws by officials who are sworn to uphold the laws.

Section 403, like section 402, provides the specific statutory authorization required by the court in *Alyeska*. Provision for court awards of reasonable attorneys' fees to prevailing parties is as necessary under the provisions of §§ 1981–1988, and Title VI of the Civil Rights Act of 1964, §§ 2000d—2000d–4, as it is under other civil rights statutes which already specifically provide for such awards.[47] Section 403 is thus needed to achieve consistency in the Congressional policy of enabling private enforcement of important Federal rights.

The standards and conditions for awarding attorneys' fees under section 403 are intended to be the same as those under section 402. The discussion of those standards and conditions under section 402, *supra*, should thus be considered as incorporated here.

Section 404 of S. 1279 requires the Director of the Census to collect data on registration and voting by race or color, and national origin. Such data is to be collected for each national election in the covered jurisdictions and for such other elections in any areas, as designated by the U.S. Commission on Civil Rights. Reports of such surveys are to be transmitted to the Congress. The confidentiality and criminal penalties provisions which are normally applicable to Census data collection processes are also applicable to the surveys mandated by S. 1279 except that no one is to be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor) and no penalty shall be imposed for the failure or refusal to make such disclosures.

S. 1279 amends Section 5 of the Act to make clear in the statute the Attorney General's authority, upon good cause shown, to provide expedited consideration of Section 5 submissions during the 60 day period following their receipt. In a situation where such expedited consideration is being accorded, the statute is amended to allow the Attorney General to indicate affirmatively, before the running of the full 60-day period, that no objection will be made. However, the statute would further provide that the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the 60-day period. These amendments to Section 5 serve to codify the already existing expedited consideration procedures which the Department of Justice has established in its Section 5 regulations. 28 C.F.R. § 51.22. It is noted that, in codifying these procedures, the Committee is not in any way intending to cast doubt upon the legality of the Attorney General's regulations, as already promulgated. See, *e.g. Georgia* v. *United States*, 411 U.S. 526 (1973).

S. 1279, as adopted by the Committee, also conforms to Section 10 and Title III of the present Act to reflect the current state of the law and particularly the ratification of the 24th and 26th Amend-

[47] If a "'private attorney general,' vindicating a policy that Congress considered of the highest priority . . . were routinely forced to bear his own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts." *Newman* v. *Piggie Park Enterprises, Inc., supra*, at 402. *See also Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974); *Northcross* v. *Board of Education of the Memphis City Schools*, 412 U.S. 427 (1973).

ments. Title III of the current Act, which prohibits the denial of the right to vote of citizens 18 years of age and older in national, state and local elections, was passed by the Congress as part of the 1970 amendments. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court upheld the constitutionality of Title III insofar as it lowered the voting age to 18 for national elections. However, the Court held that Title III prohibition was not valid for state and local elections. Subsequently, in 1971, the 26th Amendment to the Constitution was ratified. That amendment, by prohibiting the denial or abridgment of the right to vote of persons 18 years of age and older by the United States or any State, accomplishes the end which Congress had sought to achieve by its enactment of Title III. The Committee's amendment to Title III deletes what are now unnecessary findings and prohibitions. The amendment retains, however, Title III's enforcement provisions, but modifies them to authorize Attorney General enforcement of the 26th Amendment.

The amendment to Section 10 is intended to conform that section to reflect the ratification of the 24th Amendment and the Supreme Court's decision in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), the latter having been decided after the 1965 enactment of Section 10. The 24th Amendment prohibits the denial or abridgment of the right to vote in Federal elections because of the failure to pay any poll or other tax. In *Harper*, *supra*, the Court held that it is a denial of the equal protection clause of the 14th Amendment for a state to deny the right to vote in state elections because of the failure to pay a poll tax. Section 10(b) is amended by adding Section 2 of the 24th Amendment to the other enforcement provisions, pursuant to which Congress directs the Attorney General to institute actions against poll tax requirements. Section 10(d) is deleted. That provision provides for the eligibility of voters in covered jurisdictions upon payment of current year poll taxes to either Federal examiners or local election officials. The 24th Amendment to the Constitution and the Supreme Court's decision interpreting the 14th Amendment now clearly prohibit the imposition of poll taxes for all elections.

The provisions of 11(c) of the Act are amended to reflect the recent addition to Congress of Delegates from Guam and the Virgin Islands. The amendment made by Section 406 of S. 1279 corrects what is apparently a typographical error which has appeared in the Act since the adoption of the 1970 amendments.

Analysis of the Bill

A. TITLE I

Title I of the bill amends the Voting Rights Act to extend certain provisions for an additional ten years and to make permanent the ban against certain prerequisites to voting.

Section 101

Sections 4 through 9, the temporary provisions of the Voting Rights Act of 1965, as they apply to covered jurisdictions, are extended for ten years. Essentially, Section 4 provides a nondiscretionary, automatic formula, or "trigger," by which states or their political subdivisions (collectively called jurisdictions) are covered, or made

subject to the Act's temporary remedies. Section 4 prohibits the use of "tests or devices" as a prerequisite to registering or voting in any jurisdiction that maintained such tests or devices on November 1, 1964 or November 1, 1968 *and* whose voter registration or turnout in the 1964 or 1968 presidential election was less than 50 percent of the voting age population.

Section 5 freezes the electoral laws and procedures of such jurisdictions as of November 1, 1964 or 1968, and prohibits enforcement of any changes in the covered jurisdictions unless there is certification by the United States Attorney General or the United States District Court for the District of Columbia that the changes are not discriminatory in purpose or effect. This process is often called "preclearance."

Sections 6 through 9 provide for, but do not require, the assignment of Federal examiners to "list" eligible persons for registration by state and local officials in the covered jurisdictions. These sections further permit the assignment of Federal observers to monitor and report on the conduct of elections in any jurisdictions which have been designated by the Attorney General for Federal examiners.

Section 102

This section is essentially a codification of the present procedures of the Justice Department. It simply says that the Attorney General or his designeee must inform and "provide an opportunity for consultation" with the appropriate officials of the affected state or political subdivision whenever, within a 45-day period after a submission, the Attorney General has determined that there is a probability that there will be an objection.

Section 103

This section establishes a permanent nationwide ban on literacy tests and other similar devices as a voting qualification or prerequisite to voting.

Under the provisions of the original 1965 Act, literacy tests and other devices were suspended in the several states and counties covered at the time of the original enactment, primarily in the southern part of the United States. In 1970, when the Congress extended the temporary provisions of the original 1965 enactment, it also established a temporary nationwide ban on such tests and devices in areas not subject to the suspension of the 1965 Act. This section would permanently prohibit the use of any literacy tests or devices as a prerequisite to voting in any Federal, state or local election in every jurisdiction in the United States, both covered and uncovered.

B. TITLE II

Title II of the bill expands the coverage of the Voting Rights Act to new geographic areas which meet certain criteria.

Section 201

The use of election and registration materials or assistance only in the English language is suspended in the new jurisdictions which are brought within coverage of the Act by operation of Sections 202 and 203 of this title. These newly covered jurisdictions may be exempted

from coverage under the Act, if they can establish before a three-judge District Court for the District of Columbia that English-only election and registration procedures or any other "tests or devices" were not used for the purpose or with the effect of denying the right to vote on account of race or color or in contravention of the guarantees of Section 4(f)(2), during the 10 years preceding the filing of the bail-out action. The phrase "on contravention of the guarantees of Section 4(f)(2)" refers to the prohibition of the denial or abridgment of the right to vote of any citizen because he is a member of a language minority group. Language minority group, as defined in this title, means minority persons who have a native language other than English and includes persons who are Asian American, American Indians, Alaskan Native or of Spanish heritage. The Attorney General may consent to a "bail-out" action if he determines that there has been no discriminatory purpose or effect in the use of English-only elections or any other "tests or devices" in the ten years prior to the filing of the action.

A jurisdiction currently subject to the special provisions of the Act may also be covered under the separate determinations made in this title. Exemption from coverage under the Act would require a jurisdiction to satisfy two differing requirements for bail-out.

Section 202

This subsection prescribes the conditions for determination of whether a jurisdiction is covered under the expansion amendments. The formula established requires certain factual determinations that are final when made and are not reviewable in court.

A jurisdiction is covered if:

(a) The Attorney General determines that a state or political subdivision maintained a "test or device" on November 1, 1972 as a qualification for voting; and

(b) The Director of the Census determines that less than 50 percent of the citizens of voting age residing in any state or political subdivision of a state were registered to vote on November 1, 1972, or voted in the presidential election of 1972. The vote in the presidential election of 1972 is the vote cast for presidential candidates. Where an entire state falls within this subsection, so does each and every political subdivision within that state.

Figures showing the probable effects of the bill upon various states and political subdivisions have been developed. (See Appendix C for a tentative list of coverage under this title.) Some of these figures represent preliminary estimates and projections and are, therefore, subject to change when determinations are finally made by the Bureau of Census.

Section 203

All of the special remedies of the Voting Rights Act are extended to citizens of language minority groups based on their right to vote under the Fourteenth and Fifteenth Amendments. The Congress finds that these minority citizens are from environments in which the dominant language is other than English. These language minorities experience voting discrimination and exclusion caused by unequal educational opportunities and by acts of physical, economic, and political intimidation.

States and local governments are prohibited from enacting any voting procedure to deny or abridge the right to vote of any citizen because he is a member of a language minority group. To implement this prohibition within the context of the Voting Rights Act, a jurisdiction is determined to employ a "test or device" if:

(a) The Attorney General determines that a state or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, to eligible voters only in the English language. The factual determinations of the Attorney General are final when made and are not reviewable in any court; and

(b) The Director of the Census determines that more than five per centum of the citizens of voting age residing in any state or political subdivision are members of a single lanugage minority. In making determinations under this subsection, the five per centum coverage criteria must be met by a single language minority group, and not by an aggregate population of more than one group. Therefore, in any specific jurisdiction, the American Indian population and the Spanish heritage population cannot be added together to meet the five per centum test. Census determinations are to be based on the proportion of voting age citizens of each single language minority group in the population. Citizens data is used to avoid any question on the proportion of citizens which are actually represented in the designated language minority groups. The determination of the Director of the Census under this subsection is effective upon publication in the Federal Register and is not subject to review in any court.

Whenever any jurisdiction covered under this title provides to the public any registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots, it must provide them in the language of the minority group which triggered coverage. States and political subdivisions would be in compliance with the bilingual procedures affecting the language minorities whose language has no written form or is "extinct" if they provide oral bilingual assistance or assistance in English respectively. Of course, the implementation of bilingual procedures in covered jurisdictions amount to changes relating to voting would therefore be subject to preclearance by the Attorney General or the district court for the District of Columbia.

Section 204

The electoral laws and procedures of newly covered jurisdictions are frozen as of November 1, 1972. Any change relating to voting in these jurisdictions cannot be enforced unless there is certification by the United States Attorney General of the United States District Court for the District of Columbia that the change is not discriminatory in purpose or effect.

Section 205

The Fourteenth Amendment is added as a constitutional basis for these voting rights amendments. The Department of Justice and the United States Commission on Civil Rights have both expressed the

position that all persons defined in this title as "language minorities" are members of a "race or color" group protected under the Fifteenth Amendment. However, the enactment of the expansion amendments under the authority of the Fourteenth as well as the Fifteenth Amendment, would doubly insure the constitutional basis for the Act.

Section 206

The operative provisions of Sections 2, 3, 4, 5, 6 and 13 of the Voting Rights Act are amended to insure the protection of the voting rights of language minority citizens.

Section 207

The classification "language minorities" or a "language minority group" is defined as persons who are Asian Americans, American Indians, Alaskan Natives or of Spanish heritage. Each of these is a term of usage or a specific identifier employed by the Bureau of the Census and each refers to specific classes of persons.

Provides for the separability of the amendments made by this title from the existing provisions of the Voting Rights Act, as amended. The separability clause is of particular importance because it should be the demonstrable intent of Congress that the extension of the Voting Rights Act of 1965 not be impaired by a challenge to the constitutionality of the provisions of this title, which would expand the coverage of the Act. Similarly, the separability clause demonstrates that it is the intent of Congress that valid portions of the amendments expanding coverage of the Voting Rights Act be separable from any portions of the expansion amendments which might be held to be unconstitutional.

C. TITLE III

Title III of the bill would prohibit, for 10 years, the use of English-only registration and election materials in certain jurisdictions, without setting into operation all of the stringent remedies of the Voting Rights Act.

Section 301

Although in some areas language minority group citizens do not appear to suffer severe discrimination, they do experience high illiteracy in the English language, frequently as a result of unequal educational opportunities. The conduct of elections only in English in these jurisdictions, therefore, operates as an impediment to their access to the franchise.

For a period of 10 years, state and local officials are prohibited from providing English-only registration and election materials if (i) more than five percent of the citizens of voting age in the jurisdiction are of a single language minority and (ii) the illiteracy rate of the language minority group citizens is higher than the national illiteracy rate for all persons of voting age.

Illiteracy is defined as the failure to complete the fifth primary grade. Any jurisdiction with five or less percent language minority citizen population is not covered by this Section. The determination of coverage is to be made by the Director of the Census and is not subject to review in any court. A tentative list of the areas covered by this title is attached as Appendix D.

Whenever any jurisdiction covered under this title provides official registration or election materials, those materials must be provided in the language of the applicable language minority group as well as in English.

As in Title II, states and political subdivisions would be in compliance with the bilingual procedures affecting the language minorities whose language has no written form or is "extinct" if they provide oral bilingual assistance or assistance in English respectively.

Any jurisdiction subject to this title may be removed from coverage if it can demonstrate before the United States District Court for the District of Columbia that the illiteracy rate among voting age members of the language minority group which triggered its coverage is less than the national illiteracy rate. This provision would provide covered jurisdictions with an incentive to educate persons who are members of pertinent language minority groups.

The term "language minorities" or "language minority group" is defined as persons who are American Indians, Asian Americans. Alaskan Native or of Spanish heritage.

Section 302

Sections of the Act are renumbered due to addition of this title.

Section 303

Section 203 is amended to authorize Attorney General suits whenever he believes that there has been a violation of the prohibitions of Title III. Currently, such suits are authorized by Section 203 for violations of the nationwide literacy test suspension and the residency requirements established for Federal elections.

Section 304

Section 204 is amended to authorize criminal penalties whenever there are violations of the prohibitions of Title III. Currently, such penalties are authorized by Section 204 for violations of the nationwide literacy test suspension and the residency requirements established for Federal elections.

D. TITLE IV

Title IV of S. 1279 contains several amendments to facilitate enforcement of the Voting Rights Act.

Section 401

Section 3 of the Voting Rights Act provides that the court, in a case brought by the Attorney General to enforce the 15th Amendment (and 14th Amendment under Title II amendments), may grant the special remedies of the Voting Rights Act, i.e., Federal registrars, observers and preclearance of voting changes. The amendment to Section 3 would allow a court, in a suit brought by a private party, to grant the Act's special remedies. The sole consequence of this amendment is to broaden the scope of equitable relief which may be requested and granted when such litigation has been filed by private parties.

Section 402

The proposed amendment would authorize the payment of attorney's fees to prevailing parties, other than the United States, in suits

to enforce the voting guarantees of the 14th or 15th Amendment. A similar attorney's fees provision is already contained in Title II and Title VII of the Civil Rights Act of 1964 and in Section 718 of the Emergency School Aid Act of 1972. The proposed amendment follows the language as it appears in such existing legislation.

Section 403

The proposed amendment would authorize the payment of attorneys' fees to prevailing parties, other than the United States, in suits brought under Sections 1977, 1978, 1979, 1980, and 1981 of the revised statutes, or title VI of the Civil Rights Act of 1964.

Section 404

The Director of the Census is directed to collect, after January 1, 1976, following each congressional election, registration and voting statistics by race or color and national origin in every jurisdiction covered by the Voting Rights Act. The United States Commission on Civil Rights may designate the collection of data in other specific areas for any election.

Section 405

Section 11(c) of the Voting Rights Act provides for criminal penalties against those who knowingly and willfully provide false information for establishing voting eligibility. Section 404 is a technical amendment to add the elections of the Delegates of Guam and the Virgin Islands to the list of elections covered by the criminal penalties section. When the Act was passed in 1965, no Delegates from these areas were in Congress.

Section 406

Section 5 of the Voting Rights Act currently requires all covered jurisdictions to submit changes in voting laws and practices to the Attorney General for preclearance prior to their implementation. The statute currently gives the Attorney General 60 days in which to file an objection to the voting change. Section 5 regulations now provide that for good cause shown, the Attorney General can permit enforcement of the voting change within the 60 day period, subject to reexamination upon the receipt of additional evidence during the remainder of the 60 day period.

The purpose of this amendment is to codify the existing regulation enabling the Attorney General to affirmatively indicate, under the circumstances set forth in the regulations, that he will not object to a voting change under Section 5 prior to the expiration of the 60 day period.

Section 407

Section 203 of the Voting Rights Act is amended to correct a typographical error in the Code citation, which has appeared in the Act since the 1970 amendments.

Section 408

Title III of the Voting Rights Act prohibits the denial to vote of citizens 18 years of age and older in national, state and local elections. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court, while upholding the lowering of the voting age for national elections,

held that the prohibition was invalid for state and local elections. Subsequently, the 26th Amendment to the Constitution was ratified which accomplishes the end Congress sought to achieve. The amendment deletes unnecessary findings and prohibitions in Title III but retains its enforcement provisions while modifying them to authorize Attorney General enforcement of the 26th Amendment.

Section 409

The amendment to section 10 is intended to conform that section to reflect the ratification of the 24th Amendment and the Supreme Court's decision in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), that denial of the right to vote because of the failure to pay a poll tax was a denial of equal protection. Section 10(b) is amended by adding Section 2 of the 24th Amendment to the other enforcement provisions pursuant to which Congress directs the Attorney General to institute action against poll tax requirements. Section 10(d) is deleted. The 24th Amendment, and the Supreme Court decision interpreting the 14th Amendment now clearly prohibit the imposition of poll taxes for all elections.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

VOTING RIGHTS ACT OF 1965

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes

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

TITLE I—VOTING RIGHTS

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)2.*

SEC. 3. (a) Whenever the Attorney General *or an aggrieved person* institutes a proceeding under any statute to enforce the *voting* guarantees of the *fourteenth or* fifteenth amendment, in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the *voting* guarantees of the *fourteenth or* fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such *voting* guarantees or (2) as part of any final judgment if the court finds that violations of the *fourteenth or* fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgment of the right to vote on account of race or color, *or in contravention of the voting guarantees set forth in section 4(f)(2), (1)* have been few in number and have

been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General *or an aggrieved person* under any statute to enforce the *voting* guarantees of the *fourteenth or* fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, *or in contravention of the voting guarantees set forth in section 4(f)(2)*, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General *or an aggrieved person* under any statute to enforce the *voting* guarantees of the *fourteenth or* fifteenth amendment in any State or political subdivision the court finds that violations of the *fourteenth or* fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, *or in contravention of the voting guarantees set forth in section 4(f)(2): Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that either the court's finding or the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under *the first two sentences* of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the [ten] *twenty* years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of [ten] *twenty* years after the entry of a final

judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. *No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), through the use of tests or devices have occurred anywhere in the territory of such plaintiff.*

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)*.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the [ten] *twenty* years preceding the filing of [the action] *an action under the first sentence of this subsection* for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing

therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. *On or after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the presidential election of November 1972.*

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

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

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)* if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under section 4(c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than 5 per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: Provided, That (1) where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish bilingual oral instructions, assistance, or other information relating to registration and voting; (2) The provisions of this subsection shall not apply if the language of the minority is extinct. For the purposes of this provision, a language is extinct if there are no individuals known to have been raised with it as the primary language.".

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determina-

tions made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, *or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,* such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to a vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)*, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, [except that neither] *or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor* the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. *In carrying out the provisions of this section, whenever the Attorney General or his designee determines that there is a probability that he will object to the voting qualification or prerequisite to voting or standard practice or procedure with respect to voting which has been submitted, he shall, within 45 days of such submission, provide an opportunity for consultation with the appropriate State or political subdivision thereof. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.* Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3 (a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)*, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the *fourteenth or* fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the *fourteenth or* fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the *fourteenth or* fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

* * * * * * *

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment [and], section 2 of the fifteenth amendment *and section 2 of the twenty-fourth amendment*, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll

tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purpose of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination therefore, and to cause the case to be in every way expedited.

[(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered, under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.]

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives,

Delegate from the District of Columbia, *Guam, or the Virgin Islands*, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * * * *

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color *or in contravention of the guarantees set forth in section 4(f)(2)* in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 or this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

* * * * * * *

TITLE II—SUPPLEMENTAL PROVISIONS

APPLICATION OF PROHIBITION TO OTHER STATES

SEC. 201. (a) [Prior to August 6, 1975, no,] *No* citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State [as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4 (b) of this Act].

* * * * * * *

BILINGUAL ELECTION REQUIREMENTS

SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than five percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group of higher than the national illiteracy rate: Provided, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: Provided, that (1) where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish bilingual oral instructions, assistance, or other information relating to registration and voting; (2) The provisions of this subsection shall not apply if the language of the minority is extinct. For the purposes of this provision, a language is extinct if there are no individuals known to have been raised with it as the primary language.

(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for the District of Columbia for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

JUDICIAL RELIEF

SEC. [203] *204.* Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, *or 203*, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section [2282] *2284* of title 28 of the United States Code and any appeal shall be to the Supreme Court.

PENALTY

SEC. [204] *205.* Whoever shall deprive or attempt to deprive any person of any right secured by section 201 [or 202], *202 or 203* of

this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEPARABILITY

SEC. [205] *206.* If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

Sec. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1976; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of persons of voting age by race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

[TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

[DECLARATION AND FINDINGS

[SEC. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

[(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

[(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

[(3) does not bear a reasonable relationship to any compelling State interest.

[(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

[PROHIBITION

[SEC. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

[ENFORCEMENT

[SEC. 303. (a)(1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this title.

[(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

[(b) Whoever shall deny or attempt to deny any person of any right secured by this title shall be fined not more than $5,000 or imprisoned not more than five years, or both.

[DEFINITION

[SEC. 304. As used in this title the term "State" includes the District of Columbia.

[EFFECTIVE DATE

[SEC. 305. The provisions of title III shall take effect with respect to any primary or election held on or after January 1, 1971.]

TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

SEC. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284

of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITION

SEC. 302. As used in this Act, the term "State" includes the District of Columbia.

COST OF LEGISLATION

According to estimates provided by the Department of Justice, this bill would have the effect of increasing enforcement expenditures beyond current enforcement outlays by about $200,000 to $300,000 in incremental outlays over the next ten years.

Rough estimates which have been provided by the Director of the Census indicate that the cost of each of the surveys which has been mandated by this bill, will range from $45 to $55 million. It is expected that approximately five such surveys will be conducted, with one survey to be conducted every two years over the next ten year period. The Subcommittee believes that such costs, to be spread out over an approximate ten year time period, are modest (It is noted that the provisions of S. 1279 do not provide for any authorizations). Presumably, the Bureau of the Census will be able to carry out its mandate under this bill within the confines of its regular budgetary appropriations. If increased authorizations and appropriations are required, then requests to the appropriate committee(s) can be made. At such time, more precise estimates would be available and such estimated expenditures would again be reviewed in terms of their impact on the national economy.

APPENDIX A: STATES AND SUBDIVISIONS COVERED BY THE VOTING RIGHTS ACT OF 1965

1965

Alaska.
Alabama.
Georgia.
Louisiana.
Mississippi.
South Carolina.
Virginia.
North Carolina:
Anson County, Beaufort County, Bertie County, Bladen County, Camden County, Caswell County, Chowan County, Cleveland County, Craven County, Cumberland County, Edgecombe County, Franklin County, Gaston County, Gates County, Granville County, Greene County, Guilford County, Halifax County, Harnett County, Hertford County, Hoke County, Lee County, Lenoir County, Martin County, Nash County, Northampton County, Onslow County, Pasquotank County, Perquimans County, Person County, Pitt County, Robeson County, Rockingham County, Scotland County, Union County, Vance County, Wake County,[1] Washington County, Wayne County, Wilson County.
Arizona:
Apache County,[1] Coconino County, Navajo County,[1] Yuma County.
Idaho: Elmore County.[1]
Hawaii: Honolulu.

APPENDIX B: STATES AND SUBDIVISIONS COVERED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1970

1970

Coverage continued as to Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, the 39 North Carolina counties, and Honolulu County, Hawaii. Newly covered jurisdictions were:
Alaska:[1]
Anchorage Election District, Kodiak Election District, Aleutian Islands Election District, Fairbanks-Fort Yukon Election District.
Arizona:
Apache County,[1] Cochise County, Coconino County,[1] Mohave County, Navajo County,[1] Pima County, Pinal County, Santa Cruz County.
California:
Monterey County, Yuba County.
Connecticut:
Southbury, Groton, Mansfield.
Idaho: Elmore County.[1]
New Hampshire:
Rindge, Millsfield, Pinkhams Grant, Stewardstown, Stratford, Benton, Antrim, Boscawen, Newington, Unity.
New York:
Bronx County, Kings County, New York County.
Maine:
Caswell plantation, Limestone, Ludlow, Nashville plantation, Reed Plantation, Woodland, Unorg. Terr. of Connor, New Gloucester, Sullivan, Winter Harbor, Cheisea, Somerville plantation, Carroll plantation, Charleston, Webster plantation, Waldo, Beddington, Cutler.
Massachusetts:
Bourne, Sandwich, Sunderland, Amherst, Belchertown, Ayer, Shirley, Wrentham, Harvard.
Wyoming: Campbell County.

[1] Obtained exemption via Section 4(a) lawsuit.

APPENDIX C

TITLE II COVERAGE—JURISDICTIONS IN WHICH MORE THAN 5 PERCENT OF THE POPULATION ARE LANGUAGE MINORITY CITIZENS AND WHICH HAD LESS THAN 50 PERCENT VOTER PARTICIPATION IN 1972

[In percent]

	Citizens voting 1972	Spanish Heritage/VAP 1970
I. SPANISH HERITAGE		
Arizona:		
Apache [1]	36.7	6.9
Cochise [1]	43.9	24.6
Coconino [1]	49.5	12.4
Mohave [1]	47.4	5.5
Navajo [1]	41.7	10.1
Pima [1]	49.7	18.4
Pinal [1]	38.5	30.2
Yuma [1]	38.5	19.5
California:		
Kings	45.4	20.1
Merced	49.7	19.4
Yuba [1]	44.3	5.9
Colorado: El Paso	45.5	7.2
Florida:		
Collier	47.9	6.2
Hardee	40.3	7.9
Hendry	44.8	5.2
Hillsborough	43.5	9.6
Monroe	47.8	12.5
New Mexico:		
Curry	42.1	14.3
McKinley	42.9	20.2
Otero	43.7	20.7
New York:		
Bronx [1]	46.0	16.9
Kings [1]	46.3	6.7
Texas: Statewide	46.2	13.9

	Citizens voting 1972	Indian/VAP 1970
II. AMERICAN INDIAN		
Arizona:		
Apache [2]	36.7	70.1
Coconino [2]	49.5	18.6
Navajo [2]	41.7	42.8
Pinal [2]	38.5	8.1
New Mexico: McKinley	42.9	55.4
North Carolina:		
Hoke [2]	34.9	9.1
Jackson	46.6	7.6
Robeson [2]	35.8	28.3
Swain	49.5	15.0
Oklahoma:		
Choctaw	47.7	6.0
McCurtain	42.7	6.0
South Dakota:		
Shannon	35.3	80.3
Todd	47.9	60.5
Utah: San Juan	48.3	40.14
Virginia: Charles City [2]	47.2	8.9

	Citizens voting 1972	Total population 1970
III. ALASKAN NATIVES (ALEUTIANS, ESKIMOS, AND AMERICAN INDIANS IN ALASKA)		
Alaska: Statewide	48.9	8.64

IV. ASIAN AMERICAN

Complete data is not yet available for coverage for Asian Americans. Preliminary figures, however, indicate that very few jurisdictions have more than 5 percent Asian American population.

[1] Covered by 1970 amendments.
[2] Districts already covered by VRA.

APPENDIX D—TITLE III COVERAGE

A. SPANISH HERITAGE

Arizona: Statewide (14 counties).
California: Alameda, Amador, Colusa, Contra Cosa, Fresno, Imperial, Kern, Kings, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra Solano, Sonoma, Sutter, Tulare, Tuolumne, Ventura, Yolo, Yuba.
Connecticut: Bridgeport.
Colorado: Adams, Alamosa, Archuleta, Bent, Boulder, Chaffee, Clear Creek, Conejos, Costella, Crowley, Delta, Denver, Eagle, El Paso, Fremont, Huerfano, Jackson, Lake, La Plata, Las Animas, Mesa, Moffat, Montezuma, Montrose, Morgan, Otero, Prowers, Pueblo, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Weld.
Florida: Collier, Dade, Hardee, Hendry, Hillsborough, Monroe, Glades.
Idaho: Cassia.
Kansas: Finney.
Louisiana: St. Bernard.
Nevada, Elko, Humboldt, Lander, Mineral, Nye, Pershing, White Pine.
New Mexico: Statewide (32 counties).
New York: Bronx, Kings, New York County.
Oklahoma: Harmon, Tillman.
Oregon: Marion.
Texas: Andrews, Aransas, Atascosa, Bailey, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Borden, Brazoria, Brazos, Brewster, Briscoe, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Castro, Cochran, Coke, Colorado, Comal, Concho, Coryell, Crane, Crockett, Crosby, Culberson.
Dallas, Dawson, Deaf Smith, De Witt, Dickens, Dimmit, Duval, Ector, Edwards, Ellis, El Paso, Falls, Fisher, Floyd, Foard, Fort Bend, Frio, Gaines, Galveston, Garza, Gilliespie, Glasscock, Goliad, Gonzales, Grimes, Guadalupe, Hale, Hall, Hansford, Harris, Haskell, Hays, Hemphill, Hidalgo, Hockley, Howard, Hudspeth, Irion, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Jones Karnes, Kendall, Kenedy Kent, Kerr, Kimble, Kinney, Kleberg, Knox.
Lamb, Lampasas, La Salle, Live Oak, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mitchell, Moore, Motley, Nolan, Nueces, Parmer, Pecos, Potter, Presidio, Reagan, Real, Reeves, Refugio, Robertson, Runnels, San Patricio, San Saba, Schleicher, Scurry, Sherman, Starr, Sterling, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis.
Upton, Uvalde, Val Verde, Victoria, Ward, Webb, Wharton, Willacy, Williamson, Wilson, Winkler, Yoakum, Zapata, Zavala.
Washington: Adams, Columbia, Grant, Yakima.
Wyoming: Carbon, Laramie, Sweetwater, Washakie.

B. AMERICAN INDIANS

Arizona: Apache, Coconino, Gila, Graham, Navajo, Pinal.
California: Inyo.
Colorado: Montezuma.
Florida: Glades.
Idaho: Bingham.
Minnesota: Beltrami, Cass.
Mississippi: Neshoba.
Montana: Big Horn, Blaine, Glacier, Lake, Roosevelt, Rosebud, Valley.
Nebraska: Thurston.
Nevada: Elko.
New Mexico: McKinley, Rio Arriba, Sandoval, San Juan, Taos, Valencia.
North Carolina: Hoke, Jackson, Robeson, Swain.
North Dakota: Benson, Mountrail, Rolette, Sioux.
Oklahoma: Adair, Blaine, Caddo, Choctaw Cherokee, Coal, Craig, Delaware, Hughes, Johnston, Latimer, McCurtain, McIntosh, Mayes, Muskegee, Okfuskee, Osage, Ottawa, Rogers, Pushmataha, Seminole, Sequoyah.
Oregon: Jefferson.
South Dakota: Bennett, Buffalo, Corson, Lyman, Mellette, Shannon, Walworth,

Washabaugh.
Utah: San Juan, Uintah.
Virginia: Charles City.
Washington: Ferry, Okanegan, Stevens.
Wyoming: Fremont.

C. ALASKAN NATIVES

Alaska: Juneau, Ketchikan, Kuskokwim, Prince of Wales, Sitka, Skagway-Yakutat, Southeast Fairbanks, Upper Yukon, Valdes-Chitna-Whitier, Wrangell-Petersburg, Yukon-Koyukuk.
Aleutian Islands, Bristol Bay Division, Kodiak.
Barrow, Bethel, Kobuk, Kuskokwim, Nome, Wade Hampton.

D. ASIAN AMERICANS

California: San Francisco County.
Hawaii: Honolulu County.

APPENDIX E

JUNE 27, 1975.

Hon. J. STANLEY POTTINGER,
Assistant Attorney General, Civil Rights Division,
U.S. Department of Justice, Washington, D.C.

DEAR MR. POTTINGER: Certain questions have arisen concerning the approaches necessary for compliance with Title III of S. 1279 and H.R. 6219. One county official, for example, has asserted that Title III requires his office to send out bi-lingual materials to *all* registered voters in his jurisdiction, including those citizens who clearly prefer English language materials. This interpretation seems unnecessarily restrictive, and it is my feeling that less costly schemes could be devised to comply with Title III.

One possibility suggested to me is as follows:

1. For future registrants, each person would indicate a language preference at the time he or she registers, with the understanding that this choice could be changed at any time. All election materials would be supplied in the chosen language.

2. For present registrants, that county registrar would send post cards to all registrants in both English and the appropriate minority language, asking them to indicate a language preference for election materials.

This plan is sketchy, obviously, and I am assuming that all drafting and logistical problems could be worked out. It is suggested as only an alternative approach that would still satisfy the requirements of Title III.

As the official charged with enforcing Title III, should it be enacted, your opinion on these questions would be most helpful. Any thoughts you have on these matters would, of course, be appreciated, but please answer specifically:

(a) Is it necessary under Title III for a state or political subdivision to supply *each* registered voter with bi-lingual materials, or is it sufficient if the citizens needing bi-lingual materials could be "targeted"?

(b) Would the plan I mention above satisfy the requirements of Title III?

(c) Would you suggest any other approaches for implementation of Title III?

Thank you for your assistance on this matter. Your office has been most helpful to the Subcommittee these past several months, and I am grateful.

Sincerely,

JOHN V. TUNNEY, *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, D.C., July 8, 1975.

Hon. JOHN V. TUNNEY,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN TUNNEY: This is in response to your letter of June 27, 1975 regarding the implementation of Title III of S. 1279. Please excuse my delay in responding.

Title III provides in relevant part that:

> (c) Whenever any State or political Subdivision subject to the prohibition of subsection (b) of this Section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.

I am in agreement with your conclusion that the language of Title III does not require election officials to provide the specified election and registration materials bilingually to each registered voter regardless of that voter's language preference. What Title III would appear to require is that each registered voter have equal access to the specified materials in whichever language designated that he prefers.

Thus, in a covered jurisdiction, a system for the dissemination of election and registration materials which guarantees that a Spanish speaking voter, for example, would receive his or her election or registration materials in Spanish and in the same fashion as English speaking individuals, would, in my judgment meet the requirements of Title III.

It is difficult to discuss hypothetical methods of implementation of Title III in the abstract, and there are likely to be many different alternatives devised to carry out the purposes of this Title. I believe however that an acceptable approach generally patterned on the plan outlined in year letter could be devised. It is my view that a system which is designed to ensure access to bilingual materials, and which does not place an unequal burden upon those voters requiring information and materials in a language other than English, would meet the requirements of Title III.

I hope that this information is of assistance to you.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

MINORITY VIEWS

Individual Views of Senator Roman L. Hruska to S. 1279

I have long been an advocate of civil rights legislation during my membership in the Senate. In 1965 I supported the original Voting Rights Act and in 1970 supported the proposal to apply this Act on a nationwide basis. Nevertheless, I do not support S. 1279 as reported from Committee as it greatly expands the original coverage of this Act and extends its provisions for another 10 years.

The results under the 1965 Act were impressive, and all thoughtful men recognize that the Act served the extraordinary purposes for which it was enacted. It must also be recognized, however, that the facts and circumstances for which the Act was a response have changed dramatically 10 years after its original enactment.

When the Act was passed in 1965 it was done so with the thought that it was a temporary measure designed to apply unusual remedies to a few States of the Union where voting discrimination seemed prevalent. The Act's provisions were a departure, I believe, from the general rules of good legislation in that they produced a troublesome precedent of Federal interference in State matters. This departure was tolerated by this Senator, and by at least some others in this body, in the belief that the discrimination which existed at that time was of the proportion that serious remedies were required.

Ten years have now passed since the Act was implemented. A review of the voter registration figures of the six Southern States originally covered under the 1965 Act indicate a tremendous increase in minority voter registration, in some cases the totals being higher than in many States of the Union.

Nevertheless, the legislation as presently drafted seems to ignore the reversal of discriminatory practices in those States and their large gains in voter registration. Under the terms of the bill, the six States originally covered would continue to be covered for an additional 10 years no matter how successful they are in removing all vestiges of discrimination. I do not believe the regional onus which these States have been under for the past few years should be continued in view of their performance in the past decade.

While I do not favor the extension of this Act in the form contemplated by S. 1279, I would find it less objectionable if the extension was for a period of 5 years rather than the proposed 10 years. In keeping with the spirit of the initial Act and the 1970 amendment, a 5-year extension would provide Congress more flexibility to automatically review the changing circumstances of voter registration.

In light of the advances made in the past 10 years it would seem to be better policy to provide an additional review in the not so distant future at which time Congress could determine what additions or extensions should be made as to best improve voter registration. This is so particularly in light of the fact the present danger of discrimination in the States covered by the Act is presently considerably less than it was in 1970.

I am also concerned with the extension of the Act into the area of language minorities. As I have indicated, it is my thought that legislation of this nature should be employed only in those extraordinary instances where grevious wrongs exist for which there are not other remedies.

The strongest argument made in favor of such extension is the indication that in some areas of this country the voter turnout level of this minority has been at a low percentage level. It should be noted, I believe, that a low voter turnout is often the result of factors other than discrimination. For example, in the 1974 Presidential election overall voter turnout, across the country, was considerably lower than 50 percent.

It is my thought that a strong showing should be made of actual discriminatory practices, in addition to low voter turnout, before the drastic step is taken to extend this legislation to language minorities. The record which has been compiled on this subject does not convince me that the alleged discrimination against the non-English-speaking individuals covered by S. 1279 is of sufficient weight to justify the application of the Voting Rights Act.

It is with these thoughts in mind that I have voted not to report S. 1279 to the Senate.

Roman L. Hruska,
U.S. Senator.

SEPARATE VIEWS OF SENATORS EASTLAND, McCLELLAN, THURMOND, AND WILLIAM L. SCOTT

All of the undersigned recognize that the right to vote is an indispensable characteristic of a functioning democracy and fully support the provisions of the 15th amendment that no citizen shall be denied the right to vote because of race or color or previous condition of servitude. We also feel that our republican form of Government cannot reach its full potential without the right of participation in the affairs of Government by all of our citizens, but we do not believe that the temporary provisions of the Voting Rights Act of 1965 should be extended for an additional 10 years and are opposed to punitive legislation directed against States because of past wrongs dating back as far as the Civil War. Under the permanent portions of the Voting Rights Act the Attorney General is authorized to take positive action to eliminate any violation of the 15th amendment and may retain jurisdiction to assure that no citizen is denied the right to vote because of his race or color, including the right to appoint Federal examiners. However, the burden of proof of wrongdoing under the permanent legislation rests with the Government, as it should, but the portions of the legislation to be extended assumes wrong doing and shifts the burden of proof as to the covered States to the States to prove that they have not been guilty of any violation of an individual's right to vote, a burden almost impossible to achieve.

The primary provisions of the act scheduled to expire August 6, 1975, are sections 4 and 5. These contain the triggering provision indicating that the temporary provisions of the act apply to any State which maintained any test or devise on November 1, 1964, and with respect to which the Director of the Census determines that less than 50 percentum of the persons of voting are residing in a covered State or political subdivision were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the Presidential election of 1964. In our view the base date is of little evidential value and we do not believe it furnishes an objective standard for current and prospective enforcement of the 15th amendment. All of us would support a voting rights law applying equally to all citizens throughout the country in which the presumptions were the same for all States and political subdivisions, but believe it is unfair to make the States covered by the temporary legislation assume the burden of proof of their innocence of any violation of voting rights while the Government must prove violations on behalf of the States and political subdivisions in the permanent legislation. This is a double standard and contrary to general Federal law.

In summary, the Southern States covered by the 1965 act have made significant gains that deserve recognition and encouragement rather than 10 more years of punitive sanctions. More minority citizens are registered, voting, and holding office in these States than at any time in American history. Congress should recognize this and respond accordingly. For these reasons we respectfully submit that sections 4 and 5 should be allowed to expire on August 6, 1975.

JAMES O. EASTLAND.
JOHN L. MCCLELLAN.
STROM THURMOND.
WILLIAM L. SCOTT.

○

FOR IMMEDIATE RELEASE AUGUST 6, 1975

OFFICE OF THE WHITE HOUSE PRESS SECRETARY"

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
AT THE SIGNING OF
THE VOTING RIGHTS ACT

THE ROSE GARDEN

AT 12:09 P.M. EDT

THE PRESIDENT: Mr. Vice President, distinguished members of the Congress, and other distinguished guests:

I am very pleased to sign today H.R. 6219, which extends, as well as broadens, the provisions of the Voting Rights Act of 1965.

The right to vote is at the very foundation of our American system and nothing must interfere with this very precious right. Today is the tenth anniversary of the signing by President Johnson of the Voting Rights Act of 1965, which I supported as a member of the House of Representatives.

In the past decade the voting rights of millions and millions of Americans have been protected and our system of government has been strengthened immeasurably. The bill I will sign today extends the temporary provisions of the Act for seven more years and broadens the provisions to bar discrimination against Spanish-speaking Americans, American Indians, Alaskan natives and Asian Americans.

Further, this bill will permit private citizens, as well as the Attorney General, to initiate suits to protect the voting rights of citizens in any State where discrimination occurs. There must be no question whatsoever about the right of each eligible American, each eligible citizen to participate in our elective process. The extension of this Act will help to insure that right.

I thank the members of the Congress, I thank their staffs and I thank all the others who have been helpful in making this signing possible.

END (AT 12:12 P.M. EDT)

H. R. 6219

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To amend the Voting Rights Act of 1965 to extend certain provisions for an additional seven years, to make permanent the ban against certain prerequisites to voting, and for other purposes.

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

TITLE I

SEC. 101. Section 4(a) of the Voting Rights Act of 1965 is amended by striking out "ten" each time it appears and inserting in lieu thereof "seventeen".

SEC. 102. Section 201(a) of the Voting Rights Act of 1965 is amended by—

(1) striking out "Prior to August 6, 1975, no" and inserting "No" in lieu thereof; and

(2) striking out "as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act." and inserting in lieu thereof a period.

TITLE II

SEC. 201. Section 4(a) of the Voting Rights Act of 1965 is amended by—

(1) inserting immediately after "determinations have been made under" the following: "the first two sentences of";

(2) adding at the end of the first paragraph thereof the following new sentence: "No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) through the use of tests or devices have occurred anywhere in the territory of such plaintiff.";

(3) striking out "the action" in the third paragraph thereof, and by inserting in lieu thereof "an action under the first sentence of this subsection"; and

(4) inserting immediately after the third paragraph thereof the following new paragraph:

"If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), he shall consent to the entry of such judgment.".

SEC. 202. Section 4(b) of the Voting Rights Act of 1965 is amended by adding at the end of the first paragraph thereof the following: "On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.".

SEC. 203. Section 4 of the Voting Rights Act of 1965 is amended by adding the following new subsection:

"(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

"(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

"(3) In addition to the meaning given the term under section 4(c), the term 'test or device' shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing

in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term 'test or device', as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

"(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.".

SEC. 204. Section 5 of the Voting Rights Act of 1965 is amended by inserting after "November 1, 1968," the following: "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,".

SEC. 205. Sections 3 and 6 of the Voting Rights Act of 1965 are each amended by striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth or fifteenth amendment".

SEC. 206. Sections 2, 3, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by adding immediately after "on account of race or color" each time it appears the following: ", or in contravention of the guarantees set forth in section 4(f)(2)".

SEC. 207. Section 14(c) is amended by adding at the end the following new paragraph:

"(3) The term 'language minorities' or 'language minority group' means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.".

SEC. 208. If any amendments made by this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of the Voting Rights Act of 1965, or the application of such provision to other persons or circumstances shall not be affected by such determination.

TITLE III

SEC. 301. The Voting Rights Act of 1965 is amended by inserting the following new section immediately after section 202:

"BILINGUAL ELECTION REQUIREMENTS

"SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational

opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

"(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

"(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

"(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

"(e) For purposes of this section, the term 'language minorities' or 'language minority group' means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."

SEC. 302. Sections 203, 204, and 205 of the Voting Rights Act of 1965, are redesignated as 204, 205, and 206, respectively.

SEC. 303. Section 203 of the Voting Rights Act of 1965, as redesignated section 204 by section 302 of this Act, is amended by inserting immediately after "in violation of section 202," the following: "or 203,".

SEC. 304. Section 204 of the Voting Rights Act of 1965, as redesignated section 205 by section 302 of this Act, is amended by striking out "or 202" and inserting in lieu thereof ", 202, or 203".

TITLE IV

SEC. 401. Section 3 of the Voting Rights Act of 1965 is amended by striking out "Attorney General" the first three times it appears and inserting in lieu thereof the following "Attorney General or an aggrieved person".

SEC. 402. Section 14 of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new subsection:

"(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

SEC. 403. Title II of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new section:

"SEC. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

"(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

"(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

"(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section."

SEC. 404. Section 11(c) of the Voting Rights Act of 1965 is amended by inserting after "Columbia," the following words: "Guam, or the Virgin Islands,".

SEC. 405. Section 5 of the Voting Rights Act of 1965 is amended—

(1) by striking out "except that neither" and inserting in lieu thereof the following: "or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor";

(2) by placing after the words "failure to object" a comma; and

(3) by inserting immediately before the final sentence thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.".

SEC. 406. Section 203 of the Voting Rights Act of 1965, as redesignated 204 by section 302 of this Act, is amended by striking out "section 2282 of title 28" and inserting "section 2284 of title 28" in lieu thereof.

SEC. 407. Title III of the Voting Rights Act of 1965 is amended to read as follows:

"TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

"ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

"SEC. 301. (a) (1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"DEFINITION

"SEC. 302. As used in this title, the term 'State' includes the District of Columbia.".

SEC. 408. Section 10 of the Voting Rights Act of 1965 is amended—

(1) by striking out subsection (d);

(2) in subsection (b), by inserting "and section 2 of the twenty-fourth amendment" immediately after "fifteenth amendment"; and

(3) by striking out "and" the first time it appears in subsection (b), and inserting in lieu thereof a comma.

SEC. 409. Section 11 of the Voting Rights Act of 1965 is amended by adding at the end the following new subsection:

"(e) (1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

"(3) As used in this subsection, the term 'votes more than once' does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 202 of this Act, to the extent two ballots are not cast for an election to the same candidacy or office."

SEC. 410. Section 3 of the Voting Rights Act of 1965 is amended by inserting immediately before "guarantees" each time it appears the following "voting".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

EMBARGOED FOR RELEASE
UNTIL 12:00 NOON (EDT)
Wednesday, August 6, 1975

August 6, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

AMENDMENTS TO THE VOTING RIGHTS ACT OF 1964 (H.R. 6219)

President Ford today signed H.R. 6219, amending the Voting Rights Act of 1965. This extends the temporary provisions of the Act for an additional seven years and expands coverage of the Act to language-minority citizens.

BACKGROUND

The Voting Rights Act of 1965 was enacted to banish the blight of racial discrimination in voting. It became effective on August 6, 1965, and gave the U. S. Attorney General the power to appoint Federal examiners to supervise voter registration in States or voting districts where a literacy or other qualifying test was in use and where fewer than 50 per cent of voting-age residents were registered or had voted in 1964. Other provisions of the Act set stiff penalties for interference with voter rights and prohibited States from enacting new laws affecting the right to vote unless a Federal court in the District of Columbia or the Attorney General gave prior approval.

Several of the provisions of the 1965 Act were enacted on a temporary basis, for a five-year period. These temporary provisions were extended in 1970 for an additional five years. Further, a nationwide ban on the use of literacy or other qualifying tests as a prerequisite to voting was enacted for a five-year period.

The Act has often been referred to as perhaps the most successful piece of civil rights legislation ever enacted by the Congress. Since its enactment, substantial progress has been made in assuring all citizens the right to vote.

HIGHLIGHTS OF THIS LEGISLATION

Title I of H.R. 6219 extends the special provisions of the 1965 Act, including the requirement of preclearance of voting changes and the authority to use Federal examiners and observers in covered jurisdictions, for an additional seven years. It also makes permanent the nationwide ban on literacy tests or other devices.

Title II of the bill expands the special provisions of the Act to jurisdictions in which, on November 1, 1972, more than five per cent of the citizens of voting age were members of a "language minority" (persons who are American Indians, Asian-Americans, Alaskan natives or of Spanish heritage) and in which fewer than fifty per cent of the citizens of voting age were registered to vote or actually voted in the 1972 Presidential election. Such jurisdictions would be subject to the preclearance and examiner and observer provisions of the Act for a period of ten years.

more

Title III of the Act bans for ten years English-only elections in States and political subdivisions in which more than five per cent of the voting age citizens are members of any single "language minority" and in which the illiteracy rate of the language minority is greater than the national illiteracy rate. Jurisdictions covered by this ban will be required to print certain registration and election materials in both English and the language of the language minority.

Title IV permits private citizens, in addition to the Attorney General, to commense suits to protect the voting rights of persons in jurisdictions other than those in which the special provisions of the Act are already in force.

# # # #

July 29, 1975

Dear Mr. Director:

The following bills were received at the White House on July 29th:

H.R. 5327
H.R. 6219
H.R. 7731
H.R. 7728

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.