Mr. HARTKE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MUTUAL SECURITY APPROPRIATIONS, 1960

The Senate resumed the consideration of the bill (H.R. 8385) making appropriations for mutual security and related agencies for the fiscal year ending June 30, 1960, and for other purposes.

Mr. KEATING obtained the floor.

Mr. JAVITS. Mr. President, will my colleague yield to me?

Mr. KEATING. I yield to the senior Senator from New York.

Mr. JAVITS. Mr. President, I acknowledge the parentage, which has been attributed to me by the minority leader, of the proposal for handling the civil rights problem at this particular stage in our proceedings.

With the permission of my colleague, I should like very briefly to state how I see this problem.

We need legislation on the subject. I thoroughly agree with the Senator from Oregon [Mr. MORSE] that we should remain here and legislate. Life's realities, however, being what they are, everyone knows that if we remain here upon that theory, in my opinion, the civil rights legislation itself will suffer, and the things that need to be done may not be done, not because the proposals lack merit, but because of the sheer strain of the desire to get away from here.

Certain questions would be shunted aside, and decided upon an inadequate basis, merely on the theory that they would not have to be decided again, which would be a great shame. Some of them are very desirable.

There exists what might be termed a balance of convenience, and a balance of view, in terms of what is best for this legislation, as between both sides of this issue.

The advocates of civil rights legislation may, if they choose, offer amendments to the pending measure, and, as the Chair has already noted, notwithstanding the personal view of any particular occupant of the Chair, the Senate will decided what is a germane amendment.

In my opinion any amendment which goes to the power of the Civil Rights Commission is a germane amendment; and there are many civil rights measures which, in my view, would be germane. In any case, as the majority leader has often stated, this is an opportunity for the majority to work its will. The majority of the Senate can do what it desires to do in this field.

We therefore have a choice, if there is to be an opportunity to do this job in connection with civil rights at a time when we believe the best job can be done for civil rights—not the best that can be done for going home; not the best that can be done in order to be here when Khrushchev is here, but the best that can be can be done for civil rights. We can stay our hand from proposing amendments, or we can vote against them, on the theory that we shall have an opportunity on another occasion. If, on the other hand, there is no such opportunity, we shall be exactly where we are today.

I could, at an appropriate point in the proceedings—and there will be one today or tomorrow—rise and move for the consideration of my resolution, which is on the calendar, to discharge the Judiciary Committee. My colleague from New York could move for the consideration of a bill with respect to which he has very important civil rights amendments. So could the Senator from Missouri [Mr. HENNINGS] or any other Senator.

The Senate would be free to work its will. The question is, What is the best course of action for this issue? In our view—and perhaps this arrives at the point of mutuality with those who are against civil rights and would just as soon see consideration of the subject postponed—under the circumstances, consideration of this subject should be postponed until the next session.

During the war I was in the Army Chemical Warfare Service. Neither side used gas, which is a very effective and lethal weapon. Why? Because it suited them not to do it.

Of course, the Senator from Georgia has not agreed, nor has the majority leader or the minority leader; yet this plan seems to us to be indicated as the right thing to do.

As to the appropriate time for consideration of this subject, at this particular moment I do not believe that we ought to consider it any later than the middle of January. When we come to February, we begin to get legislation on the floor of the Senate, and there is what amounts to competition of legislation. In January our eye is single with respect to a particular issue with which we are to deal. The best example of that was the debate in connection with the proposal to amend rule XXII, in which the majority leader took such an important part. The debate was concluded within a reasonable time, and action—whether right or wrong—was consummated.

I think there is less likelihood of extended debate in the middle of January than there would be imediately after Lincoln Day celebrations, at which time, in my opinion, we shall begin to be pushed by other legislation. That is especially true, in view of the fact that next year is a Presidential election year, and we shall probably be leaving Washington in July in order to attend the political conventions.

I am grateful to my colleague for indulging me for so long. In summary, I believe that the wise thing, in behalf of civil rights legislation, is to deal with this question not later than the middle of January, and extend the life of the Commission now. I hope very much that this will be the way the question will be decided. That feeling can be expressed by either the majority leader or the minority leader. It is entirely practicable. That would be the most orderly way, and every Senator would have full notice. It would be entirely practicable and orderly, and in full accord with the way the Senate operates, for the minority leader, for example, to say that he will feel obliged, on such-and-such a day in January, to move for the consideration of this legislation, by whatever means he chooses.

Senator Knowland brought the subject up on motion in connection with a House bill. Our present minority leader may bring it up on motion in connection with my resolution to discharge the Committee on the Judiciary from further consideration of the subject. It can be brought up in connection with my colleagues' amendments or those of the Senator from Missouri, on any bill that may be chosen.

So if we can leave here today, having extended the life of the Commission and having obtained an assurance which is entirely satisfactory to us, and with an entirely unilateral expression of the intention of the majority leader or the minority leader that this subject will be brought before us in the middle of January, I think we shall have well served the cause of civil rights, in which my colleague and I are so much interested.

Mr. CLARK. Mr. President, in my opinion, meaningful civil rights legislation is more important than the adjournment of the Senate. In my opinion, the mere extension of the life of the Civil Rights Commission, important though it is, is not meaningful civil rights legislation. In my opinion, if a majority of the Senate wishes to adjourn within the next day or two, we should bring the civil rights matter up as soon as we come back into session in January. In my judgment, adequate civil rights legislation is more important than any Jefferson-Jackson Day dinner, than any Roosevelt Day dinner, than any Lincoln Day celebration.

I agree completely that the sooner we get at this important legislation, with respect to which my party has firm commitments, which have not been met, the better it will be for the country and for all of us who are happy to be called politicians, although we are also Members of the Senate. I thank my friend from New York for yielding.

Mr. KEATING. Mr. President, I only wish to add that I believe it would be paying the greatest honor we could pay to these distinguished patriots, whom we will honor early next year, to have enacted civil rights legislation prior to the celebrations honoring them, or to be considering it in Congress at that time. After all, Abraham Lincoln can be said to be the father of all civil rights legislation. Certainly if he were here to speak for himself, I know he would expect that we would be doing our duty by enacting legislation rather than in paying homage to him, if that becomes necessary.

Therefore I share the view, if we are not going to come to grips with this problem now, which is my first preference, that we take it up in a very early part of the next session in January. I hope that later in the day the leaders on both sides will have further conferences to the end that those of us who have amendments pending may know definitely what the program is in order that we may govern ourselves accordingly.

Mr. President, I yield the floor.

Mr. JOHNSTON of South Carolina. Mr. President, this is a matter which is very close to my heart. What hurts me most with respect to the whole affair is that we keep following the matter and keep on having investigations with regard to it.

I hold in my hand a book which contains 606 pages, and I have not been able to find in it anything on which the Commission itself is unanimous. It shows that when investigations are made, the kind of report which is going to be made depends upon who the investigators happen to be.

The fact that this book contains 606 pages reminds me that we used to have a medicine called 606, which was supposed to cure certain diseases. Today it is claimed that it does not do so. I think we find the same thing is true with this report of 606 pages. If I had the time to take it up line by line and paragraph by paragraph, I could show the Senate where it would not cure anything either.

In this book the Commission winds up by showing that where integration is taking place, there is trouble between the white and the colored at the present time.

So, Mr. President, in considering the issue of whether or not to extend the life of the Commission on Civil Rights, I cannot help but wonder if the proponents of such a move have pondered the fact that the Commission has made its study, printed its hearings, reached its conclusions, made its recommendations, and therefore has no more business to conduct.

There is no recommendation under the sun that this, or any future commission, to my knowledge, could possibly make that has not already been made; except perhaps to abolish State boundaries, State governments, and State elections. I seriously doubt if the most archfederalists of our Nation's history could come up with any group of proposals that would ever be more far-reaching, more unconstitutional in nature, and more prejudiced than those found in the final report of the existing—for not too long, I hope—Civil Rights Commission. Therefore, I cannot understand why Congress, or even the Commission itself, would want to prolong the life of the Commission. It would only be a waste of money, time, and energy to duplicate the same prejudiced, unconstitutional, and unreasonable preconceived ideas on how to run the country which have already been expressed by the present Commission.

Mr. President, the Civil Rights Commission, by its own admission, and as we can find in the statutes under which it was created, was expressly set up to do the following:

First. Investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

Second. Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

Third. Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution. The Commission was furthere instructed to submit to the President and the Congress a report of its activities, of its findings, and to make recommendations not later than September 9, of this year.

Mr. President, in my opinion, the Commission on Civil Rights has not confined its duties to the limits provided by the statute under which it was created. The most obvious, glaring abridgment of its authority was the making of so-called proposals which supplemented its so-called recommendations.

Mr. President, the Members of this Senate are not so foolish as to accept anything a minority of the Commission had to say to be a "proposal" by the entire Commission even though some of the liberal press may be inclined to do so. The staff which prepared this report has confused the facts and confused the recommendations and so-calleed proposals until the average person, at first glance, would think everything appearing in the report was a unanimous agreement by the Commission, or at least by a majority of the Commission.

This report, as I charged earlier, is a hodgepodge of conclusions derived from preconceived ideas based primarily on imagination and very little on fact. There are separate statements, supplementary statements, proposals, recommendations, general statements, and minority statements. When we in the Congress dissent with the opinion of a majority of a committee or subcommittee, we submit what we call a minority report containing minority views. There is always a separate and distinct difference between the two, and on many occasions the minority and majority reports appear under separate covers to avoid confusion. The full report of the Commission contains 557 pages plus an appendix, making a total of 606 pages. In addition, to confuse things, it has issued an abridgment of the report which contains 201 pages. To further confuse the issue, the Commission published what is called "excerpts" containing approximately 38 or 40 pages from the full report.

Mr. President, I charge that the report, the abridgment of the report, and even the excerpts from the report were prepared so as to confuse anyone reading them and to lead them to believe that every conclusion or recommendation contained in them was something of a unanimous nature, or something which carried the opinion of the commission as a whole.

Mr. President, for example, on page 534 of the full report we find a section entitled "Findings and Recommendations—Housing the Problem."

For two pages we are greeted with broad, general, trite phrases regarding hand-me-down clothing, leftovers of others' food, secondhand housing, and so forth, and then are greeted by a statement entitled "Findings." These findings are followed by another section entitled "Recommendation No. 1." Then we find some more findings after which we run into recommendations 2 and 3. Then we have more findings and recommendation No. 4, and more findings and recommendation No. 5, and more findings and recommendation No. 6.

At the end of recommendation No. 6, the reader of this document would have concluded that these were unanimous findings and recommendations of the whole Commission, or, at the very least, a majority of the Commission. However, if one reads on further, one finds what is entitled "Supplement Statement on Housing" by Vice Chairman Storey and Commissioners Battle and Carlton.

Mr. President, there are only six members of the Commission; therefore, the first six findings and recommendations obviously could not be the recommendations and findings of all six members of the Commission, but only of three, and therefore these six so-called recommendations are as much a minority or supplement statement on housing as is the statement by Vice Chairman Storey and commissioners Battle and Carlton.

Then we find another supplement statement on housing by Commissioners Hesburgh and Johnson. Nowhere in the report is it stated that the first six recommendations and findings are those of the majority of the Commission, the full Commission, or only the three commissioners who did not submit supplement statements. It could be that even some of those who did not submit supplement statements did not conclude and find what was in the first six recommendations and conclusions. They could be the recommendations and conclusions of the staff members who wrote the report, for all I know.

Mr. President, so it goes in nearly every section of the three documents I have mentioned. In fact, the pages of the excerpts from the report of the Commission on Civil Rights do not correspond with the full report of the Commission on Civil Rights, and, therefore, double the effort necessary to sift out fact from fancy, truth from opinion, and reality from conjecture.

Mr. President, my general observation of these reports is that they are all a part of a systematic effort to mount confusion upon confusion. The three volumes published by the Civil Rights Commission are alleged to contain its recommendations, findings, reports, and other statements and ideas. Frankly, they remind me of a dagwood sandwich into which has been thrown a little bit of everything in the icebox. The only difference is that the civil rights sandwich which the Commission expects us to digest contains everything except a little bit of the truth. I am afraid we will get a bad case of legislative indigestion if we swallow this report in toto.

Mr. President, I do not know whether to refer to the Civil Rights Commission report as "the report" or "the reports," so if I occasionally refer to "them" instead of "it," you will understand it is only because of the confusion.

On page 47 of the full report—and for the benefit of those who use the abridgment of the report, on page 41—there is a table entitled "Table 7 in the Full Re-

port." It is "Table 6 in the abridgment of the report." This table refers to South Carolina's population, voting population, and percentage of registered voters.

For some reason the Commission states that its source of information found in this table on this page was obtained from an article published in the Columbia State of May 25, 1958, purported to be figures released by the Secretary of State of South Carolina to the press.

Mr. President, for the information of the Senate and the Civil Rights Commission, there is no Columbia State newspaper in South Carolina. By some chance the Commission may have been referring to the State newspaper, which is published in Columbia, S.C. I have great respect for the State, if that is the newspaper the commission is referring to, as a newspaper which genuinely attempts to be as accurate as is humanly possible. However, as anyone will acknowledge, there is many a possible slip between what the secretary of state of a State issues and what appears in a newspaper. It is, in a sense, hearsay evidence. This is true because, first, a reporter gathers the information, then he types it up from his notes, then it goes to a city desk to be edited, then it is sent to a proofroom to be proofed, then it goes to a linotype operator to be set in type, and so on until it appears in print.

The Civil Rights Commission apparently did not obtain the information direct from the secretary of state. If it had done so, it would have obtained the correct information, which it obviously did not. The Civil Rights Commission reports that on May 10, 1958, the total number of registered voters in South Carolina was 537,689.

Mr. President, the secretary of state of South Carolina has personally advised me in writing that on May 10, 1958, there were actually 538,915 registered voters in South Carolina. Very obviously the error in the total number of registered voters made by the Commission affects every other statistic and figure on that page referring to my State. This table concerning South Carolina's registered voters is presented in an attempt to demonstrate that Negroes have been prevented from registering because of race, creed, or color. This is not correct.

The Commission used the 1950 census upon which to base the State's population and various percentages, but it used the 1958 registration figures. What the Commission failed to report is the fact that South Carolina requires registration by every voter every 10 years, and the anniversary date for reregistration happened to be 1958. It began in January.

This is just one instance of the bias of the members of the Commission, as reflected in the report. The fact is that in 1958, white registration in South Carolina was down by 30 percent over that of the preceding year. This is because we had entered upon a new registration period, and many citizens had not yet registered. So the conclusion on that page that Negroes were not registering in great numbers, because of refusal to register them on account of race, creed, or color is a false conclusion. There is no reason in the world why Negro registration should not be off, just as white registration was off in 1958.

Mr. President, if I were allowed ample time to prepare a full criticism of the Commission's report, it could not be completed before next January. My comments would probably fill the Library of Congress, in order to cover the instances of inconsistency, error, and the false conclusions contained in the Commission's report.

Mr. President, I must admit the Civil Rights Commission's report has done one meritorious service: I has brought to my attention that South Carolina has 47 counties. It reported this as a definite statement of fact. I have been running for public office in South Carolina for 36 years, but since 1922 I have never campaigned in more than 46 counties in South Carolina. I am appalled that I have never sought the votes of the people in that 47th county; and I hope the Civil Rights Commission will bring to my attention the name of South Carolina's 47th county, and give me its location, so I will not fail to campaign there in future elections.

Mr. President, this error cannot be charged off by the Commission as a typographical error, because the Commission not only states as a matter of fact, in the final paragraph of this chart, "South Carolina has 47 counties," but it follows up this statement with a table—which I hold in my hand—describing the percentages and types of registered voters in those counties under each category. It lists certain details, and then adds up all the counties, and again reaches a total of 47. Is this, then, the factual report Congress is supposed to accept as a basis for intelligent action?

Mr. President, the very nature of the errors involved indicates carelessness, lack of consideration for fact, and an overzealous attempt to intimidate the Congress with propaganda second only to that produced by the Kremlin.

I hold the report in my hand. I wish the Commission had shown how racial problems have moved into other sections of the country. But the Commission failed to call attention to that fact.

For instance, the report states that 28.1 percent of those who registered in Arkansas in 1958 were nonwhites; and in Florida, 13.2 percent.

Mr. President, the colored people are leaving the southern part of the country, and are going elsewhere; and other sections are going to have this problem.

I notice in the report that for Georgia, the percentage of nonwhites is listed as 25.8; for Louisiana, 13.8; for North Carolina, 28.7; for South Carolina, 33.9 of those voting age. I note than in all other Southern States the percentages have decreased.

At one time—not so long ago, perhaps 25 or 30 years ago—60 percent of the people of South Carolina were colored. But many of them have moved elsewhere. So the people of South Carolina will not be the ones who will be troubled with the fight that is going on.

So I am warning some of the Members of the Senate that the problem which the report claims to exist only in the South, or primarily in the South, is rapidly spreading to other parts of the country.

Furthermore, Mr. President, an examination of the report shows that all the charts or tabulations it includes relate only to the Southern States, and set forth figures in regard to the voters and the number of persons registered only in the Southern States. The Commission does not include in the report such figures in regard to other States—but only in regard to the Southern States.

Mr. President, I realize that many of these factual discrepancies will appear insignificant when standing alone—and especially so to the Commissioners.

However, it is of utmost importance to remember that the conclusions and recommendations, and, yes, even the proposals, rest solely on a foundation of factual errors such as these. I have examined only the material relating to my native State of South Carolina contained in this one table. It will be interesting to note how many other discrepancies appear in tables relating to other States. Perhaps the Senators from the various States can sift, for the benefit of the Senate, fact from fancy in the report where it refers to their native States. But if we have to find the facts for the Commission, then we, the Members of the U.S. Senate, are making the report for the Commission and the Commission loses its usefulness.

Mr. President, the simple fact is there never was a need for a Civil Rights Commission. The very report, with its conflicts and errors of fact, makes it obvious that Congress committed a grave mistake when it created the Commission. We should never repeat such an error again.

Mr. President, the administration, through the Attorney General of the United States, when it requested the creation of the Civil Rights Commission, declared that such a study or congressional inquiry fairly conducted would "tend to unite responsible people in a common effort to solve these problems." The Attorney General in testimony declared:

> Investigation and hearings will bring into sharper focus the area of responsibility the Federal Government and of the States under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead.

Mr. President, in the first place I charge that the Commission has done nothing to bring into focus the area of responsibility of the various States in controlling their own modes of existence as provided for in the Constitution of the United States. If it had, or if I thought it could further fairly define Federal-State responsibility, I would certainly be in favor of extending the life of this Commission. Certainly the Attorney General, of all people, could use some guidance in distinguishing between State and Federal rights.

But it is obvious that the Commission, as reflected in its report, has brought to

the Congress and to the President nothing but preconceived ideas concerning integration and further federalization of the various States. All that anyone can do to determine the respective responsibilities of the Federal and State government is to read the 10th amendment of the Constitution which declares:

> The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.

That is the Constitution of the United States speaking.

This very fact, weighed against the administration's alleged justification for this Commission, should be sufficient evidence to the Congress that there is really no need for this Commission. The Commission has not brought any State right into focus, but, on the contrary, has magnified federalization to the point that it overshadows everything in the report. It delegates to the Federal Government all States' rights in all fields it enters into. In the second instance, the Attorney General's contention that existance of a Civil Rights Commission would tend to unite the people and help solve these problems has been completely and entirely refuted. To the contrary, in the past 2 years, since the Commission was created, racial tensions have continued to mount until they have reached the crisis level in many of the large cities across the Nation. While the Civil Rights Commission points its political tentacles at the South, the North has become a jungle of bitter racial groups which fight among themselves, commit murder and other violence, and continue to break down all legal and moral order. If the Congress were to use the same logic as some of the Commissioners have used in arriving at their conclusions and recommendations, then we would be justified in concluding that the rising racial tensions of the Nation have resulted from the very existence of the Civil Rights Commission and the efforts of others who favor forced integration.

Mr. President, with all due respect to everyone involved in this controversy, I cannot help but reach the conclusion that hearings held by the Commission were nothing but window dressing and that most of the Commissioners had preconceived notions, ideas, or psychological theories at the time they were appointed and that these things have been reflected in their report.

Not one hearing was held by the Commission on Civil Rights for the purpose of determining what makes Negroes and whites live peacefully in the segregated South while they war among themselves in the integrated North. Let that sink in. Not one hearing was designed to demonstrate the tremendous progress that all citizens of all races, creeds, and colors have made in our Nation, and particularly in the South. Let that sink in.

Mr. President, not once did the Commission attempt to demonstrate the good that is contained in the practice of segregation in the South. The Commission did not mention that thousands upon thousands of Negroes holding college degrees are now teaching in the schools of South Carolina and other States and that many Negro children of South Carolina and other segregated States enjoy schools far more modern and more expensive and more adequately equipped than do many white children. The Commission did not report the great efforts and the great progress being made by citizens all across the United States who believe in segregation to insure that equal facilities and equal opportunities to people of both races exist.

The newspapers are replete with statements, comments, petitions, and other expressions of members of the Negro race in many areas of the country demanding and insisting upon segregated existence. It is curious to me that the Civil Rights Commission attempted, at no time, to set up hearings to permit these citizens, regardless of race, creed, or color, to be heard in defense of the mode of life we call segregation.

For your information, Mr. President, the Subcommittee on Constitutional Rights of the Committee on the Judiciary, on which I happen to serve, held hearings for about 3 or 4 months, but we had this question before us from January until July. We had bills before the committee for that long. Then we had the matter discussed. I think I still have the floor in the Senate Judiciary Committee on the bill that is pending here. We are still discussing pro and con in the committee the civil rights issue, and whether or not the life of the Civil Rights Commission should be extended, or what to do. We have never reached a conclusion in the Judiciary Committee yet.

Nearly every statement and conclusion of the Commission except for the statement of Gov. John S. Battle, of Virginia, has been directed at devices to force integration. The Commission has heard from a few dissenters who favor integration, but has bypassed the multitude which prefers segregation. The contented and happy vast majority, by arbitrary action of the Commission, have been whirlpooled into a loftily languaged, highly erroneous report against their will. I have only but to quote Commissioner Battle to back up the charge that this report is filled with preconceived ideas and is not based upon fact. I wish to read Commissioner Battle's statement:

> I have stated my objections to certain specific recommendations contained in the report.
>
> In addition thereto, and without in any way impugning the motives of any member of the Commission, for each of whom I have the highest regard, I must strongly disagree with the nature and tenor of the report. In my judgment it is not an impartial factual statement, such as I believe to have been the intent of Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.

Mr. President, that is the only thing in the Civil Rights Comission's report with which I believe I could say I fully agree.

Under the subject of "Voting" the Civil Rights Commission finds "there is a general lack of reliable information on voting according to race, color, or national origin, and there is no central repository of the fragmentary information available." The Commisison stated further that lack of such information made its study of voting rather difficult.

Mr. President, the lack of this information and these facilities to enable the Commission to make such a study is not available for one obvious reason: The Constitution of the United States gives unto all States the right to establish voting requirements for its citizens and to conduct the elections in each State. There are no Federal elections in these United States: there are only statewide elections. Even when we elect a President the various States elect presidential electors who then go to cast their ballot for their State's presidential choice.

I remember well reading the history of South Carolina. In 1876 our electors, when voting for President, cast their votes for a man who would get the troops out of South Carolina though he was not the people's choice. Their votes were among the necessary votes to elect a President in 1876.

Therefore, there could be no Federal repository for information concerning voting according to race, color, or national origin. The very lack of this information, to me, would be a strong indicator that there is little if any discrimination in this field. If there was discrimination, there would have to be some master file or index on each voter's race, color, or national origin to enable officials to apply prejudice.

Mr. President, recommendation No. 1 of the Civil Rights Commission seeks to charge the Bureau of the Census with the duty of compiling in the next national census a complete list of registration and voting statistics of every individual, according to race, color, and national origin.

Mr. President, such a storehouse of information housed in the Federal Government's bureaucratic structures in Washington would really set the stage for the worst kind of discrimination and prejudice this Nation has even seen.

Made accessible to a tyrannical administration, this information housed in the Federal Government's bureaucratic structures in Washington would really set the stage for the worst kind of discrimination and prejudice this Nation has ever seen or ever could seen.

Made accesible to a tyrannical administration, this information about each voter's race, color, creed, and national origin could become a pandora's box that would haunt our Nation as long as it exists. I shudder to think now this compilation of every individual's race, creed, and color in America could be used in a spirit of prejudice, which it would be. Hitler did not even have such a file available for his use when he persecuted millions in Nazi Germany because of race and creed.

Mr. President, the Commission reports found lack of uniform provision for the preservation and public inspection of all records pertaining to registration and voting. It further charged that this lack of uniform provision hampers and impedes investigations of alleged denials of

the right to vote by reason of race, color, religion, or national origin.

The Commission did not state that it did not find this information stored anywhere in the North or in any other State. We are led to believe it is only in the South that this situation prevails. However, I want Senators to know this information is not stored anywhere at the present time.

For the information of the Civil Rights Commission, it should be pointed out here that the provisions of any State looking toward the preservation of voting and registration records are designed by the individual States to facilitate registration and secret and expedient balloting. They were not designed to be convenient for some Federal bureau that wants to pry.

It happened that I had a chance to look at a publication containing voting laws of every State. Attention was not brought to these laws by the Commission. I saw that South Carolina required only about a half a page, with reference to voting qualifications and registration, and then I turned to New York and saw that New York required about four pages. The Commission did not say anything about these laws.

A system that is suitable for the people of one State may not be as suitable to the people of another State. Simply because a Federal Commission wants to come in and pry does not mean that we should be required to revamp all State laws pertaining to voting and registration for the convenience of the Federal Commission.

I have been informed that in Russia the voting system has been so smoothed out and federalized, as apparently the Civil Rights Commission is seeking to do, that when a person goes to vote at the Russian polls, he does not have to do anything, not even decide for himself for whom to vote. I fear that if we begin to systemize everything along a streamlined Federal system as the Commission desires we will lose the basic American principle of privacy and individualism.

I cannot see where the preservation of such records would have anything to do with whether or not a person was impeded in registering or voting.

That is one thing the people have been crying for, the right to vote. It has been said that the people will know how to vote. In this instance the Federal Government wants to tell everybody how everybody votes.

If one were impeded from these processes, then one would not be in the records. So what is the purpose of maintaining these records? The charge that one was denied the right to register and vote is a charge which stands upon itself. There could be no record of this charge contained in the registration or voting records of a State because those records are records of people who exercised those rights.

Mr. President, if what the Commission meant in its second recommendation is that the voting records should be preserved in cases of alleged fraud where one had exercised his right to vote, but through a fraudulent act his vote was not counted, that is a different matter. This is an entirely different situation. Fraud is a punishable offense in every State in the Union. In my own State of South Carolina there have been instances in which fraud was charged; and always, to my knowledge, the voting and registration records involved were available for the proper officials to examine.

Mr. President, the Civil Rights Commission recommends that all registration and voting records shall be made public records and be preserved for 5 years. During this time they shall be subject to public inspection, provided that all care be taken to preserve the secrecy of the ballot.

Mr. President, here again we run into one of those dreamy-eyed proposals that are about as practical as a soupspoon with a hole in the middle of it. How can any State, or the Federal Government, or any agency thereof, preserve voting and registration records that are to be made public records, and yet preserve the secrecy of the ballot? To me, this is an impossibility. How an individual votes is the most secret and private thing that a citizen can have under our form of government. People guard their voting records more privately and personally than they do almost anything else.

Mr. President, in my opinion the Civil Rights Commission is tampering with one of the most important belongings of the American people, and it is attempting to get the Federal Government to legislate in a field which is purely a State matter. This requirement to preserve voting records under a Federal statute, in my opinion, violates more than half a dozen rulings by Federal courts on this issue.

I should like to cite a few of the cases which substantiate my position. I think when they read them they will agree with the findings in those cases.

Among them are *McPherson* v. *Blacker*, 146 U.S. 869; *Minor* v. *Happersett*, 88 U. S. 627; *Breedlove* v. *Suttles*, 302 U.S. 277; and *Pirtle* v. *Brown*, 188 F. (2d) 218.

Mr. President, from the little I can make out of the Cvil Rights Commission's report, what the Commissioners and proponents of such legislation are after is for the States to eventually wipe out all registration requirements. They would have us throw the door open on election day and declare that everybody may come in and vote, whether he is a criminal, a non compos mentis, or regardless of what he is. The Commission proposes that no State should have the right to bar anyone, for any reason, from voting. The recommendations go far beyond any race, creed, or color differences that may be involved.

Mr. President the Civil Rights Commission also seeks the power to subpena witnesses by directly going to a district court instead of going through the Attorney General to obtain such a subpena. The Commission says that the normal procedure is "a needlessly cumbersome" one and is not "a sound system of administration."

Mr. President, one of the problems of this country today is that we have made it too easy for the Federal Government to reach down and delve into matters which are solely of a State nature. If the Commission seeks to speed up the procedures for obtaining true justice, it would probably prefer that the States do away with the jury trial in criminal cases, and eliminate the right to appeal. I do not think that the quickest way is the best way. On the contrary, it is a dangerous substitute.

Mr. President, I noticed that the Commission, in recommendation No. 5 under the subject of "voting" is suggesting that whenever the President of the United States receives sworn affidavits by nine or more individuals from any district, county, parish, or other political subdivision of a State, alleging that the affiants have unsuccessfully attempted to register with the duly constituted State registration office, the President shall refer such affidavits to the Commission on Civil Rights. Following that, the Commission will first investigate the allegations, and subsequently overrule the local registration boards whenever, in the Commission's opinion, it feels any of the affiants qualified to register. I have never heard of a more baldfaced attempt to destroy the rights of a State to govern itself.

I am wondering, first, why the Commission picked the figure "nine or more." Why should nine people, if so-called justice is to be rendered by the Commission, be the criteria? Why not "one or more"? Could it be that "nine" was a figure that is resting on the minds of some of the Commissioners, such as the nine members of the Supreme Court?

The more I delve into this report, the more I believe the Civil Rights Commission would like to be constituted as a permanent quasi-judicial Federal body with the unofficial title of "The Junior Supreme Court."

This recommendation even goes much further than I have described, for it provides that the President shall designate an existing Federal officer or employee in the given area from whence the complaints came to act as a registration officer. I wonder what Federal officer it would choose to operate the registration certification program in Columbia, S.C., or in my hometown, Spartanburg, S.C.

Mr. President, I do not believe the people living in South Carolina had to face conditions worse than those recommended by the Civil Rights Commission, back in the Reconstruction era, when carpetbaggers took over our State government and robbed our treasury, ransacked our laws, and stole our civil rights.

Mr. President, the proposal of the Civil Rights Commission in this instance would deprive the people of my State, and the people of any other State involved, of a basic right—the State right, if you please, to control its own registration and election machinery.

Any attempt to place Federal control over such machinery is an obvious violation of several court rulings in this respect. These cases have upheld the time-honored constitutional provision that there is no Federal election; that all elections are State elections, and that those elected are representatives of the State, and not the Federal Government. Therefore, the Federal Government has no business meddling with the registra-

tion and voting systems of the various States.

In this respect, let me quote from *Minor* v. *Happersett*, 88 U.S. 627, at page 629, where Justice Waite declared:

> The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. The Members of the House of Representatives are to be chosen by the people of the States, and the electors in each State must have the qualifications requisite for the electors of the most numerous branch of the State legislature.

Mr. President, I believe the dissent by Commissioner Battle to the recommendations of the other Commissioncrs on Federal confiscation of voting and registration machinery in the various States should be read into the RECORD at this point:

> I concur in the proposition that all properly qualified American citizens should have the right to vote but I believe the present laws are sufficient to protect that right and I disagree with the proposal for the appointment of a Federal registrar which would place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the Founding Fathers.

Mr. President, no one could appraise the so-called recommendations of the other Commissioners any finer than Commissioner Battle has done.

Mr. President, as to the proposal for a constitutional amendment to establish universal suffrage made by Chairman Hannah and Commissioners Hesburgh and Johnson, I believe it is adequate to state that the proposed amendment violates the very concepts of the preamble of the Constitution. However, one cannot argue with the right of any American to propose any amendment to the Constitution. It should be of great importance to the Senate, however, that three of the Commissioners opposed this so-called recommendation. Let us bear in mind that there are only six. Once again the authors of the Civil Rights Commission report have inferred that a recommendation by three members of the Commission is a recommendation by a majority of the Commission, while, in fact, it is simply a minority view expressed by one-half of the Commissioners.

As I read the contentions of the Civil Rights Commission in the field of education, I was appalled at the inconsistencies and contradictions contained in the report. However, I was not surprised to find all through this report an attempt to enlarge upon the Supreme Court rulings in this area and to find a very definite flavor of prointegration in the report.

In the first instance, I do not believe the Civil Rights Commission had any proper right to go into the field of education. It is not what I would consider a civil rights problem. It is a matter which has been and always will be a controversy of States' rights against Federal rights. The people of various States feel that school systems and educational facilities, because they are supported with local tax funds and are controlled by local school boards, should not be tampered with by Federal intervention. The Supreme Court in its 1954 decision ruled that it was unlawful for any school to practice segregation where the people desired to integrate, but, it should be made plain, the Supreme Court did not say that segregation in itself was illegal.

To say that the Supreme Court's interpretation on any part of the Constitution is the law of the land is an incorrect conclusion. Such a conclusion would place the Supreme Court above the Constitution and above the people. I want to make it plain that I oppose the Supreme Court's 1954 ruling in its entirety and, although I am a Senator charged with upholding the Constitution of the United States, I am obliged to say that I will do everything in my power to reverse the ruling of the Supreme Court as it is applied in the field of education.

The Civil Rights Commission in its report adheres to the theory that the Constitution, as interpreted by the Supreme Court, is the supreme law of the land. Mr. President, I wish to quote that again for the Senate. The Civil Rights Commission in its report said:

> The Constitution, as interpreted by the Supreme Court, is the supreme law of the land.

Mr. President, this statement is a fallacious, misleading conclusion and the Constitution itself contains the language to bear me out. Let me quote from the Constitution. Article 6, section 2, of the Constitution declares:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land * * *.

Mr. President, there is no question but that the Constitution is the supreme law of the land and needs no help from the Supreme Court on this score. Article 6, section 2, makes no mention of the Supreme Court of the United States, and when the Supreme Court makes an interpretation that is erroneous, I say the supreme law of the land is still the Constitution and not the interpretation made by the Supreme Court.

The proposal by the Civil Rights Commission to direct the U.S. Office of Education, in cooperation with the Bureau of the Census, to conduct an annual school census would be a wasteful, ridiculous, and downright absurd program to follow. Such a census would reflect no true picture as regards to whether or not integration or segregation is being practiced in accordance with the so-called Supreme Court ruling of 1954. This is especially true because in many areas of the Nation segregation is practiced voluntarily by both groups and any statistical report by the Bureau of the Census or the Office of Education would not reflect the feelings and desires of the people. However, it would possibly present an invitation to agitators and outsiders to come into a segregated area and attempt to force integration upon unwilling people. This would even be contrary to the wild and ridiculous 1954 decision of the Supreme Court which, in effect, placed the practice of integrated or segregated schooling on a voluntary basis. The Commission itself, quite inadvertently I am sure, used this interpretation in one of its findings by citing *Briggs* v. *Elliott*—132 Federal Supplement 776). In that decision the late Judge John J. Parker, of the U.S. Fourth Circuit Court of Appeals, declared:

> What it (the Supreme Court) has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the State may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches.

The Supreme Court's biased 1954 decision without precedent is exceeded only in deceitfulness by the biased Commission's 1959 report which is a finding without fact.

As Vice Chairman Storey and Commissioners Battle and Carlton declared concerning the educational recommendations:

> The text preceding the findings and recommendations is to a large extent argumentative and colored by the authors' views of the sociological and philosophical aspects of the school integration problem.

Here again is a divided opinion on a field of study that the Commission should have never even entered.

Any man who is unbiased in his thinking, I think, will surely admit that education is a State matter and certainly does not fall in the category of a Federal civil right.

Mr. President, I shall not spend a great deal of time on the Civil Rights Commission's housing recommendations for they, too, are for the most part nothing but attempts to promote further federalization and integration.

It is evident from the Commission's report that housing problems arise in large cities. In the South there are very few cities equal in population to the crowded cities of the North. Therefore, I feel that housing is not a problem which we face in the South. I trust that the true purpose of this Commission is to prevent further racial difficulties. After reading the report, I fear that this has not been their purpose.

There have been, to my knowledge, no racial problems because of segregated housing in the South. This statement cannot be made by the large integrated cities of the North. Thus, another point of attack on the southern way of life has failed because no problem exists.

The Commission's report clearly states that the housing problems are caused to a great extent by migration. It says that many people who are unable to afford good housing in the suburbs migrate to the cities filling existing slums and creating new slum areas. It goes further and makes this clear observation in regard to these slum conditions causing housing problems:

> This is true irrespective of race or nationality.

Thus, the Commission admits that any problem of housing is not due to segregation. The only racial problems in the

housing field are found where integration exists.

Mr. President, as I look through the final report of the Civil Rights Commission, I am reminded of an often quoted line of Shakespeare. Hamlet, who was reading a book, was asked by a friend, "What do you read?" Hamlet, in utter disgust, replied, "Word, words, words." My colleagues, it is with utter disgust that I make the same observation regarding this report: the efforts of 2 years investigation. It is 683 pages of "words, words, words."

I honestly believe that an extension of this Commission on Civil Rights will produce for us at great expense only one thing: another volume of trite phrases, preconceived findings, and lawless recommendations. I defy the Senate to show me one thing this Commission has accomplished other than a volume of "words, words, words."

Mr. President, to vote against this proposed legislation will be the easiest vote of the year for me to cast. I have always opposed foreign aid and I have always opposed civil rights legislation. I oppose foreign aid so strongly that even if I were an advocate of continuing the Civil Rights Commission, I would still vote against this measure. But, to have both civil rights legislation and foreign aid legislation wrapped up in the same package makes it possible for me to vote to kill two birds with one stone.

I believe tacking on civil rights legislation to the foreign aid bill is a flagrant violation of the orderly procedures of the Senate and a direct assault upon the Judiciary Committee of the Senate. The precedent being established here in bypassing the Senate Judiciary Committee is a far-reaching step that will open the door to other such moves in other fields and may start the general deterioration of all Senate rules and order. We cannot legislate from the floor of the Senate in an intelligent manner by suspending the rules at every turn and at every time the leadership predetermines he has the power to do so. To do this is to turn the Senate into a body run by dictators.

Except for the direct appropriation, the Committee on Appropriations has no right to legislate in this field. It is a question for the Committee on the Judiciary of the Senate to handle. I can imagine the furor that would emit on the floor of the Senate if the Judiciary Committee attempted to tack onto some legislation an appropriation measure not cleared by the Appropriations Committee.

If the Senate sustains the motion to suspend the rules and considers the Civil Rights Commission extension amendment, then a terrible precedent will have been established which will return to haunt this body forever. It will amount to dictatorship of the Judiciary Committee by the Committee on Appropriations in a field of legislation that is entirely the business of the Judiciary Committee.

The business of the Appropriations Committee is to report out appropriations bills to provide funds to pay for expenditures already authorized by the Congress. It is not the business of the Appropriations Committee to write authorizations in appropriations bills and that is what is being done here in the Senate now. The Appropriations Committee should not consider appropriations for extending the life of the Civil Rights Commission until and unless Congress has previously voted to extend the life of the Commission and made proper authorizations.

Also, it is highly inappropriate, to say the least, to tack appropriations onto a foreign aid bill that provides for a strictly domestic program. Although, I guess if money is to be wasted on civil rights studies such as the extension of the life of the Civil Rights Commission, it could not be in better company than the foreign aid bill. It is a matter that is foreign to the Constitution of the United States and it is a waste of the people's tax money, so in those two categories I presume civil rights and foreign aid do have common denominators.

Mr. President, the rules of the Senate do the same for the Senate as the laws of the Nation do for our land. Law brings order out of chaos for our Nation, and rules bring order out of chaos for the Senate.

The Supreme Court on many occasions in recent years has suspended the laws of the land in many fields and brought chaos out of order.

The U.S. Senate would be setting a very bad example to the rest of the Nation if it now suspends its rules and brings chaos out of order just to satisfy the political desires of a few for the moment.

Mr. President, I hope the Members of the Senate will not vote to suspend the rules of this body, but will vote to maintain law and order.

It is quite that simple.

Mr. ROBERTSON. Mr. President, when the Senate had under consideration the Civil Rights Act of 1957, I opposed it generally, and objected specifically to part I, which established a Commission on Civil Rights.

I said such a Commission would be political in nature and disruptive in its effect; that its hearings and reports could be manipulated with an eye on minority blocks of votes in pivotal States, and that it would lead only to harassment of the States in their efforts to administer their internal affairs.

The 1959 report of the Commission, authorized in 1957, has confirmed those fears; and I am more than ever convinced that it does not, and cannot, serve a useful purpose, and that the extension of its life would be a waste of money and a disservice to the people of the Nation.

We have the authoritative statement of one of the Commissioners, former Gov. John S. Battle, of Virgina, that the report "is not an impartial factual statement, such as I believe to have been the intent of Congress, but, rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations."

At the time of its establishment, this Commission was represented as a fact-finding body which would do a temporary job, investigating charges of violations of civil rights and assembling impartially weighed evidence which would be useful when proposals for future legislation in this field were considered.

The departure from the intent of Congress is disclosed in the Commission's report not only by its argumentative nature, referred to by Commissioner Battle, but also by open pleas for its continuance, not merely for an additional period during which to complete studies which have been started, but also as a permanent agency, with regularly assigned administrative functions.

The report recommends that after Federal registrars have been appointed to usurp the State function of determining qualifications of voters, the Commission shall investigate the validity of charges that voting rights have been denied, and shall certify to the President and to the Federal registrars affidavits which it considers well founded. That assignment presumably would continue so long as there were a possibility that any would-be voter might file a complaint that he was discriminated against because of race, color, religion, or national origin.

The report also recommends that the Commission serve as a clearinghouse to collect and make available to States and to local communities information on programs and procedures to bring about desegregation of schools—another assignment of lengthy and indefinite duration.

A third bid to make permanent the jobs of the Commission staff and to add future employees is contained in the recommendation that the Commission be requested by the President "to continue to study and appraise the policies of Federal housing agencies, to prepare and propose plans to bring about the end of discrimination in all federally assisted housing and to make appropriate recommendations."

So, Mr. President, the real question to be decided by Congress is not whether we shall extend the Commission for another 2 years, and let it spend an additional $500,000, but whether we are willing to accept it as a new bureaucratic agency, a source for administrative patronage, an adjunct to political campaign organizations, and a constant irritant against national unity and voluntary racial cooperation.

Let us make no mistake: If we allow the professional organization which handles the detailed work of this Commission, on behalf of its part-time volunteer members, to entrench itself during another 2 years, it will find so many ways to make itself politically useful that it will be extremely difficult to dislodge thereafter.

But those who might benefit from its operations at one period, might become the victims at another. The Commission was aimed at the Southern States, which have had the major problem of dealing with racial minorities of large proportions. But that problem is spreading to metropolitan centers in other areas.

A politically motivated organization which continues to delve into the fields of voting, education, and housing, and which exhibits, as the report of this Commission has, an utter disregard for

the fundamental principles of the Constitution and a willingness—as a protesting half of its members have recognized—to "ignore historical fact and disregard the development of constitutional law," poses a threat to all, including its original sponsors.

I shall not take the time on this occasion to analyze the Civil Rights Commission's report and to point out its unreliable and irresponsible nature, but I want to give just one illustration of what amounts to outright dishonesty in citing the Constitution of the United States.

In the chapter devoted to findings and recommendations on the subject of voting, the report says (p. 135):

> Article I, section 2 of the U.S. Constitution has long stood for the proposition that, while the qualifications of electors of Members of Congress are governed by State law, the right to vote for such representatives is derived from the U.S. Constitution. Article I, section 4, authorizes Federal protection of voting in Federal elections against interference from any source.

The report will be read by many persons not familiar with the text of the Constitution; and they will accept these statements at face value. But what does the Constitution say?

Article I, section 2, says this, and no more:

> The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

What words in that sentence stand for the proposition that the right of an individual to vote is derived from the Constitution? Actually, the wording of that section, and more especially its history, as revealed in the Constitutional Convention debates, State ratifying convention debates, and the Federalist papers, make it clear that the purpose was to leave to State decision the question of who should be qualified to vote in State elections, and then to allow the same persons, and no others, to vote in Federal elections.

Let us look now at article I, section 4. It says:

> The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

That is the complete text. How can its limited grant of reserve power to the Federal Government to alter "times, places, and manner of holding elections" be interpreted as authorization for "Federal protection of voting in Federal elections against interference from any source"?

The Commission report goes on to say correctly that the 14th amendment affords protection against State interference with equality of opportunity to vote; that the 15th amendment prohibits interference by the United States or a State with the right to vote, because of race, color, or previous condition of servitude, and that the 19th amendment prohibits State interference with the right to vote, because of sex.

But the misstatement about article I, section 2 is repeated when the report says:

> The 17th amendment provides that a person possessing State qualifications has a right to vote which is derived not merely from the Constitution or the laws of the State from which the Senator is chosen, but has its foundations in the Constitution of the United States.

Mr. President, the 17th amendment merely says the Senate shall be composed of two Senators from each State, "elected by the people thereof," and then repeats the language of article I, section 2:

> The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

This language, reaffirmed and repeated after a century of experience under the Constitution, makes no pretense of conferring voting rights on individuals, but simply extends the right to vote in Senatorial elections to those who have qualified to vote in State elections.

It is on the basis of this twisting of constitutional language that the Commission recommends appointment of Federal registrars who would pass on qualifications of voters, and thereby, as Commissioner Battle said, "place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the Founding Fathers."

Mr. President, even Alexander Hamilton, the arch advocate of a strong Central Government, would have been shocked by this proposal, for Hamilton himself said in the 59th Federalist paper:

> Suppose an article had been introduced into the Constitution empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarranted transposition of power and as a premeditated engine for the destruction of State governments?

Mr. President, the Civil Rights Commission can be an engine for the destruction of State governments. I am opposed to the authorization to extend its existence, and I am opposed to the appropriation to continue its operations.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the President pro tempore:

S. 1575. An act to amend the act of August 1, 1958, to authorize and direct the Secretary of the Interior to undertake continuing studies of the effects of insecticides, herbicides, fungicides, and other pesticides, upon fish and wildlife for the purpose of preventing losses of those invaluable natural resources, and for other purposes;

S. 1845. An act to provide for the reestablishment of the rates of basic compensation for certain Government positions, and for other purposes;

S. 2181. An act to amend the Mineral Leasing Act of February 25, 1920;

S. 2208. An act to provide that Alaska and Hawaii be eligible for participation in the distribution of discretionary funds under section 6(b) of the Federal Airport Act;

S. 2504. An act to authorize the sale at current support prices of agricultural commodities owned by the Commodity Credit Corporation to provide feed for livestock in areas determined to be emergency areas, and for other purposes;

S. 2568. An act to amend the Atomic Energy Act of 1954, as amended, with respect to cooperation with States; and

S. 2569. An act to amend the Atomic Energy Act of 1954, as amended.

MUTUAL SECURITY APPROPRIATIONS, 1960

The Senate resumed the consideration of the bill (H.R. 8385) making appropriations for mutual security and related agencies for the fiscal year ending June 30, 1960, and for other purposes.

Mr. HARTKE. Mr. President, I was extremely impressed as I read, while confined in the Bethesda Naval Hospital, the report of the U.S. Commission on Civil Rights. I was impressed with the factual nature of the report and its very fair analysis of a difficult problem, one often fraught with emotion.

It is interesting to note, Mr. President, that the Commission found no geographic section of our country offering full opportunity and rights of citizenship to all Americans, regardless of race, creed, or color.

Of all the rights Americans hold dear, the keystone of all is the right to vote. It is interesting to note that all the Commissioners have agreed that this right should be protected and extended to all citizens, even though among them there may be some differences as to how this should best be done.

I applaud, Mr. President, the excellent manner in which the Commission has proceeded with its business, as well as the report coming from its investigations and deliberations. It is proof positive that the issues which seem to divide us as a Nation are not insoluble.

When I came to the Senate, last January, it was my profound hope that in this session we would be able to write a meaningful civil rights bill—a law which would recognize basic rights of all Americans, indeed all human beings, and would protect and insure these rights for all citizens. Unfortunately, we have been faced with so many problems and with so many obstructions in this divided Government that we did not give this matter the attention on the floor of the Senate that it should have had. Unfortunately, too, we did not receive the report of the Commission until the 11th hour before adjournment.

Mr. President, I wholeheartedly support the move to continue the life of this Commission of reasonable Americans who earnestly are seeking a common ground on which to unite all Americans and to see that everyone in this blessed land receives an equal opportunity for housing, education, employment, and voting.

Furthermore, Mr. President, it is my sincere hope that the Senate will, when it meets again, next January, turn its attention to consideration of these recommendations as some of the first items of business. It seems to me that protection and extention of voting rights for all Americans should be one of the very first things we do next January.

Without such action, we cannot truthfully say that every citizen has a voice in his Government. With such action we can proudly say that we are making representative democracy work for all Americans, no matter what race, creed, or color. Thereafter, we may look forward with the hope and expectation that the full, unalienable rights called by our Founding Fathers, "life, liberty, and the pursuit of happiness," will truly be enjoyed by all our citizens.

Mr. HILL. Mr. President, I rise in opposition to the attempt to extend the life of the U.S. Commission on Civil Rights. I do so out of a sense of devotion to the people of Alabama, the South, and the Nation, and out of a sense of devotion to the Constitution which the Founding Fathers bequeathed us.

We are all now familiar with the report of the U.S. Commission on Civil Rights, and I think the report itself should in large measure determine the merits of this debate.

There is nothing in that report to merit the approbation of a free people. I am against it, and I believe the report itself is an unanswerable argument in favor of permitting the Commission to die its natural death. The report of the Commission constitutes, in my judgment, one of the most indefensible and irresponsible statements of a public agency that I have ever read. The recommendations and alleged "findings" of some of the members of the Commission, if accepted generally, would be a grave threat to the rights guaranteed by the Constitution and the liberties sought to be held forever sacrosanct by the Bill of Rights.

At this time, when all of us need to get back to our people to ascertain their thoughts, their desires, their aspirations, and once more be invigorated by the spirit of grassroots democracy which has made our Nation indestructible, we find ourselves squandering our time, our energies, and the people's money on this debate to extend the life of the U.S. Commission on Civil Rights.

In order that the record may be clear as to my position in opposition to the extension of the life of this Cmmission, I wish now to consider the incredible recommendations of the Commission.

First of all, the Commission, in the report of its study on voting, recommends a census of voting by race, color, and national origin. The alleged "findings" of the Commission ar as follows:

The Commission finds that there is a general deficiency of information pertinent to the phenomenon of nonvoting. There is a general lack of reliable information on voting according to race, color, or national origin, and there is no final repository of the fragmentary information available. The lack of this kind of information presents real difficulties in any undertaking such as this Commission's.

The Commission, which has spent so much of our people's money so fruitlessly, next proceeds to make a recommendation that would accomplish nothing but a sure waste of the taxpayers' hard-earned dollars. The Commission then makes its "recommendation No. 1," as follows:

Therefore, the Commission recommends, that the Bureau of the Census be authorized and directed to undertake, in connection with the census of 1960 or at the earliest possible time thereafter, a nationwide and territorial compilation of registration and voting statistics which shall include a count of individuals by race, color, and national origin who are registered, and a determination of the extent to which such individuals have voted since the prior decennial census.

Mr. President, such a recommendation, if put into effect, would accomplish nothing toward contributing to life, liberty, and the pursuit of happiness of our people. This is but an illustration of the irresponsibility of the Commission in making its report and in endeavoring to justify its 2-year existence.

After recommending this waste of the taxpayers' money, the Commission proceeds into the field of States rights and proposes Federal intrusion therein by making a recommendation in favor of the preservation and inspection of voting records of the States and of the people.

The so-called findings of the Commission are as follows:

The Commission finds that lack of uniform provision for the preservation and public inspection of all records pertaining to registration and voting hampers and impedes investigation of alleged denials of the right to vote by reason of race, color, religion, or national origin.

The Commission then makes its recommendation No. 2, as follows:

Therefore, the Commission recommends that the Congress require that all State and territorial registration and voting records shall be public records and must be preserved for a period of 5 years, during which time they shall be subject to public inspection, provided that all care be taken to preserve the secrecy of the ballot.

I ask, Mr. President, how is it humanly possible to preserve all voting records for a period of 5 years and hold those records up for public inspection and at the same time preserve the secrecy of the ballot.

It cannot, in my judgment, be done.

At first appearance, this recommendation of the Commission would seem to be a further effort to encroach on the rights of the States only, but a close scrutiny of the proposal reveals it to be an effort on the part of the Federal Government to desecrate one of our most precious inheritances—the right to a secret ballot.

The right of a citizen to cast his ballot in all secrecy is one of the greatest bastions of human liberty that the mind of man created. This right, like the right of trial by jury, is an indispensable component of American democracy. Once this right is infringed upon, our concept of American democracy will have been drastically altered, for it will never be the same. Once this right is infringed upon, we would have to adjust ourselves to a new mode of self government, for the enlightened concept of government of the people, by the people, and for the people will have been seriously abridged.

There is no substitute for the secret ballot. No procedural device ever conceived can take its place. It is unique. There is nothing like it that has ever been engendered. The secret ballot alone is the sure protector of the continued preservation of our American democratic way of life. Once that is lost all that we hold dear may well be lost.

This right is so jealously guarded and is so dearly prized by the American people that I devoutly believe any attempt to abrogate it will be renounced at once as an outrage to which an enlightened people will never acquiesce.

How, Mr. President, can this Senate give its stamp of approval to a public agency which has made such an indefensible recommendation?

The Commission, in its report, then proceeds to launch into a further assault on State sovereignty by its finding, as follows:

The Commission finds that the lack of an affirmative duty to constitute boards of registrars, or failure to discharge or enforce such duty under State law, and the failure of such boards to function on particular occasion or for long periods of time, or to restrict periods of functions to such limited periods of time as to make it impossible for most citizens to register, are devices by which the right to vote is denied to citizens of the United States by reason of their race or color. It further finds that such failure to act is arbitrary, capricious, and without legal cause or justification.

The Commission then makes its recommendation No. 3, as follows:

Therefore, the Commission recommends that part IV of the Civil Rights Act of 1957 (42 U.S.C. 1971) shall be amended by insertion of the following paragraph after the first paragraph in section 1971(b):

"Nor shall any person or group of persons, under color of State law, abritrarily and without legal justification or cause, act, or being under duty to act, fail to act, in such manner as to deprive or threaten to deprive any individual or group of individuals of the opportunity to register, vote, and have that vote counted for any candidate for the office of President, Vice President, presidential elector, Member of the Senate or Member of the House of Representatives, Delegate or Commissioner for the territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate."

This recommendation typifies some of the ambiguity of the Commission's report, which, if so construed by the courts, could possibly be fraught with interpretations that would harass and surely undermine the honest efforts of local citizens to manage their governmental affairs. Is it not possible that this recommendation, if enacted into law, could mean that a local registrar who sought to resign his job for reasons of health, or of business, or for any good cause, would be guilty of a violation of this section, in the event any individual or group of individuals brought charges against him for his failure to register them to vote? The mere possibility that this is true dooms such a recommendation to ultimate failure and renounces the desirability of continuing the existence of any public agency which conceived the recommendation.

In its next recommendation, the Commission would arrogate unto itself judicial powers which I think have never before been given to a purely investigative body.

The Commission "finds," as follows:

The Commission finds that the necessity for securing the aid and cooperation of a

separate agency of the Federal Government in order to discharge the Commission's responsibilities under law is a needlessly cumbersome procedure. It is not a sound system of administration. Full and effective implementation of Commission policy in the discharge of Commission responsibilities under law requires full and exclusive control of any necessary report to the courts by the Commission itself.

The Commission's "recommendation No. 4" follows:

Therefore, the Commission recommends that in cases of contumacy or refusal to obey a subpena issued by the Commission on Civil Rights (under sec. 105(f) of the Civil Rights Act of 1957) for the attendance and testimony of witnesses or the production of written or other matter, the Commission should be empowered to apply directly to the appropriate U.S. district court for an order enforcing such subpena.

Not satisfied with having the full resources and authority of the Office of the Attorney General of the United States to enforce their subpena powers, the Commission now comes forward and asks for the unrestricted right to go into the Federal courts and invoke the contempt processes thereof to compel the testimony of witnesses who have been hauled before it to answer harassing questions and to do the bidding of this select and powerful body.

This recommendation illustrates one of the reasons why I was so opposed to the establishment of this Commission. This demonstrates the perennial truth that, when there is established an agency for bureaucrats who have no legitimate end to serve, they will spend their time and the taxpayers' money in an effort to justify their existence and to reach out and grab more and more power. As Thomas Jefferson expressed it, they cast anchors ahead to grapple for more power.

One of the worst recommendations of the Commission is recommendation No. 5 on voting. It reads as follows:

Therefore, it is recommended that, upon receipt by the President of the United States of sworn affidavits by nine or more individuals from any district, county, parish, or other recognized political subdivision of a State alleging that the affiants have unsuccessfully attempted to register with the duly constituted State registration office, and that the affiants believe themselves qualified under State law to be electors, but have been denied the right to register because of race, color, religious, or national origin, the President shall refer such affidavits to the Commission on Civil Rights, if extended.

A. The Commission shall:

1. Investigate the validity of the allegations.

2. Dismiss such affidavits as prove, on investigation, to be unfounded.

3. Certify any and all well-founded affidavits to the President and to such temporary registrar as he may designate.

B. The President upon such certification shall designate an existing Federal officer or employee in the area from which complaints are received, to act as a temporary registrar.

C. Such registrar-designate shall administer the State qualification laws and issue to all individuals found qualified, registration certificates which shall entitle them to vote for any candidate for the Federal office of President, Vice President, presidential elector, Members of the Senate or Members of the House of Representative, Delegates or Commissioners for the territories or possessions, in any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

D. The registrar-designate shall certify to the responsible State registration officials the names and fact of registration of all persons registered by him. Such certification shall permit all such registrants to participate in Federal elections previously enumerated.

E. Jurisdiction shall be retained until such time as the President determines that the presence of the appointed registrar is no longer necessary.

The dissent by John S. Battle, a former distinguished Governor of the State of Virginia, demolished the validity of any argument in favor of this recommendation when he stated, "I disagree with the proposal for the appointment of a Federal Registrar which would place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the Founding Fathers." The dissent by Commissioner Battle continues:

I concur in the proposition that all properly qualified American citizens should have the right to vote but I believe the present laws are sufficient to protect that right and I disagree with the proposal for the appointment of a Federal registrar which would place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the Founding Fathers.

In my judgment, Mr. President, the proposal to have a Federal registrar to supplant the duties, functions, rights and privileges of State and local registrars is wholly unconstitutional.

It is in violation of section 2 of article I of the Constitution, and the 17th amendment which reserves exclusively to the States the right to determine the qualifications of electors.

It is in violation of the 10th amendment to the Constitution, which states:

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

It is in violation of the ninth amendment to the Constitution, which states:

The enumeraion in the Constitution, of certain rights, shall not be construed to deny or disparage others pertaining to the people.

It contravenes the spirit of the sixth amendment to the Constitution, which states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

It is in violation of the spirit of the sixth amendment, Mr. President, because it would remove a local registrar from his duties and, in effect, condemn him as being guilty of a crime—the crime of unlawfully denying a qualified person of the right to exercise his franchise as a voter in violations of sections 241 and 242 of title 18 of the United States Code. Regardless of whether or not such registrar should ever be prosecuted, he shall forever remain an accused who did not enjoy the right to a speedy and public trial, an impartial jury of the State and area wherein the crime allegedly was committed. He shall have been denied his constitutional right to be informed of the nature and the cause of the accusations brought against him. He shall have been denied the right to be confronted with witnesses against him. He shall have been denied the right to have compulsory process for obtaining witnesses in his favor.

And whether or not he employed the assistance of counsel will make no difference, for he shall have had no defense nor any right to present his defense.

When the representatives of the free, independent, sovereign American colonies met in Philadelphia in 1787 to determine what form of government would succeed the tyranny of the British Crown they had, for their benefit, the benefits of the works and labors of great thinkers, philosophers, statesmen, and writers. They had the rich traditions of Montesquieu, John Locke, and all the thoughtful historians and warriors for liberty that preceded them in the vast concourse of history. But that was not enough. It was only through the great assemblage of patriots—deeply devout, dedicated men, dedicated to God and country—that they were able to pen the most nearly perfect legal document that has ever been drafted, the Constitution of the United States.

They had so many questions to answer, so many issues to determine. It was their task to determine whether or not we should have a parliamentary system of government, or a centralized system of government, or a confederated government, or a Federal system in which the rights and sovereignty of the people would be carefully divided between the State and local governments on the one hand and the National Government on the other.

They fortunately chose the latter. They did so after carefully considering, studying, and evaluating the blessings and shortcomings of each system that had theretofore been conceived by the mind of man.

And what was their foremost consideration in implementing this governernment—in effectuating every detail of its mechanism? Their foremost consideration, Mr. President, was not how much of the sovereign rights of the people they desired to yield. It was not how much of those precious rights they, as individual men, were willing to yield. The sole consideration was how much of those precious rights and that sovereignty which had been won at such cost and sacrifice, they would have to yield in order to establish a stable society that would secure the blessings of liberty to themselves and to their posterity.

Madison's notes clearly point up the jealousy and the great reluctance with which they yielded every power to the Federal Government. The great Madison himself, who has so aptly been honored as the "Father of the Constitution," frequently spoke in protest against the

efforts of some of the delegates to yield to the Federal Government unwarranted powers.

When that magnificent assemblage of patriots wrote the Constitution and drafted the mechanics of our form of government their every consideration, therefore, was not how much power they would give away to the central Government, but rather, how much of the liberty of the people the necessities of time and circumstances demanded that they entrust to this one coordinate branch of our Government.

We recall that two of the foremost patriots of the revolution could not, in all good conscience, affix their signatures to this noble document. Patrick Henry, who sounded the tocsin of war and gave us the battle cry of the revolution, and George Mason, who wrote the Virginia bill of rights which gave birth to our Federal Bill of Rights and to almost every State bill of rights—both these great patriots who had done so much to win our independence from the British Crown, to lift the mantle of despotism from the backs of our people, to win our freedom, opposed the ratification of the Constitution. They felt, as did many of their compatriots, that ratification of the Constitution might mean too great a surrender of sovereignty on the part of the States, that there might have been too much yielding of power and authority to the Federal Government.

I emphasize these facts because the history of the ratification of the Constitution shows clearly that our Federal Government, as we know it, would never have come into existence if the sovereignty of the States and the rights of the people had not been positively recognized in the Constitution itself.

Indeed, there were many who were the special champions of the Constitution who would never have been such champions had they not had the absolute assurance that the Bill of Rights would soon be made a vital, living part of that great document. Jefferson, Madison, Hamilton, and other inspired leaders insisted that the Bill of Rights would shortly be made a part of the Constitution.

Of all the liberties which the Founding Fathers enshrined in the first 10 amendments they specifically designated articles IX and X as the impregnable guardians of the sovereign rights of the States and of the people.

The ninth amendment declares:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The 10th amendment declares:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Our progenitors of that day insisted that as a condition of their ratification of the Constitution, it should contain the ninth amendment which retained in them absolutely the rights not specifically enumerated as the rights, powers, and authority of the Federal Government.

But they did not stop there. The people went further and demanded that the 10th amendment be included as a part of their basic, legal protection. No language could be stronger, more definitive, more absolute in safeguarding and protecting the rights of the States and of the people from encroachment by the Congress, by the Federal judiciary, or by the executive branch of the Central Government than the 10th amendment.

The 10th amendment has been appropriately described as "saying what it means and meaning what it says."

No one sentence ever penned by the hand of man could be more lucid. Those few simple words rise up out of the book and speak loudly, clearly, intelligently, and unanswerably to all the Nation. They speak one single, cogent thought which no man, in all honesty, can deny. They say that the rights of the States and of the people are to be preserved at all cost. They say that any effort to usurp those rights is greatly to be abhorred, that it is condemned by the Constitution itself and that the conscience of the country would not tolerate any attempt by anyone, directly or indirectly, to change this basic concept of a government of freemen.

Not satisfied with the recommendation to substitute a Federal registrar for State and local registrars, three of the Commissioners go even further and recommend a constitutional amendment which would destroy the rights of the States to set any qualifications for voters, except age and residence requirements. This proposal is set out in the report as follows:

PROPOSAL FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH UNIVERSAL SUFFRAGE

(By Chairman Hannah and Commissioners Hesburgh and Johnson)

The Commission's recommendation for temporary Federal registration should, if enacted by Congress, secure the right to vote in the forthcoming national elections for many qualified citizens who would otherwise, because of their race or color, be denied this most fundamental of American civil rights. But the proposed measure is clearly a stopgap.

In its investigations, hearings, and studies the Commission has seen that complex voter qualification laws, including tests of literacy, education, and interpretation, have been used and may readily be used arbitrarily to deny the right to vote to citizens of the United States.

Most denials of the right to vote are in fact accomplished through the discriminatory application and administration of such State laws. The difficulty of proving discrimination in any particular case is considerable. It appears to be impossible to enforce an impartial administration of the literacy tests now in force in some States, for where there is a will to discriminate, these tests provide the way.

Therefore, as the best ultimate solution of the problem of securing and protecting the right to vote, we propose a constitutional amendment to establish a free and universal franchise throughout the United States.

An important aim of this amendment would be to remove the occasion for further direct Federal intervention in the States administration and conduct of elections, by prohibiting complex voting requirements and providing clear, simple, and easily enforcible standards.

The proposed constitutional amendment would give the right to vote to every citizen who meets his State's age and residence requirements and who is not legally confined at the time of registration or election.

Age and residence are objective and simple standards. With only such readily ascertainable standards to be met, the present civil remedies of the Civil Rights Act should prove more effective in any future cases of discriminatory application. A court injunction could require the immediate registration of any person who meets these clear-cut State qualifications.

The proposed amendment is in harmony with the American tradition and with the trend in the whole democratic world. As noted in the beginning of this section of the Commission's report, the growth of American democracy has been marked by a steady expansion of the franchise; first by the abandonment of property qualifications and then by conferral of suffrage upon the two great disfranchised groups, Negroes and women. Only 19 States now require that voters demonstrate their literacy. Michigan, New Hampshire, Pennsylvania, Tennessee, and Vermont have suffered no apparent harm from absence of the common provisions disqualifying mental incompetents. With minor exceptions, mostly involving election offenses, Colorado, Maine, Massachusetts, Michigan, Pennsylvania, Utah, Vermont, and West Virginia have no provisions barring certain ex-convicts from the vote, and of the States which do have such provisions, all but eight also provide for restoration of the former felon's civil rights. In only five States is the payment of a poll tax still a condition upon the suffrage.

The number of Americans disqualified under each of these categories is very small compared with the approximately 90 million now normally qualified to vote. It is also small in relation to the numbers of qualified nonwhite citizens presently being disfranchised by the discriminatory application of these complex laws. The march of education has almost eliminated illiteracy. In a Nation dedicated to the full development of every citizen's human potential, there is no excuse for whatever illiteracy that may remain. Ratification of the proposed amendment would, we believe, provide an additional incentive for its total elimination. Meanwhile, abundant information about political candidates and issues is available to all by way of television and radio.

We believe that the time has come for the United States to take the last of its many steps toward free and universal suffrage. The ratification of this amendment would be a reaffirmation of our faith in the principles upon which this Nation was founded. It would reassure lovers of freedom throughout a world in which hundreds of millions of people, most of them colored, are becoming free and are hesitating between alternative paths of national development.

For all these reasons we propose the following 23d amendment to the Constitution of the United States.

"ARTICLE XXIII

"Section 2

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State or by any person for any cause except inability to meet State age or length-of-residence requirements uniformly applied to all persons within the State, or legal confinement at the time of registration or election. This right to vote shall include the right to register or otherwise qualify to vote, and to have one's vote counted.

"Section 2

"The Congress shall have power to enforce this article by appropriate legislation."

Mr. President, this destructive proposal would permit criminals, incompetents, and others deprived of voting rights by State laws for any reason, to

vote along with all the duly qualified electors.

This proposal would destroy one of the last vestiges of State sovereignty by depriving the people through their State governments of the right to set the qualifications for the electors who choose State and local public officials. I recognize that this outrageous recommendation was made by only three of the Commissioners, but it points up lucidly the dangers that are inherent in a continuation of such an irresponsible public agency. This recommendation alone should foredoom the Commission to expire.

The recommendations in the field of education are equally obnoxious and they appear to represent a preconceived advocacy by certain members of the Commission to force the integration of the races upon the people of the South and of the Nation.

First of all, the Commission requests, not only that the Congress extend its life, but that it be given additional authority by permitting the Commission to serve as a "clearinghouse to collect and make available to States and to local communities information concerning programs and procedures" to integrate the races in the public schools.

The Commission also asks that it be authorized to establish "an advisory and conciliation service" to implement the forced integration of the races in the public schools.

Its findings and recommendations in this regard are as follows:

FINDINGS

1. The case of adjustment of a school system to desegregation is influenced by many factors including the relative size and location of the white and Negro population, the extent to which the Negro children are culturally handicapped, segregation practices in other areas of community life, the presence or absence of democratic participation in the planning of the program used or preparation of the community for its acceptance, and the character of the leadership in the community and State.

2. Many factors must be considered and weighed in determining what constitutes a prompt and reasonable start toward full compliance and the means by which and the rate at which desegregation should be accomplished.

3. Desegregation by court order has been notably more difficult than desegregation by voluntary action wherein the method and timing have been locally determined.

4. Many school districts in attempting to evolve a desegregation plan have had no established and qualified source to which to turn for information and advice. Furthermore, many of these districts have been confused and frustrated by apparent inconsistencies in decisions of lower Federal courts.

Recommendations Nos. 1(a) and 1(b)

Therefore, the Commission recommends:

1. (a) That the President propose and the Congress enact legislation to authorize the Commission on Civil Rights, if extended, to serve as a clearinghouse to collect and make available to States and to local communities information concerning programs and procedures used by school districts to comply with the Supreme Court mandate either voluntarily or by court order, including data as to the known effects of the programs on the quality of education and the cost thereof.

(b) That the Commission on Civil Rights be authorized to establish an advisory and concilation service to assist local school officials in developing plans designed to meet constitutional requirements and local conditions; and to mediate and conciliate, upon request, disputes as to proposed plans and their implementation.

Mr. President, the granting to the Commission of the authority to establish "an advisory and conciliation service" in the field of race relations would be but an exercise in futility. If this proposal has as its purpose the mediation of disputes or misunderstandings between persons of the different races, as apparently it does, it fails to recognize the inescapable lesson of history that disputes between man and man, or among members of a community, can voluntarily be resolved not by strangers whose very presence is resented but only by the working out of an accommodation by the persons involved. The creation of such a function for the Commission would be a waste of public funds and would contribute nothing to the betterment of racial relations.

Next, the Commission recommends that the spending of the public moneys be shared by another agency of the Federal Government, the Office of Education of the Department of Health, Education, and Welfare for the purpose of conducting an annual school census which could serve no useful purpose.

Three members of the Commission, as a climax to its recommendations in the field of education, recommend a proposal to require the integration of the races as a condition precedent to the granting of Federal funds to higher education.

They state:

We recommend that Federal agencies * * * be authorized and directed to withhold funds in any form to institutions of higher learning, both publicly supported and privately supported, which refuse, on racial grounds, to admit students otherwise qualified for admission.

The other three members of the Commission absolutely rebut this argument with the statement that "the findings and recommendations," in the field of education are, "to a large extent argumentative and colored by the author's views of the sociological and psychological aspects of the school integration problem."

They further state:

We cannot endorse a program of economic coercion as either a substitute for or a supplement to the direct enforcement of law through the orderly processes of justice, as administered by the courts.

In the field of housing the findings and the recommendations of the Commission are equally to be condemned.

The report written by the staff of the Commission relating to housing is even more drastic and sweeping. It recommends the integration of all federally assisted housing, including housing constructed with the assistance of Federal mortgage insurance or loan guarantees as well as federally aided public housing and urban renewal projects.

This recommendation prompted Vice Chairman Storey and Commissioners Battle and Carlton to denounce such parts of the report as being keyed to integration rather than housing, and as suggesting a fixed program of mixing the races anywhere and everywhere regardless of the wishes of either race. They further declare that if such suggestions were carried out in full, they will result in delay and in many cases defeat of adequate housing.

These recommendations of the staff are repugnant to the fundamental constitutional and legal concept that Americans should have the freedom to select their own associates. They would be likely to foredoom to failure federally assisted housing programs because they would divert such programs from the primary objective of providing adequate housing for American families to the objective of forcing the mixing of the races as a result of such housing programs.

As Senator ERVIN, the able and distinguished senior Senator from North Carolina, declared in his powerful and masterful address of Saturday night:

When all is said, the report of the Commission leaves me with the abiding conviction that the staff of the Commission is inseparably wedded to the propositions that Americans ought not to have the freedom to select their own associates, and that all possible governmental powers ought to be diverted from their primary functions to that of compelling the involuntary association of the races.

All of the recommendations represent, in my judgment, the personal predilections of certain members of the Commission in favor of forcing the integration of the races on the people of the South and the country. I agree wholeheartedly with the statement of Governor Battle in his final dissent:

I must strongly disagree with the nature and tenor of the report. In my judgment, it is not an impartial, factual statement, such as I believe to have been the intent of Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.

At this time of danger and of decision when we must be united as a Nation, when there is so much that needs to be done, so much good that can be done, so much wrong that must be undone, and so much work that our people demand to be done, it is regrettable that we must digress from high purposes and good works and concentrate our attention and energies on extending the life of a bureaucratic agency which has made such drastic, sweeping, and indefensible proposals.

Let us be done, Senators, with this measure brought here under the pressure of political expediency, which distracts and misguides our people and which separates and divides us. Let us be done with this measure.

Let us stand united, strong, and resolute in our unity. Let us support squarely the rights of the people of the United States and the rights of the States of the United States that our Government may be preserved. Let us stand squarely upon the Constitution of the United States—rock of freedom, ageless and enduring foundation of our rights, our hopes, and our democratic faith.

Mr. EASTLAND. Mr. President, I am opposed to the suspension of the rules for the purpose of legislating an extension of the life of the Civil Rights Commission on the mutual security appropriation bill. I am opposed to the extension of the life of the Civil Rights Commission by legislation in any manner, form or character. I am opposed to the appropriation of even one thin dime of public funds to finance any further activity on the part of this Commission. Its life should not only be terminated but the corpse should also be buried very deep. When a creature of this Congress places before us recommendations and proposals which, if adopted, would completely transform and destroy our established systems of government in this country, from the smallest of our local communities through the cities, counties, and States and on into Federal framework, it is time for serious thought, consideration and action. The first action should and must be the immediate demise of the Commission.

Mr. President, I do not know who wrote the text of the 668-page report that the Commission sent to Congress. After scanning the manuscript, I turned to the acknowledgments to see if Gunnar Myrdal, the Swedish social engineer, had been retained as a consultant or given any credit for assisting on the project. His name did not appear. I then turned to the selected bibliography to see if the name Gunnar Myrdal or his book "An American Dilemma" were mentioned or noticed. They were not. My conclusion is that the U.S. Supreme Court has more courage than did the Civil Rights Commission. The Court at least admitted that its integration decision was based on the alleged modern scientific authorities in the fields of sociology, anthropology, and psychology such as Myrdal and his ilk. The Civil Rights Commission, both in the fields of constitutional interpretation and the pseudo sciences, needs no authorities other than the facile minds of the Commission staff.

Congress created the Civil Rights Commission as a factfinding body. I see nothing in the Civil Rights Act of 1957 that either directs or authorizes the Commission to concern itself with the legal assignment of interpreting or reinterpreting the Constitution of the United States and the history of judicial decisions of this country. I see nothing in the act that either authorized or directed the Commission to write a new and revised history of the United States. Both of these tasks, and many others, have been performed by the Commission with vengeance. They so drip with bias, prejudice, animosity, and even downright hatred toward the South and southern people that imagination itself is staggered.

In the 1957 hearings before the Senate Judiciary Subcommittee on the Civil Rights Act, Attorney General Brownell was asked by Senator HENNINGS to give the committee a little bit of his philosophy about the proposed Commission. Senator HENNINGS asked the Attorney General further:

> You have read everything from the Gunnar Myrdal survey, "An American Dilemma," in two volumes. Myrdal is the well-known Swedish sociologist.
>
> You have read the Gunnar Myrdal survey, I am sure.
>
> Now here we have the report of the President's Committee on Civil Rights. It is dated Washington 1947, and of course as you repeat with much better phraseology than I can devise or use or come by, by any means "the American heritage comes from freedom and equality."
>
> All these things are fine, but don't we all know—you are familiar with this volume, are you not, Mr. Attorney General?
>
> Mr. BROWNELL. Yes, I am.
>
> Senator HENNINGS. I would like to inquire as to just what such a commission would do.
>
> We have seen these commissions come and go to the point where learned men sit around tables every now and then when they can get themselves together and hire somebody to make a report and they make a report and that is put away in the archives.
>
> Don't you think what we need is legislation?
>
> Don't we need action rather than another study?
>
> What are we going to study, Mr. Attorney General, if I may inquire?
>
> Mr. BROWNELL. I think the difference between a study like the Myrdal study and what we have in mind here is that that is really a collection of opinions. What we would really like to have for the benefit of our work would be a factual study where testimony could be taken under oath from people as to any patterns or practices which exist in any area of discriminations based on color, religion——
>
> Senator HENNINGS. But if we have all the legislation we should have, do we need to have any more testimony taken under oath?
>
> Mr. BROWNELL. I think we would probably find, it would be my hope and in fact my belief, that a bipartisan commission of this kind with authority to subpena witnesses and study the facts would be able to bring back sworn specific testimony which would not only be of benefit to us in the area of law enforcement, but would be of vital benefit to the Congress in determining the need for additional legislation.

Mr. President, if legislative history has any meaning or purpose, the Attorney General has herein stated the exact heart of what he and President Eisenhower intended for the legislation to authorize the Commission to do. The result of the Commission's study has achieved the exact opposite purpose from that which was intended. The Commission, insofar as the report is concerned, is damned in the words of one of the six Commissioners. Commissioner Battle says:

> In my judgment it [the report] is not an impartial factual statement, such as I believe to have been the intent of Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.

Part 1 of the report is entitled "Constitutional Background of Civil Rights." Chapter I is styled "The Spirit of Our Laws." The very first noun employed departs so far from the field of fact that we enter the realm of metaphysics. Just what does this word "spirit" mean, Mr. President? Here is what Webster says:

> 1. The breath of life; life, or the life principle, conceived as a kind of vapor animating the body, or, in man, mediating between body and soul.
>
> 2. The life principle viewed as the "breath" or gift of deity; hence, the agent of vital and conscious functions in man; the soul.
>
> 3. In the abstract, life or consciousness viewed as an independent type of existence.
>
> 4. One manifestation of the divine nature; the Holy Spirit.
>
> 5. Any supernatural being, esp. one able to possess a person, an apparition; a specter; also, sometimes a sprite; elf.

Mr. President, I do not know what connotation the Commission desired to place on the word "spirit." But regardless of the application of the word "spirit" to our laws, I am at a loss to see what possible purpose it can have with a factfinding survey. Then, too, when they speak of our "laws" they are obviously referring to our basic charter—the U.S. Constitution. So by transposition we start the report with "The Spirit of the Constitution." While the Commissioners and Myrdal arrive finally at the same conclusions as to race mixing, at least three of the Commissioners violently disagree with Myrdal on constitutional interpretation.

Myrdal charged that the Constitution of the United States was "impractical and unsuited to modern conditions" and its adoption was "nearly a plot against the common people." Commissioners Hannah, Hesburgh, and Johnson reverse Myrdal and predicate the entire report on the amazing assertion that the right to vote and the right of all persons to equal protection of the laws are implied in the original Constitution itself. Instead of my replying to this fantastic predicate and assertion, I now offer as my witnesses, Commissioners Storey, Battle, and Carlton. They say in a footnote on page 1, titled "Exception to the Statement of the Constitutional Background of Civil Rights," that—

> We take exception to this and all succeeding passages to the effect that a provision on the equal protection of the laws properly may be implied in the original Constitution itself. Such assertions ignore historical fact and disregard the development of constitutional law pertinent to recognition of the human dignity of the individual in our democratic society.

There then follows a seven-point analysis of their position.

Mr. President, as amazing as it may sound coming from me, I say with confidence that even the presently constituted U.S. Supreme Court will agree with Commissioners Storey, Battle, and Carlton. And the most puzzling point to me in this whole business is this: Why, when a six-man Commission is split 3 to 3, do three of the Commissioners have their constitutional opinions taken as the Holy Writ and placed in the body of the text of the report while the other three are relegated to the small print of the footnote? I do not know the answer to this question, but I do know this—every single recommendation and proposal which this Commission has made to Congress is squarely based on this fundamental and false interpretation or opinion as to the meaning of the U.S. Constitution. Further, in order to sustain this premise the Commission was forced to declare the U.S. Supreme Court unconstitutional in a line of decisions stretching from the infancy of the Republic to the present.

Mr. President, in 1957 the then Attorney General, Mr. Brownell, declared that the Commission's study should be objec-

tive and free from partisanship, broad and at the same time thorough, and that such a study, if fairly conducted, would tend to unite responsible people in a common effort to solve these problems. If that solemn objective had been followed by the Commission and reflected in its report, there would be few who could quarrel with that basic approach.

I am sure that every well-intentioned Member of Congress who voted in 1957 to create this Commission expected such aims to be carried out and reflected in any report submitted by this body to the Congress. Unfortunately, this is not the case. I challenge any fair-minded person who has made a careful study of the report and recommendations to say that the report is objective, free from partisanship, broad, or thorough. It is not objective. There runs through the 668-page dissertation the utopian theme that the world owes everyone a living, irrespective of one's ability, intellectual capacity, or ambition. The premise appears to be that the Government is to be an absolute insurer of everyone's well-being.

The lack of objectivity is apparent from the very first page of the report, whereby the Commission arrogated to itself its own definition of what Congress intended by creating that body.

The report states that its first concern is with the right of citizens to vote and the right of all persons to equal protection of the laws. Certainly, the Congress was concerned with the right to vote, but, as the Commission failed to state, it is the right of qualified citizens as declared by the Constitution and the laws of the sovereign States. The report starts out on the lofty note of the right of all citizens, ignoring the plain delegation of section 2, of article I of the Constitution, that the States themselves shall determine the qualifications of its voters. From this untenable premise the report runs the gamut of the Declaration of Independence, the Constitution, the Bill of Rights, the Supreme Court decisions, Patrick Henry and DeTocqueville. From this collection of authorities are selected only those ideas and statements that lend assistance and fortification to the basic theme that this is to be a new pattern for life in America declared by this Commission to be superimposed over all our citizens.

If this is the objective, it has achieved one purpose, in that it will tend to unite those who firmly believe that this Nation can only exist so long as our form of government, as we have known it, is based upon the idea that the National Government exercises those powers granted to it by the Constitution and all other powers reserved to the individual States.

The framers of this report, by attempting to impress a new ideology, have brought into sharp focus the basic difference between those who believe that all powers should vest in the Central Government and those who believe, on the other hand, as the framers of the Constitution wrote into that document, that the States should have coequal authority with the Federal Government.

Those who prepared the report ignored the plain mandate of the Congress that the primary duty and function of the Commission was to gather facts. Those who participated in the actual drafting of the report either did not care or did not wish to take the trouble of reading the hearings on the nominations of the Commissioners themselves, who stated under questioning that the act itself called for a factfinding body and not a vehicle created to disseminate ideas alien to our American way of life.

Recommendation No. 5 of the Commission, providing for the Federal voting registrars, is thoroughly unconstitutional and would constitute a violation of article I, section 2, clause 1, and section 3, clause 1, of the Constitution, as amended by the 17th amendment, in that the Federal Government, through registrars, Federal officials, would be taking over from State officials and contrary to State law the determination of who were and were not qualified electors in that State for members of the most numerous branch of the legislature of each State.

Mr. RUSSELL. Mr. President, will the Senator yield?

Mr. EASTLAND. I yield.

Mr. RUSSELL. I point out to the distinguished Senator from Mississippi that that is the only language in the Constitution of the United States which appears in two places in identically the same words. It appears where the Senator has stated, in section 2 of article I; and in the 17th amendment, providing for the popular election of Senators, the identical language appears again.

There are those who like to contend that the 15th amendment somehow was a restriction upon section 2 of article I of the Constitution. That, of course, cannot be true since the 17th amendment, which was ratified some years after the 15th amendment, repeated the earlier language of the Founding Fathers in article I and is the latest expressed of the will of the people in the writing of their Constitution.

Mr. EASTLAND. The distinguished Senator from Georgia is certainly correct. It goes to the qualifications of the members of the Commission, who are recommending to Congress that we destroy the basic charter of our liberties—our Constitution.

The determination of who possesses the qualifications required of qualified electors in each State is part and parcel of the qualifications of those electors. One cannot become a qualified elector in a State and entitled to vote for the Members of its most numerous branch of the legislature without having evidenced his qualifications in accord with State law.

This recommendation would destroy this and other features of the electoral processes in each State. The persons qualified to vote for Senators and Representatives are by the said section of the Constitution asserted by it to be those who are qualified to vote for the members of the most numerous branch of the State legislature. This recommendation makes the Federal Government the arbiter of who is and who is not qualified to be and become a member of the legislature of each of the States, because members of the legislature of each State must be qualified electors in and of that State.

If as many as nine persons in a district, county, parish, or other political subdivision of a State make oath that they believe each is qualified under the law of the State of their residence to be electors but have been denied the right to register because of their race, color, religion, or national origin and deliver these affidavits to the President of the United States, he is then required, without any discretion on his part, to refer those affidavits to the Civil Rights Commission. Upon receipt of them by the Commission, it is required mandatorily to investigate the allegations of the affidavits and if they find that the allegations of any affidavits are well founded, they shall then certify such affidavits with their findings, to the President, and to such temporary registrar as he may designate.

Upon receipt of such certificate and the affidavit so certified to him, the President is mandatorily required, with no discretion on his part, to then appoint any Federal officer or employee in the area from which such complaints are received, as a temporary registrar. Such registrar shall then take over and administer the State qualification laws and determine who are and who are not qualified electors under the State laws and determine who are, and who are not, qualified to register under the State law. Those found to be qualified he will register. Such registrar shall then certify to the State authorities the names of the persons he has registered. Such registrar shall issue a certificate to all persons registered by him and such certification shall permit all such registrants to participate in Federal elections mentioned in the act, being all primary, general, and special elections for the election of presidential electors, Senators, and Representatives. Such registrar shall remain in office and discharge his function as long as the President in his discretion thinks the registrar should remain in power.

The criterion adopted by this recommendation by which all State laws and officers may be displaced in the determination of who is qualified to register and vote is as ridiculous as it is invalid. Under it all State control over the registration and the determination of who are qualified electors eligible to vote for the members of the most numerous branch of the State legislature and thusly to vote for Senators and Representatives, is not who is in fact qualified to register and who is in fact qualified to vote, but on the other hand, is whether as many as nine persons believe that they are qualified electors and believe that they have been denied the right to register because of race, color, religion, or national origin. There is no certainty and no objectivity whatever in the test of an individual belief. What an intelligent man may believe may perplex an ignorant man. What an ignorant man may believe may be immediately rejected by an intelligent man. What a man may believe who has no

real knowledge or understanding of the State law requirements of registration certainly would not be the same belief there as to which which be entertained by a person who did understand the State law requirements. What one person may believe would constitute a denial of the right to register because of race, color, religion, or national origin, may or may not be what another person would believe upon the same facts. In this connection I have read many cases wherein people of both races have believed in their own mind that they were discriminated against because of race or color but both Federal and State courts disagreed with them when the facts were disclosed.

The criteria here permit every man in his own mind to be both the judge and the jury. How can any person say what another believes? I can think of many instances in which I could say that a person's belief in a certain thing was well founded—but at the same time, on the same facts, I would know that his belief, however sincere or insincere it may be, was erroneous and incorrect.

This recommendation shows the extent to which its advocates are willing to go in order to satisfy certain pressure groups in this Nation and to destroy the basic principles of this Government in the Federal and State relationships, and actually the provisions of the Constitution of the United States.

This recommendation usurps all power and authority under the franchise and election processes now vested in the State and Federal judiciary. The enactment of this recommendation would prevent any court, Federal or State, from dealing with or passing upon any question in connection with the franchise and the electoral processes in the election of the officers specified. It is conclusive evidence that the Civil Rights Commission wishes to actually control the most vital features of the Federal and State Governments. The Commission under this provision would be the most powerful agency in the U.S. Government. The States and the President would be subservient to its findings.

Actually, in addition to the foregoing, the recommendation is totally without any of the safeguards required by the rules of due process of law, and therefore it is invalid and unconstitutional. Presidential electors are officers of each State, and, as such, the qualifications of the persons who register and vote for them are vested exclusively in each State.

No provision in the Constitution of the United States or no amendment thereto in any way authorizes Congress to legislate with reference to religion, or national origin, in connection with the franchise or voting; and, therefore, Congress would have no right so to do.

This recommendation is, I say, squarely held to be unconstitutional by the decisions of the Supreme Court of the United States, in *McPherson* v. *Blacker,* 146 U.S. 1, 36 L. ed., 869; *Minor* v. *Happersett,* 88 U.S. 162, 22 L. ed 627; *U.S.* v. *Cruikshank,* 92 U.S. 942, 23 L. ed. 588; *Breed Love* v. *Suttles,* 302 U.S. 276, 82 L. ed 252; *In re Green,* 134 U.S. 337, 33 L. ed. 951; *Walker* v. *U.S.,* 93 Fed. 2nd, 383; *U.S.* v. *Classic,* 313, U.S. 298, 85 L. ed. 1368.

From the outset it is apparent that the Commission ignored the mandate of Congress to study facts and report those facts. To the contrary, it is attempting to interpret the Constitution and our judicial decisions in accordance with its own views, not of what the law is, but of what the Commission thinks the law should be.

Commissioner Battle very forthrightedly stated his disagreement with the nature and tenor of the report. I concur in his criticism that this report is not an impartial, factual statement, but rather, is an argument in advocacy of preconceived ideas in the field of race relations.

For the life of me, I cannot understand how members of this Commission, fully cognizant of the duties placed upon them by the Congress in this important field, could so blithely ignore the plain meaning of the Constitution, in the various recommendations and conclusions set out in this report. To justify its recommendations, the Commission makes a strained interpretation of the Constitution and interprets Supreme Court opinions to suit its own purposes.

The report, in dealing with voting, and the recommendations based on the Commission's study, reveal just how far its framers seek to go in making the National Government supreme in the voting field, to the utter exclusion of the States. Chapter IX on voting makes the statement that few Americans would deny, at least in theory, the right of all qualified citizens to vote, but then qualifies that statement by stating that a significant number differ as to which citizens are qualified, and then observes that the goal of universal adult sufferage has not yet been achieved in this country.

It is obvious that recommendations on voting, which have the endorsement of Commissioners Hannah, Storey, and Hesburgh, cavalierly disregard the fact that, throughout our history, regulation of voting has been traditionally and appropriately a function of the States, and that the intrusion of the Federal Government into the regulation of voting has been generally considered unconstitutional, except in the instances precisely defined in the 14th and 15th amendments.

These voting recommendations, which attempt to confer universal sufferage by taking from the States their traditional and constitutional right to determine the qualifications of their own voters, fly squarely in the face of the consistent holdings of the Supreme Court that the States alone are to determine the qualifications of their voters. Disregarded is the declaration of the Supreme Court in *Minor* v. *Happerset,* 88 U.S. 162, page 170, wherein the Court said:

> Certainly, if the courts can consider any question settled, this is one. For nearly 90 years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage. If uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be.

Ignored are the words of our highest Court in *Breedlove* v. *Suttles,* 302 U.S. 277, page 238, wherein the Court said:

> Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the 15th and 19th amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate.

Commissioners Storey, Carlton, and Battle oppose the recommendation for a constitutional amendment which would take from the States the power to fix the qualifications of their voters. They do so because such a proposal would alter the longstanding Federal-State relationship, and should not be proposed in the absence of clear proof that no other action will correct an existing evil; and they conclude that no such proof is apparent.

The attempt to foist this proposal of universal suffrage in the guise of a "reaffirmation of the faith in the principles upon which this Nation was founded" demonstrates the clever way that the writers of the report distort our constitutional principles. No greater principle has been observed over the past 150 years—and this principle was in effect long before our Constitution was drafted—than the principle that the States, themselves, are to determine the qualifications of voters. Yet, three of the Commissioners state that universal suffrage, as determined by the Federal Government, is a principle upon which the Nation was founded. Nothing could be farther from the truth. Article I, section 2, of the Constitution would thus be nullified by the Commissioners who espouse such action.

This proposal of universal suffrage is advocated by Commissioners Hannah, Hesburgh, and Johnson as "in harmony with the American tradition and with the trend in the whole democratic world." I thoroughly disagree that such a proposal is in harmony with our American tradition. If these gentlemen are seeking to march the United States down the road to totalitarian government, this report is an apt vehicle to carry out their purpose.

Mr. President, it is fairly evident that those who framed this report are seeking to accomplish and bring about total and complete integration, mixing, and amalgamation of the races in this Nation. This aim is demonstrated very clearly in the recommendations in regard to the fields of education and housing.

Among other things, Commissioners Hannah, Hesburgh, and Johnson would have the Federal Government withhold Federal funds, not only from public educational institutions of higher learning, but also from private and religious institutions of higher learning, who refuse to integrate and mix the races. Commissioner Johnson went even further, and recommended that this policy be extended to the elementary and secondary schools.

The sum and substance of this proposal to cut off all public funds from any schools which deny admission on the grounds of race is that this proposal strikes right at the heart of our educational system as it has existed in this country. It strikes in two ways: First, it disrupts the heretofore autonomous authority of local agencies over the conduct of its own school systems; and, second, it strikes a blow at schools which need the grants for these special programs of education, which would not be possible without aid from the Federal Government. This effort to exert economic pressure to compel integration in not only public but private schools will inevitably destroy our school system in America, if carried out. This proposal is certainly alien to our thinking, and is absolutely contrary to the history and development of our educational system, as it exists today. This proposal, if carried out, will run counter to what the Commission states in its own report is necessary if the American system of public education is to be preserved without impairment. Certainly the denial of public funds to educational institutions will irreparably harm programs which could not be sustained except for these Federal grants. Our public school system in America has been the great factor in the dominance of America over other Nations in the world. Any diminution of our educational system, therefore, will weaken our power in world affairs. The further step now advanced, and directed toward one section of the country and its educational system, can only create chaos.

I feel that all serious-minded Americans who are concerned with the necessity of higher education for our children will oppose any plan which has for its purpose the forcing of State and local educational systems to bow to the will of the Centralized Government. The past few years have amply demonstrated the feelings of the States and local communities about legislative proposals whereby control over education would be taken from local authorities and would be placed in the Federal Government. This proposal will engender the same animosity, in that what is here proposed is coercion from the Federal Government over the States and local educational bodies by forcing those institutions and school boards to compel integration or else to suffer the loss of needed Federal grants.

This proposal was opposed by Commissioners Storey, Battle, and Carlton. Their opposition, in my opinion, was based on very strong grounds. They stated that they could not endorse a program which would undermine the preservation and improvement of our educational system. These Commissioners very cogently observed that this serious and social problem of integration in the public schools cannot be solved by hasty or precipitous action, but must have the careful and sympathetic consideration of all, and that due regard must be given to the way of life of large numbers of loyal Americans.

Commissioners Storey, Battle, and Carlton further opposed this idea of denying public funds as a program of economic coercion, as a substitute for, or a supplement to, direct enforcement of law through the orderly processes of justice, as administered by the courts. In view of the fact that problems of equal protection pertaining to education fall within the purview of the 14th amendment, an area long since preempted by the courts, they cannot support this proposal.

I submit that such a proposal as the one here espoused in the report could more be expected to be raised in a totalitarian state rather than here in America.

The use of economic pressure, no matter for what purpose, has long been condemned as distateful to our form of government. Yet, in the report we are being told that schools must either integrate or must be cut off from Federal funds. If this proposal were to be adopted, the cause of education would be set back 100 years.

Mr. President, the housing recommendations of the Commission constitute a blueprint for forced integration in America. In substance, the report declares that the Federal Government should insure, in its public housing program, that that program will continue to aid only low-income families in America, if integration of the races takes place. In other words, Congress must cease to disburse public funds in the housing field, unless integration takes place.

While these housing recommendations have the concurrence of all members of the Commission, Commissioners Storey, Battle, and Carlton depart from their fellow brethren on the Commission and make it readily apparent that they cannot subscribe to the philosophy that the Government owes everyone a house. I think that their supplementary statement on the housing recommendations is worthy of being noted at this point:

> We yield to no one in our good will and anxiety for equal justice to all races, in the field of housing as elsewhere. A good home should be the goal of everyone regardless of color, and the Government should aid in providing housing in keeping with the means and ambitions of the people. Government aid is important where public improvements have displaced people and where slums become a liability to the community. This does not mean, however, that the Government owes everyone a house regardless of his ambition, industry, or will to provide for himself. When generosity takes away self-reliance or the determination of one to improve his own lot, it ceases to be a blessing. We should help, but not pamper. But there remains a financial limit beyond which the Government cannot go.

The recommendations on housing and education put forth by the Commisison clearly disclose a pattern that is proposed by the Commission to be superimposed over our present way of life. The objective sought to be accomplished is integration of the races. It is to be carried out through economic pressures exerted by the Federal Government. The report proposes that the Federal Government deny to its own citizens, in the respective States, funds for housing and educational grants, unless integration of the races takes place.

I submit that these proposals advocated in this Commission report go far afield, and extend far beyond, the authority delegated by the Congress to this Commission, under the Civil Rights Act of 1957. Rather than being a statement of facts presented to the Congress, the report is an ideological and social discussion in the field of race relations. This is a far cry from the then Attorney General Brownell's statement that the Commission was necessary in order to make a study to bring out the facts and to unite responsible people of good will in a common effort to solve these problems.

Mr. President, the report of the Civil Rights Commission categorically condemns the governments of the sovereign States of the South and the elected officials, representatives, and appointees therein. They charge that these officials, representatives, and appointees have acted arbitrarily, capriciously, and without legal cause or justification in an alleged denial of voting rights to certain individuals within the States. They propose to turn over to Federal officials the business of registering voters under State law, and to let the Postmaster tell the county registrar or election board who can or who cannot vote. The Commission reasons that, since no one yet has been registered through civil remedies under the Civil Rights Act of 1957, the Federal district courts are ineffective for this purpose. Then, too, the Commission charges that lawsuits have rarely been successful, courts act too slowly, and litigation often proves fruitless. The simple solution the Commission proposes is to bypass the courts and extend the life of the Commission, and then the Commission will register the qualified voters.

At page 61 of the report, Jefferson Davis County, Miss., is referred to as being 55 percent Negro, with an alleged 3,923 Negroes of voting age, and 1,038 registered. The report states:

> Most of the sworn complaints were filed by Negroes who were registered voters until 1956, when their names were removed from the registration books.

The Commission does not state, and the report does not mention at any place, top, side, or bottom, that under the Civil Rights Act of 1957, a suit was filed by Negro residents of Jefferson Davis County. Nowhere in the Commission report do I find mention of the fact that a three-judge constitutional court, after full and complete hearings, found both for an individual plaintiff and for a class that there was no discrimination against Negroes, as such, in being denied the right to vote in Mississippi.

Clarence Mitchell, of the NAACP, in testifying in 1957 before the House Judiciary Subcommittee on Civil Rights, offered, as part of his testimony, what he called specific examples of persons denied the right to vote in Mississippi. One of these examples was an affidavit submitted by one H. D. Darby, which says:

To Whom It May Concern:

I, Rev. H. D. Darby of Post Office Box 116, Prentiss, Miss., did on the 29th day of June 1956 go to the Jefferson Davis County court-

house and the office of the circuit clerk for the purpose of restoring my name to the roll of registered voters. After having filled out the required form for registering, I presented it to the circuit clerk, who looked at the form and promptly said, "I have to turn you down."

I had been given the 123 section of the Mississippi constitution to interpret to the satisfaction of the circuit clerk.

I had been a qualified elector for 4 years before the county supervisors called for a reregistration under the State's new constitutional amendment.

I hereby affirm that the above statement is true.

Rev. H. D. Darby.

[SEAL] Margaret A. Lewis, *Notary.*

My commission expires April 10, 1958.

Please note particularly the polished and correct language that is utilized in this affidavit. On the basis of the evidence which I will submit, I charge categorically that the affidavit was not prepared by Darby. The NAACP simply had him sign it.

The complete story can best be understood from an examination of the long and comprehensive opinion in the case of H. D. Darby, on behalf of himself and others similarly situated, against James Daniel, circuit clerk of Jefferson Davis County, Miss., and Joe T. Patterson, attorney general of the State of Mississippi. The case was brought in the U.S. District Court for the Southern District of Mississippi. It was heard by a three-judge constitutional panel. The others similarly situated involved individuals who were also used as examples by Clarence Mitchell in his NAACP testimony before the House Judiciary Subcommittee in 1957.

The suit sought an injunction under the Civil Rights Act of 1957, and other pertinent statutes. The opinion states that the gravamen of the plaintiff's complaint is that he and other Negro citizens have been denied the right to register in order that they might vote, solely because of their race and color, through the enforcement of a policy of discrimination against Negro voters, the enforcement of unconstitutional voting requirements and the discriminatory administration of valid requirements.

Prior to January 1, 1954, plaintiff Darby was a qualified elector in Jefferson Davis County and exercised his right to vote in various elections between 1950 and 1955. In February 1956, the board of supervisors of Jefferson Davis County ordered a new registration. Darby presented himself before defendant Daniel in June 1956, was given a questionnaire, then completed part of the written examination, signed his name and left.

The opinion states:

He (the plaintiff) had consulted the attorney now representing him and had written a letter of complaint to the President of the United States some weeks before that, which resulted in an investigation of defendant Daniel being made by the Federal Bureau of Investigation. About October 1, 1956, defendant Daniel received a letter from the U.S. attorney in Jackson, Miss., requesting that Daniel come to his office for conference. He responded to the request, going in company with the county attorney to the office of the U.S. attorney. There he was advised that the Department of Justice took the position that persons who, like plaintiff Darby, had been registered prior to January 1, 1954, were required to take only the oral examination covering the qualifications as set forth in the original section 244 of article 12 of the Mississippi constitution. Daniel left the U.S. attorney and went to the attorney general of Mississippi, who advised him in writing October 12, 1956, that no person registered prior to January 1, 1954 was required to take the written examination provided by the amendment. Thereafter, Daniel pursued the policy of giving all applicants of Darby's class the option to take the oral examination provided by the original section or the written examination provided by the amendment.

Notice here that from the outset the U.S. attorney was advising Darby, the Department of Justice was advising Darby what to do and what not to do, and the FBI was investigating defendant Daniel and the operation of his office.

The question of a written or oral examination was resolved by Darby being given an oral examination. He failed. He again presented himself for an oral examination and again failed. According to the opinion:

A short time thereafter the FBI made a further examination into Daniel's operation of his office in which Daniel explained freely what happened.

Next, Darby came back and asked that he be given the written examination. It was given to him on forms furnished to Daniel by the State officials, and again Daniel ruled he had not qualified for registration.

Mr. President, at this time I do not proposed to review the constitutional and statutory provisions of Mississippi law which are involved in this controversy. They are fully covered in the opinion, for which I now ask unanimous consent to have inserted in the Record immediately following my remarks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(See exhibit 1.)

Mr. EASTLAND. Mr. President, it is sufficient for my present purpose to only say that Darby attempted in every way to qualify and was denied by the application of the law. The important thing is what the Court actually found in regard to Darby's capacity and ability to meet the standards for voter registration. Here is the finding and opinion of the Court:

According to the testimony of his attorney, Plaintiff Darby approached him in April or May 1956, about the time he wrote to President Eisenhower. The attorney called the NAACP, which, sometime later, agreed that its legal fund would pay the attorneys and the expense of any litigation which might be brought by Reverend Darby.

This was before his first written application of June 29, 1956, in which he stated that he was a farmer. The application was signed by him but was not filled in. It is not claimed that, in this application or the oral tests which came after it, plaintiff Darby showed himself qualified to register. The entire case is predicated on the sworn written application of June 22, 1957, which he took under his attorney's advice and direction. This document, read in the light of the testimony of Plaintiff Darby, reveals several deficiencies.

He made no answer to question 14 inquiring if he had ever been convicted of the crimes enumerated in the question; considerable portions of the answers written by plaintiff are illegible. In response to question 18 calling upon him to copy section 123 of the Constitution of Mississippi,[1] he wrote six lines not called for by the question and not possessing marked coherence. In giving his reasonable interpretation of that section he wrote, "the Govenner govends all the works of the state and he is to see that all the voilatores be punished and als he can pardon out the penetenter ane pherson." In answering question 20 which directed him to write his understanding of the duties and obligations of citizenship under a constitutional form of government, he wrote five lines which could hardly be called accurate or responsive to the question.[2]

The Court found as a fact that Darby did not compose and write the letter of protest to the President. I now ask you to find with me, in view of the Court's finding as to Darby's degree of literacy, that he did not compose and write the affidavit previously quoted from the House hearings. Please note also that the Court found that defendant Daniel, while dealing with Darby, knew that he was under constant surveillance by Federal officials and that he was dealing with a party who was acting under advice of counsel.

As to other Negro witnesses who were called as having been denied the right to register and vote, the Court said:

Plaintiffs served subpenas on 25 Negro witnesses, of whom 15 were placed upon the stand. Despite the principles last above quoted and such cases as *Reddix* v. *Lucky* (5 Cir., 1958) 252 F. 2d 930, 938, holding that "obviously the right of each voter depends upon the action taken with respect to his own case," we permitted this testimony to be introduced over objection to give plaintiffs a chance to show that there was a class whose rights they might carry if they established their own case, and also that the testimony might be considered as furnishing circumstantial evidence of discrimination in favor of the case of plaintiffs. Although some of the written applications exhibited in connection with the testimony of these witnesses were sufficient to raise an issue of fact as to their qualifications, it is not our providence to set ourselves up as registrar of voters.

Some of the testimony certainly demonstrated the absence of qualifications of the applicants. For example, when called upon by question 18 to copy section 198 of the Mississippi Constitution, Johnnie B. Darby, Plaintiff Darby's wife, wrote: "I have so agreed to be as good a citizen as I possibly can I have not yet read the Constitution of Mississippi I do try to abide by truth and right as the Almighty God provide the understanding and wisdom."

Another witness called upon to copy section 16 of the constitution[3] wrote: "Ex post facto laws or laws impaitring obligations contrace St. Shall Be passed." Interpreting that section this same witness wrote: "a man must pay pold tax befor he eagable to voat." This witness gave his occupation as that of teacher.

None of these witnesses took appeals from

[1] The Governor shall see that the laws are faithfully executed.

[2] A citizen is persn has in been in the U.S.A. all his days, and is not been convicted of enny crimes and has been loyal, to his country and pase all his tax.

[3] Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.

Daniel's ruling declining to permit them to register. Four of the fifteen passed the written examination, and of those who failed, the wives of two passed. He gave the test to some of the witnesses as many as four times and he invited plaintiff Dillon to come back and try again. The testimony of these witnesses adds little to the solution of the problem before us.

Then the Court said:

The essence of the action before us, therefore, is discrimination on the part of the defendant Daniel—discrimination against plaintiffs, Negroes, and in favor of white persons. After listening to the oral testimony and examining the documents carefully we are unable to find any tangible or credible proof of discrimination. There is no proof that any white person was ever treated in any manner more favorably than plaintiffs or any other Negroes. The mere showing that of 3,000 qualified voters in Jefferson Davis County only 40 to 50 are Negroes is not sufficient. Plaintiffs carry the burden of showing that plaintiffs have been denied the right to register because they are Negroes, and that white people similarly situated have been permitted to register. This record contains no such proof. The disparity between numbers of registrants, as has been so often pointed out, results doubtless from the fact that one race had a start of several centuries over the other in the slow and laborious struggle toward literacy. This record does not, in our opinion, show that defendant has practiced discrimination. From our observation of his demeanor during the trial and while on the witness stand and of the evidence generally we are convinced that he has shown himself to be a conscientious, patient, and fair public official, exerting every effort to do a hard job in an honorable way.

As to the constitutional principles involved in the Darby case, the Court held:

We are importuned to rule without proof that, on its face or by reason of its unrevealed sinister purpose, the constitutional amendment is void. The showing before us wholly fails to warrant serious consideration of so condemning a whole people, which is what we would have to do if we accepted plaintiffs' argument. Neither proof nor judicial knowledge tend to sustain plaintiffs' position.

Even if we had such knowledge by some sort of occult power of divination, we would not have the competence to do what plaintiffs advocate. No case is cited as a precedent for such action, and no proof is offered to sustain it. If we should imagine ourselves possessed of such omniscience and omnipotence, we would find ourselves confronted by a vast array of authority which forbids questioning the motives even of a legislature, certainly of a sovereign people.

(b) Commenting upon the immunity of State legislators from having their motives scrutinized, Judge Learned Hand exclaims: "But of all conceivable issues this would be the most completely 'political,' and no court would undertake it." He also quotes Chief Justice Taney's statement in *The License Cases,* 5 How. 504, 583: "Upon that question the object and motive of the States are of no importance, and cannot influence the decision. It is a question of power." Mr. Justice Douglas, in *Ferandez* v. *Wiener,* 326 U.S. 340, quoted the language of Chief Justice Stone in *Sonzinsky* v. *United States,* 1937, 300 U.S. 506, 513: "Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of the courts." Upon a principle so unquestionable it is sufficient to add to the cases already cited a list of more recent decisions affirming it.

We hold, therefore, that plaintiffs have wholly failed to establish that the amendment to section 244 of the Mississippi constitution of 1890 is void on its face or because it was the product of base motives. We hold, on the other hand, that said amendment and the statutes passed in connection with it are valid on their face and, in fact, and are a legitimate exercise by the State of its sovereign right to prescribe and enforce the qualification of voters.

Finally, and most significant, no appeal was taken from the decision of this three-judge constitutional court to the U.S. Supreme Court. It is final—it is complete. Mississippi's constitution and statutes in regard to registration and voting requirements meet the demands of the U.S. Constitution.

Mr. President, it was always my understanding in the operation of our system of government, both State and Federal, that the courts were the final arbiters in interpreting the respective constitutions, laws, and statutes adopted by the several legislatures and the U.S. Congress. We now find a Commission arrogating unto itself the power and right to overrule the solemn judgments of courts. The Commission denies the court's conclusion that the Mississippi constitution and statutes in regard to registration and voting requirements meet the demands of the U.S. Constitution. In addition to all of its other constitutional deficiencies, the Commission's recommendation to establish Federal registrars in local communities is a gross invasion on the part of the executive branch of the Federal Government against the judicial branch. It upsets completely the scheme of checks and balances in the division of powers. The Commission is asking this Congress to constitute it as the court to determine who has or has not been denied voting rights. Not even in the days of reconstruction was a more monstrous plan devised to destroy and emasculate the constitutional rights and powers of the sovereign States.

Those who advocate and approve the recommendations and proposals of the Commission, together with the reasoning and support thereof, predicate them upon many unsound, erroneous, and fallacious facts, interpretations of the Constitution, and nonexistent powers and policies of the Federal Government; among such theories, principles, and erroneous constructions are the following:

That the Federal Constitution, either specifically or impliedly, provides for and requires it to assure and guarantee to all citizens of the United States and of the States equal protection of the laws;

That the principle that all persons in the United States, including citizens, have equal rights granted by the Constitution to everything in every phase of voting, education, housing, and other fields of social and political life in this Nation;

That the privileges and immunities of a citizen of the United States include the right of suffrage;

That the States are required to establish only what the Federal Government considers to be reasonable qualifications or restrictions on the right to vote;

That universal suffrage and total equality are basic requirements for every person under the Constitution of the United States and that such is guaranteed unto them by the Constitution;

That if integration and total equality in every respect has not been granted to and received by every citizen of each State and this Nation by the courts, then the courts should be bypassed and all questions of qualification of voters should be withdrawn from the courts and placed in the hands of the Civil Rights Commission;

That it is proper and within the provisions of the Constitution that the executive department of the Government perform judicial functions;

That the Constitution, and particularly the 14th and 15th amendments, are designed to make the "nonwhite" race in this Nation members of the privileged class and give to them rights and privileges not given or secured to members of the white race.

There are many provisions of the report in advocacy and support of the recommendations and proposals which sustain the foregoing statements but the following are selected for your immediate consideration:

To show the fallacy and incorrectness of the foregoing, we must review some of the historical facts surrounding the drafting of the Constitution and the status of the franchise at the time of the drafting and adoption of the Constitution, and the pronouncements of the Supreme Court of the United States and other Federal Courts since 1788.

At the time of the adoption of the Constitution the various States had their own requirements which must have been met for a person to be a qualified elector. Among them were property requirements, financial worth, age, and residence. Only males were permitted to vote. During the Constitutional Convention each State refused to give up the right to set the qualifications of its electors. Efforts were made by Gouverneur Morris and others to permit the Federal Government to set the qualifications of the electors in each State measured by the qualifications of State electors for members of the most numerous branch of their respective State legislatures—this was overwhelmingly defeated. Nowhere in any State law, as it then existed, was there any idea of or requirement of equality among all the people as to all things. The right of suffrage was most unequal.

The selection of the people or the class of people qualified to vote for representatives was as set out in article I, section 2. Senators were to be elected according to article I, section 3, clause 1, by the State legislatures. The selection of presidential electors was left exclusively to the States, with the exception of the time and day on which the electors were to cast their ballots for President and Vice President.

Until the adoption of the 14th amendment the State could condition suffrage as each State saw fit. This amendment did not grant the franchise to any person. It merely recognized the difference between citizenship in the United States

or national citizenship and State citizenship; it further made all Negroes citizens of the United States; it further required that the laws of each State be applied equally to all persons therein.

As to voting we find the source of the franchise, whom it may be exercised by, what is the true meaning of the words "right to vote," and to whom it is given, and the correct meaning of the 14th and 15th amendments well stated in various cases from the Supreme Court of the United States and other Federal Courts.

The right of suffrage is not one of the privileges and immunities of national citizenship; it is not one of the privileges and immunities of State citizenship. In *Minor* v. *Happerset,* 21 Wall 627, 22d Law Ed. 162, we find, page 629:

The United States has no voters in the state of its own creation. The elective offices of the United States are all elected directly or indirectly by State officers.

Speaking of the 14th amendment, the Court said:

The amendment did not add to the privileges and immunities of the citizen, it simply furnished an additional guaranty for the protection of such as he already had.

It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted.

The Court holds that the franchise is not a privilege and immunity of State citizenship.

As to the true meaning of the 14th amendment as interpreted by the *Slaughterhouse Cases,* 83 U.S. 16, Wall 36, 21 L. Ed. 394, and as to the right of suffrage as effected by the 14th and 15th amendments, we find as follows in *McPherson* v. *Blacker,* 146 U.S. 1, 36 L. Ed. 869–878:

This Court held that the first clause of the 14th article was primarily intended to confer citizenship on the Negro race; and secondly, to give definitions of citizenship of the United States, and citizenship of the States, and it recognized the distinction between citizenship of a State and citizenship of the United States by those definitions; that the privileges and immunities of citizens of the States embrace generally those fundamental civil rights for the security and establishment of which organized society was instituted, and which remain, with certain exceptions mentioned in the Federal Constitution, under the care of the State governments; while the privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national Government, the provisions of its Constitution, or its laws and treaties made in pursuance thereof; and that it is the latter which are placed under the protection of Congress by the second clause of the 14th amendment.

We decided in *Minor* v. *Happersett,* 88 U.S. 21 Wall. 162 (22: 627), that the right of suffrage was not necessarily one of the privileges or immunities of citizenship before the adoption of the 14th amendment, and that that amendment does not add to these privileges and immunities, but simply furnishes as additional guaranty for the protection of such as the citizen already has; that at the time of the adoption of that amendment, suffrage was not coextensive with the citizenship of the State; nor was it at the time of the adoption of the Constitution; and that neither the Constitution nor the 14th amendment made all citizens voters.

The 15th amendment exempted citizens of the United States from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The right to vote in the States comes from the States, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been. *United States* v. *Cruikshank,* 92 U.S. 542 (23: 588); *United States* v. *Reese,* 92 U.S. 214 (23: 563).

If because it happened, at the time of the adoption of the 14th amendment, that those who exercised the elective franchise in the State of Michigan were entitled to vote for all the presidential electors, this right was rendered permanent by that amendment, then the second clause of article II, has been so amended that the States can no longer appoint in such manner as the legislatures thereof may direct; and yet no such result is indicated by the language used nor are the amendments necessarily inconsistent with that clause. The first section of the 14th amendment does not refer to the exercise of the elective franchise, though the second provides that if the right to vote is denied or abridged to any male inhabitant of the State having attained majority and being a citizen of the United States, then the basis of representation to which each State is entitled in the Congress shall be proportionately reduced. Whenever presidential electors are appointed by popular election, then the right to vote cannot be denied or abridged without invoking the penalty, and so of the right to vote for representatives in Congress, the executive and judicial officers of a State or the members of the legislature thereof. The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State. There is no color for the contention that under the amendments every male inhabitant of the State being a citizen of the United States has from time of his majority a right to vote for presidential electors.

At page 879 of the Law Edition, report of McPherson, we find the Court pointedly summing up the 14th amendment insofar as equal protection of the laws is concerned.

It merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges and in the liabilities imposed.

The Court further held in McPherson that the fact that the constitution and laws of the State of Michigan did not grant the franchise to women, did not prevent the State of Michigan from having a republican form of government. This holding squarely contradicts the assertions of the Commission's report to the effect that in order to have a republican form of government there must be universal suffrage and that everyone must have equal right to everything at the same time.

The case of *Pope* v. *Williams,* 193 U.S. 621, 48 L. Ed. 817, squarely refutes and condemns the statement in the report at page 5, that:

It was understood then (referring to the time when the Constitution was adopted) as now, that States could establish reasonable restrictions on the right to vote saying in effect that the Federal Government had the power to require the States to prescribe only what the Federal Government thought were reasonable restrictions on the right to vote.

Here the Court dealt with the contention of a former citizen of the District of Columbia who had become a citizen of Maryland but who had not registered with the circuit clerk of the county of his residence, at least 1 year before he offered to register and vote, and who claimed that such was an unreasonable qualification. The Court rejected his contention that the Federal Government had a right to determine whether such requirement was reasonable or unreasonable. The Court held the Federal Government had no right to determine that question but as long as a requirement did not violate the Constitution, the State had the exclusive right to determine whether the requirement was reasonable or unreasonable at page 822 of the law edition, as follows:

We are of the opinion that the statute does not violate any Federal right of the plaintiff in error which he seeks to assert in this proceeding. The statue, so far as it concerns him and the right which he urges, is one making regulations and conditions for the registry of persons for the purpose of voting. It was only for the purpose of thereafter voting that the plaintiff in error sought to be registered, and it was the denial of that right only which he can now review. His application for registry as a voter was denied by the board of registry solely because of his failure to comply with the statute. Whatever other right he may have as a citizen of Maryland by reason of his removal there with an intent to become such citizen is not now in question. So far as appears no other right, if any he may have, has been infringed by the statute. The simple matter to be herein determined is whether with reference to the exercise of the privilege of voting in Maryland, the legislature of that State had the legal right to provide that a person coming into the State to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the State.

The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States (*Minor* v. *Happersett,* 21 Wall. 162, 22 L. Ed. 627). It may not be refused on account of race, color, or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution. The State might provide that persons of foreign birth could vote without being naturalized, and, as stated by Mr. Chief Justice Waite in *Minor* v. *Happersett,* 21 Wall. 162, 22 L. Ed. 627, such persons were allowed to vote in several of the States upon having declared their intentions to become citizens of the United States. Some States permit women to vote; others refuse them that privilege. A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon any one, and the conditions under which that right is to be exercised are matters for the States alone to prescribe, subject to the conditions of the Federal Constitution, already stated; although it may be observed that the right

to vote for a Member of Congress is not derived exclusively from the State law. See Fed. Const. art. 1, sec. 2; *Wiley* v. *Sinkler*, 179 U.S. 58 L. Ed. 84, 21 Sup. Ct. Rep. 17.) But the elector must be one entitled to vote under the State statute. Id., Id. (See also *Awafford* v. *Templeton*, 185 U.S. 487, 491, 46 L. Ed. 1005, 1007, 22 Sup. Ct. Rep. 783.) In this case no question arises as to the right to vote for electors of President and Vice President, and no decision is made thereon. The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one. We do not wish to be understood, however, as intimating that the condition in this statute is unreasonable or in any way improper.

The Court further held in Pope that the reasons which may have caused the State legislature to enact the statute in question were matters solely for its determination and that the Federal Court, and thus the Federal Government, had no concern with them.

In the case of Lassiter against Northampton County Board of Electors, decided June 8, 1959, the Supreme Court of the United States sustained the validity of the literacy tests of the State of North Carolina against the contention of the Negro plaintiff that they were invalid and violated the Constitution of the United States, including the 14th and other amendments thereto. The Court at pages 6, 7, and 8 of the opinion said:

> Section 2 of the 14th amendment, which provides for an apportionment of representatives among the States acocrding to their respective numbers, counts the whole number of persons in each State (except Indians not taxed), speaks of the right to vote, the right protected, refers to the right to vote as established by the laws and constitution of the State. (*McPherson* v. *Blacker*, 146 U.S.)
>
> Residence requirements, age, previous criminal record (*Davis* v. *Beason*, 133 U.S. 333, 345–347) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. (Cf. *Franklin* v. *Harper*, 205 Ga. 779, appeal dismissed 339 U.S. 946.) It was said last century in Massachusetts that a literacy test was designed to insure an independent and intelligent exercise of the right of suffrage. (*Stone* v. *Smith*, 159 Mass. 413–414.) North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Commissioners Battle, Storey, and Carlton in the footnotes at pages 1 and 2 of the report say that equality was not made part of our fundamental law.

The contents of the report in advocacy of the the recommendations and proposals rely upon the Declaration of Independence and many socialogical and historical documents together with the Dred Scott decision. As to such contents of the report, I think it sufficient to say that the Constitution of the United States supersedes all documents prior thereto and, of course, the 14th amendment was passed for the purpose of overriding the doctrine and holding in the Dred Scott decision.

The Commission's report is no more and no less overall than a complaint, or advocacy, respectively, as indicated: a complaint that under the Constitution of the United States as interpreted by its courts, it is impossible for the Federal Government, Congress, the President, or the courts to order, direct, or require integration and mixing of the races in every phase of the life of this Nation; a complaint that the courts have refused to depart from the true meaning of the Constitution; the report advocates recommendations and proposals, on the basis laid in the reasoning and language thereof which would cause integration and mixing of the races in every phase of the life of this Nation; the report advocates that the nonwhites in this Nation should be made members of a privileged class and given rights and privileges not enjoyed by members of the white race; the report advocates that the Federal Government should by executive or legislative power bypass the courts if such is necessary to bring about integration and mixing of the races; the report advocates a constitutional amendment which would permit criminals, mental incompetents, illiterates, and so forth, to be given the right to vote in all elections for State officials and for Senators and Representatives in the U.S. Congress, thus destroying the basic principle of State power and Federal power under the Constitution of the United States and denying to the States the rights and powers which they have enjoyed since 1788, a period of 171 years, and even before that from the time of the organization of the respective States which adopted the Constitution; the report advocates the enactment of Federal statutes patently unconstitutional in order to accomplish integration and mixing of the races; it advocates jeopardizing the right of most Negroes and most white persons to choose associates and the right to select voluntarily with whom they shall mix and mingle; and to give to the members of the nonwhite races in this Nation the over-riding power to determine who everybody else will associate with and mix with.

All recommendations are either unnecessary, unwise, or unconstitutional.

Voting recommendation No. 2 would require preservation of all State registration and voting records for a period of 5 years, that they be public records and subject to public inspection.

Any act of Congress requiring the above would be absolutely unconstitutional and void. It would violate the provisions of article I, section 2, clause 1, and article I, section 3, clause 1, together with many cases decided by the Supreme Court of the United States. It cannot be justified under article I, section 4, clause 1, or any other provision of the Federal Constitution.

Recommendation No. 3 proposes that the Federal Government cast burdens upon Sate officers without the consent of the State and seeks to exercise Federal control over the selection of Presidential electors who are State officers; it seeks to extend Federal authority and power in control and regulation of State officers and vests in the Federal courts jurisdiction of matters which are not otherwise within the scope and sphere of Federal power.

Mr. President, since the days of Reconstruction the white and Negro people of the South, slowly and laboriously, evolved a pattern of life that gave to each race the maximum opportunities for progress and advancement and promoted mutually respected, peaceful, and harmonious relations between the two races. You are never, either by commission reports or statutes, going to force the white people of the South into social relationships with the Negro race. What can be done, and is fast being done, is the destruction of the harmonious relationships and the erection of a wall that prevents and prohibits communication between the races, mutual trust and confidence.

Mr. President, let me say that the rape, the murder, the other crimes, and the filth in New York and in other great metropolitan areas of the country are due to the attempts at racial integration; but the newspapers in those areas will not tell the public the truth.

It is on the sidewalks of the cities of the North, East, and West that terror stalks the streets—where rape, murder, assaults, crime, and violence of all kinds now run rampant. In the South, we do not have juvenile delinquency, gang rule and gang murder. We do not have those things, because we have a segregated society that has been built throughout the years.

The fundamental cause of this deplorable situation is the continual agitation for the intermingling of the races on a social plane. You cannot put white and Negro children in school together and not have social contacts result. When Negro families move into white neighborhoods, the whites are either going to move out, as they usually do, or social intermingling will result. What will happen in the North, East, or West may be problematical. In the Deep South there is no doubt or question—the races are not going to be intermingled.

Mr. President, no geographic area of the United States contains a higher proportion of population whose lineal ancestors were living in this country prior to the Revolutionary War than does the South. When we speak of a birthright, we speak of and through our fathers, grandfathers, and gandsires who lived, fought, bled, and died to create and build this great country. When we speak of our Founding Fathers, we are calling them fathers, as such, and not referring to them as abstract symbols for metaphysical fulminations. When we speak of the Constitution we are talking about a document which means exactly what these men of life and blood intended it to mean and we refuse to accept or consider the monstrous misinterpretations placed on this charter by modern-day witch doctors who would pervert it into

an instrument for the destruction of the white race of the South.

If the South is forced to stand again today, where it once stood in the dark and hopeless days of reconstruction, I remind my colleagues that they are dealing with a people who hold the same ideas of freedom and liberty under law their fathers held before them. They will meet today both the description and challenge so eloquently stated by Henry W. Grady in 1889, when he said:

If there is any human force that cannot be withstood, it is the power of the banded intelligence and responsibility of a free community. Against it, numbers and corruption cannot prevail. It cannot be forbidden in the law, or divorced in force. It is the inalienable right of every free community. It is on this, sir, that we rely in the South. Not the cowardly menace of mask or shotgun, but the peaceful majesty of intelligence and responsibility, massed and united for the protection of its homes and the preservation of its liberty.

EXHIBIT I

IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION—H. D. DARBY, ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED, PLAINTIFFS, *v.* JAMES DANIEL, CIRCUIT CLERK OF JEFFERSON DAVIS COUNTY, MISSISSIPPI AND JOE T. PATTERSON, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI, DEFENDANTS—CIVIL ACTION NO. 2748

Before Cameron, circuit judge, and Mize and Clayton, district judges.

Cameron, circuit judge:

The case before us, with some of the facts, is thus stated in plaintiff's brief: "This is an action for a declaratory judgment and injunction brought by plaintiff on behalf of himself and others similarly situated. The gravamen of plaintiff's complaint is that he and other Negro citizens of Jefferson Davis County, Miss., have been denied the right to register in order that they might vote, solely because of their race and color, through the enforcement of a policy of discrimination against Negro voters, the enforcement of unconstitutional voting requirements, and the discriminatory administration of valid requirements. The plaintiff also seeks to enjoin enforcement of a State statute which makes it a crime, punishable by imprisonment for 1 year, for him to accept financial and legal assistance in the prosecution of this action and for his attorneys and others to give such assistance."

"The plaintiff in this case is an adult Negro citizen of the United States and of the State of Mississippi, residing in Prentiss, Jefferson Davis County, Miss. since 1947. He is not an idiot, an insane person, or an Indian who is not taxed, and is more than 21 years of age. His occupation is that of a minister of the Gospel. He has never been convicted of any crime enumerated in the Mississippi constitution as grounds for disqualification as a voter. He has paid his poll tax for the years 1956 and 1957. He was a duly qualified and registered voter of Jefferson Davis County prior to January 1, 1954, and exercised his right to vote in various elections held in the county between 1950 and 1955, having registered for the first time in the early part of 1950.

"In 1954 the Legislature of the State of Mississippi proposed that section 244 of the Mississippi constitution of 1890 be amended, and after the proposed amendment was ratified by a vote of the electorate, it became law in 1955." Defendant Daniel was and is circuit clerk and registrar of Jefferson Davis County and will be referred to as defendant unless otherwise noted.

The qualifications of electors are set forth in article 12 of the Mississippi constitution of 1890, as amended, titled "Franchise," and the article embraces sections 240–243, inclusive.

The sections of the article, other than section 244 which is challenged by plaintiff, grant the right to vote to inhabitants of the State, except idiots, insane persons and Indians not taxed, who are citizens of the United States, 21 years old or over, with certain residence requirements, who have duly registered as provided in the article and who have never been convicted of certain listed crimes and who have paid all poll taxes legally required of them before February 1 of the year in which they offer to vote. Section 249 provides: "And registration under the constitution and laws of this State by the proper officers of this State is hereby declared to be an essential and necessary qualification to vote at any and all elections."

Section 244 of article 12, prior to the amendment attacked, was in these words:

"§ 244. On and after the first day of January, A.D. 1892, every elector shall, in addition to the foregoing qualifications be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A.D. 1892."

Amended section 244[1] reads as follows in its pertinent portions:

"SEC. 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional from of government."

Following the quoted language the amended section goes on to provide that a person applying to register shall make a sworn written application on a form to be prescribed by the State board of election commissioners, and concludes with these words: "Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this State prior to January 1, 1954. The legislature shall have the power to enforce the provisions of this section by appropriate legislation."

In February 1956 the Board of Supervisors of Jefferson Davis County ordered a new registration and due notice thereof was given by publication as required by law. This new registration was in line with the practice which had been followed in the county for a number of years, new registrations having been had in the years 1906, 1923, 1934, and 1949.

Defendant Daniel first became circuit clerk and registrar of Jefferson Davis County January 1, 1956. Without dispute and based upon his opinion that, since a new registration had been ordered and forms had been sent to him by the State election commissioners, he was so obligated, he began the practice of requiring all applicants, regardless of color, to take the examination provided by the amendment and covered by the questionnaire, which policy he pursued until about October 15, 1956. Plaintiff Darby first entered his office to register on June 29, 1956, and Defendant Daniel handed him the questionnaire to be completed pursuant to the custom then universally followed by him. No discussion was had between plaintiff and defendant. Plaintiff completed a part of the written examination and signed his name and left.

He had consulted the attorney now representing him and had written a letter of complaint to the President of the United States some weeks before that, which resulted in an investigtion of Defendant Daniel being made by the Federal Bureau of Investigation. About October 1, 1956, Defendant Daniel received a letter from the U.S. attorney in Jackson, Miss., requesting that Daniel come to his office for conference. He responded to the request, going in company with the county attorney to the office of the U.S. attorney. There he was advised that the Department of Justice took the position that persons who, like Plaintiff Darby, had been registered prior to January 1, 1954, were required to take only the oral examination covering the qualifications as set forth in the original section 244 of article 12 of the Mississippi constitution. Daniel left the U.S. attorney and went to the attorney general of Mississippi, who advised him in writing October 12, 1956, that no person registered prior to January 1, 1954, was required to take the written examination provided by the amendment. Thereafter, Daniel pursued the policy of giving all applicants of Darby's class the option to take the oral examination provided by the original section or the written examination provided by the amendment.

About November 2, 1956, Plaintiff Darby again presented himself for registration and was given the oral examination. He did not pass in the opinion of Daniel and was so advised. Neither Darby nor Daniel remembered what section of the constitution Darby was called upon to interpret. About June 8, 1957, Darby came to Daniel's office again to register and was given the oral examination, and again failed to pass. A short time thereafter the FBI made a further examination into Daniel's operation of his office in which Daniel explained freely what happened.

On June 22, 1957, Plaintiff Darby again presented himself to Defendant Daniel, this time requesting that he be given the written examination as provided by the amendment. Without dispute, Plaintiff followed this course on the advice of his attorney, whom he had first consulted more than a year before. He was given the written examination on the forms furnished to Daniel by the State officials, and again Daniel ruled that he had not qualified for registration.[2]

[1] In 1954 the Legislature of Mississippi proposed that section 244 of the constitution of 1890 be amended, and after the proposed amendment was ratified by a vote of the people it became a part of the constitution in 1955.

[2] After the Court had concluded the hearing of this action July 22–25, 1958, Rutha Dillon presented a motion to intervene served and filed September 16, 1958, setting forth that she had testified as a witness for Plaintiff Darby and that her interest "may not be adequately represented by plaintiff and applicant may be bound by a judgment in this action." The application was filed by the attorneys already representing Plaintiff Darby and with it was filed a memorandum brief in which she claimed that she was filing the application under rule 20(a) and rule 24(b)(2) FRCP. Her application asked that she be permitted to intervene upon her testimony already given and upon the testimony introduced at the hearing. Her desire to intervene was grounded on her apprehension that Plaintiff Darby might not represent her inasmuch as she had not registered prior to January 1, 1954, whereas Darby had registered prior to that time and had requested and taken the written examination provided by the amendment to section 244, although not required so to do.

The defendants resisted the requested intervention, taking the position that the application came too late and that Plaintiff Darby, having volunteered to take an examination he was not required to take, was

Plaintiff Darby appealed, as provided by law, from the ruling of Defendant Daniel rejecting his written application (he had not appealed from the other three rejections), and the evidence shows that in so doing he was guided by one of his attorneys of record who had been employed by the NAACP legal defense and educational fund. His attorney filed with the registrar a writing bearing the heading "Appellant's Contentions."[3] Plaintiff Darby and his attorney appeared at the office of Daniel on October 7, 1957, but there was no meeting of the commissioners scheduled or held at that time.[4] Said plaintiff and his attorney were advised that the commissioners would meet at the registrar's office on the Tuesday after the third Monday in March 1958; Plaintiff Darby testified that Daniel told them of a March meeting. No provision is made for notice to persons desiring to present contests of the actions of the registrar and we do not find that Defendant Daniel made any agreement to give any notice to plaintiff or that such an agreement, if made, would have any legal effect. The appeal, apparently begun as a test of the provisions of the constitution and statutes here under attack, was not prosecuted, but this civil action was filed 4 days before he election commission met in Jefferson Davis County. The appeal is still pending before them.

Other portions of the testimony will be referred to under the discussion of the several points raised by the parties.

From the written contentions so filed on the appeal, the averments of the complaint and plaintiff's brief it appears that the attack on the Mississippi Constitution and implementing statutes is based upon three grounds: that section 244 is unconstitutional and void on its face because it betows upon the registrar "an uncontrolled discretion to determine who is able to interpret the constitution of * * * Mississippi" and who is able to demonstrate an understanding of the duties of citizenship; that the section is unconstitutional and void because the purpose of said provisions was to enable the registrars to "discriminate against otherwise qualified Negroes;" and that said section is being administered "in such a manner as to discriminate against Rev. H. B. Darby and other Negroes otherwise qualified, solely because of their race and color."

The complaint specifies that the uncontrolled discretion referred to results from the amendment's vague and uncertain language which fails to set up a standard of reasonableness capable of objective measurement. The precise prayer of the complaint asks an injunction restraining defendant from enforcing those parts of said constitutional and statutory provisions which require an elector to give to defendant a reasonable interpretation of a provision of the Constitution of the State of Mississippi and which require that an elector demonstrate to defendant a reasonable understanding of the duties and obligations of citizens under a constitutional form of government. The allegations of unconstitutionality are predicated upon the due process clause of the 14th amendment and the provisions of the 15th amendment.

I

(1) Any consideration of the constitutionality of the challenged portions of this amendment begins with the fundamental fact that, under our constitutional system, the qualification of voters is a matter committed exclusively to the States. The Supreme Court has spoken on the subject in language as clear as it is decisive. Witness, for example, what it said in *Pope* v. *Williams*, 1904, 193 U.S. 621:[5]

"The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States (*Minor* v. *Happersett* (21 Wall. 162)). It may not be refused on account of race, color, or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper * * *. The State might provide that persons of foreign birth could vote without being naturalized, and, as stated by Mr. Chief Justice Waite in *Minor* v. *Happersett, supra,* such persons were allowed to vote in several of the States upon having declared their intentions to become citizens of the United States. Some States permit women to vote; others refuse them that privilege. A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon anyone, and the conditions under which that right is to be exercised are matters for the States alone to prescribe, subject to the conditions of the Federal Constitution, already stated. * * * The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one. * * *

"* * * The right of a State to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution.

"The reasons which may have impelled the State legislature to enact the statute in question were matters entirely for its consideration, and this Court has no concern with them" (pp. 632–634).

Like language was used by the Court in a case so much relied upon by plaintiffs, *Guinn et al.* v. *United States* ((1915), 238 U.S. 347). In striking down the grandfather clause of the Oklahoma Constitution the Court fixed its eyes upon certain principles as the lodestar which should furnish the light by which it would be guided:

"It [the United States] says State power to provide for suffrage is not disputed, although, of course, the authority of the 15th amendment and the limit on that power which it imposes is insisted upon. Hence, no assertion denying the right of a State to exert judgment and discretion in fixing the qualification of suffrage is advanced and no right to question the motive of the State in establishing a standard as to such subjects under such circumstances or to review or supervise the same is relied upon, and no power to destroy an otherwise valid exertion of authority upon the mere ultimate operation of the power exercised is asserted. And applying these principles to the very case in hand the argument of the Government in substance says: No question is raised by the Government concerning the validity of the literacy test provided for in the amendment under consideration as an independent standard since the conclusion is plain that that test rests on the exercise of State judgment, and, therefore, cannot be here assailed either by disregarding the State's power to judge on the subject or by testing its motive in enacting the provision (pp. 359–360).

* * * * *

"Beyond doubt the amendment does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the Nation and the State would fall to the ground. In fact, the very command of the amendment recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals" (p. 362).[6]

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not in position to maintain the action brought by him. The amendment provides that Darby should not be "required" to submit to its terms, but contains no prohibition against his voluntarily doing so. Both he and Defendant Daniel proceeded in the written examination before us in obedience to the terms of the amendment, and we do not pause to resolve this question, arising as it does afer all of the briefs have been submitted and much study given to the fundamental issues involved.

We see no harm to ensue from granting the application to intervene and have entered an order permitting the requested intervention upon the terms set forth. The intervenor will be referred to hereafter as a plaintiff.

[3] This document set forth that Plaintiff Darby had appealed to the board of commissioners within 5 days from the refusal of Defendant Daniel to register him, that section 244 of the Mississippi constitution as amended "is unconstitutional and void on its face since it bestows upon the registrar of voters an uncontrolled discretion to determine who is able to interpret the constitution of the State of Mississippi and who is able to demonstrate an understanding of the duties and obligations of citizenship in a democratic form of government," and allegation being applied also to the Mississippi statutes implementing the constitutional provision. The document further set up that the constitutional and statutory provisions "are unconstitutional and void because the purpose of said provisions was to enable the registrar of voters to discriminate against otherwise qualified Negroes, solely because of their race and color," and that said provisions were being administered by Defendant Daniel "in such a manner as to discriminate against Rev. H. B. Darby and other Negroes otherwise qualified, solely because of their race and color." The document further contended that since Plaintiff Darby had registered prior to January 1, 1954, the new provisions were not applicable to him.

[4] This appearance by Plaintiff Darby and his attorney resulted, no doubt, from the language of section 3226 of the Mississippi Code of 1942 providing that the commissioners should meet "on the first Monday in October after appointment." The commissioners had been appointed in 1956 and had held the October meeting that year. No provision being made in that section for meeting in any year except that of their appointment, the Mississippi Legislature in 1938 passed a statute appearing as section 3240 of the Mississippi Code of 1942 providing that: "On the Tuesday after the third Monday in March, A.D. 1939, and every year thereafter the commissioners of election shall meet at the office of the registrar."

[5] The Court was then composed of Chief Justice Fuller and Associate Justices Harlan, Brewer, Brown, White, Peckham, McKenna, Holmes, and Day, and the decision was unanimous.

[6] To the same effect see *In Re Slaughter-House* cases, 1873, 16 Wall. 36; *Minor* v. *Happersett*, 1874, 21 Wall. 162, 88 U.S. 162; *United States* v. *Cruikshank*, 1875, 92 U.S. 542; *United States* v. *Reece*, 1875, 92 U.S. 214; *State of Virginia* v. *Rives*, 1879, 100 U.S. 313; *Snowden* v. *Hughes*, 1944, 321 U.S. 1. And cf. *McPherson* v. *Blacker*, 1892, 146 U.S. 1, 35: "The question before us is not one of policy but of power," and Annotation 153 A.L.R., pp. 1066 et seq.

(2) Plaintiffs base their argument that the constitutional provisions under attack are void on their face chiefly upon four Supreme Court decisions: *Yick Wo* v. *Hopkins, Sheriff*, 1886, 118 U.S. 356; *Guinn et al* v. *United States, supra; Lane* v. *Wilson*, 1939, 307 U.S. 268; and *Schnell et al* v. *Davis*, 1949, 336 U.S. 933. Analysis of those cases will reveal that they do not apply to the constitutional and statutory provisions before us.

Yick Wo involved the constitutionality, as administered by the board of supervisors, of an ordinance of the city and county of San Francisco making it unlawful to establish or maintain a laundry without the consent of the board of supervisors unless such laundry "be located in a building constructed either of brick or stone." Two Chineses nationals were convicted of violating the ordinances and the two cases wherein they sought habeas corpus were consolidated and decided by the Supreme Court. One was Yick Wo's petition for habeas corpus denied by the Supreme Court of California, and the other a like petition by Wo Lee, on practically identical facts, denied by the circuit court of the United States for the San Francisco district. The facts in both cases were without dispute.

Of the 320 laundries in San Francisco, about 310 were constructed of wood, and about about 240 were owned and conducted by subjects of China. The board of supervisors followed the policy of issuing permits for laundry operation to all Caucasians and denying it to all Chinese even though in the cases presented to the court the premises of the Chinese had been inspected and approved by the fire wardens, the health officers, and other city officials. The Supreme Court of California thought that the statute was a proper exercise of the police power, and the U.S. circuit court, in the other case, thought otherwise, expressing the opinion that the ordinances as administered violated provisions of the 14th amendment and a treaty between the United States and China. In deference to the decision of the Supreme Court of California, however, and contrary to its own opinion, the circuit court discharged the habeas corpus writ as the Supreme Court of California had done.

The Supreme Court rejected the decision of the California court, holding that the ordinances "seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons. * * * The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint (pp. 366–367). The final conclusion of the Supreme Court is epitomized in graphic words copied in the margin.[7] The quotation from the Supreme Court's opinion as applied to the facts there refutes the argument the case is called upon to furnish here. The case will be discussed further in our analysis of Schnell, infra. The constitution and statutes of Mississippi do not contain any license for the exercise of arbitrary power. Plaintiffs are entitled to relief here if they can show the discrimination which was admitted there.

Guinn brought in question the constitutionality of the "grandfather clause" inserted by amendment into the constitution of Oklahoma. That amendment established literacy tests, but exempted from such tests every person "who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation." The exemption was made to apply also to the lineal descendants of such persons. The court held that the language of the Oklahoma amendment was indisputably aimed directly at the 15th amendment with palpable intent of destroying the effect of that amendment. Its course of reasoning ran thus:

The 15th amendment provided that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." The Oklahoma constitution fixed a date, January 1, 1866, as the crucial date, at which time the 15th amendment had not been passed and no Negro possessed the right of suffrage. By its terms, therefore, the exemption from the literary test was denied to all Negroes, and was vouchsafed to all others. This being true, the Oklahome amendment—and the Supreme Court so stated—could have no other purpose, under its very language, than to abridge the right of Negroes to vote by requiring them to pass a literacy test from which all non-Negroes were exempted.

Lane v. *Wilson* dealt with an act of the Oklahoma Legislature passed at a special session immediately following the invalidation of the constitutional amendment in *Guinn*, which act the Supreme Court decided was directed solely at a circumvention of the Guinn decision. The scope and reach of *Lane* v. *Wilson* can best be evaluated by quotations from the Supreme Court's opinion set forth in the margin.[8]

It is clear that the Supreme Court thought that it was impossible to construe the Oklahoma legislation as having any efficacy which did not perpetuate as a favored class the white citizens, who were the only ones permitted to vote in 1914,[9] and to lay a heavy burden on Negroes aspiring to register under discriminatory requirements which they were forced to meet only because they had been wrongfully excluded from voting right under the unconstitutional provisions of the grandfather clause.

The last case relied upon by plaintiffs is the per curiam opinion of the Supreme Court in *Schnell et al.* v. *Davis et al.*, which reads as follows:

"The judgment is affirmed. *Lane* v. *Wilson*, 307 U.S. 268; *Yick Wo* v. *Hopkins*, 118 U.S. 356. Cf. *Williams* v. *Mississippi*, 170 U.S. 213."

A three-judge district court for the southern district of Alabama had written a lengthy opinion and had based its decision upon a number of grounds including a finding that the Boswell amendment there under consideration "has, in fact, been arbitrarily used for the purpose of excluding Negro applicants for the franchise, while white applicants with comparable qualifications were being accepted."[10] From the concluding words of the district court's opinion[11] it appears that the judgment it entered was to grant an injunction in favor of Schnell et al. The Supreme Court did nothing more than to affirm that judgment, not indicating which of the several grounds it adopted as the basis for the affirmance.

Viewed most favorably to the contentions of the plaintiffs here, it would be assumed that the Supreme Court decided that the Boswell amendment placed final and arbitrary powers in the hands of the board of registrars, which power the board had in fact exercised arbitrarily in favor of white

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[7] (pp. 373–374) "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

* * * * *

"The present cases, as shown by the facts disclosed in the record, are within this class. It appears that both petitioners have complied with every requisite, deemed by the law or by the public officers charged with its administration. * * * No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accumstomed manner, their harmless and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from 200 others who have also petitioned, all of whom happen to be Chinese subjects, 80 others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the 14th amendment of the Constitution."

[8] "Those who had voted in the general election of 1914 automatically remained qualified voters. The new regisatration requirements affected only others. * * * The crux of the present controversy is the validity of this registration scheme, with its dividing line between white citizens who had voted under the 'grandfather clause' immunity prior to *Guinn* v. *United States, supra*, and citizens who were outside it, and the not more than 12 days as the normal period of registration for the theretofore proscribed class" (p. 271).

"When in *Guinn* v. *United States, supra*, the Oklahoma 'grandfather clause' was found violative of the 15th amendment, Oklahoma was confronted with the serious task of devising a new registration system consonant with her own political ideas but also consistent with the Federal Constitution. We are compelled to conclude, however reluctantly, that the legislation of 1916 partakes too much of the infirmity of the 'grandfather clause' to be able to survive (p. 275).

* * * * *

"But this registration was held under the statute which was condemned in the *Guinn* case. Unfair discrimination was thus retained by automatically granting voting privileges for life to the white citizens whom the constitutional 'grandfather clause' had sheltered while subjecting colored citizens to a new burden" (p. 276).

[9] In its decision of *Lane* v. *Wilson* the Circuit Court of Appeals for the 10th Circuit, 98 F. 2d 980, 984, stated: "It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the 15th amendment until 1915 no Negroes voted at the 1914 election."

[10] Fundamental factual differences differentiate Schnell from the case before us. The Alabama amendment invested the registrars with rigid and arbitrary powers, not requiring that their judgment be reasonable. It contained no requirement that the examination be in writing or that a record be made of it so that it might be subjected to review. The decision makes no mention of any right of appeal from the decision of the registrars. State agencies took active leadership in campaigning for its adoption, stating openly in writing that the object of the amendment was to curtail Negro registration. As applied, the tests were not required of whites, only Negroes being subjected to them. Not one of these criticisms applies to the Mississippi amendment under the facts presented to us.

[11] 81 F. Supp. 881.

applicants and against Negro applicants. As shown above, this was the ground common to Lane and Yick Wo, the two cases forming the predicate for the Supreme Court's action in Schnell.

It is important to note that the Supreme Court, after citing these two cases, directed a comparison with *Williams* v. *Mississippi*, 1898, 170 U.S. 213. There, the literacy tests of the Mississippi Constitution of 1890 were upheld and, as demonstrated infra, the Court held categorically that the doctrine of Yick Wo did not apply. The clear meaning of the reference to the three cases by the Supreme Court was that in contrast with the valid requirements of the Mississippi Constitution, the Boswell amendment involved in Schnell came under the condemnation of the two cases wherein the Supreme Court had pointed out specifically that arbitrary power granted and discriminatorily used could not stand the test of constitutionality.

II

(1) In considering whether amended section 244 is unconstitutional on its face, it is important to bear in mind that plaintiffs concede that the voting provisions of the Constitution of 1890 were valid. They could not, of course, do less because the Supreme Court of the United States specifically approved them in *Williams* v. *Mississippi*, 1898, 170 U.S. 213.[12]

Sections 241, 242, and 244 of the constitution of 1890 were attacked by motion (20 So. at 840) as being violative of the due process and equal protection clauses of the 14th amendment. The motion was grounded on the allegation that the constitutional convention of Mississippi was composed of 134 members, of which only 1 was a Negro; "that the purpose and object of said constitution was to disqualify, by reason of their color, race, and previous condition of servitude, 190,000 Negro voters." It was contended before the Supreme Court, 170 U.S. at page 215, that, "under prior laws, there were 190,000 colored voters and 69,000 white voters;" and "that sections 241, 242, and 244 of the constitution of this State are in conflict with the 14th amendment to the Constitution of the United States, because they vest in administrative officers the power to discriminate against citizens by reason of their color; and that the purpose of so investing such officers with such power was intended by the framers of the State constitution to the end that it should be used to discriminate against the Negroes of the State." The contentions there made bear a marked resemblance to those now made before us. Responding to them, the Supreme Court of Mississippi said (20 So. 840–841):

"At this point in the investigation it is sufficient to say that we have no power to investigate or decide upon the private, individual purposes of those who framed the constitution, the political or social complexion of the body of the convention. * * * We can deal only with the perfected work—the written constitution adopted and put in operation by the convention. * * *

"We find nothing in the constitutional provisions challenged by the appellant which discriminate against any citizen by reason of his race, color, or previous conditions of servitude. * * * All these provisions, if fairly and impartially administered, apply with equal force to the individual white and Negro citizen. It may be, and unquestionably is, true that, so administered, their operation will be to exclude from the exercise of the elective franchise a greater proportionate number of colored than of white persons. But this is not because one is white and the other is colored, but, because of superior advantages and circumstances possessed by the one race over the other, a greater number of the more fortunate race is found to possess the qualifications which the framers of the constitution deemed essential for the exercise of the elective franchise."

Affirming the decision of the Mississippi Supreme Court in Williams, the Supreme Court of the United States considered at length *Yick Wo* v. *Hopkins*, supra, more than half of the opinion being devoted to a study of and quotations from the case. The Court quoted what it had said in Yick Wo, which quotation—set forth supra—is the portion of Yick Wo so vigorously urged by plaintiffs before us. But concerning said quoted language the Supreme Court of the United States, after stating "We do not think that this case is brought within the ruling in *Yick Wo* v. *Hopkins*" 170 U.S. at 225, said:

"This comment is not applicable to the constitution of Mississippi and its statutes. They do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them."

The Court, in that decision, quoted and discussed all of the important provisions of the Mississippi constitution governing the right to vote, and also quoted the contention there made that the constitution vested in the registrar "the full power, * * * to ask all sorts of vain, impertinent questions, and * * * reject whomsoever he chooses, and register whomsoever he chooses, for he is vested by the constitution with that power. Under section 244 it is left with the administrative officer to determine whether the applicant reads, understands, or interprets the section of the constitution designated. The officer is the sole judge of the examination of the applicant, and even though the applicant be qualified, it is left with the officer to so determine; and the said officer can refuse him registration."

It is of determinant significance that the Supreme Court in Williams rejected all of those contentions and upheld the constitutionality of section 244 as originally written.

(2) it is pertinent to observe at this point that plaintiffs, having thus conceded the validity of the original 244, make the identical argument that amended 244 is unconstitutional because (a) its language is so vague and indefinite as to furnish no ascertainable standard of action, and (b) it invests the registrar with arbitrary and uncontrolled powers

(a) The obvious answer to the ground first stated is that the words used in amended section 244 are the identical terms used in the 1890 constitution—"read," "reasonable," "interpret," "understand." Every one of those words was used in the original section which plaintiffs find no difficulty in comprehending. The language above quoted shows that the identical contention was made by Williams in his appeal and was rejected by the Supreme Court. It is further clear that the responsible State official was invested with exactly the same powers under the constitution of 1890 that he has under the amended section.

It is plain that what plaintiffs complain of is, not that the words used in the amendment are vague and indefinite, but that the literacy test imposed by the amendment is slightly more onerous and exacting than that of the original. They complain that the amendment requires an applicant for registration to read and write a section of the constitution. Certainly the original requirement was more rigorous at the time of its enactment than was the amendment when it was adopted.

The constitution of 1890 was passed when Negroes had just emerged from complete illiteracy—cf. the Supreme Court's language in *Brown* v. *Board of Education*, 1954, 347 U.S. 483, 490 "Education of Negroes was almost nonexistent and practically all of the race were illiterate"—and when both Negroes and whites had passed through two decades of the tragedy of Reconstruction when efforts at education were close to the vanishing point. After six decades of an increasingly competent educational system[13] it seems moderate indeed for the electorate to lay upon itself the obligation of being able to read and write the basic law of the Commonwealth. Understanding and interpretation formed a part of the original section 244 and they seem all the more proper in this time of general enlightenment.

The same can well be said of the sentence added by the amendment requiring an applicant to demonstrate "a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government." In assaying the reasonableness of such requirements it is well to note that the provision of the Oklahoma constitution, which the Supreme Court found unexceptionable in *Guinn*, supra (238 U.S. at 357), required the applicant to both read and write, and that the Court rejected the grandfather clause only because it was not able to discover any reason for its arbitrary exemption of those possessing certain qualifications on a specified date except one which flew in the face of the 15th amendment (238 U.S. at pp. 364–365). Such is not the case here. At a time when alien ideologies are making a steady and insidious assault upon constitutional government everywhere,[14] it is nothing but reasonable that the States should be tightening their belts and seeking to assure that those carrying the responsibility of suffrage understand and appreciate the form and genius of the Government of the country and of the States.

(b) Literacy tests for prospective voters have been in effect in this country for a century, and no case has been brought before us holding that the people of a State have placed themselves under too heavy a burden in setting the standards which will earn the right to vote, and none condemning a literacy test as such. In *Lassiter* v. *Taylor*, U.S.D.C. E.D. N. Car., 1957, 152 F. Supp. 295, 297–298, attention is called to the fact that 19 States, only 7 of which are Southern States, prescribe literacy tests, and those States and the laws prescribing the literacy tests are listed. Plaintiffs concede that it is proper for Mississippi to enact reasonable literacy requirements for voting. That concession is bound to include the unquestioned concept that it is the States which have plenary and exclusive power to determine what is reasonable. See the language of the Supreme Court opinions in part I supra. Plaintiff's idea that a literacy test may properly embrace one facet but not two (or two facets but not three) is without sanction of either law or reason. In *Trudeau* v. *Barnes*, 65 F. 2d 563, certiorari denied 290 U.S. 659, the fifth circuit court of appeals approved Louisiana constitutional requirements embracing both reading and interpreting its constitution and that of the United States.

[12] The Supreme Court there affirmed the decision of the Supreme Court of Mississippi in *Williams* v. *State*, 1896, 20 So. 1023, in which case a memorandum opinion only was written. That memorandum opinion referred to the decision of Chief Justice Cooper in the companion case of *Dixon* v. *State*, 20 So. 839; and consideration of the Dixon decision is necessary to an understanding of the effect of the Supreme Court's decision in Williams.

[13] Last year 268,246 Negroes attended the public schools of Mississippi and 281,684 whites. See Bulletin S.D. 58, Mississippi Department of Education.

[14] Blazoned across the front of the October 3, 1958, issue of U.S. News & World Report, are these words in red letters: "Today's War—How the Reds Are Operating in 72 Countries."

(c) To attack the language of amended section 244 as being too vague and indefinite is to ignore a long and unbroken line of decisions approving legislative enactments whose phraseologies are far more nebulous and difficult of ascertainment than the relatively simple terms before us. A few recent examples will suffice. The Supreme Court has recently [15] approved a Federal and a State statute which made criminal the dissemination of literature which was "obscene, lewd, lascivious, filthy, indecent," although it was necessarily left to 12 laymen constituting the jury to determine whether such dissemination had "a substantial tendency to deprave or corrupt the readers by inciting lascivious thoughts or by arousing lustful desires." The Labor Board is given power [16] to examine protracted negotiations between representatives of employers and employees and to determine therefrom whether there has been "bargaining in good faith."

In *Screws* v. *United States*, 325 U.S. 91, the Supreme Court upheld a criminal statute making it unlawful to deprive any inhabitant of a state "of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States * * *by reason of his color, or race." Those rights, privileges, and immunities are legion and are being defined and expanded every day.[17] The Court justified its decision by holding that conviction under the statute can ensue only when the jurors find, under proper instructions, that the rights violated are rights belonging to Federal citizenship as distinguished from those inhering in State citizenship. It should be remembered also that every juror in a criminal case is forced to apply his common sense in determining what is or is not a "reasonable" doubt; and jurors trying personal injury suits are required to fashion largely out of their own experience standards of "reasonable" care and "reasonable" prudence upon which to base their verdicts.

(3) To charge that the discretion vested in the registrar is arbitrary and uncontrolled is to ignore the procedures provided by Mississippi law. Administrative appeal to a board selected by the State board of election commissioners is given de nobo and, on such appeal, the judgment of the registrar is so highly tentative and lacking in finality that it is not even prima facie correct. In every instance his judgment must be one based upon reason, and absolute right of appeal to the courts is also provided. This administrative machinery has the explicit approval not only of Williams, supra, but of *Peay et al* v. *Cox, Registrar*, 5 Cir., 1951, certiorari denied 342 U.S. 896.

It would be hard to conceive of constitutional provisions which safeguard the rights of applicants for suffrage as well as do the ones under attack. A permanent record is made on forms prepared by State officers and applying uniformly to all applicants, so that anything smacking of discrimination can easily be checked by examination of the public records. This provides a more certain insurance against discrimination than the requirements of original section 244—providing for oral examination—which bears the stamp of plaintiffs' approval. Right of appeal is given not only to rejected applicants but to any member of the public who may think that any applicant has been too generously dealt with.

(4) (a) In an attempt to prove that the purpose, i.e., motive, of the people of Mississippi in amending section 244 of the Mississippi constitution was an evil one, plaintiffs sought to introduce in evidence six photostatic copies of newspaper articles expressing the opinion that the object of the constitutional amendment was "aimed at stemming the tide of Nergo voters that is growing up in the State." [18] The amendment was voted upon at an election for various officials, State and Federal. No effort was made to prove that the copies offered were in fact copies of newspapers published at the time and no proof was offered to show that the statements attributed to various individuals were made, or that the opinions were actually expressed.

These articles were permitted to be inserted in the record for whatever value they might have toward proving what the plaintiffs called climate. No statements were attributed to State officers and the articles purported to express only sentiments which were alleged to be entertained by the private citizens to whom they were attributed. The articles possessed little, if any, probative value.

(b) Plaintiffs also obtained by subpena copy of an issue of the Clarion Ledger, a newspaper published in Jackson, Miss., containing an article by Charles M. Hills in which the number of Negroes supposedly qualified and registered in various counties of the State was discussed. The article showed that Jefferson Davis County had, in 1954, 1,221 registered Negro voters. Hills was offered by plaintiff as a witness and asked as to the correctness of his figures. He replied that he had no personal knowledge at all and no information except what he had obtained, as the article set forth, from the Mississippi Citizens' Council. The figures could have been nothing but an estimate, as the registration records omit entirely any reference to the race of a registrant; but the article was received as a part of the record for whatever probative value it might have.

If the article should be accepted as dependable and as competent proof, some interesting comparisons might be made. In Jefferson Davis County 926 electors cast their ballots in favor of the constitutional amendment [19] and 278 against it. Plaintiffs' newspaper article showed that 54 Negroes were registered voters in Itawamba County; in voting on the amendment, 228 citizens of that county voted for the amendment and 1,248 voted against it. The article reflected that 4 Negroes were registered in Pontotoc County; the vote in that county was 339 for the amendment and 1,371 against. Speculation engendered by the article would lead to the conclusion that the adoption of the amendment by well over a 2 to 1 majority statewide did not follow at all the pattern of race registration which plaintiffs attempt to ascribe to it.[20]

(c) Plaintiffs, pursuing further the argument that the purpose of amending section 244 was to fashion tools the better to discriminate against Negro applicants, list a number of statutes passed by the Mississippi Legislature in 1954, 1955, and 1956 dealing with the public schools and with other aspects of what plaintiffs term "the State's declared policy of preserving segregation." If we should be tempted to accept guilt by association as a proper basis for condemning State action, it would not apply here, because the attack plaintiffs make here is basically upon a constitutional amendment enacted by vote of the people themselves. It was submitted at a time when only one other amendment was on the ballot and that had to do with a technical point applying to corporate procedures. The argument, like those which precede it, is lacking in force.

(5) (a) Having failed to produce any tangible proof to sustain this position, plaintiffs finally call upon us to supply the lack by judicial notice. In other words, we are importuned to rule without proof that, on its face or by reason of its unrevealed sinister purpose, the constitutional amendment is void. The showing before us wholly fails to warrant serious consideration of so condemning a whole people, which is what we would have to do if we accepted plaintiffs' argument. Neither proof nor judicial knowledge tend to sustain plaintiffs' position.

Even if we had such knowledge by some sort of occult power of divination, we would not have the competence to do what plaintiffs advocate. No case is cited as a precedent for such action, and no proof is offered to sustain it. If we should imagine ourselves possessed of such ominiscience and omnipotence, we would find ourselves confronted by a vast array of authority which forbids questioning the motives even of a legislature, certainly of a sovereign people.

(b) Commenting upon the immunity of State legislators from having their motives scrutinized, Judge Learned Hand,[21] exclaims: "but of all conceivable issues this would be the most completely 'political,' and no court would undertake it.' [22] He also quotes Chief Justice Taney's statement in the *License*

[15] *Roth* v. *United States*, 1957, 354 U.S. 476.

[16] *Labor Board* v. *Truitt Manufacturing Co.*, 1956, 351 U.S. 149.

[17] In *Adamson* v. *California*, 332 U.S. 46, it is demonstrated by the four exhaustive opinions that the Judges of the Supreme Court differ radically as to what the quoted words mean.

[18] Five of these were assumed copies of one daily newspaper, including two excerpts from editorials, two news stories about the impending election, and one news story about the formation of a citizens' council in a Mississippi county. Each contained the expression of the opinion that the amendment was intended to limit Negro registration. This quotation from one of the editorials is typical:

"The second proposed amendment would tighten up the State's voter-registration requirements to curb registration of near-illiterates. * * * The proposed change is wise, desirable, and very timely. * * * Adoption of this amendment, and fair and uniform application of the new voter-registration requirements, over the years would steadily raise the average educational qualifications and intelligence of our citizens. It would also curb the registration of members of groups most likely to engage in bloc voting and we believe that adoption of this amendment would, over a long period, help win the fight to retain our separate school system and social institutions."

The remaining newspaper article was a news story in another newspaper dealing largely with activities of citizens' councils.

[19] The figures are obtained from Mississippi Official and Statistical Register, 1956–60, p. 397.

[20] Plaintiffs seek to draw an unfavorable inference aginst defendants from the fact that Governor Coleman declined to honor a subpena issued by them. This was in keeping with the general law and the traditional policy of governors in Mississippi and in States generally. The Court offered to have Mr. Patterson, a member of the same Commission with the Governor, submitted to examination by plaintiffs, but plaintiffs did not choose so to proceed. It was clear that the testimony which plaintiffs sought to elicit from the Governor was hearsay and undependable because the figures were derived from a letter poll made of registrars which turned out to be incomplete. Plaintiffs had ample opportunity to attempt to make the desired proof by the registrar of Jefferson Davis County in 1954, or to proceed by interrogatories, request for admission, or the other avenues provided in F.R.C.P., but they did not do so.

[21] The Bill of Rights, supra, p. 46.

[22] Citing *McCulloch* v. *Maryland*, 4 Wheat. 316, 423; *Doyle* v. *Continental Ins. Co.* 94 U.S. 535, 541; *Weber* v. *Freed*, 239 U.S. 325, 330; *Arizona* v. *California*, 283 U.S. 423, 435; *Daniel* v. *Family Insurance Co.*, 336 U.S. 220, 224.

cases (5 How. 504, 583): "Upon that question the object and motive of the States are of no importance, and cannot influence the decision. It is a question of power." Mr. Justice Douglas, in *Ferandez* v. *Wiener*, 326 U.S. 340, quoted the language of Chief Justice Stone in *Sonzinsky* v. *United States* (1937, 300 U.S. 506, 513): "Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of the courts." Upon a principle so unquestionable it is sufficient to add to the cases already cited a list of more recent decisions affirming it.[23]

We hold, therefore, that plaintiffs have wholly failed to establish that the amendment to section 244 of the Mississippi constitution of 1890 is void on its face or because it was the product of base motives. We hold, on the other hand, that said amendment and the statutes passed in connection with it are valid on their face and in fact, and are a legitimate exercise by the State of its sovereign right to prescribe and enforce the qualification of voters.

III

(1) This brings us to the contention that plaintiffs, along with other Negroes, were actually discriminated against in the administration of the constitution and laws of Mississippi by defendant Daniel. If such discrimination was practiced against plaintiffs, the actions of defendant would certainly come under the condemnation of the 15th amendment, or the 14th amendment, or both. Plaintiffs put on the witness stand a number of other Negroes, but we look first to their own testimony to determine if either plaintiff proved that he was qualified to register under the constitution and laws of Mississippi and was denied registration because of his race.

Plaintiff Dillon, conceding that she was properly given the written test provided by the amendment, failed to produce a copy of that test for the court's inspection. She did not demonstrate in her oral testimony the possession of the qualifications provided in the Mississippi constitution and statutes, and there is no proof at all, therefore, that she had any status to maintain this action.

According to the testimony of his attorney, plaintiff Darby approached him in April or May 1956, about the time he wrote President Eisenhower. The attorney called the NAACP which, sometime later, agreed that its legal fund would pay the attorneys and the expense of any litigation which might be brought by Reverend Darby.

This was before his first written application of June 29, 1956, in which he stated that he was a farmer. The application was signed by him but was not filled in. It is not claimed that, in this application or the oral tests which came after it, Plaintiff Darby showed himself qualified to register. The entire case is predicated on the sworn written application of June 22, 1957, which he took under his attorney's advice and direction. This document, read in the light of the testimony of Plaintiff Darby, reveals several deficiencies.

He made no answer to question 14 inquiring if he had ever been convicted of the crimes enumerated in the question; considerable portions of the answers written by plaintiff are illegible. In response to question 18 calling upon him to copy section 123 of the Constitution of Mississippi,[24] he wrote six lines not called for by the question and not possessing marked coherence. In giving his reasonable interpretation of that section he wrote, "the govvener govends all the words of the state and he is to see that all the voilatores be punished and als he can pardon out the penetenter ane pherson." In answering question 20 which directed him to write his understanding of the duties and obligations of citizenship under a constitutional form of government, he wrote five lines which could hardly be called accurate or responsive to the question.[25]

That he could not write legibly is exemplified by examination of the several documents in the record written by him, and is further attested by the fact that the letter he sent the President was written entirely by someone else, including the signature. He did not attempt, while on the witness stand, to demonstrate that he could read. Every other Negro witness he placed on the stand was given a section of the Mississippi Constitution to read before the Court, but plaintiff himself did not attempt to show his ability to read. The evidence does not, therefore, support the burden imposed on the plaintiffs to show that they were qualified to be registered as voters. A fortiori it does not establish that defendant, Daniel, did not act in good faith or exercise a sound discretion when he made his decision that plaintiffs had not passed the examinations given them.

In passing judgment on this phase of the case we cannot leave out of view that defendant, Daniel, knew that he was under surveillance by Federal officials and that he was dealing with one party who was acting under advice of counsel.

It is fundamental that plaintiffs must stand or fall on the merits of their own case. The Supreme Court stated the principle in *McCabe* v. *A.T. & S.F. Ry. Co.*, 1914, 235 U.S. 151, 162, in these words:

"But we are dealing here with the case of the complainants, and nothing is shown to entitle them to an injunction. It is an elementary principle that, in order to justify the granting of this extraordinary relief, the complainant's need of it, and the absence of an adequate remedy at law, must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons, who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant—not to others—which justifies judicial intervention." (Citing a number of Supreme Court cases.[26])

(2) Plaintiffs served subpenas on 25 Negro witnesses, of whom 15 were placed upon the stand. Despite the principles last above quoted and such cases as *Reddix* v. *Lucky* (5 Cir., 1958), 252 F. 2d 930, 938, holding that "obviously the right of each voter depends upon the action taken with respect to his own case," we permitted this testimony to be introduced over objection to give plaintiffs a chance to show that there was a class whose rights they might carry if they established their own case, and also that the testimony might be considered as furnishing circumstantial evidence of discrimination in favor of the case of plaintiffs. Although some of the written applications exhibited in connection with the testimony of these witnesses were sufficient to raise an issue of fact as to their qualifications, it is not our province to set ourselves up as registrar of voters.

Some of the testimony certainly demonstrated the absence of qualifications of the applicants. For example, when called upon by question 18 to copy section 198 of the Mississippi constitution, Johnnie B. Darby, Plaintiff Darby's wife, wrote: "I have so agreed to be as good a citizen as I possible can I have not yet read the constitution of Mississippi I do try to abide by truth and right as the Almighty God provide the understanding and wisdom."

Another witness called upon to copy section 16 of the constitution[27] wrote: "Ex post facto laws or laws impaitring obligations contrace St. Shall Be passed." Interpreting that section this same witness wrote: "a man must pay pold tax befor he eagable to voat." This witness gave his occupation as that of teacher.

None of these witnesses took appeals from Daniel's ruling declining to permit them to register. Four of the 15 passed the written examination, and of those who failed the wives of 2 passed. He gave the test to some of the witnesses as many as four times and he invited plaintiff Dillon to come back and try again. The testimony of these witnesses adds little to the solution of the problem before us.

(3) Plaintiffs introduced one bound volume containing 78 original applications. The documents do not show whether the applicants were white or colored. It seems probable that the purpose of introducing this volume was to show that, during this period, all applicants were required to take the written examination, whereas under the constitutional amendment those who were registered voters on January 1, 1954, were required to take only the oral test habitually given under the original constitution. This does not prove anything which was not readily admitted by Defendant Daniel. From the time Daniel came into office January 1, 1956, until the attorney general of Mississippi advised him of his error he had been using the forms furnished him by the State election commissioners and testing all applicants by written examination. As far as the testimony goes none had objected. The point of this testimony, however, is that undisputedly white and colored were treated exactly alike. Since, according to the undisputed proof, there were only 40 to 50 Negro voters registered in the

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[23] *Cohen et al.* v. *Beneficial Industrial Loan Corp.*, 1949, 337 U.S. 541, 552; *Goesaret* v. *Cleary*, 1948, 335 U.S. 464, 467; *Oklahoma ex rel. Phillips* v. *Atkinson*, 1940, 313 U.S. 508, 528; *United States* v. *Darby*, 1941, 312 U.S. 100, 115; *Child Labor* case, 1922, 259 U.S. 20, 39; *Daniel* v. *Family Insurance Co.*, 336 U.S. 221; and *Doyle* v. *Continental Insurance Co.*, 94 U.S. 535.

[24] "The Governor shall see that the laws are faithfully executed."

[25] "a citizen is persn has in been in the USA all his days. and is not been convicted of enny crimes and has been loyal. to his country and pase all his tax."

[26] The cases on the subject are collected in an opinion by Chief Judge Hutcheson of the Court of Appeals of the Fifth Circuit in *Brown* v. *Board of Trustees* (1951), 187 F. 2d 20, 25, where he quoted from several Supreme Court cases. This language is applicable to the case before us: "All of these considerations, however, are completely beside the mark here, for plaintiff has wholly failed to plead or prove any deprivation of his civil rights and it is elementary that he has no standing to sue for the deprivation of the civil rights of others.

* * * * *

"It is the individual who is entitled to the equal protection of the laws, and if he is denied * * * a facility or convenience * * * which, under substantially the same circumstances, is furnished to another traveler, he may properly complain that his constitutional privilege has been invaded.

"Cf. *Sweatt* v. *Painter*, 339 U.S. 629, 635, 70 S. Ct. 848, 851, where the Court said: 'It is fundamental that these cases concern rights which are personal and present. * * * petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws.'"

[27] "Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed."

county, the 78 applicants, all of whom passed necessarily included some white people.

The wrongful interpretation or the misapplication of Mississippi law alone would not give this Court jurisdiction or amount to deprivation of any constitutional rights. Under this phase of the case discrimination alone resulting from the fact that plaintiffs are Negroes can justify maintaining the action or granting the relief sought. The Supreme Court announced the principle in explicit terms in Snowden v. Hughes, et al. 1944, 321 U.S. 1, 8 (a case in which Williams v. Mississippi, supra, was cited with approval) where the dismissal of an action for want of jurisdiction was approved where a candidate for office sought equitable relief against party, officials who refused to certify him as a candidate. The language quoted in the margin controls here.[28]

The essence of the action before us, therefore, is discrimination on the part of the defendant Daniel—discrimination against plaintiffs, Negroes, and in favor of white persons. After listening to the oral testimony and examining the documents carefully we are unable to find any tangible or credible proof of discrimination. There is no proof that any white person was ever treated in any manner more favorably than plaintiffs or any other Negroes. The mere showing that of 3,000 qualified voters in Jefferson Davis County, only 40 to 50 are Negroes is not sufficient. Plaintiffs carry the burden of showing that plaintiffs have been denied the right to register because they are Negroes, and that white people similarly situated have been permitted to register. This record contains no such proof. The disparity between numbers of registrants, as has been so often pointed out, results doubtless from the fact that one race had a start of several centuries over the others in the slow and laborious struggle toward literacy. This records does not, in our opinion, show that defendant has practiced discrimination. From our observation of his demeanor during the trial and while on the witness stand and of the evidence generally we are convinced that he has shown himself to be a conscientious, patient, and fair, public official, exerting every effort to do a hard job in an honorable way.

IV

Plaintiffs aver in their complaint that they have a right to maintain this action without exhaustion of the administrative remedies provided under Mississippi law. They base this contention upon the provisions of 42 United States Code Annotated, paragraph 1971(d), upon their charge that "where the plaintiff challenges the constitutionality of a State statute or policy, a Federal court will not require the exhaustion of administrative remedies;" and upon their assertion that "plaintiff here seasonably attempted to exhaust his administrative remedies and was unable to obtain a decision by the board of election commissioner." These contentions will be discussed in reverse order.

(1) Mississippi's election machinery is under the supervision of the State board of election commissioners, consisting of the Governor, the secretary of state, and the attorney general.[29] This board is required,[30] 2 months before every general election of Representatives in Congress, and of electors of President and Vice President of the United States * * * [to] appoint the commissioners of election for each county." The absolute right of appeal to the county board is given in words reproduced in the margin.[31] Hearings on appeal are provided for by section 3227 of the Mississippi Code (appearing first in the Mississippi Code of 1892) entitled "Appeal Heard De Novo:"

"All cases on appeals shall be heard by the boards of election commissioners de novo, and oral evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by the circuit and supreme courts. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books."

Sections 3228, 3229, 3230, and 3231 provide for hearing of the appeal by the circuit court of the county. The right of appeal to the supreme court is given.

The evidence does not show that plaintiff Darby "was unable to obtain a decision by the board of election commissioners." It does show that he seasonably appealed to the county board of election commissioners, thus electing to proceed by statutory appellate procedures, but that he failed to follow them through. On the other hand, he began this civil action 4 days before the first meeting of the board held after his appeal. The appeal is still pending and undisposed of.[32] Plaintiffs' first assigned reason is, therefore, without merit.

(2) The cases cited by plaintiffs[33] do not sustain their contention that it is not necessary to exhaust administrative remedies where the claim is asserted that constitutional rights have been violated.

There are decisions[34] holding that, where an appeal presents only matters of law, the court may intervene without awaiting action by the intermediate administrative board which had no power to pass upon legal questions. But such cases do not control here. The written appeal of Plaintiff Darby on June 24, 1957 was a general appeal, and the writing which accompanied it, states that he had on June 22, 1957 presented himself to the registrar, making application to register as a voter "whereupon such instance notwithstanding that I did then and do now possess the necessary qualifications to register, I was denied registration." A letter from his attorney dated September 21, 1957 states that "He has been denied the right to register to vote, notwithstanding that he was then and is now possessed wih the necessary qualifications for same." The formal "contentions" filed by said plaintiff October 7, 1957 raised constitutional questions, but also reiterated the questions of fact theretofore relied upon, to wit: that Defendant Daniel was administering the constitutional and statutory provisions of Mississippi in such a manner as to discriminate against him, and that he was a duly qualified and registered voter in Mississippi prior to January 1, 1954, and was entitled to registration without complying with the additional qualifications contained in the amendment to the Constitution. In this state of the record and under the complaint, it is clear that plaintiffs' challenge did not relate to questions of law only. We repeat what the court of appeals for the fifth circuit said in *Peay* v. *Cox, supra:*[35] "The commissioners are sworn officers and presumably will give them a fair hearing. They may easily think the petitioners are right in their construction of the Mississippi constitution. * * * If they hold otherwise on that point but that a discrimination is practiced, they may correct that. The registrar is bound to obey them." The second ground asserted by plaintiffs is, therefore, untenable.

(3) Finally, plaintiffs, claim to be exempted from Mississippi procedural laws relating to registration and appeal therefrom, basing their contention upon the act of Congress approved September 9, 1957 (Public Law

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[28] "But not every denial of a right conferred by State law involves a denial of the equal protection of the laws, even though the denial of the right to one person may operate to confer it on another. * * * And where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws.

"The unlawful administration by State officers of a State statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. * * * But a discriminatory purpose is not presumed, Tarrance v. Florida, 188 U.S. 519, 520; there must be a showing of 'clear and intentional discrimination,' Gundling v. Chicago, 177 U.S. 183, 186."

[29] Mississippi Code of 1942, sec. 3204.

[30] Ibid., sec. 3205.

[31] Ibid., sec. 3224 provides that: "Any person denied the right to register as a voter may appeal from the decision of the registrar to the board of election commissioners by filing with the registrar, on the same day of such denial or within 5 days thereafter, a written application for appeal."

Sec. 3225 provides: "Any elector of the county may likewise appeal from the decision of the registrar allowing any other person to be registered as a voter; but before the same can be heard the party appealing shall give notice to the person whose registration is appealed from, in writing, stating the grounds of the appeal; which notice shall be served by the sheriff "

[32] Meetings of the board are fixed by three Mississippi statutes: Section 3239 of the Mississippi Code of 1942, first passed in 1880, provides for a meeting "On the first Monday of October preceding a general election, and 5 days before any other." There was no general or other election in Mississippi during 1957. Section 3226 first passed in 1892, provides for meetings on the first Monday in October after appointment. The reason for this statute is that the time of appointment of the board is indefinite under section 3205, supra. The board had been appointed in 1956 and had held a meeting in October of that year. This statute does not apply to any year except the year of their appointment.

The Mississippi Legislature of 1938 passed a new statute, now section 3240 of the code, requiring that the board meet every year on the Tuesday after the third Monday in March, and this is the general meeting. The statutes provide an understable and reasonable time for the meeting of the board so that an elector desiring to register may not miss any election, and plaintiff and his attorney were advised by the statutes and by the word of the Registrar of the date the board would meet. Instead of attending the meeting of the board and prosecuting the appeal they had begun, they filed this civil action.

Plaintiff Rutha Dillon testified that she did not appeal at all.

[33] E.g., *Gibson* v. *Board of Public Instruction of Dade County,* 5 cir., 1957, 246 F. 2d 913, which holds premature the contention that schoolchildren did not pursue administrative remedies where the Florida constitution made nonsegregated schools illegal.

[34] E.g., *Bruce et al.* v. *Stilwell et al.,* 5 cir., 1953, 206 F. 2d 554.

[35] 1951, 190 F. 2d 123, 126, certiorari denied 342 U.S. 896.

said threats, plaintiffs and their attorneys are suffering irreparable injury. Plaintiffs' evidence wholly failed to sustain these charges of the complaint. In fact, that evidence showed without dispute that no such threats had been made and that no action was taken or within contemplation which could in any way affect the welfare or the rights of plaintiffs or their attorneys. The statutes have not been passed upon by the courts of Mississippi. Since the evidence fails to establish that any controversy exists between plaintiffs and either defendant with respect to said statutes, and in view of the long line of Supreme Court decisions committing such matters at least primarily to State court action, *Amalgamated Clothing Workers of America* v. *Richmond Bros.*, 348 U.S. 511; *Stefanelli* v. *Minard*, 342 U.S. 117; *Douglas* v. *City of Jeanette*, 319 U.S. 157; and *Watson* v. *Buck*, 313 U.S. 387, and cf. 28 U.S.C.A. No. 2283, plaintiffs cannot maintain this phase of their complaint.

It results from the foregoing views that plaintiffs are not entitled to any of the relief sought. We are, therefore, entering an order dismissing the complaint.

Dismissed.

(This opinion issued Nov. 6, 1958.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 2319) for the relief of Sergiusz Rudczenko.

The message also announced that the House had agreed to the amendments of the Senate to the amendment of the House to the bill (S. 2162) to provide a health benefits program for Government employees.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7476) to extend for 2 additional years the authority of the Surgeon General of the Public Health Service with respect to air pollution control.

The message also announced that the House had agreed to the amendments of the Senate to each of the following bills of the House:

H.R. 47. An act to amend the Internal Revenue Code of 1954 to provide a personal exemption for children placed for adoption; and

H.R. 6059. An act to provide additional civilian positions for the Department of Defense for purposes of scientific research and development relating to the national defense, to improve the management of the activities of such Department, and for other purposes.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H.R. 6067) to amend section 4544 of the Revised Statutes of the United States to provide that, if the money and effects of a deceased seaman paid or delivered to a district court do not exceed in value the sum of $1,500, such court may pay and deliver such money and effects to certain persons other than the legal personal representative of the deceased seaman.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the President pro tempore:

S. 1436. An act to amend the act of June 14, 1926, as amended by the act of June 4, 1954 (68 Stat. 173; 43 U.S.C., sec. 869);

S. 2230. An act to amend the National Cultural Center Act;

S 2445. Authorizing the conferring of the degree of master of arts in education on certain students who enrolled in the District of Columbia Teachers College prior to July 1, 1958, and who, prior to July 1, 1961, are certified by the president and faculty of such college as having met all requirements for the granting of such degree;

S. 2517. An act to amend section 7 of the Federal Home Loan Bank Act, as amended; and

S.J. Res. 103. Joint resolution authorizing the National Geographic Society to erect a memorial on public grounds in the State of Virginia to honor Rear Adm. Richard E. Byrd.

MUTUAL SECURITY APPROPRIATIONS, 1960

The Senate resumed the consideration of the bill (H.R. 8385) making appropriations for mutual security and related agencies for the fiscal year ending June 30, 1960, and for other purposes.

Mr. McNAMARA. Mr. President, many of us in the Senate—I like to think it is a majority—had hoped that we would come to grips during this session with definitive legislation in the civil rights field.

It was our desire to build upon the foundation we laid in the Civil Rights Act of 1957 to erect new safeguards for the basic civil and human rights of all Americans.

Unfortunately, on the eve of adjournment, it is obvious that our desire is not going to be fulfilled this year.

I would not like the Nation to feel, however, that this failure to act in the civil rights field resulted from any lack of interest or purpose on our part.

Rather, it resulted primarily from the same parliamentary obstacles that, until 1957, had prevented legislation to insure civil rights for nearly 90 years.

There is first the great obstacle of getting committee action on civil rights bills. And even should that achievement be obtained, there is still the threat of the filibuster, despite the token change this year in the filibuster rule.

Thus we are permitted this year to act only on the relatively simple task of extending the Commission on Civil Rights for another 2 years.

And even that rather innocuous proposal is being greeted with sharp and extended debate.

To my mind, however, the debate on extension of the Civil Rights Commission is achieving two meritorious goals.

First, it has drawn assurances from the Senate leadership that the full Senate definitely will have the opportunity next year to express its will on the subject of civil rights legislation.

So, while we regret that we did not have the opportunity for action this year, we at least have the satisfaction of knowing that next year we will be able to present our case to the Congress and to the country.

We hope, of course, that this opportunity will come at a very early date, after Congress reconvenes on January 6, 1960.

The other achievement of this debate, as I see it, is that it has called much-deserved attention to the Civil Rights Commission, its work in recent months, and its report.

I have the feeling that had not the issue of extending the life of the Commission come up, the report would have been noted briefly, and then forgotten.

In reading portions of this report, I have been pleased with the manner in which it grasps the interlocking nature of civil rights problems.

It notes, for example, that solving one problem does not automatically clear up others. The report states, in part:

> If the right to vote is secured, but there is not equal opportunity in education and housing, the value of that right will be discounted by apathy and ignorance. If compulsory discrimination is ended in public education, but children continue to be brought up in slums and restricted areas of racial concentration, the conditions for good education and good citizenship will still not obtain.
>
> If decent housing is made available to nonwhites on equal terms but their education and habits of citizenship are not raised, new neighborhoods will degenerate into slums.

Particularly impressive, too, is the call upon the leadership of America in the report's statement that:

> To eliminate discrimination and demoralization, some dramatic and creative intervention by the leaders of our national life is necessary. In the American system much of the action needed should come from private enterprise and voluntary citizens' groups and from local and State governments. If they fail in their responsibilities the burden falls unduly on the Federal Government.

To me, this means that all America, from the White House on down, must take a much more active and constructive part in meeting these problems than has been the case in the past.

I should like to take this opportunity to congratulate Dr. John A. Hannah, president of Michigan State University, for the fine job he has done as Chairman of the Civil Rights Commision.

A NATION OF ECONOMIC ILLITERATES

Mr. BUTLER. Mr. President, as a member of the Joint Economic Committee, I have become increasingly concerned with the lack of a basic understanding of the American free enterprise system on the part of our younger people. Recently an article on this subject by the well-known columnist, Sylvia Porter, appeared in the Washington Evening Star. It is so clearly directed to the problem which confronts all of us that I ask unanimous consent that it may be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NATION OF ECONOMIC ILLITERATES

(By Sylvia Porter)

In Congress today policies vitally affecting the survival of our economic system are being made by economic illiterates.

In business board rooms and union meeting halls across the Nation decisions directly involving jobs are being made by men who

85–315, pt. IV, sec. 131(d))[36] Plaintiffs would construe the words "shall have exhausted any administrative or other remedies that may be provided by law" as permitting interception of the State remedy of appeal already begun and carried through by Darby to a point just short of hearing before the county commissioners; and as relieving Plaintiff Dillon of having taken the first step toward appeal, or having made any move at all until more than 2 years after her application had been rejected by the registrar.

The mechanics set up by Mississippi to determine which applicants are qualified to register embrace three steps: written application, which is passed upon by the registrar; appeal from his ruling by the applicant or any other citizen and full hearing before the county board; and appeal to the circuit court of the county. The Court of Appeals for the Fifth Circuit, in *Pey* v. *Cox, Registrar* (190 F. 2d at p. 126; certiorari denied, 342 U.S. 896), classified even the step carrying the controversy before the courts as administrative under the authority of *Federal Railroad Commission* v. *General Electric Co.* (281 U.S. 464). To short-circuit the admittedly administrative proceedings short of a hearing and decision by the county board would be not only to deny exhaustion of administrative remedies, but to stop them before they had begun. Such a conclusion is compelled if two key words of the new Federal statute, "remedy" and "exhaust," are given their normal meaning.

"Exhaust" means to "use up, to expend completely."[37] "Remedy" is defined as "something that corrects, counteracts or removes an evil or wrong; relief; redress."[38] To sustain plaintiffs' position would be to shut off all State action aimed at providing a remedy, at redress. But the words of the statute contemplate that the State be given a chance to "correct" the asserted "wrong." It is difficult to perceive how these words of the statute can be given any efficacy at all or how the constitutional scheme can be fulfilled if Federal competence is to be construed as displacing State power in this vital field before the State is permitted to take the first step toward furnishing an administrative "remedy."

The meaning of the quoted words must be determined in the light of State and Federal competence as established by the Constitution as construed by the Supreme Court. In balancing the rights of a plaintiff to the protection of the Constitution and the power of a State over suffrage, it is well to keep in mind what the Supreme Court said in Guinn, supra, to the effect that "without the possession of which power the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rests would be without support and both the authority of the Nation and State would fall to the ground." The State of Mississippi had plenary and exclusive power to fix the qualifications of voters. More than that, it had and must have the power to provide machinery for its enforcement. The machinery provided by it contemplates the relatively ministerial act of registration by the registrar. The heart of Mississippi's machinery lies in the right of any person to appeal to the county election commission. That body alone has the power to have a hearing, to consider evidence, to give the time and study incident to a considered conclusion. Its findings and orders are absolutely binding upon the registrar. To take from this administrative scheme the duties conferred on this Board would be to render sterile the undoubted exclusive power of a State over suffrage.

The Supreme Court of the United States has throughout its history recognized the rule that administrative proceedings must be exhausted, and it has been particularly punctilious in requiring the exhaustion of administrative remedies provided by the States.

We are confronted here with the necessity of deciding the point at which a Federal court would be warranted in interrupting administrative procedures—that is, what the statute under consideration means by exhaustion of administrative remedies. The Supreme Court, in handling an action for declaratory judgment in a district court under the Renegotiation Acts, used this language concerning administrative remedies, affirming the act of the district court in declining jurisdiction.[39] "Ordinarily of course issues relating to exhaustion of administrative remedies, as a condition precedent to securing judicial relief, and to the existence of jurisdiction in equity are either separate or separable matters, to be treated as entirely or substantially distinct. The one generally speaking is simply a condition to be performed prior to invoking an exercise of jurisdiction by the courts. The other goes to the existence of judicial power in the basic jurisdictional sense. * * *

"* * * The doctrine, wherever applicable, does not require merely the initiation of prescribed administrative procedures. It is one of exhausting them; that is, of pursuing them to their appropriate conclusion and, correlatively, of awaiting their final outcome before seeking judicial intervention."

The solicitude habitually manifested by the Supreme Court in its traditional dealing with State matters before administrative agencies is well illustrated by the language used in *Alabama Public Service Commission et al.* v. *Southern Railway Company*, 1951, 341 U.S. 341, 349–350: "As adequate State court review of an administrative order based upon predominantly local factors is available to appellee, intervention of a Federal court is not necessary for the protection of Federal rights. Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of State governments which should at all times actuate the Federal courts,' is convinced that the asserted Federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the Federal courts.' Considering that '(f)ew public interests have a higher claim upon the discretion of a Federal chancellor than the avoidance of needless friction with State policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the State courts."

And in *Hecht Co.* v. *Bowles*, 1944, 321 U.S. 321, 329–330, the Court upheld the refusal of a District Court to grant an injunction using this language: "We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made.

"* * * We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied.

"* * * Neither body [that is, administrative and court] should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder."

It seems reasonable that, as applied to the Mississippi statutes under the facts of this case, the exhaustion of administrative remedies provided in the quoted Federal statute should, in any event, be held to exist only after the appellate proceedings before the county election commissioners have been completed. Such a course would give full protection to the rights of plaintiffs, affording them remedy in the Federal courts at the point where the administrative process is by Mississippi statutes committed to the courts. That is consistent with the holding of the Supreme Court in *Lane* v. *Wilson, supra.*[40] "To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the State courts. Normally, the State legislative process, sometimes exercised through administrative powers conferred on State courts, must be completed before resort to the Federal courts can be had. * * * But the State procedure open for one in the plaintiff's situation * * * has all the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma courts any of the discretionary or initiatory functions that are characteristic of administrative agencies. * * * Barring only exceptional circumstances, * * * resort to a Federal court may be had without first exhausting the judicial remedies of State courts." The exercise of such a discretion comports with the holdings of a long line of decisions of the Supreme Court.[41] And compare the language and action in Lane, supra, with that in Alabama Public Service Commission, supra.

We think the foregoing reasoning is sound, but we do not have to rest this phase of the decision upon it because it is quite clear that this case is not governed by the quoted provisions of the act of September 9, 1957. By its terms it applies only to "proceedings instituted pursuant to this section." Subsection (d) appears as a part of the Civil Rights Act of 1957 bearing the heading: "Section 131." That section creates procedures theretofore unknown and vests the Attorney General of the United States with power to institute legal proceedings for private individuals. It is manifest that subsection (d) applies only to actions so instituted. It follows that plaintiffs cannot maintain this action for the additional reason that they failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law.

Plaintiffs attack the constitutionality of the Mississippi statutes covering champerty and maintenance, section 2049–01 through section 2049–08 of the Mississippi Code of 1942, this portion of the action being directed chiefly against defendant Patterson, attorney general of Mississippi. The complaint alleges that the defendant attorney general threatens to enforce as against the plaintiffs and their attorneys the provisions of these statutes and that, as the result of

[36] The section now codified as 42 U.S.C.A., par. 1971(d), reads as follows: "The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have *exhausted* any administrative or other *remedies* that may be provided by law." [Emphasis added.]

[37] Webster's New World Dictionary, p. 509.

[38] Ib., p. 1230.

[39] *Aircraft & Diesel Corp.* v. *Hirsch*, 1947, 331 U.S. 752, 764, and 767; and cf. *United States* v. *Abilene & So. Ry. Co.*, 265 U.S. 274; *United States* v. *Sing Tuck*, 194 U.S. 161; and *Gonzales* v. *French*, 164 U.S. 338.

[40] 307 U.S. at 274.

[41] *Burford et al.* v. *Sun Oil Co. et al.*, 1943, 319 U.S. 315; *Railroad Commission of Texas* v. *Pullman Co.*, 1941, 312 U.S. 496; *Meyers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41; *Prentis et al.* v. *Atlantic Coast Line Co.*, etc., 1908, 211 U.S. 210, and cases cited. And see also *Peay* v. *Cox, supra*; *Cook* v. *Davis*, 5 Cir., 178 F. 2d 595; and *Bates* v. *Batte*, 5 Cir., 187 F. 2d 142.

said threats, plaintiffs and their attorneys are suffering irreparable injury. Plaintiffs' evidence wholly failed to sustain these charges of the complaint. In fact, that evidence showed without dispute that no such threats had been made and that no action was taken or within contemplation which could in any way affect the welfare or the rights of plaintiffs or their attorneys. The statutes have not been passed upon by the courts of Mississippi. Since the evidence fails to establish that any controversy exists between plaintiffs and either defendant with respect to said statutes, and in view of the long line of Supreme Court decisions committing such matters at least primarily to State court action, *Amalgamated Clothing Workers of America* v. *Richmond Bros.*, 348 U.S. 511; *Stefanelli* v. *Minard*, 342 U.S. 117; *Douglas* v. *City of Jeanette*, 319 U.S. 157; and *Watson* v. *Buck*, 313 U.S. 387, and cf. 28 U.S.C.A. No. 2283, plaintiffs cannot maintain this phase of their complaint.

It results from the foregoing views that plaintiffs are not entitled to any of the relief sought. We are, therefore, entering an order dismissing the complaint.

Dismissed.

(This opinion issued Nov. 6, 1958.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 2319) for the relief of Sergiusz Rudczenko.

The message also announced that the House had agreed to the amendments of the Senate to the amendment of the House to the bill (S. 2162) to provide a health benefits program for Government employees.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7476) to extend for 2 additional years the authority of the Surgeon General of the Public Health Service with respect to air pollution control.

The message also announced that the House had agreed to the amendments of the Senate to each of the following bills of the House:

H.R. 47. An act to amend the Internal Revenue Code of 1954 to provide a personal exemption for children placed for adoption; and

H.R. 6059. An act to provide additional civilian positions for the Department of Defense for purposes of scientific research and development relating to the national defense, to improve the management of the activities of such Department, and for other purposes.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H.R. 6067) to amend section 4544 of the Revised Statutes of the United States to provide that, if the money and effects of a deceased seaman paid or delivered to a district court do not exceed in value the sum of $1,500, such court may pay and deliver such money and effects to certain persons other than the legal personal representative of the deceased seaman.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the President pro tempore:

S. 1436. An act to amend the act of June 14, 1926, as amended by the act of June 4, 1954 (68 Stat. 173; 43 U.S.C., sec. 869);

S. 2230. An act to amend the National Cultural Center Act;

S 2445. Authorizing the conferring of the degree of master of arts in education on certain students who enrolled in the District of Columbia Teachers College prior to July 1, 1958, and who, prior to July 1, 1961, are certified by the president and faculty of such college as having met all requirements for the granting of such degree;

S. 2517. An act to amend section 7 of the Federal Home Loan Bank Act, as amended; and

S.J. Res. 103. Joint resolution authorizing the National Geographic Society to erect a memorial on public grounds in the State of Virginia to honor Rear Adm. Richard E. Byrd.

MUTUAL SECURITY APPROPRIATIONS, 1960

The Senate resumed the consideration of the bill (H.R. 8385) making appropriations for mutual security and related agencies for the fiscal year ending June 30, 1960, and for other purposes.

Mr. McNAMARA. Mr. President, many of us in the Senate—I like to think it is a majority—had hoped that we would come to grips during this session with definitive legislation in the civil rights field.

It was our desire to build upon the foundation we laid in the Civil Rights Act of 1957 to erect new safeguards for the basic civil and human rights of all Americans.

Unfortunately, on the eve of adjournment, it is obvious that our desire is not going to be fulfilled this year.

I would not like the Nation to feel, however, that this failure to act in the civil rights field resulted from any lack of interest or purpose on our part.

Rather, it resulted primarily from the same parliamentary obstacles that, until 1957, had prevented legislation to insure civil rights for nearly 90 years.

There is first the great obstacle of getting committee action on civil rights bills. And even should that achievement be obtained, there is still the threat of the filibuster, despite the token change this year in the filibuster rule.

Thus we are permitted this year to act only on the relatively simple task of extending the Commission on Civil Rights for another 2 years.

And even that rather innocuous proposal is being greeted with sharp and extended debate.

To my mind, however, the debate on extension of the Civil Rights Commission is achieving two meritorious goals.

First, it has drawn assurances from the Senate leadership that the full Senate definitely will have the opportunity next year to express its will on the subject of civil rights legislation.

So, while we regret that we did not have the opportunity for action this year, we at least have the satisfaction of knowing that next year we will be able to present our case to the Congress and to the country.

We hope, of course, that this opportunity will come at a very early date, after Congress reconvenes on January 6, 1960.

The other achievement of this debate, as I see it, is that it has called much-deserved attention to the Civil Rights Commission, its work in recent months, and its report.

I have the feeling that had not the issue of extending the life of the Commission come up, the report would have been noted briefly, and then forgotten.

In reading portions of this report, I have been pleased with the manner in which it grasps the interlocking nature of civil rights problems.

It notes, for example, that solving one problem does not automatically clear up others. The report states, in part:

If the right to vote is secured, but there is not equal opportunity in education and housing, the value of that right will be discounted by apathy and ignorance. If compulsory discrimination is ended in public education, but children continue to be brought up in slums and restricted areas of racial concentration, the conditions for good education and good citizenship will still not obtain.

If decent housing is made available to nonwhites on equal terms but their education and habits of citizenship are not raised, new neighborhoods will degenerate into slums.

Particularly impressive, too, is the call upon the leadership of America in the report's statement that:

To eliminate discrimination and demoralization, some dramatic and creative intervention by the leaders of our national life is necessary. In the American system much of the action needed should come from private enterprise and voluntary citizens' groups and from local and State governments. If they fail in their responsibilities the burden falls unduly on the Federal Government.

To me, this means that all America, from the White House on down, must take a much more active and constructive part in meeting these problems than has been the case in the past.

I should like to take this opportunity to congratulate Dr. John A. Hannah, president of Michigan State University, for the fine job he has done as Chairman of the Civil Rights Commision.

A NATION OF ECONOMIC ILLITERATES

Mr. BUTLER. Mr. President, as a member of the Joint Economic Committee, I have become increasingly concerned with the lack of a basic understanding of the American free enterprise system on the part of our younger people. Recently an article on this subject by the well-known columnist, Sylvia Porter, appeared in the Washington Evening Star. It is so clearly directed to the problem which confronts all of us that I ask unanimous consent that it may be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NATION OF ECONOMIC ILLITERATES

(By Sylvia Porter)

In Congress today policies vitally affecting the survival of our economic system are being made by economic illiterates.

In business board rooms and union meeting halls across the Nation decisions directly involving jobs are being made by men who